

RULES AND REGULATIONS
FOR THE LICENSING OF
NURSING SERVICE AGENCIES
(R23-17.7.1-NSA)



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Health

FEBRUARY 2006

AS AMENDED:

January 2007 (re-filing in accordance with the provisions of section 42-35-4.1 of the Rhode Island General Laws, as amended)

January 2012 (re-filing in accordance with the provisions of section 42-35-4.1 of the Rhode Island General Laws, as amended)

September 2012

INTRODUCTION

The *Rules and Regulations For the Licensing of Nursing Service Agencies* are promulgated pursuant to the authority conferred under Chapters 23-17.7.1 and 42-35 of the General Laws of Rhode Island, as amended, and are established for the purpose of adopting prevailing standards for the licensing of nursing service agencies in this state.

Pursuant to the provisions of section 42-35-3(c) of the General Laws of Rhode Island, as amended, consideration was given in arriving at the regulations as to: (1) alternative approach to the regulations; and (2) duplication or overlap with other state regulations. No known overlap or duplication, nor alternative approach was identified. The health, safety and welfare of the public override any significant economic impact which may result from the regulations.

These regulations shall supersede all other *Rules and Regulations for the Licensing of Nursing Service Agencies* and the *Rules and Regulations for the Registration of Nursing Pools* promulgated by the Rhode Island Department of Health and filed with the Secretary of State

TABLE OF CONTENTS

	<i>Page</i>
PART I	
<i>Definitions and Licensing Procedures</i>	1
1.0 Definitions	1
2.0 General Requirements for Licensing	2
3.0 Application for Licensure and Fee	3
4.0 Issuance and Renewal of Licensing/Fee	3
5.0 Change of Ownership, Operation and/or Location	4
6.0 Inspections	4
7.0 Denial, Suspension, Revocation of Certificate of Licensing	4
PART II	
<i>Operational Requirements/Organization and Management</i>	6
8.0 Governing Body and Management	6
9.0 Administrative Management	7
10.0 Personnel	7
11.0 Administrative Records and Reports	10
12.0 Contractual Agreements	11
13.0 Confidentiality	11
14.0 Reporting of Patient Abuse and Neglect	11
PART III	
<i>Nursing/Nursing Assistant/Duties/Training Programs</i>	13
15.0 Services	13
PART IV	
<i>Variance, Violations and Sanctions, Practices and Procedures and Severability</i>	
16.0 Variance Procedure	14
17.0 Deficiencies and Plans of Correction	14
18.0 Denial, Suspension, Revocation of License	15
19.0 Rules Governing Practices and Procedures	15
20.0 Severability	15
<i>References</i>	16

Section 1.0 *Definitions*

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

- 1.1 **"Accreditation agency"** means an entity, approved by the Director, that grants accreditation to nursing service agencies.
- 1.2 **"Act"** refers to Chapter 23-17.7.1 of the General Laws of Rhode Island, as amended, entitled, "Licensing of Nursing Service Agencies."
- 1.3 **"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.
- 1.4 **"Client"**, as used herein, means the facility or agency to which the registered nurse, licensed practical nurse or nursing assistant is assigned on a temporary basis.
- 1.5 **"Director"** means the Director of the Rhode Island Department of Health.
- 1.6 **"Employees"** means those individuals (registered nurses, licensed practical nurses, or nursing assistants) which a nursing service agency supplies on a temporary basis.
- 1.7 **"Employers"** means nursing service agencies as defined in section 1.10 herein.
- 1.8 **"Licensing agency"** means the Rhode Island Department of Health.
- 1.9 **"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 Chapter 23-17.9 of the Rhode Island General Laws, as amended.
- 1.10 **"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 health care 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.

- 1.11 **"Person"** means any individual, trust or estate, partnership, corporation (including association, joint stock companies) state or political subdivision or instrumentality of a state.
- 1.12 **"Service record"** means the written entries documenting services rendered by the nursing service agency.

Section 2.0 *General Requirements for Licensing*

- 2.1 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 reference 1 and the rules and regulations herein, and such other statutory provisions.
- 2.2 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 with the Department of Health as a nursing service agency in accordance with the provisions herein.
- 2.3 A nursing service agency shall maintain a licensed central office within the geographical boundaries of the state.
- 2.4 Within twenty four (24) months of initial licensure, the nursing service agency shall attain appropriate certification from an accreditation agency, as defined in section 1.1 herein.
 - 2.4.1 Each nursing service agency, having obtained accreditation pursuant to section 2.4, shall maintain such certification as a condition of licensure.

