

Subtitle 07 HOSPITALS

10.07.03 Nursing Staff Agencies

Authority: Health-General Article, Title 19, Subtitle 20,

Annotated Code of Maryland

Notice of Proposed Action

The Secretary of Health and Mental Hygiene proposes to repeal in their entirety Regulations .01- .05 under **COMAR 10.27.14 Nursing Staff Agencies** and to adopt Regulations .01- .19 under a new chapter, **COMAR 10.07.03 Nursing Staff Agencies**.

Statement of Purpose

The proposed regulations establish licensure requirements, procedures, and fees for nursing staff agencies that do business in Maryland.

Comparison to Federal Standards

(Check one option)

- There is no corresponding federal standard to this proposed regulation.

Or

There is a corresponding federal standard to this proposed regulation, but the proposed regulation is not more restrictive or stringent.

Or

In compliance with Executive Order 01.01.1996.03, this proposed regulation is more restrictive or stringent than corresponding federal standards as follows:

- (1) Regulation citation and manner in which it is more restrictive than the applicable federal standard:
- (2) Benefit to the public health, safety or welfare, or the environment:
- (3) Analysis of additional burden or cost on the regulated person:

(4) Justification for the need for more restrictive standards:

Impact Statements

Part A

(Check one option)

Estimate of Economic Impact

The proposed action has no economic impact.

Or

The proposed action has an economic impact.

Complete the following form in its entirety.

I. Summary of Economic Impact. Oversight of nursing staff agencies in Maryland has changed from a registration program to a licensure program, including announced or unannounced inspections. An annual licensure fee of \$150 has been established to recover the operating costs associated with the licensure program. There will be a negative fiscal impact on nursing staff agencies. Agencies that do not notify the Department of certain changes in information on file will be fined \$100.

II. Types of Economic Impacts.	Revenue (R+/R-) Expenditures (E+/E-)	Magnitude
A. On issuing agency:		
Operating costs	(E-)	\$75,456
Annual license fee	(R+)	\$86,400
Fines	(R+)	\$200
B. On other State agencies:	NONE	

C. On local governments:	NONE	
	Benefit (+)	
	Cost (-)	Magnitude

D. On regulated industries or trade groups:

Annual license fee	(-)	\$86,400
Fines	(-)	\$200

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Expenses of \$75,456 represent average annual administrative costs, including salary, mileage for surveyor statewide travel, postage, phone operation, supplies, and equipment. Revenue of \$86,400 is based on an annual license fee of \$150 per nursing staff agency times 576 agencies that do business in Maryland.

D. Nursing staff agencies paid an initial registration fee of \$100 and an annual registration renewal fee of \$25 under COMAR 10.27.14.

Part B

(Check one option)

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Or

■ The proposed action has a meaningful economic impact on small businesses. An analysis of this economic impact follows.

Economic Impact on Small Businesses

1a. Intended Beneficiaries: Businesses.

1c. Intended Beneficiaries: Businesses.

The proposed regulations will affect nursing staff agencies that provide licensed nursing personnel to health care facilities as temporary employees. An estimated 576 agencies are Maryland-based and an estimated 50 more are large national corporations that do business in Maryland. The average agency employs 35-50 people.

Legislation transferred regulatory oversight of nursing staff agencies from the Board of Nursing to the Department of Health and Mental Hygiene (DHMH), Office of Health Care Quality (OHCQ). The General Assembly also changed the oversight from a paper registration program to a licensure program with authority for OHCQ to conduct announced or unannounced inspections and complaint investigations.

2a. Other Direct or Indirect Impacts: Adverse

Smaller agencies in particular may consider the proposed \$150 annual license fee a significant increase. The annual registration fee was \$25.

