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TITLE 216 – DEPARTMENT OF HEALTH

CHAPTER 40 – PROFESSIONAL LICENSING AND FACILITY REGULATION

SUBCHAPTER 10 – FACILITIES REGULATION

PART 10 – LICENSING NURSING SERVICE AGENCIES

10.1 Authority

A. These regulations are promulgated pursuant to the authority conferred under R.I. Gen. Laws §§ 23-17.7.1-3, 23-17.7.1-10, and 23-17.7.1-19, and are established for the purpose of adopting prevailing standards for the licensing of nursing service agencies in this state.

10.2 Definitions

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

1. "Accreditation agency" means an entity, approved by the Director, that grants accreditation to nursing service agencies.

2. "Act" means R.I. Gen. Laws Chapter 23-17.7.1 entitled, "Licensing of Nursing Service Agencies."

3. "Branch office" means a location from which a licensed nursing service agency provides services within a portion of the total geographic area served by the licensed central office.

4. "Client" means the facility or agency to which the registered nurse, licensed practical nurse, or nursing assistant is assigned on a temporary basis.

5. "Director" means the Director of the Rhode Island Department of Health.

6. "Employees" means those individuals (registered nurses, licensed practical nurses, or nursing assistants) which a nursing service agency supplies on a temporary basis.

7. "Employers" means nursing service agencies as defined herein.

8. "Licensing agency" means the Rhode Island Department of Health.

9. "Nursing assistant" means ~~a nurse's aide, or orderly, or home health aide who is a paraprofessional, trained to give personal care and related health care and assistance based on his/her level of preparation to individuals who are sick, disabled, dependent or infirm, as defined in R.I. Gen. Laws Chapter 23-17.9.~~ as defined in R.I. Gen. Laws § 23-17.7.1-2(c).

10. "Nursing service agency" means ~~any person, firm, partnership or corporation doing business within the state of Rhode Island that supplies, on a temporary basis, registered nurses, licensed practical nurses, or nursing assistants, to a hospital, nursing home, or other facility requiring the services of such persons, with the exception of hospitals, home nursing care providers, home care providers, and hospices licensed in this state. For all purposes, a nursing service agency shall be considered an employer and those persons that it supplies on a temporary basis shall be considered employees and not independent contractors. Nursing services agencies shall be subject to all state and federal laws which govern employer-employee relations.~~as defined in R.I. Gen. Laws § 23-17.7.1-2(d) and also means temporary nursing service agency.

11. "Person" means any individual, trust or estate, partnership, corporation (including association, joint stock companies) state or political subdivision or instrumentality of a state.

12. "Service record" means ~~the written entries documenting services rendered by the nursing service agency.~~as defined in R.I. Gen. Laws § 23-17.7.1-2(e).

10.3 General Requirements for Licensing

A. No person ~~acting alone or jointly with any other person~~ shall establish, conduct or maintain a nursing service agency in this state without ~~holding~~ a license in accordance with~~the statutory requirements of~~ R.I. Gen. Laws Chapter 23-17.7.1 and this Part.~~and such other statutory provisions~~ In addition to the requirements of R.I. Gen. Laws Chapter 23-17.7.1:

~~B~~1. Unless otherwise exempt, no agency shall hold itself or represent itself as a nursing service agency or use the term "nursing service agency" or other similar term in its advertising, publicity or any other form of communication, unless ~~registered~~ licensed with the Department of Health as a nursing service agency in accordance with the provisions of this Part.

~~C~~2. A nursing service agency shall maintain a licensed central office within the geographical boundaries of the state.

~~D~~3. Within twenty~~-~~-four (24) months of initial licensure, the nursing service agency shall attain appropriate certification from an accreditation agency, as defined in § 10.~~1~~2(A)(1) of this Part.

~~1~~a. Each nursing service agency, having obtained accreditation pursuant to § 10.3(~~D~~A)(3) of this Part, shall maintain such certification as a condition of licensure.

~~E~~B. Exemptions

1. ~~1.~~ The provisions of the Act and this Part shall not be construed to apply to~~:~~

~~a.~~ ~~Those~~ those agencies identified in R.I. Gen. Laws §§ 23-17.7.1-13, 23-17.7.1-14, and 23-17.7.1-15. However, the agencies shall be subject to the same

training requirements for nursing assistants and the duties of the individuals shall be the same as those prescribed by regulations.

