

PART IV ADMINISTRATION

109 THE AUTHORITY FOR ADMINISTRATION FOR INSTITUTION FOR THE AGED OR INFIRM

109.01 Responsibility. The governing authority, the owner, or the person(s) designated by the governing authority or the owner shall be the supreme authority in a facility responsible for the management, control, and operation of the institution including the appointment of a qualified staff.

109.02 Organization. Each facility should establish a written organizational plan, which may be an organizational chart that clearly establishes a line of authority, responsibilities, and relationships. Written personnel policies and job descriptions shall be prepared and given to each employee.

109.03 Relationship of staff to Governing Authority. The administrator, personnel, and all auxiliary organizations shall be directly or indirectly responsible to the governing authority.

110 THE LICENSEE

110.01 Responsibility. The licensee shall be the person who the licensing agency will hold responsible for the operation of the home in compliance with these regulations. The licensee may serve as the administrator or may appoint someone to be the administrator. The licensee shall be responsible for submitting to the licensing agency the plans and specifications for the building, the applications for license, and such reports as are required.

1. Initial Application. The licensee shall submit the following with his initial application:

a. References in regard to this character, temperament, and experience background from three (3) responsible persons not related to him.

The licensing agency reserves the right to make investigations from its own source regarding the character of the applicant.

b. Whether the governing body will be a private proprietary, partnership, corporation, governmental, or other (non-profit, church, etc.). If a partnership, the full name and address of each partner. If a corporation or other, the name, address, and title of each officer. If governmental, the unit of government.

2. Application for License. Application for license or relicense shall be submitted in form and content pursuant to the instructions of the licensing agency. 15

111 ADMINISTRATOR

111.01 Responsibility.

1. There shall be a licensed administrator with authority and responsibility for the operation of the facility in all its administrative and professional functions subject only to the policies enacted by the governing authority and to such orders as it may issue. The administrator shall be the direct representative of the governing authority in the management of the facility and shall be responsible to said governing authority for the proper performance of duties.

2. There shall be a qualified individual present in the facility responsible to the administrator in matters of administration who shall represent him during the absence. The persons shall not be a resident of the facility.

111.02 Qualifications. The administrator shall be chosen primarily for his administrative ability to establish proper working relationship with physicians, nurse practitioners, and employees of the facility.

1. The administrator and his assistant shall be at least twenty-one (21) years of age.

2. The administrator shall be of reputable and responsible character and in such state of physical and mental health as will permit him to satisfactorily direct the activities and services of the facility.

112 FINANCIAL

112.01 Accounting. Accounting methods and procedures should be carried out in accordance with a recognized system of good business practice. The method and procedure used should be sufficient to permit annual audit, accurate determination of the cost of operation and the cost per resident per day.

112.02 Financial Structure. All facilities shall have a financial plan which guarantees sufficient resources to meet operating cost at all times and to maintain standards required by these regulations.

112.03 Admission Agreement. Prior to or at the time of admission, the administrator and the resident or the resident's responsible party shall execute in writing a financial agreement. This agreement shall be prepared and signed in two or more copies, one copy given to the resident or his sponsor, and one copy placed on file in the license facility.

1. As a minimum this agreement shall contain:

a. Basic charges agreed upon (room, board, laundry, nursing, and/or

personal care). 16

b. Period to be covered in the charges.

c. Services for which special charges are made.

d. Agreement regarding refund for any payments made in advance.

2. No agreement or contract shall be entered into between the licensee and the resident or his responsible party which will relieve the licensee of responsibility for the protection of the person and of the rights of the individual admitted to the facility for care, as set forth in these regulations.

3. A record of all sums of money received from each resident shall be kept up-to-date and available for inspection.

4. The resident or his lawful agent shall be furnished a receipt signed by the lawful agent of the institution for all sums paid over to the facility.

5. Neither the licensee or any employee shall misuse or misappropriate any property real or personal, belonging to a resident of the facility.