Impact on Individuals with Disabilities

(Check one option)

XXX The proposed action has no impact on individuals with disabilities.

or

The proposed action has an impact on individuals with disabilities as follows:

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Regulations Coordinator, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 521, Baltimore, Maryland 21201, or fax to (410) 333-7687, or email to regs@dhmh.state.md.us, or call (410) 767-6499 or 1-877-4MD-DHMH, extension 6499. These comments must be received by

Part C

(For legislative use only; not for publication)

- A. Fiscal Year in which regulations will become effective: FY 2007
- B. Does the budget for fiscal year in which regulations become effective contain funds to implement the regulations?
- Yes No N/A
- C. If “yes”, state whether general, special (exact name), or federal funds will be used:
- D. If “no”, identify the source(s) of funds necessary for implementation of these regulations:
Regulations will be implemented using existing resources in S103G.
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

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ALL NEW MATERIAL

.01 Purpose.

The purpose of this chapter is to set minimum standards for licensure of nursing staff agencies providing services in Maryland.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Abuse.

(a) “Abuse” means:

(i) The nontherapeutic infliction upon a resident of physical pain or injury; or

(ii) A persistent course of conduct intended to produce, or resulting in, mental or emotional distress to a resident, for example, verbal intimidation of a resident.

(b) “Abuse” does not mean the performance of an accepted medical procedure ordered by a physician or administered by another health care professional practicing within the scope of the physician's or health care professional's license.

(2) “Agency” means a nursing staff agency.

(3) “Board” means the Maryland Board of Nursing.

(4) Certified Nursing Assistant.

(a) “Certified nursing assistant” means an individual, regardless of title, who routinely performs nursing tasks delegated by a registered nurse or licensed practical nurse for compensation and

who meets the criteria contained in Health Occupations Article, §8-6A-05, Annotated Code of Maryland.

(b) “Certified nursing assistant” does not include a medication assistant.

(5) “Client facility” means a health care facility that contracts with a nursing staff agency for the referral of nursing personnel.

(6) “Deficiency” means any failure of the nursing staff agency to meet the requirements of Health-General Article, Title 19, Subtitle 20, Annotated Code of Maryland, or any rule or regulation that the Secretary adopts under that subtitle.

(7) “Department” means the Department of Health and Mental Hygiene.

(8) “Exploitation of individual's funds” means the misappropriation of a resident's funds, assets, or income, including spending the resident's assets or income:

(a) Against or without the resident's consent, or if the resident is incapable of giving consent and has no agent with authority to give consent, when the expenditure is not necessary for the direct and immediate benefit and welfare of the resident; or

(b) For the use and benefit of a person other than the resident, if the resident or agent has not consented to the expense.

(9) “Geriatric nursing assistant” means a certified nursing assistant who has successfully completed the requirements for geriatric nursing assistant mandated under federal law and COMAR 10.39.03.

(10) “Health care facility” means a hospital or related institution as defined in Health-General Article, §19-301, Annotated Code of Maryland.

(11) “Initially providing or referring” means the first time an agency provides or refers a particular licensed practical nurse, registered nurse, or certified nursing assistant to a health care facility.

(12) “Licensee” means the person, association, partnership, corporation, limited liability company, or other entity to which a license is issued.

(13) “Misconduct” means a commission or omission of an act or behavior that may cause physical, emotional, or psychological harm to another.

(14) “Neglect” means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(15) “Nursing personnel” means any individual licensed by the Board as a:

- (a) Licensed practical nurse;
- (b) Registered nurse; or
- (c) Certified nursing assistant.

(16) Nursing Staff Agency.

(a) “Nursing staff agency” means any person, firm, corporation, partnership, or other business entity engaged in the business of referring nursing personnel as employees or independent contractors to render temporary nursing services at a health care facility in the State.

(b) “Nursing staff agency” does not include:

(i) A nursing staff agency operated by a health care facility solely for the purpose of procuring, furnishing, or referring temporary or permanent nursing personnel for employment at that health care facility;

(ii) A home health agency regulated under Health-General Article, Title 19, Subtitle 4, Annotated Code of Maryland; or

(iii) Any nursing personnel procuring, furnishing, or referring their own services to a health care facility without the direct or indirect assistance of a nursing staff agency.

