

NEBRASKA HEALTH AND HUMAN SERVICES  
REGULATION AND LICENSURE

175 HEALTH CARE FACILITIES AND SERVICES LICENSURE

CHAPTER 12 SKILLED NURSING FACILITIES, NURSING FACILITIES, AND  
INTERMEDIATE CARE FACILITIES

12-007 PHYSICAL PLANT STANDARDS: The facility must be designed, constructed and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided. The physical plant standards for facilities, which include support services, care and treatment areas, construction standards, building systems and waivers, are set forth below.

12-007.01 Support Areas: The facility may share the following support service areas among the detached structures, care and treatment suites, and with other licensed facilities:

12-007.01A Dietary: If food preparation is provided on site, the facility must dedicate space and equipment for the preparation of meals. Food service physical environment and equipment must comply with the Food Code, except when used only for training or activity purposes.

12-007.01B Laundry: The facility must provide laundry services. Such service may be provided by contract or on-site by the facility.

12-007.01B1 Contract: If contractual services are used, the facility must have areas for soiled linen awaiting pickup and separate areas for storage and distribution of clean linen.

12-007.01B2 On-Site: If on-site services are provided, the facility must have areas dedicated to laundry.

12-007.01B2a If the facility provides personal laundry areas, the areas must be equipped with a washer and dryer for use by residents. In new construction, the facility must provide a conveniently located sink for soaking and hand washing of laundry.

12-007.01B2b When the facility launders items for more than one resident together, the bulk laundry area must be divided into separate soiled (sort and washer areas) and clean (drying, folding, and mending areas) rooms. In new construction and new facilities, a separate soaking and hand washing sink and housekeeping room must be provided in the laundry area.

12-007.01B2c Separate clean linen supply storage areas must be conveniently located in each care and treatment location.

12-007.01C Waste Processing: The facility must provide areas to collect, contain, process, and dispose of medical and general waste produced within the facility in such a manner as to prevent the attraction of rodents, flies, and all other insects and vermin, and to minimize the transmission of infectious diseases.

12-007.01D Housekeeping Room: The facility must have a room with a service sink and space for storage of supplies and housekeeping equipment.

12-007.02 Care and Treatment Areas: The facility must provide a physical environment that facilitates and supports the safety and dignity of residents and accommodates the needs of the resident population.

12-007.02A Care and treatment areas must contain a control point, medication station, and clean storage/utility room. The facility must not share these areas among detached structures.

12-007.02A1 Control Point: The facility must provide an area(s) for charting and resident records, space for storage of emergency equipment and supplies, and call and alarm annunciation systems.

12-007.02A2 Medication Station: The facility must provide a medication station for storage and distribution of drugs and routine medications. Distribution may be done from a medicine preparation room or unit, from a self-contained medicine-dispensing unit, or by another system. If used, a medicine preparation room or unit must be under visual control of nursing staff and must contain a work counter, sink, refrigerator, and double-locked storage for controlled substances.

12-007.02A3 Clean Storage/Utility Room: The facility must have separate areas for soiled and clean materials. The area for soiled materials must contain a fixture for disposing waste and a handwashing sink.

12-007.02B Equipment and Supplies: The facility must have services and space to distribute, maintain, clean and sanitize durable medical instruments, equipment, and supplies required for the care and treatment performed in the facility.

12-007.02B1 Durable Medical Equipment: The facility must ensure that durable medical equipment is tested and calibrated in accordance with the manufacturer's recommendations.

12-007.02B2 Equipment Storage: The facility must have space to store equipment, stretchers, wheelchairs, supplies, and linen out of the path of normal traffic.

12-007.02C Rehabilitative: If the facility provides rehabilitative services, the facility must have at least one treatment room or cubicle, an area for specialized treatment and care, handwashing sink(s), storage for equipment and supplies, a call system, and areas to allow for resident toileting, dressing, and consultation.