~~F~~C. Nursing service agencies who may be exempt from the requirements contained in this Part (in accordance with § 10.3(~~E~~B)~~(1)~~ of this Part) shall submit a written request for exemption to the licensing agency setting forth the reasons for such exemption.

10.4 Application for Licensing and Fee

A. Application for a license to conduct, maintain or operate a nursing service agency shall be made ~~to the licensing agency on forms provided by it, and shall contain such information as the licensing agency reasonably requires, including but not limited to, evidence of ability to comply with the provisions of the Act and this Part, and shall be accompanied by the licensing fee as set forth in the rules and regulations pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title).~~pursuant to R.I. Gen. Laws § 23-17.7.1-5. In addition to the requirements of R.I. Gen. Laws § 23-17.7.1-5:

1. A license shall be required for each central office of a nursing service agency operation. Each branch shall be subject to the requirements of this Part, with the exception of the licensing fee.

2. Each nursing service agency that maintains a branch office shall indicate on the application the location of the central office as well as the location(s) of the branch office(s).

B. In addition to the requirements of R.I. Gen. Laws Chapter 23-17.7.1, a notarized list 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 licensing and shall be updated annually. The list shall include each owner (in whole or in part), any mortgage, deed or trust, or other obligation secured (in whole or in part) by the nursing service agency or any of the property or assets of same.

1. This list shall also include all officers, directors and other persons of any subsidiary corporation owning stock, if the nursing service agency is organized as a partnership.

10.5 Issuance and Renewal of License

A. The licensing agency shall issue a license to the applicant(s) that meets the requirements of R.I. Gen. Laws Chapter 23-17.7.1 and this Part.

B. The license issued, unless sooner suspended or revoked, shall expire ~~by limitation~~ on the thirty-first (31st) day of December following its issuance and may be renewed from year to year ~~subject to inspection and approval by the licensing agency and upon submission of the~~in accordance with R.I. Gen. Laws § 23-17.7.1-7. The licensing fee ~~as~~is set forth in ~~the rules and regulations pertaining to the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title~~R.I. Gen. Laws § 23-17.7.1-3(c).

C. A license shall not be transferable or assignable except with the prior written approval of the licensing agency.

D. Upon receipt of an application for a license, the licensing agency shall issue a license in accordance with R.I. Gen. Laws § 23-17.7.1-6. In addition to the requirements of R.I. Gen. Laws § 23-17.7.1-6, a~~A~~ license issued under this Part shall be the property of the state and loaned to such registrant and it shall be kept posted in a conspicuous place on the premises.

E. The location of the agency and the location where required in-service training is conducted shall conform to all local and state building codes, and laws.

10.6 Change of Ownership, Operation and/or Location

A. When a change of ownership or location, any interruption in delivery of nursing service agency services of three (3) consecutive months or longer duration, or closure of the nursing service agency is contemplated, the licensing agency shall be notified in writing.

1. Thirty (30) days prior to voluntary cessation of service, the licensing agency shall be notified and provided with a plan for orderly closure; notification to clients; transfer, storage, or proper disposal of records; and notification to the public.

2. Thirty (30) days prior to a change in the location of a nursing service agency premises, the licensing agency shall be notified in writing.

B. Upon closure or changes of ownership or cessation in service of three (3) consecutive months or longer in duration, the license shall immediately become void and shall be returned to the licensing agency, unless deemed otherwise by the Director, pursuant to § 10.5(C) of this Part.

1. When there is a change in ownership or in the operation or control of the nursing service agency, the licensing agency reserves the right to extend the expiration date of such license allowing the nursing service agency to operate under the same license which applied to the prior registrant for such time as shall be required for the processing of a new application.

10.7 Inspections

A. The licensing agency shall make or cause to be made, ~~such~~any inspections and investigations~~of the nursing service agency including records as deemed necessary.~~ in accordance with R.I. Gen. Laws § 23-17.7.1-10(a).

