

## PART I *Licensing Procedures and Definitions*

### Section 1.0 *Definitions*

Wherever used in these rules and regulations the following terms shall be construed as follows:

- 1.1 **"Abuse"** means any assault as defined in Chapter 11-5, including, but not limited to hitting, kicking, pinching, slapping or the pulling of hair, provided however, unless such is required as an element of offense, it shall not be necessary to prove that the patient or resident was injured thereby, or any assault as defined in Chapter 11-37, or any offense under Chapter 11-10 of the General Laws; or
  - 1.1.1 any conduct which harms or is likely to physically harm the resident except where the conduct is a part of the care and treatment, and in furtherance of the health and safety of the resident; or
  - 1.1.2 intentionally engaging in a pattern of harassing conduct which causes or is likely to cause emotional or psychological harm to the resident, including but not limited to, ridiculing or demeaning a patient or resident, making derogatory remarks to a patient or resident or cursing directed towards a patient or resident, or threatening to inflict physical or emotional harm on a patient.
- 1.2 **"Alzheimer Dementia Special Care Unit or Program"** means a distinct living environment within a nursing facility that has been physically adapted to accommodate the particular needs and behaviors of those with dementia. Such unit provides increased staffing, therapeutic activities designed specifically for those with dementia and trains its staff on an ongoing basis on the effective management of the physical and behavioral problems of those with dementia. The residents of such a unit/program have had a standard medical diagnostic evaluation and have been determined to have a diagnosis of Alzheimer dementia or another dementia.
- 1.3 "The **capacity** of a facility" refers to the maximum potential number of beds which may be accommodated within a facility according to the dimensional limitations of section 44.0 herein.
- 1.4 **"Change in operator"** means a transfer by the governing body or operator of a nursing facility to any other person (excluding delegations of authority to the medical or administrative staff of the facility) of the governing body's authority to:
  - a) hire or fire the chief executive officer of the nursing facility;
  - b) maintain and control the books and records of the nursing facility;
  - c) dispose of assets and incur liabilities on behalf of the nursing facility; or
  - d) adopt and enforce policies regarding operation of the nursing facility.  
(This definition is not applicable to circumstances wherein the governing body of a nursing facility retains the immediate authority and jurisdiction over the activities enumerated in subsections (a) through (d) herein.)

1.5 **"Change in owner"** means:

- (1) in the case of a nursing facility which is a partnership, the removal, addition or substitution of a partner which results in a new partner acquiring a controlling interest in such partnership;
- (2) in the case of a nursing facility which is an unincorporated solo proprietorship, the transfer of the title and property to another person;
- (3) in the case of a nursing facility which is a corporation;
  - a) a sale, lease, exchange or other disposition of all, or substantially all of the property and assets of the corporation; or
  - b) a merger of the corporation into another corporation; or
  - c) the consolidation of two or more corporations, resulting in the creation of a new corporation; or
  - d) in the case of a nursing facility which is a business corporation, any transfer of corporate stock which results in a new person acquiring a controlling interest in such corporation; or
  - e) in the case of a nursing facility which is a non-business corporation, any change in membership which results in a new person acquiring a controlling vote in such corporation.

1.6 **"Controlling person"** means any person or entity in control of a nursing facility directly or indirectly, including:

- a) in the case of a corporation or a limited liability company, or limited liability partnership, a person having a beneficial ownership interest of five percent (5%) or more in the corporation, limited liability company or limited liability partnership to which the facility is licensed;
- b) in the case of a general partnership or limited partnership, any general partner;
- c) in the case of a limited liability company, or limited liability partnership any member;
- d) a legal entity that operates or contracts with another person for the operation of a nursing facility or an owner thereof;
- e) each of the president, vice president, secretary and treasurer of a corporation that is not exempt from taxation under section 501(a) of the United States Internal Revenue Code as an organization described in section 501(c)(3) of such code; and
- f) such other ownership interest or relationship as may be determined by the Director.

1.7 **"Credentialing"** means the administrative process for reviewing, verifying, and evaluating the qualifications and credentials of licensed physicians in accordance with criteria established by the nursing facility for the purpose of granting clinical privileges at the nursing facility.