12-007.02D Psychiatric or Mental Health: If the facility provides a specialized area or unit designated for psychiatric or mental health services, the facility must provide space and equipment that allows for resident and staff safety. The area must provide at least separate quiet and noisy activity areas, dining areas, private and group areas for specialized treatment and care, handwashing sink(s), storage for equipment and supplies, and security systems. In rooms where care and treatment is provided to abusive or suicidal residents, the rooms must have:

1. Tamper-resistant air distribution devices, lighting fixtures, sprinkler heads, and safety devices;
2. Ventilation, exhaust, heating and cooling components that are inaccessible to residents;
3. Bedroom, toilet, and bathing room doors that are not lockable or capable of being obstructed from within; and
4. Electrical outlets protected by ground fault interrupting devices.

12-007.02E Alzheimer's, Dementia, and Related Conditions: If a facility provides a specialized area/unit for Alzheimer's, dementia, and related conditions, the area must have personalized resident bedrooms, activity areas, separate dining areas, features that support resident orientation to their surroundings, handwashing sinks, and call and security systems.

12-007.02F Outpatient Areas: Areas of the facility designated for the care and treatment of residents not residing in the facility must comply with the following standards:

1. Areas must not interfere with residents currently residing in the facility;
2. Furniture and equipment must meet care and treatment needs;
3. Toilets must be easily accessible from all program areas; and
4. Sufficient inside and outside space that accommodates the full range of program activities and services.

12-007.03 Construction Standards: The facility must be designed, constructed, and maintained in a manner that is safe, clean, and functional for the type of care and treatment to be provided. The standards are set forth below.

#### 12-007.03A Codes and Guidelines

12-007.03A1 New construction must comply with the following codes and guidelines to provide a safe and accessible environment that is conducive to the care and treatment to be provided:

1. Building: Building Construction Act, Neb. Rev. Stat. §§ 71-6401 to 71-6407;
2. Plumbing: Plumbing Ordinance or Code, Neb. Rev. Stat. § 18-1915;
3. Electrical: State Electrical Act, Neb. Rev. Stat. §§ 81-2101 to 81-2143;
4. Elevators: Nebraska Elevator Code, Neb. Rev. Stat. § 48-418.12 and Department of Labor Regulations, 230 NAC 1;
5. Boiler: Boiler Inspection Act, Neb. Rev. Stat. §§ 48-719 to 48-743;

6. Accessibility: Nebraska Accessibility Requirements, State Fire Marshal Regulations, 156 NAC 1 to 12;

7. Guidelines for Design and Construction of Hospitals and Health Care Facilities, Chapter 8, 2001 edition, published by the American Institute of Architects; and

8. Energy: Nebraska Energy Code, Neb. Rev. Stat. §§ 81-1608 to 81-1626, for construction initiated on or after July 1, 2005.

12-007.03A2 The facility must comply with the following applicable codes and standards to provide a safe environment:

1. Fire Codes: Nebraska State Fire Code Regulations, State Fire Marshal, 153 NAC 1; and

2. The Food Code, Neb. Rev. Stat. § 81-2,244.01, as published by the Nebraska Department of Agriculture, except for compliance and enforcement provisions.

12-007.03A3 Existing and new facilities must comply with the physical plant standards contained in 175 NAC 12-007. The facility must maintain all building materials and structural components so that total loads imposed do not stress materials and components more than one and one-half times the working stresses allowed in the building code for new buildings of similar structure, purpose, or location.

12-007.03B Conflicts in Standards: In situations where the referenced codes and guidelines conflict with 175 NAC 12, the adopted rules and regulations of the Department and the Nebraska State Fire Marshal will prevail.

12-007.03C Interpretations: All dimension, sizes, and quantities noted herein must be determined by rounding fractions to the nearest whole number.

12-007.03D Floor Area: Floor area is the space with ceilings at least seven feet in height and excludes enclosed storage, toilets and bathing rooms, corridors, and halls. The space beyond the first two feet of vestibules and alcoves less than five feet in width is not included in the required floor area. In rooms with sloped ceilings, at least half of the ceiling must be at least seven feet in height. Areas less than five feet in height are not included in the required floor area.