1. If an employee of a staffing agency is directly connected to a quality of care or a substandard quality of care deficiency in a facility, a subsequential investigation by the licensing agency shall be conducted in accordance with R.I. Gen. Laws § 23-17.7.1-10.

B. Refusal to permit inspections of the nursing service agency shall constitute valid grounds for licensing denial, suspension or revocation.

C. Every nursing service agency shall be given notice by the licensing agency of all deficiencies reported as a result of an inspection or investigation.

10.8 Denial, Suspension, Revocation of Certificate of Licensing

A. The licensing agency is authorized to deny, suspend or revoke the license of any nursing service agency which has failed to comply with the statutory provisions of the Act and ~~the rules and regulations of~~ with this Part.

B. Whenever an action shall be proposed to deny, suspend, or revoke a nursing service agency license, the licensing agency shall notify the nursing service agency ~~by registered or certified mail, or by personal messenger service, setting forth particular reasons for the proposed action, and the applicant or registrant shall be given an opportunity for a prompt and fair hearing~~ in accordance with the provisions of R.I. Gen. Laws § 23-17.7.1-8.

1. However, if the licensing agency finds that public health, safety or welfare of clients requires emergency action and incorporates a finding to that effect in its order, the licensing agency may order summary suspension of licensing pending proceedings for revocation or other action in accordance with R.I. Gen. Laws §§ 42-35-14(c) and 23-1-21.

C. The appropriate state and federal agencies shall be notified of any action taken by the licensing agency pertaining to either denial, suspension, or revocation of the license.

10.9 Operational Requirements/Organization and Management

10.9.1 Governing Body

A. The staffing agency shall maintain insurance coverage for workers' compensation in accordance with R.I. Gen. Laws § 23-17.7.1-10(e). In addition to the requirements of R.I. Gen. Laws Chapter 23-17.7.1-10(e), ~~E~~each nursing service agency shall have an organized governing body or equivalent legal authority ultimately responsible for:

1. The management and operation of the agency including fiscal management;

2. Assuring employees are appropriately credentialed, including a mechanism to verify currency of licensure electronically via the licensing agency's licensure database;

3. Appropriate placement of qualified personnel (employees) and delineation of provisions for supervision;

4. A mechanism to resolve client complaints or other difficulties;

5. Acquiring and maintaining employee bonding insurance (theft and damage) (a minimum amount of ten thousand dollars ($10,000.00) per loss) and liability insurance (a minimum amount of five hundred thousand dollars ($500,000.00) per occurrence); and

6. Assuring compliance with all applicable state and federal statutory and regulatory provisions thereof, including the rules and regulations of this Part.

B. The governing body or equivalent legal authority shall:

1. Establish policies delineating administrative responsibilities for the operation and management of the agency;

2. Provide an appropriate mechanism for the selection, screening of personnel (employees) credentials, and placement of personnel (employees);

3. Ensure that nursing assistants rendering services to clients are supervised by professional (registered) nurses in accordance with R.I. Gen. Laws Chapter 23-17.9;

4. Provide photo identification for each employee in accordance with § 10.9.3(A)(2) of this Part; and

5. Designate in writing the person responsible for the management and operation of the agency and services in the absence of the administrator.

C. Uniform Reporting System

1. Each nursing service agency shall establish and maintain records and data in such a manner as to make uniform a system of periodic reporting. The manner in which the requirements of this Part may be met shall be prescribed from time to time in directives promulgated by the Director.

2. Each nursing service agency shall report to the licensing agency detailed statistical data pertaining to its operation and services. Such reports and data shall be made at such intervals and by such dates as determined by the Director.

3. The licensing agency is authorized to make the reported data available to any state or federal agency concerned with or exercising jurisdiction over the nursing service agency.

4. The directives promulgated by the Director pursuant to this Part shall be sent to each nursing service agency to which they apply. Such directives shall prescribe the form and manner in which the statistical data required shall be furnished to the licensing agency.

D. Nursing service agencies shall provide the licensing agency with a statistical report of the information required by R.I. Gen. Laws § 23-17.7.1-23. In accordance with R.I. Gen. Laws § 23-17.7.1-23(c), these reports shall be submitted by the employment agencies no later than thirty (30) days after the end of the calendar year.