- 1.8 **"Department"** means the Department of Health.
- 1.9 **"Direct care nursing staff"** means registered nurses, licensed practical nurses, and nursing assistants who are assigned to provide direct nursing care to residents.
- 1.10 **"Director"** means the Director of the Rhode Island Department of Health.
- 1.11 **"Drug administration"** means 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 the regulations herein.
- 1.12 **"Employee"** means an individual employed, whether directly, by the contract with another entity or as an independent contractor, by a long-term care nursing facility on a part-time or full-time basis.
- 1.13 **"Equity"** means non-debt funds contributed towards the capital costs related to a change in owner or change in operator of a nursing facility which funds are free and clear of any repayment or liens against the assets of the proposed owner and/or licensee and that result in a like reduction in the portion of the capital cost that is required to be financed or mortgaged.
- 1.14 **"Family council"** means an organized group of the family members, friends, or representatives of facility residents who may meet in private without the presence of facility staff.
- 1.15 **"Health care provider"** means any person licensed by this state to provide or otherwise lawfully providing health care services, including, but not limited to, a physician, hospital, intermediate care facility or other health care facility, dentist, nurse, optometrist, podiatrist, physical therapist, psychiatric social worker, pharmacist, or psychologist, and any officer, employee or agent of that provider acting in the course and scope of his or her employment or agency related to or supportive of health services.
- 1.16 **"High managerial agent"** means an officer of a facility, the administrator and assistant administrator of the facility, the director and assistant director of nursing services, or any other agent in a position of comparable authority with respect to the formulation of policies of the facility or the supervision in a managerial capacity of subordinate employees.
- 1.17 **"Immediate jeopardy"** means a situation in which the nursing facility's noncompliance or alleged noncompliance with one or more state or federal requirements or conditions has caused, or is likely to cause serious injury, harm, impairment or death to a resident; or shall be defined in accordance with 42 CFR 489 or any subsequent applicable federal regulations.
- 1.18 "The **licensed capacity** of a facility" refers to the number of beds a facility is licensed to operate.
- 1.19 **"Licensing agency"** means the Rhode Island Department of Health.
- 1.20 **"Lift team"** means health care facility employees specially trained to perform patient lifts, transfers, and repositioning in accordance with safe patient handling policy.
- 1.21 **"Long-term care facility or facility"** shall mean a health care facility as defined in Chapter 23-17, which provides long term health care.

- 1.22 "**Medication technician**", as used herein, means selected unlicensed personnel who have satisfactorily completed a state-approved course in drug administration who may administer oral or topical drugs (with the exception of Schedule II drugs) in accordance with the requirements of section 25.9 herein.
- 1.23 "**Mistreatment**" means the inappropriate use of medications, isolation, or use of physical or chemical restraints as punishment, for staff convenience, as a substitute for treatment or care, in conflict with a physician's order, or in quantities which inhibit effective care or treatment, which harms or is likely to harm the patient or resident.
- 1.24 "**Musculoskeletal disorders**" means conditions that involve the nerves, tendons, muscles, and supporting structures of the body.
- 1.25 "**Neglect**" means the intentional failure to provide treatment, care, goods and services necessary to maintain the health and safety of the patient or resident, or the intentional failure to carry out a plan of treatment or care prescribed by the physician of the patient or resident, or the intentional failure to report patient or resident health problems or changes in health conditions to an immediate supervisor or nurse, or the intentional lack of attention to the physical needs of a patient or resident including, but not limited to toileting, bathing, meals and safety. Provided, however, no person shall be considered to be neglected for the sole reason that he or she relies or is being furnished treatment in accordance with the tenets and teachings of a well recognized church or denomination by a duly-accredited practitioner thereof.
- 1.26 "**Net operating revenue**" means net patient revenue plus other operating revenue.
- 1.27 "**Nourishing snack**" means a verbal offering of items, single or in combination, from the basic food groups.
- 1.28 "**Nursing facility**" means a place, however named, or an identifiable unit or distinct part thereof that provides 24 hour inresident nursing, therapeutic, restorative or preventive and supportive nursing care services for two (2) or more residents unrelated by blood or marriage whose condition requires continuous nursing care and supervision.
- 1.29 "**Nursing service**" means a service organized, staffed and equipped to provide nursing care to residents on a continuous basis.
- 1.30 "The **occupancy level** of a facility" refers to the number of beds a facility has in actual use, equal to or less than the licensed capacity.
- 1.31 "**Person**" means any individual, trust or estate, partnership, corporation (including associations, joint stock companies), limited liability company, state or political subdivision or instrumentality of a state.
- 1.32 "**Physician**" means a person licensed to practice allopathic or osteopathic medicine in this state, pursuant to the provisions of Chapter 5-37 of the General Laws of Rhode Island, as amended.
- 1.33 "**Resident**" means a person who resides in a nursing facility as defined in Chapter 17 of Title 23 and the regulations contained herein.
- 1.34 "**Resident attendant**" means an individual who is trained to assist residents in a nursing home with the activities of eating and drinking. A resident attendant shall not include an individual

who:

- a) is a licensed health professional, including but not limited to a nursing assistant, registered dietitian; or
  - b) volunteers without monetary compensation as authorized by the resident, or the resident's appropriate legal representative.
- 1.35 **"Residential area"** means a distinct living environment within a nursing facility that includes no more than 60 beds.
- 1.36 **"Safe patient handling"** means the use of engineering controls, transfer aids, or assistive devices whenever feasible and appropriate instead of manual lifting to perform the acts of lifting, transferring, and/or repositioning health care patients and residents.
- 1.37 **"Safe patient handling policy"** means protocols established to implement safe patient handling.
- 1.38 **"Standing orders"** means orders to be automatically implemented for a class of patients without physician direction for an individual patient within the class.
- 1.39 **"Substantial evening meal"** means an offering of three (3) or more menu items at one time, one (1) of which includes a high-quality protein such as meat, fish, eggs, or cheese. The meal should represent no less than 20 percent (20%) of the day's total nutritional requirements.
- 1.40 **"Turnover rate"** means the total number of terminations in a given calendar year divided by the average number of personnel employed for the same calendar year and multiplied by 100 (for the percentage). (See calculation set forth in Appendix "F" herein).