12-007.03E Dining Areas: Dining areas must have an outside wall with windows for natural light and ventilation. Dining areas must:

1. Be furnished with tables and chairs that accommodate or conform to resident needs;
2. Have a floor area of 15 square feet per resident in existing facilities and 20 square feet per resident in new construction;
3. Allow for group dining at the same time in either separate dining areas or a single dining area, dining in two shifts, or dining during open dining hours; and
4. Not be used for sleeping, offices, or corridors.

12-007.03F Activity Areas: The facility must have space for resident socialization and leisure time activities. Activity areas must:

1. Have an outside wall with windows for natural light and ventilation;
2. Have furnishings to accommodate group and individual activities;
3. Have a floor area of at least 15 square feet per resident residing in bedrooms and may be combined with dining areas;
4. Not be used for sleeping, offices, or corridors; and
5. Be available to all residents.

12-007.03G Bathing Rooms: The facility must provide a bathing room consisting of a tub and/or shower adjacent to each bedroom, or a central bathing room on each sleeping floor. Tubs and showers, regardless of location, must be equipped with hand grips or other assistive devices as needed or desired by the resident.

12-007.03G1 In new construction where a central bathing room is provided, the room must open off the corridor and contain a toilet and sink or have an adjoining toilet room.

12-007.03G2 The facility must have one bathing fixture per 30 licensed beds.

12-007.03H Toilet Rooms: The facility must provide at least one room with a toilet and sink for resident use.

12-007.03H1 Existing facilities must have a toilet and sink adjoining each bedroom or shared toilet facilities may be provided as follows:

1. One toilet and sink per eight licensed beds in existing facilities; and
2. One toilet and sink per four licensed beds in new facilities and new construction.

12-007.03H2 New construction must have a toilet room provided adjoining each resident bedroom or in each apartment or dwelling.

12-007.03I Resident Room Requirements: The facility must provide bedrooms which allow for sleeping, afford privacy, provide access to furniture and belongings, and accommodate the care and treatment provided to the resident. All bedrooms must:

1. Not be located in any garage, storage area, shed, or similar detached building;
2. Be a single room located within an apartment, dwelling, or dormitory-like structure;
3. Not be accessed through a bathroom, food preparation area, laundry, or another bedroom;
4. Be located on an outside wall with an operable window with a minimum glass size of eight square feet per resident. The window must provide an unobstructed view of at least ten feet;

5. Contain at least 45 cubic feet of enclosed storage volume per resident in dressers, closets or wardrobes;
6. Be located within 150 feet of a control point if nursing services are provided in the room; and
7. Allow for an accessible arrangement of furniture providing a minimum of three feet between the heads of the beds in multiple bedrooms;

12-007.03I1 Existing or New Facility Floor Areas: Resident rooms in existing and new facilities must have at least the following floor areas:

1. Single bedrooms: 100 square feet;
2. Multiple bedrooms: 80 square feet with a maximum of 4 beds; and
3. Apartments or dwellings: 110 square feet for one resident plus 100 square feet for each additional resident.

12-007.03I2 New Construction Floor Areas: Resident rooms in new construction must have at least the following floor areas:

1. Single bedrooms: 120 square feet;
2. Multiple bedrooms: 100 square feet per bed with a maximum of 2 beds; and
3. Apartments or dwellings: 120 square feet for one resident plus 110 square feet for each additional resident.

12-007.03J Isolation Rooms: The number and type of isolation rooms in the facility must be based upon infection control risk assessment of the facility.

12-007.03J1 The facility must make provisions for isolating residents with infectious diseases.

12-007.03J2 In new construction, if the facility provides a designated isolation room, the isolation room must be equipped with handwashing and gown changing facilities at the entrance of the room.

12-007.03K Examination Rooms: If the facility has an examination room, it must have a minimum floor area of 80 square feet and a minimum of 3 feet clear dimension around 3 sides of the examination table or chair.

12-007.03L Treatment Rooms: If the facility has a treatment room for procedures performed under topical, local, or regional anesthesia without pre-operative sedation, the room must have a minimum floor area of 120 square feet and a minimum of 10 feet clear dimension.