10.9.2 Administrative Management

A. The designated person responsible for the management and operation of the agency shall furthermore be responsible for no less than the following:

1. The implementation of agency policies and procedures pertaining to the administration and operation of the agency, the hiring and placement of personnel (employees), and the implementation of appropriate state and federal statutory and regulatory requirements including the regulatory provisions of this Part;

2. The selection of employees, documentation and verification of current certification, licensing and/or licensure of employees as may be required by law;

3. The maintenance of administrative and personnel (employee) records and files;

4. Policies and procedures pertaining to patient care;

5. Assuring that employees wear their photo identification during working hours;

6. Provisions to assure that appropriate supervision is provided to nursing assistants;

7. The establishment of a mechanism for the recording and follow-up of all complaints;

8. An operational twenty-four (24) hour on-call system; appropriate agency staff must be accessible by pager or phone; and

9. Such other matters as may be relevant to the organization and operation of the agency.

10.9.3 Personnel

A. Each nursing service agency shall establish personnel policies and procedures which shall be made available to each employee.

1. Such policies and procedures shall include provisions pertaining to conditions for employment, selection, credentials and placement of employees, supervision as may be required, reporting to clients, reporting to the nursing service agency, employee evaluation, and such other provisions as deemed necessary.

   a. An evaluation of employee performance shall be performed annually for each employee and shall be reviewed with and signed by the employee within forty- five (45) days of the evaluation.

2. As a condition of employment, the nursing service agency shall require employees to wear a photo identification at all times while the employee is working~~. Such photo identification shall be provided to the employee by the agency prior to placement and shall include a recent photograph of the employee, his or her name, certificate, licensing or license number with expiration date and the name of the nursing service agency.~~ in accordance with R.I. Gen. Laws § 23-17.7.1-12.

3. There shall be a job description for each classification of position which delineates qualifications, duties, authority and responsibilities inherent in each position.

4. An in-service educational program for direct patient care personnel shall be provided ~~on an ongoing basis which shall include orientation for new personnel and periodic programs (three (3) hours quarterly (i.e., January, April, July, October) minimum) for the continued improvement and development of skills of direct care personnel.~~in accordance with R.I. Gen. Laws § 23-17.7.1-11.

   a. If an employee has been found to have provided a quality-of-care violation or substandard quality of care deficiency, the nursing service agency must provide re-education related to the deficient practice, and in accordance with the nursing service agency's policy and must include a re-evaluation of the policies.

B. Personnel files shall be maintained for each employee and shall be available at all times for inspection by the licensing agency. Such files shall be available at all times for inspection and shall include findings of a criminal records check in accordance with R.I. Gen. Laws § 23-17.7.1-17(e). In addition to the requirements of R.I. Gen. Laws § 23-17.7.1-17(e), the files must also contain no less than the following:

1. Resume or application form that includes qualifications for employment, completion of required training and educational programs, and previous employment;

2. Evidence of current licensing, certification or licensure of personnel (employees) as may be required by law;

3. Records of required health examination which shall be kept confidential and in accordance with provisions of § 10.9.3(C) of this Part;

4. Documentation of complaints and follow-up;

~~5. Findings of a criminal records check;~~

~~6~~5. Employee orientation, evaluation (90-day and annual) and documentation of in-service education; and

~~7~~6. Such other matters as may be relevant to the organization and operation of the agency.

C. Health Requirements

1. ~~1.~~ Upon hire and prior to delivering services, a pre-employment health screening shall be required for each individual who has or may have direct patient contact. Such health screening shall be conducted in accordance with Part 20-15-7 of this Title.

D. Criminal Records Check

1. ~~1.~~ Criminal records checks will be conducted pursuant to R.I. Gen. Laws § 23-17.7.1-17.~~2.~~ The Nursing service agency employer is responsible for following the requirements for disqualifying information pursuant to R.I. Gen. Laws § 23-17.7.1-20.

E. Employment Prohibitions

1. No nursing service agency shall recruit potential employees from a client to which it actively provides services in any contract in accordance with R.I. Gen. Laws § 23-17.7.1-22.