Exemptions

- 2.5 The provisions of the Act and the rules and regulations herein shall not be construed to apply to:
 - 2.5.1 Hospices, home nursing care providers and homecare providers licensed in accordance with Chapter 23-17 of the Rhode Island General Laws, as amended; 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.
 - 2.5.2 Training Thru Placement, Inc., and the respite care services provided to the developmentally disabled by Training Thru Placement, Inc.,
 - 2.5.3 Nursing service agencies exempt from regulation by the state;
 - 2.5.4 Visiting nursing services or home health services conducted by and for those who rely exclusively upon spiritual means through prayer alone in accordance with the creed or tenets of a recognized church or religious denomination; or
 - 2.5.5 Nursing service agencies who limit the provision of temporary staff, including registered nurses, licensed practical nurses, or nursing assistants, to one or more hospitals provided that such nursing service agency maintain certification from the Joint Commission on the Accreditation of Health Care Organizations (JCAHO) or such other accreditation entity acceptable to the Director.
- 2.6 Nursing service agencies who may be exempt from the requirements contained herein (in accordance with section 2.5) shall submit a written request for exemption to the Department setting forth the reasons for such exemption.

Section 3.0 *Application for Licensing and Fee*

- 3.1 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 the rules and regulations herein, 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*.
 - 3.1.1 A license shall be required for each central office of a nursing service agency operation. Each branch shall be subject to the requirements herein, with the exception of the licensing fee.
 - 3.1.2 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).
- 3.2 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.
 - 3.2.1 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.

Section 4.0 *Issuance and Renewal of License*

- 4.1 The licensing agency shall issue a license to the applicant(s) that meets the requirements of reference 1 and the regulations herein.
 - 4.1.1 An initial survey shall be conducted for all new applicants prior to the issuance of a license. A license may be issued based on the findings of the initial survey. No facility shall provide services without a license. Within ninety (90) days of the issuance of the initial license, a second survey shall be conducted.
- 4.2 The license issued, 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 subject to inspection and approval by the licensing agency and upon submission of 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*.
- 4.3 A license shall not be transferable or assignable except with the prior written approval of the licensing agency.
- 4.4 A license issued hereunder 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.

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

Section 5.0 *Change of Ownership, Operation and/or Location*

- 5.1 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.
- 5.1.1 Thirty (30) days prior to voluntary cessation of service, the Department 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.
- 5.1.2 Thirty (30) days prior to a change in the location of a nursing service agency premises, the Department shall be notified in writing.
- 5.2 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 section 4.3 herein.
- 5.2.1 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.

Section 6.0 *Inspections*

- 6.1 The licensing agency shall make or cause to be made, such inspections and investigations of the nursing service agency including records as deemed necessary.
- 6.2 Refusal to permit inspections of the nursing service agency shall constitute valid grounds for licensing denial, suspension or revocation.

Section 7.0 *Denial, Suspension, Revocation of Certificate of Licensing*

- 7.1 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 herein.
- 7.2 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 section 23-17.7.1-8 of the Rhode Island General Laws, as amended.
- 7.2.1 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 sections 42-35-14 (c) of reference 3 and 23-1-21 of reference 4.

- 7.3 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.

PART II *OPERATIONAL REQUIREMENTS/ORGANIZATION AND MANAGEMENT*

Section 8.0 *Governing Body*

- 8.1 Each nursing service agency shall have an organized governing body or equivalent legal authority ultimately responsible for:
- 8.1.1 the management and operation of the agency including fiscal management;
 - 8.1.2 assuring employees are appropriately credentialed, including a mechanism to verify currency of licensure electronically via the Department's licensure database;
 - 8.1.3 appropriate placement of qualified personnel (employees) and delineation of provisions for supervision;
 - 8.1.4 a mechanism to resolve client complaints or other difficulties;
 - 8.1.5 acquiring and maintaining employee bonding insurance (theft and damage) (a minimum amount of \$10,000.00 per loss) and liability insurance (a minimum amount of \$500,000.00 per occurrence);
and
 - 8.1.6 assuring compliance with all applicable state and federal statutory and regulatory provisions thereof, including the rules and regulations herein.
- 8.2 The governing body or equivalent legal authority shall:
- 8.2.1 establish policies delineating administrative responsibilities for the operation and management of the agency;
 - 8.2.2 provide an appropriate mechanism for the selection, screening of personnel (employees) credentials, and placement of personnel (employees);
 - 8.2.3 insure that nursing assistants rendering services to clients are supervised by professional (registered) nurses in accordance with Chapter 23-17.9 of reference 2;
 - 8.2.4 provide photo identification for each employee in accordance with section 10.1.2 herein;
and
 - 8.2.5 designate in writing the person responsible for the management and operation of the agency and services in the absence of the administrator.