(17) “Office” means the Office of Health Care Quality in the Department.

(18) “Responsible party” means the individual at a nursing staff agency who controls the day-to-day operation of the nursing staff agency.

(19) “Secretary” means the Secretary of Health and Mental Hygiene.

.03 License Required.

A. A person, firm, corporation, partnership, or other business entity may not maintain or operate an agency in this State without first obtaining a license from the Secretary and complying with this chapter.

B. An out-of-State agency providing services in this State shall have a current Maryland license conspicuously posted at the:

(1) Office in this State where the agency conducts its day-to-day operations; or

(2) Agency’s records repository that is located in this State.

.04 Restrictions of License.

A. A person operating an agency may not use the term “nursing staff agency” in its advertising without first obtaining a license from the Secretary.

B. A license is valid only in the name of the licensee to whom it is issued and is not subject to sale, assignment, or other transfer.

C. A license is valid only for the premises for which it was originally issued.

.05 Existing Nursing Staff Agencies.

A. A nursing staff agency that was registered by the Board shall complete and submit an application for licensure within 90 days after the effective date of this chapter, following the procedures in Regulation .06 of this chapter.

B. The agency shall also submit the nonrefundable license fee with the application.

.06 Licensing Procedure.

A. Application for Licensure.

(1) To obtain and maintain a license, an applicant shall meet all requirements of:

- (a) This chapter; and
- (b) Other applicable laws and regulations.

(2) An applicant shall submit to the Department:

- (a) An application for licensure on a form developed by the Office;
- (b) A nonrefundable license fee of \$150;
- (c) Documentation of any prior denial, suspension, or revocation of a license of certification to provide care to third parties;

(d) Documentation of any felony conviction of the applicant or anyone with direct or indirect ownership interest in the agency; and

(e) Ownership information as specified on an addendum to the application.

B. Duration of License.

A license to operate a nursing staff agency shall expire on the 28th day of the month in which the license was originally issued unless the license is renewed for a 1-year term.

C. License Renewal.

(1) At least 1 month before the current license expires, the Office shall send to the agency, by first-class mail to the last known address of the agency, a renewal notice that states:

(a) The date on which the current license expires;

(b) The date by which the renewal application shall be received by the Office for the renewal to be issued and mailed before the license expires; and

(c) The amount of the renewal fee.

(2) Before a license expires, the agency may renew its license for an additional term, if the agency:

(a) Otherwise is entitled to be licensed; and

(b) Pays to the Office the \$150 license renewal fee.

(3) Failure to Renew License. When an agency fails to renew its license, the agency shall immediately stop referring personnel to health care facilities.

D. Additional Requirements.

(1) The Secretary may require an applicant to submit information:

(a) Concerning the applicant's past or current operation of a health-related facility or an agency; and

(b) Demonstrating the applicant's financial or administrative ability to operate an agency in compliance with this chapter.

(2) Based on information provided to the Department by the applicant and the Department's own investigation, the Secretary shall:

(a) Approve the application unconditionally;

(b) Approve the application conditionally, which may include, among other conditions, requiring the applicant to use the services of a management firm approved by the Secretary; or

(c) Deny the application.

(3) A person aggrieved by a decision of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing consistent with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

E. Rights of Applicant if License is Revoked or Denied.

(1) Denial of License. The Secretary shall inform the applicant of the reasons for refusal to issue a license.

(2) Revocation of License. The Secretary may, for cause shown, revoke or refuse to reissue any license.

(3) A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing consistent with Regulation .19 of this chapter.

07 Changes to Licensure Information.

A. A licensee shall notify the Department of any change in agency ownership, name, or address within 30 calendar days of the change.

B. Any change in agency ownership, name, or address requires the issuance of a new license and a fee of \$150

C. If the licensee fails to notify the Office of the changes in §A of this regulation, the Office may impose a fine of \$100.

