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**Title 40 - Professions and Occupations**

CHAPTER 35.

LONG TERM HEALTH CARE ADMINISTRATORS

**SECTION 40-35-5.** Applicability; conflicts of law.

Unless otherwise provided for in this chapter, Article 1, Chapter 1 applies to the regulation of nursing home administrators and residential care facility administrators; however, if there is a conflict between this chapter and Article 1, Chapter 1, the provisions of this chapter control.

**SECTION 40-35-10.** South Carolina Board of Long Term Health Care Administrators; membership; meetings.

(A) There is created the South Carolina Board of Long Term Health Care Administrators composed of nine members who must be appointed by the Governor, with the advice and consent of the Senate, for three-year terms and until their successors are appointed and qualify. Of the nine members:

(1) three must be qualified nursing home administrators licensed under this chapter; one must be from a proprietary nursing home; one must be from a nonproprietary nursing home; and one must be a qualified hospital administrator;

(2) three must be community residential care facility administrators, licensed under this chapter, at least one of whom must be from a community residential care facility with ten or fewer residents;

(3) one must be a consumer, sponsor, or family member of a consumer of nursing home services;

(4) one must be a consumer, sponsor, or family member of a consumer of community residential care

services;

(5) one must be a voting member of the Long Term Care Committee of the Health and Human Services Coordinating Council who must be nominated by election of the committee from among its voting members. If the Governor does not accept the nomination, an additional nominee must be selected in the same manner.

The Commissioner of the Department of Health and Environmental Control, or his designee, also shall serve as a nonvoting member on the board, ex officio.

An individual, group, or association may submit the names of qualified individuals to the Governor for his consideration in making these appointments.

A vacancy must be filled in the manner of the original appointment for the unexpired portion of the term. A member may not serve more than two consecutive full terms.

(B) The board shall meet at least twice a year.

(C) Any business conducted by the board must be by a positive majority vote. For purposes of this subsection, "positive majority vote" means a majority vote of the entire membership of the board, reduced by any vacancies existing at the time.

**SECTION 40-35-20.** Definitions.

As used in this chapter:

(1) "Accredited college or university" means a college or university whose accreditation is recognized by the Council on Higher Education Accreditation and the United States Department of Education.

(2) "Board" means the South Carolina Board of Long Term Health Care Administrators.

(3) "Community residential care facility" means a facility defined for licensing purposes under law or pursuant to regulations for community residential care facilities by the Department of Health and Environmental Control, whether proprietary or nonprofit.

(4) "Community residential care facility administrator" means a person who has attained the required education and experience, is otherwise qualified, has been issued a license by the board, and is eligible to administer, manage, supervise, or be in administrative charge of a community residential care facility.

(5) "Consumer" means a person who is or has been a resident of a nursing home or community residential care facility.

(6) "Department" means the Department of Labor, Licensing and Regulation.

(7) "Habilitation center for the mentally retarded or persons with related conditions" means a facility which is licensed by the Department of Health and Environmental Control and that serves four or more mentally retarded persons or persons with related conditions and provides health or rehabilitative services on a regular basis to individuals whose mental and physical conditions require services including room, board, and active treatment for their mental retardation or related conditions.

(8) "Nursing home" means an institution or facility defined for licensing purposes under law or pursuant to regulations for nursing homes promulgated by the Department of Health and Environmental Control, whether proprietary or nonprofit including, but not limited to, nursing homes owned or administered by the State or a political subdivision of the State. The term does not include habilitation centers for the mentally retarded or persons with related conditions.

(9) "Nursing home administrator" means a person who has attained the requisite education and experience, is otherwise qualified, and has been issued a license by the board and is eligible to administer, manage, supervise, or be in administrative charge of a nursing home.