6. Undue influence or coercion shall not be used in procuring a transfer of funds or property or in procuring a contract or agreement providing for payment of funds or delivery of property belonging to a resident of the facility.

7. Agreements between a facility and a resident relative to cost of care shall include adequate arrangements for such emergency medical or hospital care as may be required by the resident.

8. No licensee, owner, or administrator of a facility; a member of their family; an employee of the facility; or a person who has financial interest in the home shall act as the legal guardian for a resident of the facility. This requirement shall not apply if the resident is related within the third degree as computed by civil law.

112.04 Resident Admission. Prior to initial licensure of each facility, a written schedule for resident admission shall be developed and submitted to the licensing agency.

113 EMERGENCY OPERATIONS PLAN (EOP)

113.01 The licensed entity shall develop and maintain a written preparedness plan utilizing the "All Hazards" approach to emergency and disaster planning. The plan must include procedures to be followed in the event of any act of terrorism

or man-made or natural disaster as appropriate for the specific geographical location. The final draft of the Emergency Operations Plan (EOP), will be reviewed by the Office of Emergency Preparedness and Response, Mississippi State Department of Health, or their designates, for conformance with the “All Hazards Emergency Preparedness and Response Plan.” Particular attention shall be given to critical areas of concern which may arise during any “all hazards” emergency whether required to evacuate or to sustain in place. Additional plan criteria or a specified EOP format may be required as deemed necessary by the Office of Emergency Preparedness and Response. The six (6) critical areas of consideration are:

- Communications - Facility status reports shall be submitted in a format and a frequency as required by the Office of EOP.
- Resources and Assets
- Safety and Security
- Staffing
- Utilities
- Clinical Activities.

Emergency Operations Plans (EOPs) must be exercised and reviewed annually or as directed by the Office of Emergency Preparedness and Response. Written evidence of current approval or review of provider EOPs, by the Office of Emergency Preparedness and Response, shall accompany all applications for facility license renewals.

113.02 Facility Fire Preparedness

Fire Drills. Fire drills shall be conducted one (1) per shift per quarter. Employees shall participate in a fire drill at least four (4) times per year.

Written Records. Written records of all drills shall be maintained, indicating content of and attendance at each drill.

A fire evacuation plan for the facility shall be posted in each facility in a conspicuous place and kept current.

114 PHYSICAL FACILITIES

114.01 Administration Facilities. Each facility shall provide an office space and/or administrative office(s).

1. As a minimum, the office space and/or administrative office(s) shall be provided with a desk, file drawer or cabinet, and related office equipment and supplies.

2. Facilities caring for twenty-five (25) or more residents should provide a separate room(s) for these facilities.

3. Each facility should provide a waiting room or space for the public. 18

114.02 Communication Facilities. Each facility shall have an adequate number of telephones and extensions to summon help in case of fire or other emergency, and these shall be located so as to be quickly accessible from all parts of the building. The telephone shall be listed under the official licensed name of the facility.

115 RECORDS AND REPORTS

115.01 General. Each facility shall submit such records and reports as the licensing agency may request.

115.02 Annual Report. An annual report shall be submitted to the licensing agency by each facility upon such uniform dates and shall contain such information in such form as the licensing agency prescribes.

115.03 Criminal History Record Checks.

1. Pursuant to Section 43-11-13, Mississippi Code of 1972, the covered entity shall require to be preformed a disciplinary check with the professional licensing agency, if any, for each employee to determine if any disciplinary action has been taken against the employee by the agency, and a criminal history record check on:

- a. Every new employee of a covered entity who provides direct patient care or services and who is employed on or after July 01, 2003, and
- b. Every employee of a covered entity employed prior to July 01, 2003, who has documented disciplinary action by his or her present employer.

