

**Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

**Subtitle 07 HOSPITALS**

**10.07.03 [Nursing] *Health Care Staff Agencies***

**Authority:** Health-General Article, Title 19, Subtitle 20, Annotated Code of Maryland

**.01 Purpose.**

A. The purpose of this chapter is to set minimum standards for licensure of [nursing] *health care* staff agencies providing services in Maryland.

B. The regulations of this chapter do not preclude a [nursing] *health care* staff agency from operating with independent contractors.

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Agency" means a [nursing] *health care* staff agency.

(3) "Board" means [the Maryland Board of Nursing.] *a health occupation licensing board authorized to license, certify, and discipline a health care practitioner in accordance with the Health Occupations Article.*

[(4) "Certified nursing assistant" means an individual certified by the Board as a nursing assistant.]

[(5)] (4)"Client facility" means a health care facility that contracts with a [nursing] *health care* staff agency for the referral of [nursing personnel] *health care practitioners.*

[(6)] (5) "Deficiency" means any failure of the [nursing] *health care* 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)] (6) (text unchanged)

[(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, if 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)] (7) "Geriatric nursing assistant" means a certified nursing assistant certified by the Board as a geriatric nursing assistant.]

[(10)] (8) (text unchanged)

(9) *Health Care Practitioner.*

(a) Except as provided in §B(10)(b) of this regulation, "health care practitioner" means any individual licensed or certified under the Health Occupations Article.

(b) "Health Care Practitioner" does not include:

(i) An acupuncturist;

(ii) A dentist;

(iii) A nurse anesthetist;

(iv.) A nurse midwife;

(v) A nurse practitioner;

(vi) A pharmacist;

(vii) A physician; or

(viii) A podiatrist.

[(11)] (10) "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] a health care staff agency provides or refers a particular health care practitioner to a health care facility.

[(12)] (11) (text unchanged)

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

(14) (12) (text unchanged)

[(15)] "Nursing personnel" means any individual licensed or certified by the Board as a:

(a) Licensed practical nurse;

(b) Registered nurse; or

(c) Certified nursing assistant.]

[(16)] (13) [Nursing] Health Care Staff Agency.

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

(b) "[Nursing] Health care staff agency" does not include:

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

(ii) (text unchanged)

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

[(17)] (14) (text unchanged)

[(18)] (15) "Responsible party" means the individual at a [nursing] *health care* staff agency who controls the day-to-day operation of the [nursing] *health care* staff agency.

[(19)] (16) (text unchanged)

### **.03 License Required.**

A. A person, firm, corporation, partnership, or other business entity may not maintain or operate a [nursing] *health care* staff agency in this State without first obtaining a license from the Secretary and complying with the regulations of this chapter.

B.—C. (text unchanged)

### **.04 Restrictions of License.**

A. A person operating an agency may not use the term "[nursing] *health care* staff agency" in its advertising without first obtaining a license from the Secretary.

B.—C. (text unchanged)

### **[.05 Existing Nursing Staff Agencies.**

A. A nursing care 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] .05 Licensing Procedure.**

A. Application for Licensure.

(1) A person desiring to refer [nursing personnel] *a health care practitioner* to a health care facility to render temporary [nursing] *health care* services in this State shall file an application with the Secretary, on a form provided by the Secretary.

(2) (text unchanged)

(3) Along with the application, the applicant shall submit a:

(a) (text unchanged)

(b) Copy of the agency's policies and procedures as specified in Regulation [.09] .08 of this chapter.

B.—E. (text unchanged)

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

(1)—(2) (text unchanged)

(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 [.18] .17 of this chapter.

[.07] .06 (text unchanged)

**[.08] .07 Inspections by the Department.**

A.—D. (text unchanged)

**[.09] .08 Administration.**

A. (text unchanged)

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

(1) Selecting and verifying the credentials of [nursing personnel] *a health care practitioner* referred by the agency;

(2) Validating experience of [nursing personnel] *a health care practitioner* prior to referral by the agency;

(3) (text unchanged)

(4) Reporting of an action or condition performed by [nursing personnel] *a health care practitioner* as required under Regulation [.10C] .09C of this chapter;

(5) Verifying the following:

(a) That [nursing personnel] *a health care practitioner* 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] *a health care practitioner* to a client facility by the agency, drug screening of [nursing personnel] *a health care practitioner* referred by the agency, if the client facility requires drug screening for facility employees;

(c) If there is probable cause to perform a drug test or if a client facility requests a drug test, drug testing of [nursing personnel] *a health care practitioner* referred by the agency;

(d) Before initial referral of [nursing personnel] *a health care practitioner* to a client facility by the agency, criminal background checks of [nursing personnel] *a health care practitioner*

referred by the agency, if the client facility requires criminal background checks for facility employees;

(e) The references of [personnel] a *health care practitioner* referred by the agency;

(f) That [nursing personnel] a *health care practitioner* referred by the agency have I-9 status that permits them to legally work in the United States; and

(g) That [personnel] a *health care practitioner* have active licensure or certification with the Board; and

(6) (text unchanged)

**[.10] .09 Referral and Reporting [Nursing Staff Personnel] *Health Care Practitioners*.**

A. An agency may not knowingly provide or refer [nursing personnel] a *health care practitioner* 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.

B. An agency and client facility shall ensure that the scope of practice of the referred [nursing personnel] *health care practitioner* is consistent with [:] *the Health Occupations Article*.

[(1) Health Occupations Article, Title 8, Annotated Code of Maryland;

(2) COMAR 10.27; and

(3) COMAR 10.39.]

C. If an agency is aware of an action or inaction by a [licensed individual] *health care practitioner* who is provided or referred by the agency that may be grounds for action under the Health Occupations Article[, §8-316, Annotated Code of Maryland], the agency shall report

the action or condition to the appropriate Board and the Office immediately when the action or condition is known by the agency.

D.—E. (text unchanged)

[.11] .10 —[.15] .14 (text unchanged)

**[.16] .15 Emergency Suspensions.**

A.—D. (text unchanged)

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 [.18] .17 of this chapter.

F. The Office of Administrative Hearings shall conduct a hearing as provided in Regulation [.18] .17 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. (text unchanged)

**[.17] .16 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 [.16] .15 of this chapter, the denial or revocation shall be stayed if a hearing is requested.

B. (text unchanged)

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 [.18] .17 of this chapter.



[.18] .17 (text unchanged)

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