08 Inspections by the Department.

A. The Department or its designee may conduct announced or unannounced licensure or complaint inspection visits to the agency's office or records repository to ensure compliance with the requirements of this chapter.

B. The agency's office or records repository shall be available during normal business hours for announced or unannounced inspections by the Department or its designee.

C. An agency with offices out-of-state shall comply with the regulations of this chapter and shall reimburse the Department for reasonable travel expenses incurred in conducting out-of-state inspections.

D. At the request of the Department, an agency shall cooperate with the Department in gaining access to facilities where agency referrals are providing services for the purpose of conducting inspections.

E. An agency shall maintain records and make reports as required by the Department or its designee. The responsible party of the agency shall provide all records requested by the Office within 24 hours of the request.

.09 Administration.

A. The agency shall develop and implement policies and procedures related to the scope of responsibility of its nursing personnel consistent with:

- (1) Health Occupations Article, Title 8, Annotated Code of Maryland;
- (2) COMAR 10.27; and
- (3) COMAR 10.39.

B. Policies and procedures shall include, but not be limited to:

- (1) Selecting and verifying the credentials of nursing personnel referred by the agency;
- (2) Validating experience of nursing personnel prior to referral by the agency;
- (3) Tracking and acting on serious or life-threatening complaints received by a client, facility, or the client facility's agent;
- (4) Reporting of an action or inaction in accordance with Health Occupations Article, §8-316, Annotated Code of Maryland; and

(5) Verifying the following:

(a) That nursing personnel referred by the agency are of satisfactory health status and have received the necessary testing and immunization as required or requested by the client facility,

(b) Before initial referral of nursing personnel to a client facility by the agency, drug screening of nursing personnel referred by the agency, if the client facility requires drug screening for facility employees,

(c) When there is probable cause to perform a drug test or when a client facility requests a drug test, drug testing of nursing personnel referred by the agency,

(d) Before initial referral of nursing personnel to a client facility by the agency, criminal background checks of nursing personnel referred by the agency, if the client facility requires criminal background checks for facility employees, and

(e) The references of personnel referred by the agency.

.10 Referral and Reporting Nursing Staff Personnel.

A. An agency may not knowingly provide or refer any of the following individuals to render temporary nursing services who are not authorized under Health Occupations Article, Title 8, Annotated Code of Maryland, to practice their respective professions in Maryland:

(1) A registered nurse;

(2) A licensed practical nurse;

(3) A geriatric nursing assistant; or

(4) A certified nursing assistant.

B. If an agency is aware of an action or inaction by a licensed individual who is provided or referred by the agency that may be grounds for action under Health Occupations Article, §8-316,

Annotated Code of Maryland, the agency shall report the action or condition to the Board and the Office immediately when the action or condition is known by the agency.

C. An individual shall have immunity from liability described in the Courts and Judicial Proceedings Article, §5-709, Annotated Code of Maryland, for making a report as required under §B of this regulation.

D. Personnel Qualifications and Duties. The agency shall have the following:

- (1) Job descriptions from clients for referred individuals; and
- (2) A documented mechanism to determine that a referral's qualifications are consistent with the assignments to which the individual is being referred.

E. The agency shall maintain documentation indicating that individuals providing services in any health care facility within the State have been educated by the agency or the facility about:

- (1) The facility's policies and procedures related to the individuals' scope of practice and responsibilities in the referred assignment; and
- (2) The individuals' obligations under Maryland law to report abuse and neglect.

F. An agency shall attest on a form developed by the Department that the agency is in compliance with the federal:

- (1) Civil Rights Act of 1964;
- (2) Rehabilitation Act of 1973;
- (3) Americans with Disabilities Act of 1990; and

(4) Drug Free Workplace Act of 1988, if applicable.

.11 Complaints

A. A complaint may be presented to an agency by the client facility, an individual receiving services, a representative of the individual receiving services, or any concerned individual.