Uniform Reporting System

- 8.3 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 regulation may be met shall be prescribed from time to time in directives promulgated by the Director.

- 8.4 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.
- 8.5 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.
- 8.6 The directives promulgated by the Director pursuant to these regulations 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.

Section 9.0 *Administrative Management*

- 9.1 The designated person responsible for the management and operation of the agency shall furthermore be responsible for no less than the following:
 - 9.1.1 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 herein;
 - 9.1.2 the selection of employees, documentation and verification of current certification, licensing and/or licensure of employees as may be required by law;
 - 9.1.3 the maintenance of administrative and personnel (employee) records and files;
 - 9.1.4 policies and procedures pertaining to patient care;
 - 9.1.5 assuring that employees wear their photo identification during working hours;
 - 9.1.6 provisions to assure that appropriate supervision is provided to nursing assistants;
 - 9.1.7 the establishment of a mechanism for the recording and follow-up of all complaints;
 - 9.1.8 an operational twenty-four (24) hour on-call system; appropriate agency staff must be accessible by pager or phone; and
 - 9.1.9 such other matters as may be relevant to the organization and operation of the agency.

Section 10.0 *Personnel*

- 10.1 Each nursing service agency shall establish personnel policies and procedures which shall be made available to each employee.
 - 10.1.1 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.
- 10.1.2 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.
 - 10.1.3 There shall be a job description for each classification of position which delineates qualifications, duties, authority and responsibilities inherent in each position.
 - 10.1.4 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.
- 10.2 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 no less than the following:
 - 10.2.1 resume or application form that includes qualifications for employment, completion of required training and educational programs, and previous employment;
 - 10.2.2 evidence of current licensing, certification or licensure of personnel (employees) as may be required by law;
 - 10.2.3 records of required health examination which shall be kept confidential and in accordance with provisions of section 10.3 herein;
 - 10.2.4 documentation of complaints and follow-up;
 - 10.2.5 findings of a criminal records check;
 - 10.2.6 employee orientation, evaluation (90-day and annual) and documentation of in-service education; and
 - 10.2.7 such other matters as may be relevant to the organization and operation of the agency.

Health Requirements

- 10.3 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 the *Rules and Regulations Pertaining to Immunization, Testing, and Health Screening for Health Care Workers (R23-17-HCW)* promulgated by the Department of Health.

Criminal Records Check

- 10.4 Pursuant to section 23-17.7.1-17 of the Rhode Island General Laws, as amended, all employees

of nursing service agencies, and having routine contact with a patient or resident, without the presence of other employees, shall be subject to a criminal background check, prior to, or within one week of employment. All employees hired prior to July 6, 2005 shall be exempted from the requirements of this section.

- 10.5 It shall be the responsibility of the bureau of criminal identification of the state police or the local police department to conduct the criminal records check to the applicant for employment without charge to either the employee or the employer.
- 10.6 Said employee through the employer shall apply to the Rhode Island bureau of criminal identification of the Rhode Island state or local police department for a statewide criminal records check. Fingerprinting shall not be required as part of this check.
- 10.7 In those situations in which no disqualifying information has been found, the bureau of criminal identification (BCI) of the state or local police shall inform the applicant and the employer in writing.
- 10.8 Any disqualifying information as defined below will be conveyed to the applicant in writing, by the bureau of criminal identification. The employer shall also be notified that disqualifying information has been discovered, but shall not be informed of the nature of the disqualifying information.
 - 10.8.1 ***Disqualifying information:*** information produced by a criminal records review pertaining to conviction, for the following crimes will result in a letter to the employee and employer disqualifying the applicant from said employment: murder, voluntary manslaughter, involuntary manslaughter, first degree sexual assault, second degree sexual assault, third degree sexual assault, assault on persons sixty (60) years of age or older, assault with intent to commit specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime against nature), felony assault, patient abuse, neglect or mistreatment of patients, burglary, first degree arson, robbery, felony drug offenses, larceny or felony banking law violations.
 - 10.8.2 Information produced by a criminal records review pertaining to convictions for crimes other than those listed in subsection (a) of this section shall entitle, but not obligate the employer to decline to hire the applicant. An employee against whom conviction information related to this subsection has been found may request that a copy of the criminal background report be sent to the employer who shall make a determination regarding the continued employment of the employee.
 - 10.8.3 For purposes of this section, the term "conviction" shall mean, in addition to judgments of conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances where the defendant has entered a plea of nolo contendere and has received a sentence of probation and those instances where a defendant has entered into a deferred sentence agreement with the Attorney General.
- 10.9 The employer shall maintain on file, subject to inspection by the Department, evidence that criminal records checks have been initiated on all employees seeking employment after July 6, 2005 as well as the results of said check. Failure to maintain this evidence shall be grounds to revoke the license or registration of the employer.