## Section 2.0 ***Certificate of Need Requirements***

- 2.1 Any person individually or jointly with any other person(s) who proposes to undertake any substantial construction shall be subject to the Rhode Island Department of Health, rules and regulations for construction of nursing or personal care homes.
- 2.2 A certificate of need is required as a precondition to the establishment of a new nursing facility in accordance with reference 5.
- 2.3 Any facility which has received a certificate of need as evidence by written approval of the Director of Health after review by the Health Services Council, shall submit plans and specifications for review, prior to signing a construction contract, to the Office of Facilities Regulation, Rhode Island Department of Health, to the Division of Fire Safety, Executive Department, and to the Office of Food Protection and Sanitation of the Rhode Island Department of Health in accordance with reference 6.

## Section 3.0 ***General Requirements for Licensure***

- 3.1 No person or governmental unit acting severally or jointly with any other person or governmental unit shall conduct, maintain or operate a or hold itself out as a nursing facility without a license in accordance with the requirements of reference 1.

- 3.2 The provisions of the rules and regulations herein, in addition to the provisions of reference 1, shall apply to all nursing facilities and to all residents housed therein, except that persons caring exclusively for relatives shall be exempted from the provisions of reference 1 and of the rules and regulations herein.
- 3.3 Facilities meeting the definition of nursing facilities by virtue of the residence therein of persons who are mentally, physically and/or emotionally dependent on others for fulfilling the requirements of daily life but which do not include primary medical and nursing components shall not be subject to the rules and regulations herein but shall be subject to the requirements of Chapter 23-17.4 of the General Laws of Rhode Island, as amended (see reference 3), and to the *Rules and Regulations For Licensing Assisted Living Residences (R23-17.4-ALR)* (see reference 4).
- 3.4 Any nursing facility that utilizes latex gloves shall do so in accordance with the provisions of the *Rules and Regulations Pertaining to the Use of Latex Gloves by Health Care Workers, in Licensed Health Care Facilities, and by Other Persons, Firms, or Corporations Licensed or Registered by the Department* promulgated by the Department of Health.
- 3.5 The nursing facility shall maintain sufficient financial resources to provide adequate staffing and supplies to care for the residents.

### ***Safe Resident Handling***

- 3.6 Each licensed nursing facility shall comply with the following as a condition of licensure:
- 3.6.1 Each licensed nursing facility shall establish a safe patient handling committee, which shall be chaired by a professional nurse or other appropriate licensed health care professional. A nursing facility may utilize any appropriately configured committee to perform the responsibilities of this section. At least half of the members of the committee shall be hourly, non-managerial employees who provide direct resident care.
- 3.6.2 By July 1, 2007, each licensed nursing facility shall develop a written safe patient handling program, with input from the safe patient handling committee, to prevent musculoskeletal disorders among health care workers and injuries to residents. As part of this program, each licensed nursing facility shall:
- 3.6.3 By July 1, 2008, implement a safe resident handling policy for all shifts and units of the facility that will achieve the maximum reasonable reduction of manual lifting, transferring, and repositioning of all or most of a resident's weight, except in emergency, life-threatening, or otherwise exceptional circumstances;
- a) Conduct a resident handling hazard assessment. This assessment should consider such variables as patient-handling tasks, types of nursing units, resident populations, and the physical environment of resident care areas;
- b) Develop a process to identify the appropriate use of the safe resident handling policy based on the resident's physical and mental condition, the resident's choice, and the availability of lifting equipment or lift teams. The policy shall include a means to address circumstances under which it would be medically

contraindicated to use lifting or transfer aids or assistive devices for particular residents;

- c) Designate and train a registered nurse or other appropriate licensed health care professional to serve as an expert resource, and train all clinical staff on safe resident handling policies, equipment, and devices before implementation, and at least annually or as changes are made to the safe patient handling policies, equipment and/or devices being used;
- d) Conduct an annual performance evaluation of the safe resident handling with the results of the evaluation reported to the safe resident handling committee or other appropriately designated committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in musculoskeletal disorder claims and days of lost work attributable to musculoskeletal disorder caused by resident handling, and include recommendations to increase the program's effectiveness; and
- e) Submit an annual report to the safe resident handling committee of the facility, which shall be made available to the public upon request, on activities related to the identification, assessment, development, and evaluation of strategies to control risk of injury to patients, nurses, and other health care workers associated with the lifting, transferring, repositioning, or movement of a resident.

3.6.4 Nothing in this section precludes lift team members from performing other duties as assigned during their shift.

3.6.5 An employee may, in accordance with established facility protocols, report to the committee, as soon as possible, after being required to perform a resident handling activity that he/she believes in good faith exposed the resident and/or employee to an unacceptable risk of injury. Such employee reporting shall not be cause for discipline or be subject to other adverse consequences by his/her employer. These reportable incidents shall be included in the facility's annual performance evaluation.