B. Complaint or Grievance Procedure. An agency shall develop and implement a written complaint or grievance procedure that includes a:

- (1) Description of how and to whom to file a complaint within the agency;
- (2) Description of how and to whom to file a complaint with the Office;
- (3) Commitment to conduct a thorough investigation into any allegation against individuals referred by the agency; and
- (4) Mechanism for making completed investigation reports available to the Department upon request during inspections.

.12 Civil Money Penalties—Imposition.

A. The Department may impose a civil money penalty if a deficiency exists.

B. In determining whether a civil money penalty is to be imposed, the Department shall consider the following factors:

- (1) The number, nature, and seriousness of the deficiencies;
- (2) The extent to which the deficiencies are part of a pattern;
- (3) The degree of risk to the health, life, or safety of the residents of the client facility caused by the deficiency or deficiencies;

- (4) The efforts made by, and the ability of the agency to correct the deficiency or deficiencies;
- (5) An agency's prior history of compliance in general and specifically with reference to the cited deficiencies; and
- (6) Other factors as justice may require.

C. If the Department determines that a deficiency or a pattern of deficiencies exists, the Department shall notify the agency of the deficiency or deficiencies and may:

- (1) Impose a per-day civil money penalty until compliance has been achieved;
- (2) Permit the agency the opportunity to correct the deficiencies by a specific date; or
- (3) Impose a per-instance civil money penalty for each deficiency.

D. If the Department permits an agency the opportunity to correct the deficiencies by a specific date and the agency fails to comply with this requirement, the Department may impose a per-day civil money penalty for each day of violation until correction of the deficiency or deficiencies has been verified and compliance has been maintained.

E. When a civil money penalty is imposed, the Department shall issue an order that includes the:

- (1) Deficiency or deficiencies on which the order was based; and
- (2) Amount of civil money penalty to be imposed.

.13 Civil Money Penalties—Amount of Penalty.

A. A civil money penalty imposed under this chapter for a first offense may not exceed:

- (1) \$2,500 for each instance of violation; or
- (2) \$2,500 per day until correction of the deficiency or deficiencies has been verified and compliance has been maintained.

B. A civil money penalty imposed under this chapter for a second offense may not exceed:

- (1) \$5,000 for each instance of violation; or
- (2) \$5,000 per day until correction of the deficiency or deficiencies has been verified and compliance has been maintained.

C. A civil money penalty imposed under this chapter for a third or subsequent offense may not exceed:

- (1) \$10,000 for each instance of violation; or
- (2) \$10,000 per day until correction of the deficiency or deficiencies has been verified and compliance has been maintained.

.14 Civil Money Penalties—Effective Date and Duration of Penalty.

A. Per-Instance Civil Money Penalty. The effective date may be as early as the date that the deficiency or deficiencies on which the civil money penalty is based first occurred.

B. Per-Day Civil Money Penalty.

- (1) The daily civil money penalty starts to accrue as of the date of the visit that identifies the deficiency or deficiencies on which the civil money penalty is based.
- (2) The accrual of the daily civil money penalty ceases when correction of the deficiency or deficiencies on which the civil money penalty was based has been verified.

.15 Civil Money Penalties—Payment of Penalty/Establishment of Escrow Account.

A. A civil money penalty payment is due 15 calendar days after:

(1) The time period for requesting a hearing has expired, if a request for a hearing has not been received; or

(2) Receipt of a written request from the agency to waive its right to a hearing and reduce the amount of the civil money penalty by 40 percent, if the written request is received by the Department within 30 calendar days of the Department's order imposing the civil money penalty.

B. Within 15 days of the request for an appeal by an agency, the agency shall deposit the amount of the civil money penalty in an interest-bearing escrow account. If a per-day civil money penalty is in effect at the time the escrow account is established, the amount owed on that date shall be deposited into the escrow account. The agency shall bear any cost associated with establishing the escrow account and the account shall be titled in the name of the agency and the Department of Health and Mental Hygiene as joint owners.