- 10.10 If an applicant has undergone a statewide criminal records check within eighteen (18) months of an application for employment, then an employer may request from the bureau a letter indicating if any disqualifying information was discovered. The bureau will respond without disclosing the nature of the disqualifying information. This letter may be maintained on file to satisfy the requirements of the Act.
- 10.11 An employee against whom disqualifying information has been found may request that a copy of the criminal background report be sent to the employer who shall make a judgement regarding the continued employment of the employee.

Immunity from Liability

- 10.12 No employer who disqualifies an individual from employment or continued employment within thirty (30) days of receipt of a letter containing disqualifying information as defined in section 10.8.1 (above) or of a criminal background report relating to that information shall be liable for civil damages or subject to any claim, cause of action, or proceeding of any nature as a result of the disqualification.

Section 11.0 Administrative Records and Reports

- 11.1 Each nursing service agency shall maintain appropriate administrative records documenting administrative management of the operation, such as 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:
- 11.1.1 contract(s) and/or agreements entered into with other agency(ies);
 - 11.1.2 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;
 - 11.1.3 documentary evidence of bonding and liability insurance;
 - 11.1.4 evidence of compliance with all U.S. Occupational Safety and Health Administration (OSHA) requirements;
 - 11.1.5 payroll records; and
 - 11.1.6 such other administrative and personnel records as deemed necessary and appropriate for the operation of the agency.

Section 12.0 Contractual Agreements

- 12.1 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:

- 12.1.1 identification of the services requested and type(s) of personnel (employees);
- 12.1.2 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;
- 12.1.3 provisions for employee supervision;
- 12.1.4 a mechanism to resolve client complaints or other difficulties;
- 12.1.5 fiscal arrangements;
- 12.1.6 duration and severability provisions; and
- 12.1.7 such other provisions as are mutually acceptable to parties involved.

Section 13.0 *Confidentiality*

- 13.1 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 reference 6.

Section 14.0 *Reporting of Patient Abuse/Neglect*

- 14.1 In accordance with section 23-17.8-2 of the Rhode Island General Laws, as amended, any physician, medical intern, registered nurse, licensed practical nurse, nurse's aide, orderly, certified nursing assistant, medical examiner, dentist, optometrist, optician, chiropractor, podiatrist, coroner, police officer, emergency medical technician, fire-fighter, speech pathologist, audiologist, social worker, pharmacist, physical or occupational therapist, or health officer, or any person, within the scope of their employment at a facility or in their professional capacity, who has knowledge of or reasonable cause to believe that a patient or resident in a facility has been abused, mistreated, or neglected shall make, within twenty-four (24) hours or by the end of the next business day, a telephone report to the Director or her designee for those incidents involving health care facilities, or to the director of the department of mental health, retardation and hospitals or his or her designee for those incidents involving community residences for people who are mentally retarded or persons with developmental disabilities.
- 14.2 The report required in section 14.1 above shall contain:
 - 14.2.1 The name, address, telephone number, occupation, and employer's address and the phone number of the person reporting;
 - 14.2.2 The name and address of the patient or resident who is believed to be the victim of the abuse, mistreatment, or neglect;
 - 14.2.3 The details, observations, and beliefs concerning the incident(s);
 - 14.2.4 Any statements regarding the incident made by the patient or resident and to whom they

were made;

14.2.5 The date, time, and place of the incident;

14.2.6 The name of any individual(s) believed to have knowledge of the incident;

14.2.7 The name of any individual(s) believed to have been responsible for the incident.

14.3 In addition to those persons required to report pursuant to this section, any other person may make a report if that person has reasonable cause to believe that a patient or resident of a facility has been abused, mistreated, or neglected.