12-007.03M Corridors: The facility's corridors must be wide enough to allow passage and be equipped as needed for the residents to minimize injury. All stairways and ramps must have handrails.

12-007.03N Doors: The facility's doors must be wide enough to allow passage and be equipped for privacy, safety, and with assistive devices to minimize resident injury.

12-007.03N1 All bedroom, toilet, and bathing room doors must provide privacy yet not create seclusion or prohibit staff access for routine or emergency care.

12-007.03N2 In new construction, all resident-used toilet and bathing rooms with less than 50 square feet of clear floor area must not have doors that swing solely inward.

12-007.03O Outdoor Areas: The facility must provide an outdoor area for resident usage. It must be equipped and situated to allow for resident safety and abilities.

12-007.03P Handwashing Sinks: The facility must provide a handwashing sink equipped with towel and soap dispenser in all examination, treatment, isolation, and toilet rooms.

12-007.03Q Emergency Telephone: The facility must provide non-coin operated telephone(s) with emergency numbers for use by residents.

12-007.03R Privacy: In multiple bed resident rooms, visual privacy and window curtains must be provided for each resident. In new facilities, the curtain layout must totally surround each care and treatment location and not restrict access to the entrance to the room, lavatory, toilet, or enclosed storage.

12-007.03S Finishes: The facility must provide washable room finishes in isolation rooms, clean workrooms, and food preparation areas with smooth non-absorptive surfaces that are not physically affected by routine housekeeping cleaning solutions and methods. Acoustic lay-in ceilings, if used, must not interfere with infection control. Perforated, tegular, serrated cut, or highly textured tiles are not acceptable.

12-007.04 Building Systems: Facilities must have building systems that are designed, installed, and maintained to remain operational.

12-007.04A Water and Sewer Systems: The facility must have and maintain an accessible, adequate, safe, and potable supply of water. Where an authorized public water supply of satisfactory quantity, quality, and pressure is available, the facility must be connected to it and its supply used exclusively.

12-007.04A1 The system for collection, treatment, storage, and distribution of potable water in a facility that regularly serves 25 or more individuals must be constructed, maintained, and operated in accordance with all provisions of the Nebraska Safe Drinking Water Act and Title 179 Regulations Governing Public Water Systems.

12-007.04A2 The system for collection, treatment, storage and distribution of potable water system in a facility that serves less than 25 individuals on a regular basis must be maintained and operated as if it were a public water system in accordance with 179 NAC 2-002, 3 and 4. These facilities must report to the Department the result of all tests that indicate the water is in violation of the standards set out in 179 NAC 2-002 or 3. These facilities must construct all water wells in accordance with 178 NAC 12, Water Well Construction, Pump Installation, and Water Well Decommissioning.

12-007.04A3 The water distribution system must have an anti-siphon device and air-gaps to prevent potable water system and equipment contamination.

12-007.04A4 The facility must provide continuously circulated, filtered, and treated water systems as required for the care and treatment equipment used in the facility.

12-007.04A5 The facility must maintain a sanitary and functioning sewage system.

12-007.04B Hot Water System: The facility must maintain hot and cold water to all handwashing and bathing locations. The hot water system must have the capacity to provide continuous hot water in a temperature range as required by these regulations.

12-007.04C Heating and Cooling Systems: The facility must provide a heating and air conditioning system capable of maintaining the following:

12-007.04C1 In existing and new facilities, a temperature of at least 70 degrees Fahrenheit during heating conditions and that does not exceed 85 degrees Fahrenheit during cooling conditions.

12-007.04C2 In new construction, a temperature of at least 75 degrees Fahrenheit during heating conditions and that does not exceed 80 degrees Fahrenheit during cooling conditions.

12-007.04C3 In new construction, central air distribution and return systems must be equipped with the following percent dust spot rated filters:

1. General areas: 30+% pre-filters; and,
2. Nursing care and treatment areas: 80+% pre-filters.

12-007.04C4 Airflow must move from clean to soiled locations. In new construction, air movement must be designed to reduce the potential of contamination of clean areas.

12-007.04C5 Openings to the heating and cooling system must not be located where subject to wet cleaning methods or body fluids.