#### Section 4.0 *Application for License or for Changes in Owner, Operator, or Lessee*

- 4.1 Application for a license to conduct, maintain or operate a nursing facility shall be made in writing and submitted on forms provided by the licensing agency prior to the expiration date for license renewal or prior to the opening date for a new facility.
- 4.2 A notarized listing of names and addresses of direct and indirect owners whether individual, partnership, or corporation, with percentages of ownership designated, shall be provided with the application for licensure and shall be updated annually. If a corporation, the list shall include all officers, directors and other persons or any subsidiary corporation owning stock.
- 4.3 Application for changes in the owner, operator, or lessee of a nursing facility shall be made on forms provided by the licensing agency and shall contain but not be limited to information pertinent to the statutory purpose expressed in section 23-17-3 of Chapter 23-17 or to the

considerations enumerated in section 5.6 herein. Twenty-five (25) copies of such applications are required to be provided.

4.3.1 Each application filed pursuant the provisions of this section shall be accompanied by a non-returnable, non-refundable application fee, made payable to the Rhode Island General Treasurer, as follows: applicants shall submit a fee equal to two tenths of one percent (0.2%) of the projected annual facility net operating revenue contained in the application; provided, however, that the minimum fee shall be fifteen hundred dollars (\$1,500) and the maximum fee shall not exceed twenty thousand dollars (\$20,000).

## Section 5.0 *Issuance and Renewal of License*

5.1 The licensing agency shall issue a license or renewal thereof for a period of no longer than one (1) year. Said license, unless sooner suspended or revoked, shall expire by limitation on the 31st day of December following its issuance and may be renewed from year to year after inspection, and approval by the licensing agency, provided the applicant meets the appropriate requirements of reference 1 and the rules and regulations herein.

5.2 A license shall be issued to a specific licensee for a specific location and shall not be transferable. The license shall be issued to the individual owner, operator or lessee, or to the corporate entity responsible for its governance.

5.2.1 Any initial licensure or change in owner, operator, or lessee of a licensed nursing facility shall require prior review by the Health Services Council and approval of the licensing agency as provided in section 5.5 and section 5.6 as a condition precedent to the transfer, assignment or issuance of a new license.

5.3 A license issued hereunder shall be the property of the state and loaned to such licensee, and it shall be kept posted in a conspicuous place on the licensed premises.

5.4 A distinct part of a nursing facility which is designed, maintained and primarily devoted to the provision of residential care and assisted living in accordance with reference 3 shall obtain a separate license in accordance with the regulatory and statutory requirements of references 3 and 4.

5.5 Reviews of applications for initial licensure or changes in the owner, operator, or lessee of licensed nursing facilities shall be conducted according to the following procedures:

- a) Applicants for initial licensure or a change in effective control of a nursing facility shall submit all required information as contained in the application provided by the Department.
- b) Within ten (10) working days of receipt, in acceptable form, of an application for a license in connection with an initial licensure or a change in the owner, operator or lessee of an existing facility, the licensing agency will notify and afford the public thirty (30) days to comment on such application.
- c) The decision of the licensing agency will be rendered within ninety (90) days from acceptance of the application for license.



- d) The decision of the licensing agency shall be based upon the findings and recommendations of the Health Services Council unless the licensing agency shall afford written justification for variance therefrom.
- e) All applications reviewed by the licensing agency and all written materials pertinent to the licensing agency review, including minutes of all Health Services Council meetings, shall be accessible to the public upon request.

5.6 Except as otherwise provided in Chapter 23-17 of the General Laws of Rhode Island, as amended, a review by the Health Services Council of an application for a license in the case of an initial licensure or a proposed change in the owner, operator, or lessee of a licensed nursing facility may not be made subject to any criterion unless the criterion directly relates to the statutory purpose expressed in section 23-17-3 of the General Laws. In conducting reviews of such applications the Health Services Council shall specifically consider and it shall be the applicant's burden of proof to demonstrate:

5.6.1 The character, commitment, competence, and standing in the community of the proposed owners, operators or directors of the facility as evidenced by:

- (A) In cases where the proposed owners, operators, or directors of the health care facility currently own, operate, or direct a health care facility, or in the past five years owned, operated or directed a health care facility, whether within or outside Rhode Island, the demonstrated commitment and record of that (those) person(s):
  - (i) in providing safe and adequate treatment to the individuals receiving the health care facility's services;
  - (ii) in encouraging, promoting and effecting quality improvement in all aspects of health care facility services; and
  - (iii) in providing appropriate access to health care facility services;
- (B) A complete disclosure of all individuals and entities comprising the applicant; and
- (C) The applicant's proposed and demonstrated financial commitment to the health care facility.