2. Nursing service agencies shall not penalize current employees should the employee be hired as a permanent employee of a client facility, in accordance with R.I. Gen. Laws § 23-17.7.1-22.

10.9.4 Administrative Records and Reports

A. Each nursing service agency shall maintain appropriate administrative records documenting administrative management of the operation, including but not limited to charter of incorporation, by-laws or administrative policies approved by the governing body or equivalent legal authority, and fiscal records. In addition, the following administrative records/reports shall be maintained and kept current:

1. Contract(s) and/or agreements entered into with other agency(ies);

2. Personnel file and folder for each employee; which includes documented evidence of credentials and other appropriate data, including documentation of orientation, and quarterly in-service education, records of completion of required training and educational programs;

3. Documentary evidence of workers compensation, bonding and liability insurance;

4. Evidence of compliance with all U.S. Occupational Safety and Health Administration (OSHA) requirements;

5. Payroll records; and

6. Such other administrative and personnel records as deemed necessary and appropriate for the operation of the agency.

10.9.5 Contractual Agreements

A. When contractual agreements or arrangements are entered into with another agency, such contract must be signed by the parties involved and shall include no less than the following terms:

1. Identification of the services requested and type(s) of personnel (employees);

2. Compliance with contracting agency personnel (employee) policies which includes assurance that the photo identification be worn on the employee's person at all times while the employee is working;

3. Provisions for employee supervision;

4. A mechanism to resolve client complaints or other difficulties;

5. Fiscal arrangements;

6. Duration and severability provisions; and

7. Such other provisions as are mutually acceptable to parties involved.

10.9.6 Confidentiality

A. Each nursing service agency and all persons employed by the service agency must comply with all applicable federal and state laws and regulations regarding confidentiality of patient information including but not limited to the provisions of R.I. Gen. Laws Chapter 5-37.3.

10.9.7 Reporting of Patient Abuse/Neglect

A. Reporting of patient abuse/neglect shall be pursuant to R.I. Gen. Laws § 23-17.8-2.

10.9.8 Agency Rates

A. In accordance with R.I. Gen. Laws § 23-17.7.1-10, the nursing service agency's maximum rate for services provided to a nursing facility and/or assisted living residence by a nurse or certified nurse shall not exceed two hundred percent (200%) of the regional hourly wage of each position. These positions shall include, but not be limited to: registered nurses, licensed practical nurses, certified nurse assistants, and medication aides pursuant to R.I. Gen. Laws § 23-17.7.1-10(b).

1. The maximum rate shall include all charges in accordance with R.I. Gen. Laws § 23-17.7.1-10(b).

B. The regional hourly wage shall be determined in accordance with R.I. Gen. Laws § 23-17.1-10.

10.10 Nursing/Nursing Assistant/Services/Duties/Training Programs

10.10.1 Services

A. Each nursing service agency shall establish policies and procedures governing services, which shall include policies pertaining to no less than the following:

1. Hours of service, availability of weekend services and accessibility of services;

2. Provisions for crisis or emergency services; and

3. Such other as may be deemed necessary and appropriate.

B. Nursing Services

1. ~~1.~~ All services performed by registered nurses shall be in accordance with the provisions of R.I. Gen. Laws Chapter 5-34 and the rules and regulations promulgated thereunder, relating to the practice of nursing.

C. Nursing Assistant Services

1. All nursing assistant services performed by registered nursing assistants shall be in accordance with the provisions of R.I. Gen. Laws Chapter 23-17.9, and the rules and regulations promulgated thereunder, relating to the services, duties and training of a nursing assistant.

2. A nursing assistant shall be registered with the licensing agency and shall conform to all requirements of registration.

10.11 Variance, Violations and Sanctions, Practices and Procedures and Severability

10.11.1 Variance Procedure

A. The licensing agency may grant a variance either upon its own motion or upon request of the applicant from any of the provisions ~~of any rules and regulations~~ of this Part, if it finds in specific cases, that a literal enforcement of such provision will result in unnecessary hardship to the applicant and that such a variance will not be contrary to the public interest, public health, and/or health and safety of the public.

B. A request for a variance shall be filed by an applicant in writing, setting forth in detail the basis upon which the request is made.