12-007.04D Ventilation System: The facility must provide ventilation that prevents the concentrations of contaminants that impair health or cause discomfort to residents and employees.

12-007.04D1 New construction must provide a mechanical exhaust ventilation system for windowless toilets, baths, laundry rooms, housekeeping rooms, kitchens, and similar rooms at ten air changes per hour (ACH); for care and treatment areas at five ACH; and for procedure and respiratory isolation areas at 15 ACH.

12-007.04E Electrical System: The facility must have an electrical system that has sufficient capacity to maintain care and treatment services provided. The electrical system must be properly grounded.

12-007.04E1 New construction and new facilities must have outlets that are ground fault circuit interrupter-protected in wet areas and within six feet of sinks.

12-007.04E2 The facility must provide minimum illumination levels as follows:

1. General purpose areas: 5 foot candles;
2. General corridors and resident living areas: 10 foot candles;
3. Personal care and dining areas: 20 foot candles;
4. Reading and activity areas: 30 foot candles;
5. Food preparation areas: 40 foot candles;
6. Hazardous work surfaces: 50 foot candles;
7. Care and treatment locations: 70 foot candles;
8. Examination task lighting: 100 foot candles; and
9. Reduced night lighting in resident rooms where nursing services are provided and resident-used toilet and bathing rooms and corridors.  
Light levels are measured at 30 inches above the floor in multiple areas in the room being evaluated and the readings are averaged.

12-007.04F Essential Power System: The facility must have an emergency power generator for any care and treatment location with electrical life support equipment.

12-007.04F1 Existing and new facilities must maintain emergency power for essential care and treatment equipment and lighting, medical gas systems, and nurse call systems.

12-007.04F2 New construction must maintain emergency power for essential care and treatment equipment, lighting, nurse call systems, ventilation, heating, and medical gas systems.

12-007.04F3 Facilities with electrical life support equipment must provide and maintain an essential power system with an on-site fuel source. The minimum fuel source capacity must allow for non-interrupted system operation.

12-007.04G Call Systems: The facility must have a call system that is operable from resident beds and resident-used toilet and bathing areas. The system must transmit a receivable (visual, audible, tactile, or other) signal to on-duty staff which readily notifies and directs the staff to the location where the call was activated.

12-007.04G1 In new construction, the call systems must have a dedicated device which allows activation by a resident from each exam and treatment room or cubicle, and toilet and bathing fixture.

12-007.04H Medical Gas System: The facility must safely provide medical gas and vacuum by means of portable equipment or building systems as required by residents receiving care and treatment.

12-007.04H1 The installation, testing, and certification of nonflammable medical gas, clinical vacuum, and air systems must comply with the requirements of 153 NAC 1, Nebraska State Fire Code Regulations.

12-007.04H2 The facility must identify portable and system components, and periodically test and approve all medical gas piping, alarms, valves, and equipment for resident care and treatment. The facility must document such approvals for review and reference.

12-007.05 Waivers: The Department may waive any provision of 175 NAC 12 relating to construction or physical plant requirements of a licensed facility upon proof by the licensee satisfactory to the Department that:

1. The waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in the facility;
2. The provision would create an unreasonable hardship for the facility; and
3. The waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of Medicare or Medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

12-007.05A Unreasonable Hardship: In evaluating the issue of unreasonable hardship, the Department will consider the following:

1. The estimated cost of the modification or installation;
2. The extent and duration of the disruption of the normal use of areas used by persons residing in the facility resulting from construction work;
3. The estimated period over which the cost would be recovered through reduced insurance premiums and increase reimbursement related to costs;
4. The availability of financing; and
5. The remaining useful life of the building.

12-007.05B Waiver Terms and Conditions: A waiver may be granted under terms and conditions and for a period of time as are applicable and appropriate to the waiver. Terms and conditions and period of waiver include but are not limited to:

1. Waivers that are granted to meet the special needs of a resident remain in effect as long as required by the resident;
2. Waivers may be granted for a period of time that ends at the time the conditions of approval no longer exist;
3. Waivers may be granted to permit a facility time to come into compliance with the physical plant standards for a period of one year. Upon submission of proof of ongoing progress, the waiver may be continued for an additional year; and

4. An applicant or licensee must submit any request for waiver of any construction or physical plant requirements set forth in 175 NAC 12. An applicant for a waiver may construct a request for waiver form or obtain a form from the Department.