(10) "Practical experience in nursing home administration" means a minimum of thirty-six hours per week employment under the on-site supervision of a licensed nursing home administrator in a state licensed nursing home, and in the case of a beginning administrator, this includes providing, for a minimum of six months, supervision in at least two of these areas:

(a) business and fiscal management;

(b) a direct patient-care service including, but not limited to, nursing, physical therapy, occupational

therapy, speech therapy, chaplaincy, social work, or activities;

(c) a supporting service including, but not limited to, dietary, maintenance, engineering, laundry, environmental services, or pharmacy.

(11) "Qualified mental retardation professional" means a person who, by training and experience, meets the requirements of applicable federal law and regulations for a qualified mental retardation professional, as determined by the Department of Disabilities and Special Needs.

(12) "Related health care administration" means the administration of a facility that provides direct nursing care on a twenty-four hour basis to persons who require health services because of illness, age, or chronic disability. This does not include administration of a continuing care retirement/residential care facility.

(13) "Sponsor" means a person who is financially or legally responsible for an individual currently residing in a nursing home or residential care facility.

**SECTION 40-35-30.** Supervision of facilities and centers by licensed administrators.

(A) A nursing home or community residential care facility within this State may not operate except under the supervision of an administrator licensed in accordance with this chapter.

(B) A habilitation center for the mentally retarded or persons with related conditions, funded in whole or in part by the Department of Disabilities and Special Needs, must be under the supervision of a licensed nursing home administrator or a qualified mental retardation professional who has been determined by the department to have the requisite training and experience.

**SECTION 40-35-40.** Issuance of license; qualifications and requirements.

(A) The board shall issue a nursing home administrator license to a person who submits evidence satisfactory to the board that the person:

(1) is at least twenty-one years of age;

(2) has not been convicted of any criminal act that is relevant to the practice of nursing home administration, including financial misconduct or physical violence;

(3) is of reputable and responsible character and is of sound physical and mental health sufficient to perform the duties of a nursing home administrator;

(4)(a) has a baccalaureate degree in nursing home administration or related health care administration from an accredited college or university and one year of practical experience in nursing home administration or related health care administration;

(b) has a baccalaureate degree other than in health care administration from an accredited college or university and two years of practical experience in nursing home administration or related health care administration; or

(c) has a combination of education and experience as established by the board in regulation;

(5) has successfully completed the nursing home administrators' examination administered by the board; and

(6) has paid the applicable fees.

(B) The board shall issue a community residential care facility administrator license to a person who submits evidence satisfactory to the board that the person:

(1) is at least twenty-one years of age;

(2) has not been convicted of any criminal act that is relevant to the practice of community residential care facility administration, including financial misconduct or physical violence;

(3) is of reputable and responsible character and is of sound physical and mental health sufficient to perform the duties of a community residential care facility administrator.

(4)(a) has a minimum of an associate degree with at least one year of on-site work experience with supervisory and direct resident care responsibilities under the supervision of a licensed community

residential care facility administrator; however, a person who has a health-related associate degree or higher is required to have only six months of on-site work experience with supervisory and direct resident care responsibilities under the supervision of a licensed community residential care facility administrator; or

(b) had at least three months of on-site work experience under the supervision of a licensed community residential care facility administrator and has a:

(i) health-related baccalaureate degree and at least two years' work experience, as defined by the board, in a health-related field other than in a community residential care facility; or

(ii) nonhealth-related baccalaureate degree with at least three years' work experience, as defined by the board, in a health-related field other than in a community residential care facility; or

(c) has a combination of education and experience as established by the board in regulation;

(5) has successfully completed the community residential care facility administrators' examination administered by the board and has paid the established fees.

(C) The board may establish qualifications in regulation for the issuance of a combined nursing home administrator and community residential care facility administrator license.

(D) An applicant for a nursing home administrator license or a community residential care facility administrator license shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine state criminal history and a federal fingerprint review to be conducted by the Federal Bureau of Investigation to determine other criminal history. In addition to the fingerprint fee, the results of the reviews must be furnished to the board by the applicant before initial licensure.

(E) An applicant for a nursing home administrator license or a community residential care facility administrator license shall provide a current credit report before initial licensure.