1. Upon filing of each request for a variance with the licensing agency and within a reasonable time thereafter, the licensing agency shall notify the applicant by certified mail of its approval or in the case of a denial, a hearing date, time and place may be scheduled if the facility appeals the denial. Such hearing must be held in accordance with the provisions of § 10.11.4 of this Part.

10.11.2 Deficiencies and Plans of Correction

A. The licensing agency shall notify the governing body or other legal authority of a facility of violations of individual standards through a notice of deficiencies which shall be forwarded to the facility within fifteen (15) days of inspection of the facility unless the Director determines that immediate action is necessary to protect the health, welfare, or safety of the public or any member thereof through the issuance of an immediate compliance order in accordance with R.I. Gen. Laws § 23-1-21.

B. A facility which received a notice of deficiencies must submit a plan of correction to the licensing agency within fifteen (15) days of the date of the notice of deficiencies. The plan of correction shall detail any requests for variances as well as document the reasons therefor.

C. The licensing agency will be required to approve or reject the plan of correction submitted by a facility in accordance with § 10.11.2(B) of this Part within fifteen (15) days of receipt of the plan of correction.

D. If the licensing agency rejects the plan of correction, or if the facility does not provide a plan of correction within the fifteen (15) day period stipulated in § 10.11.2(B) of this Part, or if a facility whose plan of correction has been approved by the licensing agency fails to execute its plan within a reasonable time, the licensing agency may invoke the sanctions enumerated in § 10.11.3 of this Part. If the facility is aggrieved by the sanctions of the licensing agency, the facility may appeal the decision and request a hearing in accordance with the provisions of R.I. Gen. Laws Chapter 42-35.

E. The notice of the hearing to be given by the Department shall comply in all respects with the provisions of R.I. Gen. Laws Chapter 42-35. The hearing shall in all respects comply therein.

10.11.3 Denial, Suspension, or Revocation of License

A. The licensing agency, after notice and opportunity for a hearing to the applicant or licensee, is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been failure to comply with ~~the requirements established under the Act~~R.I. Gen. Laws Chapter 23-17.7.1 and this Part.

B. The notice shall be effected ~~by registered or certified mail or by personal service, setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of the mailing or service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of the hearing, or upon the failure of the applicant or licensee to appear, the licensing agency shall make a determination specifying its findings of fact and conclusion of law.~~in accordance with R.I. Gen. Laws § 23-17.7.1-8.

C. A copy of the determination shall be sent by registered or certified mail or served personally upon the applicant or licensee. The decision denying, suspending, or revoking the license or application shall ~~become final thirty (30) days after it is so mailed or served, unless the applicant or licensee, within the thirty (30) day period, appeals the decision pursuant to R.I. Gen. Laws § 42-35-15.~~be in accordance with R.I. Gen. Laws § 23-17.7.1-8.

D. The procedure governing hearings authorized by this Section shall be in accordance with R.I. Gen. Laws §§ 42-35-9 through 42-35-13 as stipulated in R.I. Gen. Laws § 42-35-14(a).

E. A full and complete record shall be kept of all proceedings, and all testimony shall be reported in accordance with R.I. Gen. Laws § 23-17.7.1-8.

F. ~~but need not be transcribed unless the decision is appealed pursuant to § 42-35-15.~~ A copy or copies of the transcript may be obtained by an interested party in accordance with R.I. Gen. Laws § 23-17.7.1-8.~~on payment of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either party.~~

GE. Any person, firm, partnership or corporation establishing, conducting, managing or operating a nursing service agency without licensing, or who shall operate such business after revocation or suspension of a certificate of licensing or after an order to curtail any or all activities or who violates any of the statutory or regulatory provisions of this Part, shall be subject to the sanctions of the Act.

10.11.4 Rules Governing Practices and Procedures

A. All hearings and reviews required under the provisions of the Act shall be held in accordance with the provisions of ~~the Rules and Regulations of the Rhode Island Department of Health Regarding~~ Practices and Procedures Before the Department of Health (Part 10-05-4 of this Title) and Access to Public Records ~~of the Department of Health~~ (Part 10-05-1 of this Title).