5.6.2 The extent to which the facility will continue, without material effect on its viability at the time of change of owner, operator, or lessee, to provide safe and adequate treatment for individuals receiving the facility's services as evidenced by:

- (A) The immediate and long term financial feasibility of the proposed financing plan;
  - (i) The proposed amount and sources of owner's equity to be provided by the applicant;

- (ii) The proposed financial plan for operating and capital expenses and income for the period immediately prior to, during and after the implementation of the change in owner, operator or lessee of the health care facility;
- (iii) The relative availability of funds for capital and operating needs;
- (iv) The applicant's demonstrated financial capability;
- (v) Such other financial indicators as may be requested by the state agency;

5.6.3 The extent to which the facility will continue to provide safe and adequate treatment for individuals receiving the facility's services and the extent to which the facility will encourage quality improvement in all aspects of the operation of the health care facility as evidenced by:

- (A) The applicant's demonstrated record in providing safe and adequate treatment to individuals receiving services at facilities owned, operated, or directed by the applicant; and
- (B) the credibility and demonstrated or potential effectiveness of the applicant's proposed quality assurance programs;

5.6.4 The extent to which the facility will continue to provide appropriate access with respect to traditionally underserved populations and in consideration of the proposed continuance or termination of health care services by the facility as evidenced by:

- (A) In cases where the proposed owners, operators, or directors of the health care facility currently own, operate, or direct a health care facility, or in the past five years owned, operated or directed a health care facility, both within and outside of Rhode Island, the demonstrated record of that person(s) with respect to access of traditionally underserved populations to its health care facilities; and
- (B) The proposed immediate and long term plans of the applicant to ensure adequate and appropriate access to the programs and health care services to be provided by the health care facility;

5.6.5 In consideration of the proposed continuation or termination of health care services by the facility:

- (A) The effect(s) of such continuation or termination on access to safe and adequate treatment of individuals, including but not limited to traditionally underserved populations;

5.6.6 And, in cases where the application involves a merger, consolidation or otherwise legal affiliation of two or more health care facilities, the proposed immediate and long term plans of such health care facilities with respect to the health care programs to be offered and health care services to be provided by such health care facilities as a result of the merger, consolidation or otherwise legal affiliation.

- 5.7 Subsequent to reviews conducted under sections 5.5 and 5.6 of these regulations, the issuance of a license by the licensing agency may be made subject to any condition, provided that no condition may be made unless it directly relates to the statutory purpose expressed in section 23-17-3 of the Rhode Island General Laws, as amended, or to the review criteria set forth in section 5.6 herein. This shall not limit the authority of the licensing agency to require correction of conditions or defects which existed prior to the proposed change of owner, operator, or lessee and of which notice had been given to the nursing facility by the licensing agency.

***Background and Qualifications of the Applicant or Proposed License Holder***

- 5.8 For purposes of this section, applicants must meet a financial threshold that shall include, as a minimum, that the applicant or proposed license holder shall have sufficient resources to operate the nursing facility at licensed capacity for thirty (30) days, evidenced by an unencumbered line of credit, a joint escrow account established with the Department, or a performance bond secured in favor of the state or a similar form of security satisfactory to the Department.
- 5.9 The Department may also require background information to be submitted relating to any partner, officer, director, manager or member (if member-managed) of the applicant or proposed license holder, or information relating to each person having a beneficial ownership interest of five percent (5%) or more in the applicant or proposed license holder.
- 5.10 In reviewing information required by sections 5.8 and 5.9 (above), the Department may require the applicant or proposed license holder to file a sworn affidavit substantiating the validity of any submitted information as required by the Department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant, proposed license holder or any other person described by sections 5.8 and 5.9 (above) operated a nursing facility at any time during the five-year period preceding the date on which the application is made. The Department shall determine what constitutes a satisfactory compliance history.
- 5.11 The Department may also require the applicant or proposed license holder to file information relating to the current financial condition of the applicant, proposed license holder or any other person described by sections 5.8 and 5.9 (above) and the history of the financial condition of the applicant, proposed license holder or any other person described by sections 5.8 and 5.9 (above) with respect to a facility operated in another state or jurisdiction at any time during the five-year period preceding the date on which the application is made.
- 5.12 In addition to the information required to be provided in sections 5.8—5.11 above, the Department shall gather information from state departments and agencies relating to the background and qualifications of the applicant, proposed license holder, or any person having a five percent (5%) or more beneficial ownership interest.

***Moratorium on New Initial Nursing Facility Licensed Beds and on Increases to the Licensed Capacity of Existing Nursing Facility Licenses***

- 5.13 Pursuant to section 23-17-44 of the Rhode Island General Laws, as amended, the licensing agency shall issue no new initial licenses for nursing facilities prior to July 1, 2009; provided,