(F) An application must be submitted on forms prescribed by the department and developed in consultation with the board.

**SECTION 40-35-45.** Transferability of license; renewal and reinstatement; licensure of persons holding license in another jurisdiction.

(A) A nursing home administrator's license or a community residential care facility administrator's license is not transferable.

(B) A license must be renewed upon dates established by the department. A licensee must submit an application for renewal, payment of the renewal fee, and proof of compliance with continuing education requirements established by the board in regulation. If a license is not renewed in accordance with this subsection, the license lapses on the expiration date. Further practice may be sanctioned as unlicensed practice.

(C) A nursing home administrator or community residential care facility administrator previously licensed in this State whose license has lapsed for failure to renew on or before the expiration date of the license may seek reinstatement of the license within one year of the expiration date by submitting an application with the renewal fee, payment of a penalty as provided in the fee schedule, proof of compliance with continuing education requirements, and an affidavit that he or she has not engaged in practice as an administrator during the period in which the license was lapsed.

(D) If a license has lapsed for more than one year, the individual shall submit an initial application and satisfy the requirements of Section 40-35-40 to become relicensed.

(E) The board may deny renewal to an applicant who has committed an act that would be grounds for disciplinary action.

(F) The board may issue a nursing home administrator's license or a community residential care facility administrator's license to a person who holds a current license as a nursing home administrator or community residential care facility administrator from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least the substantial equivalent of those in this State and if the applicant has passed the national and South Carolina portions of the licensure examination and is otherwise qualified.

**SECTION 40-35-50.** Fees.

(A) Initial fees must be established by the board in regulation and shall serve as the basis for necessary adjustments in accordance with Chapter 1.

(B) Licensure application fees are nonrefundable.

**SECTION 40-35-60.** Rules and regulations.

The board may adopt rules governing its proceedings and may promulgate regulations necessary to carry out the provisions of this chapter.

**SECTION 40-35-70.** Additional powers and duties of the board.

In addition to the powers and duties provided for in this chapter, the board has those powers and duties set forth in Chapter 1.

**SECTION 40-35-80.** Investigation of complaints and violations.

The department on behalf of the board shall investigate complaints and violations of this chapter as provided for in Chapter 1.

**SECTION 40-35-90.** Disciplinary action in accordance with Administrative Procedures Act.

The board in accordance with the Administrative Procedures Act may take disciplinary action authorized by Chapter 1.

**SECTION 40-35-100.** Cease and desist orders; temporary restraining orders.

In addition to other remedies provided for in this chapter, the board in accordance with Chapter 1 also may issue a cease and desist order or may petition an administrative law judge for a temporary restraining order or other equitable relief to enjoin a violation of this chapter.

**SECTION 40-35-110.** Misconduct.

Misconduct, which constitutes grounds for revocation, suspension, or other restriction of a license or a limitation or other discipline of a licensee, is a satisfactory showing to the board of any grounds for disciplinary action stated in Chapter 1 or:

- (1) acting in a manner inconsistent with the health or safety of the patients of the nursing home or community residential care facility;
- (2) failing to ensure that the nursing home or community residential care facility in which he is an administrator complies with the provisions of law and regulations of the licensing or supervising authority or agency, whether federal, state, or local, having jurisdiction over the operation and licensing of the nursing home or community residential care facility;
- (3) intentional or knowing, direct or indirect, violation of or the aiding and abetting in the violation of this chapter or a regulation promulgated under this chapter;
- (4) failing to operate a nursing home or community residential care facility in a manner that ensures the safety, health, and welfare of the patients;
- (5) use of a false, fraudulent, or forged statement in the practice of nursing home administration or community residential care facility administration;
- (6) supervising or aiding an unlicensed person in the practice of nursing home administration or community residential care facility administration;
- (7) permitting unauthorized disclosure of information relating to a patient in a nursing home or community residential care facility under his administration;
- (8) use of alcohol, drugs, or controlled substances to such a degree as to adversely affect the ability to act as a nursing home administrator or community residential care facility administrator;
- (9) a mental or physical disability or addiction which renders further practice dangerous to the public or to the patients of the nursing home or community residential care facility;
- (10) conviction of, or pleading guilty or nolo contendere to, a felony, a crime involving the safety, health, or welfare of a patient, or any other crime involving moral turpitude. The license of a person who is