2. Except as otherwise provided in this paragraph, no employee hired on or after July 01, 2003, shall be permitted to provide direct patient care until the results of the criminal history record check revealed no disqualifying record or the employee has been granted a waiver. Provided the covered entity has documented evidence of submission of fingerprints for the background check, any person may be employed and provide direct patient care on a temporary basis pending the results of the criminal history record check but any employment offer, contract, or arrangement with the person shall be voidable, if he/she receives a disqualifying criminal record check and no waiver is granted.

3. If such criminal history record check discloses a felony conviction; a guilty plea; and/or a plea of *nolo contendere* to a felony for one (1) or more of the following crimes which has not been reversed on appeal, or for which a pardon has not been granted, the applicant/employee shall not be eligible to be employed at the licensed facility: 19

- a. possession or sale of drugs
 - b. murder
 - c. manslaughter
 - d. armed robbery
 - e. rape
 - f. sexual battery
 - g. sex offense listed in Section 45-33-23(g), Mississippi Code of 1972
 - h. child abuse
 - i. arson
 - j. grand larceny
 - k. burglary
 - l. gratification of lust
 - m. aggravated assault
 - n. felonious abuse and/or battery of vulnerable adult
4. Documentation of verification of the employee's disciplinary status, if any, with the employee's professional licensing agency as applicable, and evidence of submission of the employee's fingerprints to the licensing agency must be on file and maintained by the facility prior to the new employees first date of employment. The covered entity shall maintain on file evidence of verification of the employee's disciplinary status from any applicable professional licensing agency and of submission and/or completion of the criminal record check, the signed affidavit, if applicable, and/or a copy of the referenced notarized letter addressing the individual's suitability for such employment.
5. Pursuant to Section 43-11-13, Mississippi Code of 1972, the licensing agency shall require every employee of a covered entity employed prior to July 01, 2003, to sign an affidavit stating that he or she does not have a criminal history as outlined in paragraph (3) above.
6. From and after December 31, 2003, no employee of a covered entity hired

before July 01, 2003, shall be permitted to provide direct patient care unless the employee has signed an affidavit as required by this section. The covered entity shall place the affidavit in the employee's personnel file as proof of compliance with this section. 20

7. If a person signs the affidavit required by this section, and it is later determined that the person actually had been convicted of or pleaded guilty or nolo contendere to any of the offenses listed herein, and the conviction or pleas has not been reversed on appeal or a pardon has not been granted for the conviction or plea, the person is guilty of perjury as set out in Section 43-11-13, Mississippi Code of 1972. The covered entity shall immediately institute termination proceedings against the employee pursuant to the facility's policies and procedures.

8. The covered entity may, in its discretion, allow any employee unable to sign the affidavit required by paragraph (7) of this subsection or any employee applicant aggrieved by the employment decision under this subsection to appear before the covered entity's hiring officer, or his or her designee, to show mitigating circumstances that may exist and allow the employee or employee applicant to be employed at the covered entity. The covered entity, upon report and recommendation of the hiring officer, may grant waivers for those mitigating circumstances, which shall include, but not be limited to: (1) age at which the crime was committed; (2) circumstances surrounding the crime; (3) length of time since the conviction and criminal history since the conviction; (4) work history; (5) current employment and character references; and (6) other evidence demonstrating the ability of the individual does not pose a threat to the health or safety of the patients in the licensed facility.

9. The licensing agency may charge the covered entity submitting the fingerprints a fee not to exceed Fifty Dollars (\$50.00).

10. Should results of an employee applicant's criminal history record check reveal no disqualifying event, then the covered entity shall, within two (2) weeks of the notification of no disqualifying event, provide the employee applicant with a notarized letter signed by the chief executive officer of the covered entity, or his or her authorized designee, confirming the employee applicant's suitability for employment based on his or her criminal history record check. An employee applicant may use that letter for a period of two (2) years from the date of the letter to seek employment at any covered entity licensed by the Mississippi Department of Health without the necessity of an additional criminal record check. Any covered entity presented with the letter may rely on the letter with respect to an employee applicant's criminal background and is not required for a period of two (2) years from the date of the letter to conduct or have conducted a criminal history check as required in this subsection.