however, that: (a) any person holding a previously issued and valid certificate of need as of the date of passage of that section shall be permitted to effect such prior certificate from the licensing agency consistent with such other statutory and regulatory provisions which may further apply; (b) any person holding a nursing facility license may undertake activities to construct and operate a replacement nursing facility with the same or lower bed capacity as is presently licensed provided that such replacement facility may only be licensed upon the otherwise unconditional cessation of operation of the previously licensed nursing facility; and (c) any certificate of need application under active review before the state agency as of January 10, 1996 which application seeks approval of a proposal to establish a new nursing facility or seeks to increase the licensed bed capacity of an existing nursing facility shall continue to be reviewed under all the statutory and regulatory requirements in effect at the time such application was accepted for review by the state agency; and (d) any residential care/assist living facility licensed as of July 1, 1999 pursuant to Chapter 23-17.4 of the Rhode Island General Laws, as amended, may establish a licensed nursing facility through the conversion of residential care/assisted living space within its existing physical plant, provided that (1) the number of nursing facility beds so licensed shall not exceed the lesser of twenty (20) beds or ten percent (10%) of the licensed bed capacity of such residential care/assisted living facility as of July 1, 1999; (2) the total capital expenditures associated with the implementation of such nursing facility shall not exceed five hundred thousand dollars (\$500,000); (3) that such nursing facility shall be limited to admitting as residents those persons who are transferring from residency at such resident care/assisted living facility; (4) that such residential care/assisted living facility shall have submitted a certificate of need application to the Department of Health in a form and content acceptable to the Department of Health no later than 4:30 p.m. on October 1, 1999; (5) that such residential care/assisted living facility shall have been granted a certificate of need by the Department of Health; and (6) that such nursing facility shall comply with all of the requirements of the Health Care Certificate of Need Act (Chapter 15 of Title 23) and of the Licensing of Health Care Facilities Act (Chapter 17 of Title 23). All certificate of need applications submitted pursuant to this subsection (d) to the Department of Health in a form and content acceptable to the Department of Health no later than 4:30 p.m. on October 1, 1999 shall be batched and reviewed in the same review cycle.

- 5.14 Prior to July 1, 2009, the licensing agency shall not increase the licensed bed capacity of any existing licensed nursing facility, including any nursing facility approved for change in ownership, pursuant to section 23-17-14 of the Rhode Island General Laws, as amended, to greater than the level of the facility's licensed bed capacity as of August 21, 1996 plus the greater of ten (10) beds or ten percent (10%) of such licensed bed capacity. Any person holding a previously issued and valid certificate of need as of the date of passage of section 23-17-44 (2) or who shall subsequently be granted a certificate of need pursuant to section 5.8 above shall be permitted to effect such prior certificate from the licensing agency consistent with such other statutory and regulatory provisions which may further apply.
- 5.15 Notwithstanding any other provision of the law to the contrary, including any moratorium on increasing bed capacity in nursing facilities that may otherwise apply, a nursing facility may take out of service any or all beds of its licensed capacity without impediment to its right to place back into service such beds at a future date under the same terms and conditions as applied at the time of taking them out of service.

- 5.15.1 **"Take out of service"**, as used in this section, means an action by a nursing facility to leave a bed(s) unutilized as a nursing facility bed for a specified period of time. Specified periods of time shall be in six-month increments, at a minimum.
- 5.15.2 The nursing facility shall inform the licensing agency in writing no less than ten (10) days prior to taking bed(s) out of service and shall describe the alteration of physical space (if any) resulting from taking such bed(s) out of service.
- 5.15.3 Beds taken out of service shall reduce a nursing facility's licensed bed capacity by the number of beds taken out of service.

#### ***Additional Information Required of all Nursing Facilities***

- 5.16 Effective January 1, 2006, any nursing facility applying for initial licensure or renewal of its license that contracts with a management company to assist with the facility's operation shall file a copy of the management contract with the Department including the management fee and, if the management company is a corporation or limited liability company, shall identify every person having an ownership interest of five percent (5%) or more in such corporation or limited liability company and, if the management company is a general partnership or limited partnership, shall identify all general or limited partners of such general partnership or limited partnership.

#### **Section 6.0 *Capacity and Classifications***

- 6.1 Each license shall specify the licensed bed capacity of the facility. No facility shall have more residents than the number of beds for which it is licensed.
  - 6.1.1 The facility shall identify to the licensing agency the location of licensed beds and shall maintain proper space and furnishings for such locations.
- 6.2 Proposed changes in bed capacity within a facility shall be submitted to the licensing agency in writing and shall be subject to the approval of the licensing agency in accordance with the provisions of reference 5.

#### **Section 7.0 *Change of Ownership, Operation and/or Location***

- 7.1 When a change of ownership, as defined in the rules and regulations pursuant to reference 5, or in operation or location of a facility or when discontinuation of services is contemplated the owner and/or operator shall notify the licensing agency in writing no later than six (6) weeks prior to the proposed action.
- 7.2 A license shall immediately become void and shall be returned to the licensing agency when operation of the facility is discontinued, or when any changes in ownership occur in accordance with appropriate certificate of need rules and regulations.
  - a) When there is a change in ownership as defined in the certificate of need rules and regulations or in the operation or control of an existing facility, the licensing agency reserves the right to extend the expiration date of such license, allowing the facility to operate under the same conditions which applied to the prior operator, for such time as

shall be required for the processing of a new application or for transfer of residents, not to exceed six (6) weeks.

7.3 Thirty (30) days prior to voluntary cessation of any facility license, the resident, his/her guardian or decision-maker, and the Department of Health shall be notified. The facility shall provide the Department with a plan for orderly closure, and transfer of residents and records.