C. Release of Escrow Funds. When the Secretary issues the final decision of the Department:

(1) If the decision upholds the imposition of the civil money penalty, the escrow funds, in addition to the amount of any per-day civil money penalty that has accrued after the initial deposit into the escrow account, shall be released to the Department within 15 days from the date of the decision;

(2) If the decision upholds the imposition of a civil money penalty, but reduces the amount of the civil money penalty, the amount due the Department shall be released to the Department with accrued interest within 15 days of the date of the decision and the balance shall be released to the agency within 15 days of the date of the decision; or

(3) If the decision reverses the imposition of the civil penalty, the escrow funds shall be released to the agency with accrued interest within 15 days of the decision.

D. The amount of the civil money penalty, when determined, may be deducted from any sum owed by the State to the agency.

.16 Civil Money Penalties—Hearings.

A licensee aggrieved by the imposition of a civil money penalty may appeal the action by filing a request for a hearing in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.17 Emergency Suspensions.

A. The Secretary may immediately suspend a license on finding that the public health, safety, or welfare imperatively requires emergency action pursuant to State Government Article, §10-226(c), Annotated Code of Maryland.

B. The Department shall deliver a written notice to the agency:

- (1) Informing the agency of the emergency suspension;
- (2) Giving the reasons for the action and the regulation or regulations with which the licensee has failed to comply that form the basis for the emergency suspension; and
- (3) Notifying the agency of its right to request a hearing and to be represented by counsel.

C. The filing of a hearing request does not stay the emergency action.

D. Suspended License. If a license is suspended by emergency action, the agency shall:

- (1) Immediately return the license to the Department; and
- (2) Cease making referrals.

E. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .19 of this chapter.

F. The Office of Administrative Hearings shall conduct a hearing as provided in Regulation .19 of this chapter and issue a proposed decision within 10 business days of the close of the hearing record. Exceptions may be filed by an aggrieved person pursuant to COMAR 10.01.03. The Secretary shall make a final decision pursuant to COMAR 10.01.03.

G. If the Secretary's final decision does not uphold the emergency suspension, the agency may resume operation.

.18 Denial or Revocation of License.

A. Denial or Revocation of License. The Secretary, for cause shown, may notify the agency of the decision to revoke or deny the license. Except as provided in Regulation .18 of this chapter, the denial or revocation shall be stayed if a hearing is requested.

B. Criteria for Denial or Revocation. The Department shall notify the agency in writing of the following:

- (1) The effective date of the denial or revocation;
- (2) The reason for the denial or revocation;
- (3) The regulations with which the licensee has failed to comply that form the basis for the denial or revocation;
- (4) That the agency is entitled to a hearing if requested, and to be represented by counsel;

(5) That the agency shall stop providing services on the effective date of the denial or revocation if the agency does not request a hearing;

(6) That the denial or revocation shall be stayed if a hearing is requested; and

(7) That the agency is required to surrender its license to the Department if the denial or revocation is upheld.

C. A person aggrieved by the action of the Secretary under this regulation may appeal the Secretary's action by filing a request for a hearing in accordance with Regulation .19 of this chapter.

.19 Hearings.

A. An agency shall file a request for a hearing with the Office of Administrative Hearings, with a copy to the Office of Health Care Quality of the Department, not later than 30 calendar days after receipt of notice of the Secretary's action. This request shall include a copy of the Secretary's action.

B. A hearing requested under this chapter shall be conducted in accordance with:

- (1) State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland;
- (2) COMAR 28.02.01; and
- (3) COMAR 10.01.03.

C. The burden of proof is as provided in COMAR 10.01.03.28.

D. Unless otherwise stated in this chapter, the Office of Administrative Hearings shall issue a proposed decision within the time frames set forth in COMAR 28.02.01.

E. The aggrieved person may file exceptions as provided in COMAR 10.01.03.35.

F. A final decision by the Secretary shall be issued in accordance with COMAR 10.01.03.35.

END ALL NEW MATERIAL

JOHN COLMERS

Secretary of Health and Mental Hygiene

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