11. For individuals contacted through a third party who provide direct patient care as defined herein, the covered entity shall require proof of a criminal history record check. 21

12. Pursuant to Section 43-11-13, Mississippi Code of 1972, the licensing agency, the covered entity, and their agents, officer, employees, attorneys, and representatives, shall be presumed to be acting in good faith for any employment decision or action taken under this section. The presumption of good faith may be overcome by a preponderance of the evidence in any civil action. No licensing agency, covered entity, nor their agents, officers, employees, attorneys and representatives shall be held liable in any employment discrimination suit in which an allegation of discrimination is made regarding an employment decision authorized under this section.

115.04 Employee Health Screening. All staff of a facility shall receive a health screening by a licensed physician, registered nurse, or nurse practitioner prior to employment and annually thereafter. The extent of the screening shall be determined by committee consisting of at least a licensed physician, nurse practitioner or a registered nurse, and the facility's administrator.

There shall be written evidence on file at the facility indicating that such a committee met to develop a policy for the facility's employee health screening program. This policy shall include:

1. What constitutes an adequate health screening.
 2. The health professional designated to conduct the screening.
- The written policy shall be evaluated periodically by said committee.

115.05 Testing for Tuberculosis. The tuberculin test status of all staff shall be documented in the individual's record. The first step of a two-step Mantoux tuberculin skin test shall be performed (administered and read) on all new employees thirty (30) days prior to hire or immediately upon hire. Each Mantoux tuberculin skin test shall be administered and read by personnel trained and certified in the procedure and the results shall be recorded in millimeters of induration. An employee shall not have contact with residents or be allowed to work in areas of the facility to which residents have routine access prior to the reading and documentation of the first step of a two-step Mantoux tuberculin skin test and completing a signs and symptom assessment. Anyone found to have a positive signs and symptoms assessment (e.g., cough, sputum production, chest pain, anorexia, weight loss, fever, night sweats, especially if symptoms last three weeks or longer), regardless of the size of the skin test, or anyone found to have a positive skin test shall also have a chest x-ray and be evaluated for active tuberculosis by a physician within 72 hours. This evaluation must be prior to any contact with residents or being allowed to work in areas of

the facility to which residents have routine access.

The results of the first step of the two-step Mantoux tuberculosis testing shall be documented in the individual's record within seven (7) days of employment.

Exceptions to this requirement may be made if:

1. The individual is currently receiving or can provide documentation of having received a course of tuberculosis prophylactic therapy approved by the State Tuberculosis Program for tuberculosis infection, or
2. The individual is currently receiving or can provide documentation of having received a course of multi-drug chemotherapy approved by the State Tuberculosis Program for active tuberculosis disease, or
3. The individual has a documented previous significant tuberculin skin test reaction. Individuals with significant Mantoux tuberculin skin tests should be reminded periodically about the symptoms of tuberculosis and the need for prompt evaluation of any pulmonary symptoms of tuberculosis. A tuberculosis symptom assessment shall be documented as part of the annual health screening. No additional follow-up is indicated unless symptoms suggestive of active tuberculosis develop. Specifically, annual chest x-rays are not indicated.

Employees with a negative tuberculin skin test and a negative symptom assessment shall have the second step of the two-step Mantoux tuberculin skin test performed and documented in the employee's personnel record within fourteen (14) days of employment.

The two-step protocol is to be used for each employee who has not been previously skin tested and/or for whom a negative test cannot be documented within the past twelve (12) months. If the employer has documentation the employee has had a negative TB skin test within the past twelve months, a single test performed thirty (30) days prior to employment or immediately upon hire will fulfill the two-step requirements. As above, the employee shall not have contact with residents or be allowed to work in areas of the facility to which residents have routine access prior to reading the skin test, completing a signs and symptoms assessment, and documenting the results.