14.4 Any person required to make a report pursuant to this section shall be deemed to have complied with these requirements if a report is made to a high managerial agent of the facility in which the alleged incident occurred. Once notified, the high managerial agent shall be required to meet all reporting requirements of this section within the time frames specified by Chapter 23-17.8 of the Rhode Island General Laws, as amended.

14.5 Telephone reports made pursuant to section 14.1 herein shall be followed-up within three (3) business days with a written report.

PART III ***NURSING/NURSING ASSISTANT /SERVICES/DUTIES/TRAINING PROGRAMS***

Section 15.0 ***Services***

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

15.1.1 hours of service, availability of weekend services and accessibility of services;

15.1.2 provisions for crisis or emergency services; and

15.1.3 such other as may be deemed necessary and appropriate.

Nursing Services

15.2 All services performed by registered nurses shall be in accordance with the provisions of Chapter 5-34 of the Rhode Island General Laws, as amended, and the rules and regulations promulgated thereunder, relating to the practice of nursing.

Nursing Assistant Services

15.3 All nursing assistant services performed by registered nursing assistants shall be in accordance with the provisions of Chapter 23-17.9 of the Rhode Island General Laws, as amended, and the rules and regulations promulgated thereunder, relating to the services, duties and training of a nursing assistant.

15.4 A nursing assistant shall be registered with the Department and shall conform to all requirements of registration.

PART IV ***VARIANCE, VIOLATIONS AND SANCTIONS, PRACTICES AND PROCEDURES AND SEVERABILITY***

Section 16.0 ***Variance Procedure***

- 16.1 The licensing agency may grant a variance either upon its own motion or upon request of the applicant from the provisions of any rules and regulations herein, 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.
- 16.2 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.
- 16.2.1 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 section 19.0 herein.

Section 17.0 ***Deficiencies and Plans of Correction***

- 17.1 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 section 23-1-21 of the General Laws of Rhode Island, as amended.
- 17.2 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.
- 17.3 The licensing agency will be required to approve or reject the plan of correction submitted by a facility in accordance with section 17.2 (above) within fifteen (15) days of receipt of the plan of correction.
- 17.4 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 section 17.2 above, 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 section 18.0 herein. 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 Chapter 42-35 of the Rhode Island General Laws, as amended.
- 17.5 The notice of the hearing to be given by the Department shall comply in all respects with the provisions of Chapter 42-35 of the Rhode Island General Laws, as amended. The hearing shall in all respects comply therein.

Section 18.0 ***Denial, Suspension, or Revocation of License***

- 18.1 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.
- 18.2 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.
- 18.3 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 section 42-35-15.
- 18.4 The procedure governing hearings authorized by this section shall be in accordance with sections 42-35-9 through 42-35-13 as stipulated in subsection 42-35-14(a). A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to section 42-35-15. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either party.
- 18.5 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 herein, shall be subject to the sanctions of the Act.

Section 19.0 ***Rules Governing Practices and Procedures***

- 19.1 All hearings and reviews required under the provisions of the Act of reference 1 shall be held in accordance with the provisions of the rules and regulations of reference 5.

Section 20.0 ***Severability***

- 20.1 If any provision of these rules and regulations or the application thereof to any facility or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of the regulations which can be given effect, and to this end the provisions of the regulations are declared to be severable.

REFERENCES

1. "Licensing of Nursing Service Agencies", Chapter 23-17.7.1 of the General Laws of Rhode Island, as amended.
2. "An Act Relating To Nursing Assistant Services," Chapter 23-17.9 of the General Laws of Rhode Island, as amended.
3. "Administrative Procedures Act," Chapter 42-35 of the General Laws of Rhode Island, as amended.
4. "Health Department," Chapter 23-1 of the General Laws of Rhode Island, as amended.
5. *Rules and Regulations of the Rhode Island Department of Health Regarding Practices and Procedures Before the Department of Health and Access to Public Records of the Department of Health (R42-35-PP)*, Rhode Island Department of Health, April 2004 and subsequent amendments thereto.
6. "Confidentiality of Health Care Information," Chapter 5-37.3 of the General Laws of Rhode Island, as amended.
7. *Rules and Regulations for the Registration of Nursing Assistants and the Approval of Nursing Assistant Training Programs (R23-17.9-NA)*, Rhode Island Department of Health, September 2005 and subsequent amendments thereto.
8. *Rules and Regulations Pertaining to Immunization, Testing, and Health Screening for Health Care Workers (R23-17-HCW)*, Rhode Island Department of Health, July 2002 and subsequent amendments thereto.

NursingServAgencies_Final_Sept2012.doc
Monday, 17 September 2012