12-007.05C Denial of Waiver: If the Department denies a facility's request for waiver, the facility may request an administrative hearing as provided in the Administrative Procedure Act and the Department's rules and regulations adopted and promulgated under the APA.

## 12-008 DENIAL, REFUSAL TO RENEW, AND DISCIPLINARY ACTION

### 12-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action

12-008.01A The Department may deny or refuse to renew a facility license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 12-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 12-008.01B.

12-008.01B The Department may take disciplinary action against a facility license for any of the following grounds:

1. Violation of any of the provisions of the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, or 175 NAC 12;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of a facility resident or employee;
4. A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the facility;
5. Failure to allow an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure access to the facility for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the departments;
6. Discrimination or retaliation against a facility resident or employee who has submitted a complaint or information to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure;
7. Discrimination or retaliation against a facility resident or employee who has presented a grievance or information to the office of the state long-term care ombudsman;

8. Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the facility for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in 15 NAC 3;

9. Violation of the Emergency Box Drug Act;

10. Failure to file a report of payment made or action taken due to a liability claim or an alleged violation, as required by Neb. Rev. Stat. § 71-168.02;

11. Violation of the Medication Aide Act; or

12. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and 28-711.

#### 12-008.02 Procedures for Denial, Refusal to Renew, or Disciplinary Action

12-008.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a license, the Department will send a notice to the applicant or licensee by certified mail to the last address shown on its records. The notice will state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

12-008.02B The denial, refusal to renew, or disciplinary action becomes final 15 days after the mailing of the notice unless the applicant or licensee, within the 15-day period, makes a written request to the Director for an informal conference or an administrative hearing.

#### 12-008.02C Informal Conference

12-008.02C1 At the request of the applicant or licensee, the Department will hold an informal conference within 30 days of the receipt of the request. The conference may be held in person or by other means, at the request of the applicant or licensee. If the pending action is based on an inspection, the Department's representative at the conference will not be the individual who did the inspection.

12-008.02C2 Within 20 working days of the conference, the Department representative will state in writing the specific reasons for affirming, modifying, or dismissing the notice. The representative will send a copy of the statement to the applicant or licensee by certified mail to the last address shown in the Department's records and a copy to the Director.

12-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department will remove the deficiencies from the notice and rescind any sanction imposed solely as a result of those cited deficiencies.

12-008.02C4 If the applicant or licensee contests the affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the statement.

## 12-008.02D Administrative Hearing

12-008.02D1 When an applicant or a licensee contests the notice and requests a hearing, the Department will hold a hearing in accordance with the Administrative Procedure Act (APA) and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

12-008.02D2 On the basis of evidence presented at the hearing, the Director will affirm, modify, or set aside the determination. The Director's decision will:

1. Be in writing;
2. Be sent by registered or certified mail to the applicant or licensee; and
3. Become final 30 working days after mailing unless the applicant or licensee, within the 30-day period, appeals the decision.

12-008.02D3 An applicant or a licensee's appeal of the Director's decision must be in accordance with the Administrative Procedure Act.

## 12-008.03 Types of Disciplinary Action

12-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the license:

1. A fine not to exceed \$10,000 per violation;
2. A prohibition on admissions or re-admissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;
3. A period of probation not to exceed two years during which the facility may continue to operate under terms and conditions fixed by the order of probation;
4. A period of suspension not to exceed three years during which the facility may not operate; and
5. Revocation, which is a permanent termination of the license. The licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

12-008.03B In determining the type of disciplinary action to impose, the Department will consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result;
2. The severity of the actual or potential harm;
3. The extent to which the provisions of applicable statutes, rules, and regulations were violated;

4. The reasonableness of the diligence exercised by the facility in identifying or correcting the violation;
5. Any previous violations committed by the facility; and
6. The financial benefit to the facility of committing or continuing the violation.