All staff who do not have a significant Mantoux tuberculin skin test reaction shall be retested annually within thirty (30) days of the anniversary of their last Mantoux tuberculin skin test. Staff exposed to an active infectious case of tuberculosis between annual tuberculin skin tests shall be treated as contacts and be managed appropriately. Individuals found to have a significant Mantoux tuberculin skin test reaction and a chest x-ray not suggestive of active tuberculosis, shall be evaluated by a physician or nurse practitioner for latent tuberculosis infection treatment.

115.06 Admission Record-Personal Information. Each facility shall prepare a record on each resident at the time of admission on which the following minimum information shall be recorded: name; date of admittance; address at the time of

admittance; race; sex; marital status; religious preference; date of birth; name; address, and telephone number of person responsible for resident and his/her relationship to him/her; and name and telephone number of physician or nurse practitioner. The date and reason for discharge shall be entered upon discharge of a resident.

115.07 Reporting of Tuberculosis Testing. The facility shall report and comply with the annual MDH TB Program surveillance procedures.

116 RESIDENTS RIGHTS

116.01 General. The facility shall maintain written policies and procedures regarding the rights and responsibilities of residents. These written policies and procedures shall be established in consultation with residents or responsible parties. Written policies and procedures regarding residents' rights shall be made available to residents or their guardian, next of kin, sponsoring agency or agencies, or lawful representative and to the public. There shall be documented evidence that the staff of the facility is trained and involved in the implementation of these policies and procedures. In-service on residents' rights and responsibilities shall be conducted annually. These rights and responsibilities shall be posted throughout the facility for the benefit of all staff and residents.

116.02 Residents' Rights. The residents' rights policies and procedures ensure that each resident admitted to the facility:

1. is fully informed, as evidenced by the resident's written acknowledgment, prior to or at the time of admission and during stay, of these rights and is given a statement of the facility's rules and regulations and an explanation of the resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of other residents;
2. is fully informed, and is given a written statement prior to or at time of admission and during stay, of services available in the facility, and of related charges including any charges for services covered by the facility's basic per diem rate;
3. is assured of adequate and appropriate medical care, is fully informed by a physician or nurse practitioner of his medical conditions unless medically contraindicated (as documented by a physician or nurse practitioner in his medical record), is afforded the opportunity to participate in the planning of his medical treatment, to not be limited in his/her choice of a pharmacy or pharmacist provider in accordance with state law, as referenced in House Bill 1439, which states that the facility shall not limit a resident's choice of pharmacy or pharmacy provider if that provider meets the same

standards of dispensing guidelines required of long term care facilities, to refuse to participate in experimental research, and to refuse medication and treatment after fully informed of and understanding the consequences of such action;

4. is transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment for his stay (except as prohibited by sources of third-party payment), and is given a two weeks advance notice in writing to ensure orderly transfer or discharge. A copy of this notice is maintained in his medical record;

5. is encouraged and assisted, throughout his period of stay, to exercise his rights as a resident and as a citizen, and to this end may voice grievances, has a right of action for damages or other relief for deprivations or infringements of his right to adequate and proper treatment and care established by an applicable statute, rule, regulation or contract, and to recommend changes in policies and services to facility staff and/or to outside representatives of his choice, free from restraint, interference, coercion, discrimination, or reprisal;

6. may manage his personal financial affairs, or is given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility to the facility for any period of time in conformance with State law;

7. is free from mental and physical abuse;

8. is free from restraint except by order of a physician or nurse practitioner, or unless it is determined that the resident is a threat to himself or to others. Physical and chemical restraints shall be used for medical conditions that warrant the use of a restraint. Restraint is not to be used for discipline or staff convenience. The facility must have policies and procedures addressing the use and monitoring of restraint. A physician order for restraint must be countersigned within 24 hours of the emergency application of the restraint;

9. is assured security in storing personal possessions and confidential treatment of his personal and medical records, and may approve or refuse their release to any individual outside the facility, except, in the case of his transfer to another health care institution, or as required by law of thirdparty payment contract;