7.3.1 In the event that a facility seeks a variance from the required thirty (30) day notice of closure of the facility, reasonable advance notice of the hearing for the variance shall be given by the facility to the resident, his or her guardian, or relative so appointed or elected to be his or her decision-maker, and an opportunity to be present at the hearing shall be granted to the person so designated.

7.3.2 In the event of the voluntary closure of a facility, which closure is the result of a variance from the required thirty (30) day notice of closure, granted by the Director, reasonable advance notice of the closure shall be given by the facility to the resident, his or her guardian, or relative so appointed or elected to be his or her decision-maker.

7.4 Any nursing facility with any significant changes in its management contract shall submit a copy of the revised management contract to the Department within thirty (30) days of the effective date of the new contract provisions.

## Section 8.0 *Inspections*

8.1 The licensing agency shall make such inspections and investigations as deemed necessary and in accordance with references 1 and 5 and the regulations herein. Such inspections shall apply to all nursing facilities licensed under 23-17 and shall apply to all residents housed therein without regard to source of payment.

8.2 A duly authorized representative of the licensing agency shall have the right to enter at any time without prior notice to inspect the entire premises and services, including all records of any facility for which an application has been received or for which a license has been issued. Any application shall constitute permission for and willingness to comply with such inspections. The duly authorized representative shall provide necessary identification information and shall sign the log or journal of the nursing facility provided in accordance with reference 7.

8.3 Refusal to permit inspections shall constitute a valid ground for license revocation.

8.4 Every nursing facility shall be given prompt notice by the licensing agency of all deficiencies reported as a result of an inspection or investigation and in accordance with the procedures incorporated in references 1 and 6.

8.5 Written reports and recommendations of inspections and inspection logs or journals shall be maintained on file in each facility for a period of no less than three years.

## Section 9.0 *Denial, Suspension, Revocation of License or Curtailment of Activities & Sanctions*

- 9.1 The licensing agency is authorized to deny, suspend, revoke the license, or curtail the activities of any nursing facility which: (1) has failed to comply with the rules and regulations pertaining to licensing of nursing facilities; (2) has aided, abetted or permitted any illegal act or conduct adverse to the health, welfare and safety of residents or of the general public; or (3) has failed to comply with municipal, state or federal law.
- a) Lists of deficiencies noted in inspections conducted in accordance with section 8.0 herein shall be maintained on file in the licensing agency, and shall be considered by the licensing agency in rendering determinations to deny, suspend or revoke the license of a nursing facility or to curtail its activities.
- 9.2 In those instances wherein the licensing agency determines that a nursing facility licensed in accordance with reference 1 is not being operated in conformity with all of the requirements established thereby, the licensing agency may (in lieu of suspension or revocation) curtail activities of the facility, order the licensee to be placed on probationary status and set conditions with which the licensee must comply within a set period of time, order the licensee to admit no additional persons to the facility, to provide health services to no additional persons through the facility, to transfer all or some of the persons occupying the facility to other suitable accommodations, or to take any other corrective action necessary to secure compliance with the requirements established under the Act. Notice of the order and any subsequent hearing that may be scheduled shall comply with the requirements of procedural due process stipulated in section 23-17-8 of the Rhode Island General Laws, as amended. Such action may be taken only when the licensing agency determines that operation of the home shall not result in undue hardship to residents.
- a) Notice of an order to curtail any or all activities of a nursing facility in accordance with section 9.2 herein shall be made in writing by certified mail and shall state the reason thereof, the action to be taken by the licensee and the time within which said action shall be taken.
- 9.3 When the licensing agency deems that operation of a nursing facility results in undue hardship to residents as a result of deficiencies enumerated in the notice of deficiencies, the licensing agency is authorized to deny licensure to facilities not previously licensed, or to suspend the license for a stipulated period of time or to revoke the license of a facility already licensed.
- 9.4 Whenever an action shall be proposed to deny, suspend or revoke the license or curtail activities of a licensee, the licensing agency shall notify the nursing facility by certified mail (or may be hand delivered), setting forth reasons for the proposed action, and the applicant or licensee shall be given an opportunity for a prompt and fair hearing in accordance with reference 20.
- a) However, if the licensing agency finds that public health, safety, or welfare, including the health and safety of residents, imperatively requires emergency action and incorporates a finding to that effect in its order, the licensing agency may order summary suspension of license pending proceedings for revocation or other action.
- 9.5 The appropriate state and federal placement and reimbursement agencies shall be notified of any action taken by the licensing agency pertaining to either denial, suspension or revocation of license or curtailment of activities of any facility.