12-008.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 12-008.03.

12-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that residents of the facility are in imminent danger of death or serious physical harm, the Director may:

1. Temporarily suspend or temporarily limit the facility license, effective when the order is served upon the facility. If the licensee is not involved in the daily operation of the facility, the Department will mail a copy of the order to the licensee, or if the licensee is a corporation, to the corporation's registered agent;
2. Order the immediate removal of residents; and
3. Order the temporary closure of the facility pending further action by the Department.

The Department will simultaneously institute proceedings for revocation, suspension, or limitation of the license, and will conduct an administrative hearing no later than ten days after the date of the temporary suspension or temporary limitation.

12-008.03D1 The Department will conduct the hearing in accordance with the Administrative Procedure Act and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. §§ 33-139 and 33-139.01.

12-008.03D2 If a written request for continuance of the hearing is made by the licensee, the Department will grant a continuance, which may not exceed 30 days.

12-008.03D3 On the basis of evidence presented at the hearing, the Director will:

1. Order the revocation, suspension, or limitation of the license; or
2. Set aside the temporary suspension or temporary limitation.

If the Director does not reach a decision within 90 days of the date of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation will expire.

12-008.03D4 Any appeal of the Department's decision after hearing must be in accordance with the APA.

12-008.04 Reinstatement from Disciplinary Probation or Suspension, and Re-Licensure After Revocation

#### 12-008.04A Reinstatement at the End of Probation or Suspension

12-008.04A1 Reinstatement at the End of Probation: A license may be reinstated at the end of probation after the successful completion of an inspection, if the Department determines an inspection is warranted.

12-008.04A2 Reinstatement at the End of Suspension: A license may be reinstated at the end of suspension following;

1. Submission of an application to the Department for renewal that conforms to the requirements of 175 NAC 12-003.02;
2. Payment of the renewal fee as specified in 175 NAC12-004.09; and
3. Successful completion of an inspection.

The Department will reinstate the license when it finds, based on an inspection as provided for in 175 NAC 12-005, that the facility is in compliance with the operation, care, treatment, and physical plant requirements of 175 NAC 12-006 and 12-007.

#### 12-008.04B Reinstatement Prior to Completion of Probation or Suspension

12-008.04B1 Reinstatement Prior to the Completion of Probation: A licensee may request reinstatement prior to the completion of probation and must meet the following conditions:

1. Submit a petition to the Department stating:
  - a. The reasons why the license should be reinstated prior to the probation completion date; and
  - b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the probation; and
2. Successfully complete any inspection the Department determines necessary.

12-008.04B2 Reinstatement Prior to Completion of Suspension: A licensee may request reinstatement prior to the completion of suspension and must meet the following conditions:

1. Submit a petition to the Department stating:
  - a. The reasons why the license should be reinstated prior to the suspension completion date; and
  - b. The corrective action taken to prevent recurrence of the Violation(s) that served as the basis of the suspension;
2. Submit a written renewal application to the Department as specified 175 NAC 12-003.02;

3. Pay the renewal fee as specified in 175 NAC 12-004; and
4. Successfully complete an inspection.

12-008.04B3 The Director will consider the petition submitted and any results of the inspection or investigation conducted by the Department and:

1. Grant full reinstatement of the license;
2. Modify the probation or suspension; or
3. Deny the petition for reinstatement.

12-008.04B4 The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing will be held according to rules and regulations of the Department for administrative hearings in contested cases.

12-008.04C Re-Licensure After Revocation: A facility license that has been revoked is not eligible for re-licensure until two years after the date of revocation.

12-008.04C1 A facility seeking re-licensure must apply for an initial license and meet the requirements for initial licensure in 175 NAC 12-003.01.

12-008.04C2 The Department will process the application for re-licensure in the same manner as specified in 175 NAC 12-003.01.

Approved by the Attorney General February 21, 2007

Approved by the Governor February 22, 2007

Filed with the Sec. of State February 22, 2007

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