convicted or, or who pleads guilty or nolo contendere to, such crime immediately may be suspended temporarily pending final disposition of a disciplinary proceeding to be commenced upon the conviction or the entry of the plea of guilty or nolo contendere. A person who is suspended must be reinstated immediately upon the filing of documentation, satisfactory to the board, that the conviction has been reversed. Reinstatement does not terminate a disciplinary action pending against the person. The license of a person may be suspended immediately pending final disposition of a disciplinary proceeding if the board has probable cause to believe that continued practice as a nursing home administrator or community residential care facility administrator by the licensee constitutes harm to the safety, health, or welfare of patients in a nursing home or community residential care facility.

**SECTION 40-35-115.** Jurisdiction.

The board has jurisdiction over the actions of licensees and former licensees as provided for in Chapter 1.

**SECTION 40-35-120.** Disciplinary action; civil penalties; documentation of participation in education or treatment program.

(A) The board may take disciplinary action against a person as provided for in Chapter 1.

(B) The board may assess civil penalties of not more than one thousand dollars per violation, not to exceed a total of ten thousand dollars.

(C) The board may require documented participation in education programs and in treatment for mental or physical impairments or addiction.

**SECTION 40-35-130.** Denial of licensure.

As provided for in Chapter 1, the board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

**SECTION 40-35-150.** Voluntary surrender of license.

A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Chapter 1.

**SECTION 40-35-160.** Appeal.

A person aggrieved by a final action of the board may seek review of the decision in accordance with Chapter 1.

**SECTION 40-35-170.** Payment of investigation and prosecution costs.

A person found in violation of this chapter or a regulation promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Chapter 1.

**SECTION 40-35-180.** Payment of costs and fines.

All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Chapter 1 and to the collection provisions of the Department of Revenue for delinquent fines.

**SECTION 40-35-190.** Confidentiality of investigations and proceedings.

Investigations and proceedings conducted under this chapter are confidential, and all communications are privileged as provided for in Chapter 1.

**SECTION 40-35-200.** Licensure requirement; criminal and civil penalties for violation.

(A) It is unlawful for a person to administer, manage, or supervise, or be in administrative charge of a nursing home, community residential care facility, or habilitation center for the mentally retarded or persons with related conditions, unless the person is licensed in accordance with this chapter.

(B) It is unlawful for a person to act or serve in the capacity of a nursing home administrator or residential care facility administrator unless the person is licensed in accordance with this chapter.

(C) A person who violates subsection (A) or (B) is guilty of a misdemeanor and, upon conviction, must be

ined not more than fifty thousand dollars or imprisoned not more than one year.

(D) A person who violates subsection (A) or (B) is subject to a civil penalty imposed by the board of not more than two hundred dollars per day, not to exceed a total of twenty thousand dollars and may be sanctioned in accordance with Section 40-35-130.

**SECTION 40-35-210.** Injunctive relief.

The department, at the written request of the board and in accordance with Chapter 1, may petition an administrative law judge, in the name of the State, for injunctive relief against a person violating this chapter.

**SECTION 40-35-250.** Construction of chapter.

The provisions of this chapter are intended to be consistent with the applicable federal and state law and must be so construed, whenever necessary, to achieve this consistency.

**SECTION 40-35-260.** Severability.

In the event that any provision of this chapter is declared unconstitutional or invalid or that the application of any provision to any person or circumstance is held invalid, the applicability of the provision to other persons and circumstances and the constitutionality or validity of every other provision of this chapter is not affected.