- 9.6 **SANCTIONS:** The licensing agency may take appropriate action from within the following array for dealing with violations of references 1 and 5 or of the rules and regulations herein.
- a) As a result of denial, the rights and privileges attendant upon licensure will not accrue to a facility.
  - b) As a result of an order to curtail any or all activities of a nursing facility, a licensee may be ordered to admit no additional persons to said home, and/or transfer to other suitable accommodations all or some of the residents residing in said home, and/or take any other corrective action necessary to secure compliance with the requirements established by reference 1 and the rules and regulations herein.
  - c) As a result of suspension, a facility shall be restrained from admitting any residents during the period of suspension and shall be required to transfer all residents to another facility during the period of suspension. The difference between suspension and revocation of license is essentially a temporal one, such that the sanctions imposed as a result of suspension are so imposed until such time as the deficiency is corrected or until such other time as the licensing agency determines, whereas the sanctions imposed as a result of revocation are considered to be permanent and re-application for license would be necessary.
  - d) As a result of license revocation, a facility loses all rights and privileges related to licensure and will be required to transfer all residents, will be restrained from admitting any residents and will be subject to prosecution for operation without a license if the foregoing actions are not accomplished.
- 9.7 In accordance with the requirements of section 23-17-12.3 of the Rhode Island General Laws, as amended, every person including a controlling person, or corporation who shall willfully and continually violate the provisions of sections 23-17-12 -- 23-17-12.2 of the Rhode Island General Laws, as amended, will be subject to a fine up to three hundred dollars (\$300) for each violation of these sections.

***Adverse Change in Financial Condition***

- 9.8 Whenever the Department, or the Department in consultation with the Rhode Island Department of Human Services, determines that a nursing facility's financial status is of concern and determines, through inspection of the facility or investigation of a complaint, that incident(s), event(s) or patterns of care exist that harm or have the potential to result in harm or danger to the residents of a facility, the Departments, acting jointly, shall convene a meeting, as soon as possible but in no event later than ten (10) days after the finding(s) cited above, with the license holder to communicate the state's concerns with respect to the operation of the facility. The license holder shall be given the opportunity to respond to the state's concerns and to offer explanation as to why the concerns are not valid or accurate.
- 9.9 In the event that the explanation provided by the license holder is not found by the Department to be adequate or otherwise satisfactory, the Department shall direct the license holder to prepare and submit, within ten (10) days of the meeting cited above, or for good cause shown no later than twenty (20) days after said meeting, a plan of correction and remediation for the Department's review and approval, including, but not limited to, the following elements:



- 1) Specific targeted improvements;
  - 2) Definite deadlines for accomplishing those targeted improvements;
  - 3) Measurable standards that will be used to judge whether the targeted improvements have been accomplished;
  - 4) A spending plan that supports all costs associated with accomplishment of the targeted improvements;
  - 5) Monthly reporting of cash availability, the status of vendor payments and employee payrolls, and staffing levels, as metrics concerning financial status and quality of care; and
  - 6) With regard to concerns regarding resident care, and if directed by the Department, a proposal to engage an independent quality monitor or independent quality consultant, to work, in consultation with the facility administrator and medical director, the implementation of the plan of correction and remediation, and to provide progress updates to the Department of Health.
- 9.10 Whenever a facility's financial status is determined to be marginal, the Department shall cause such a facility to be inspected in order to determine if financial problems are causing the facility to be out of compliance with nursing facility regulatory standards.
- 9.11 Whenever a facility is determined to be having severe financial difficulties, the Department shall cause the facility to have more frequent inspections and the Director may, at the facility's expense:
- 1) Appoint an independent consultant to review the facility's management and financial status and make recommendations to improve the facility's financial status; or
  - 2) Require the hiring of a temporary manager of the facility's operations.
- 9.12 With the exception of the plan of correction and remediation, as allowed in section 9.13 below, the information obtained by the Department under this section is confidential and is not subject to disclosure under § 38-2-2 of the Rhode Island General Laws, as amended, "Access to Public Records." However, upon request, the Department shall release the information to the following who shall treat the information as confidential:
- 1) The facility;
  - 2) A person other than the facility if the facility consents in writing to the disclosure;
  - 3) The state Medicaid agency responsible for rate setting of nursing facilities;
  - 4) The state long-term care ombudsman; or
  - 5) The Department of Attorney General.
- 9.13 Within ten (10) days, or twenty (20) days for good cause shown, of the submission of the plan of correction and remediation by the facility, the Department shall either:
- a) Accept the plan, at which time it shall be considered to be a public record, and the facility shall make it, and all reports that follow and are related to it, available for public

inspection, and shall provide a written summary of the plan to each resident of the facility or his or her legal representative, and each resident's family representative;

- b) Conditionally accept the plan with modifications made by the Department, at which time the plan shall be considered to be a public record and the facility shall make it, and all reports that follow and are related to it, available in accordance with subsection a) above; or
- c) Reject the plan, at which time all records acquired in accordance with this section that do not violate resident confidentiality shall be considered to be a public record, and a notice of said plan rejection shall be sent, along with directions on obtaining the complete record to each resident of the facility or his or her legal representative and each resident's family representative.

9.14 The provisions in section 9.11 herein relating to the confidentiality of records do not apply:

- 1) To a facility whose license has been revoked or suspended;
- 2) To the use of the information in an administrative proceeding initiated by the Department, including implementing enforcement actions, and in judicial proceedings relating thereto.

9.15 These regulations adopt by reference the regulations that incorporate the criteria to measure financial status as shall be promulgated by the Department of Human Services pursuant to § 40-8-19.1 of the Rhode Island General Laws, as amended.