10. is treated with consideration, respect, and full recognition of his dignity and individuality, including privacy in treatment and in care for his personal needs;

11. is not required to perform services for the facility that are not included for

therapeutic purposes in his plan of care;

12. may associate and communicate privately with persons of his choice, may join with other residents or individuals within or outside of the facility to work for improvements in resident care, and send and receive his personal mail unopened, unless medically contraindicated (as documented by his physician or nurse practitioner in his medical record);

13. may meet with, and participate in activities of, social, religious and community groups at his discretion, unless medically contraindicated (as documented by his physician or nurse practitioner in his medical record);

14. may retain and use his personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents, unless medically contraindicated (as documented by his physician or nurse practitioner in his medical record);

15. if married, is assured privacy for visits by his/her spouse; if both are inpatients in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician or nurse practitioner in the medical record); and

16. is assured of exercising his civil and religious liberties including the right to independent personal decisions and knowledge of available choice. The facility shall encourage and assist in the fullest exercise of these rights. All rights and responsibilities specified in paragraph (1) through (16) of Section

116.02, as they pertain to (1) a resident adjudicated incompetent in accordance with State law, (2) a resident who is found by his physician or nurse practitioner to be medically incapable of understanding these rights, or (3) a resident who exhibits a communication barrier, devolve to and shall be exercised by the resident's guardian, next of kin, sponsoring agencies, or representative payee (except when the facility is representative payee).

117 STAFF DEVELOPMENT

117.01 Orientation. Each employee shall receive thorough orientation to the position, the facility, and its policies.

117.02 In-service Training. Appropriate in-service education programs shall be provided to all employees on an on-going basis.

117.03 Training Records. A written record shall be maintained of all orientation and in-service training sessions

117.04 Administrator Mentoring. Administrators shall be scheduled to spend two (2)

concurrent days with the licensing agency for the purpose of training and mentoring. Placement of an administrator with the licensing agency may include, but not be limited to, assignments within the licensing agency's central offices or placement with a survey team. Any costs associated with placements for the purposes of this section shall be borne by the licensed facility at which the administrator is employed. The administrator shall keep confidential and not disclose to any other persons any identifying information about any person or entity that he/she learned while observing operations as required by this section, except as otherwise mandated by law.

This section shall apply to administrators who:

1. received their license from the Mississippi Board of Nursing Home Administrators on or after January 1, 2002; and
2. have been employed by a licensed facility for less than six (6) months, during which time the placement must be completed.

This section shall not apply to administrators who:

1. received a license from the Mississippi Board of Nursing Home Administrators on or prior to December 31, 2001; or
2. who were previously employed by the licensing agency in a surveyor capacity.

Failure to successfully complete the placement required under this section shall disqualify the administrator from serving in such capacity for a licensed facility until a placement is completed.

This section shall go into effect January 1, 2002 and thereafter.

117.05 Surveyor Mentoring. Surveyors shall be scheduled to spend two (2) concurrent days with a licensed facility for the purpose of training and mentoring. Selection of a licensed facility for placement of the surveyor shall be done at the discretion of the licensing agency, except no licensed facility shall be required to accept more than two (2) placements in any calendar year. Upon completion of said training, the surveyor shall not participate in a survey of the same licensed facility for a period not to exceed one year from the date of training placement. Any costs associated with the placement of a surveyor for the purposes of this section shall be borne by the licensing agency. The surveyor shall keep confidential and not disclose to any other persons any identifying information about any person or entity that the surveyor learned while observing operations as required by this section, except as otherwise mandated by law

This section shall apply to surveyors who have been employed by the licensing agency in a surveyor capacity for less than six (6) months, during which time the placement must be completed.

This section shall not apply to surveyors who were previously employed by a licensed facility.

Failure to successfully complete the placement required under this section shall disqualify the surveyor from serving in such capacity for the licensing agency until a placement is completed.