

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in sections 3 and 17 of the Nurse Staffing Agency Act of 2003 (hereinafter “the Act”), effective March 10, 2004, D.C. Law 15-74, D.C. Official Code § 44-1051.01 *et seq.*, at 44-1051.02 and 44-1051.16, and in accordance with Mayor’s Order 2004-83, dated May 21, 2004, hereby gives notice of the adoption of the following new Chapter 49 of Title 22 of the District of Columbia Municipal Regulations (DCMR), which contains licensure requirements and operating standards for nurse staffing agencies.

The purpose of this rulemaking is to protect the health and safety of individuals receiving nursing services in the District of Columbia from nursing personnel who are provided or referred to those individuals, either directly or indirectly through the auspices of a health-care facility or agency, by nurse staffing agencies engaged in the business of providing or referring nursing personnel to render temporary nursing services. These rules were developed by a community task force coordinated by the Department of Health. As required by the Act, the rules prescribe licensing requirements and procedures for nurse staffing agencies, as well as fees, documentation and reporting requirements, standards for operation, and enforcement and hearing procedures.

These rules were published as proposed in the *D.C. Register* on September 17, 2004, at 51 DCR 9022. No comments were received.

Title 22 DCMR is hereby amended by adding the following new Chapter 49:

NURSE STAFFING AGENCIES

4900 GENERAL PROVISIONS

4900.1 These rules are implemented pursuant to and in accordance with the Nurse Staffing Agency Act of 2003 (hereinafter "the Act"), effective March 10, 2004, D.C. Law 15-74, D.C. Official Code § 44-1051.01 *et seq.* Each nurse staffing agency must comply with the Act and with these rules, which together constitute standards for licensing and operation of nurse staffing agencies within the District of Columbia.

4900.2 Except as otherwise expressly provided in the Act or these rules, no person or entity may operate, or hold himself, herself or itself out as operating, a nurse staffing agency for the purpose of rendering temporary nursing services or related health aide services within the District of Columbia, whether public or private, for profit or not for profit, without being licensed as required by the Act and these rules.

4900.3 Each person or entity operating within the District of Columbia as a nurse staffing agency, as defined in the Act, on the effective date of these rules, must submit an application for licensure within ninety (90) days or cease operation within the District of Columbia within ninety (90) days of the effective date of these rules.

4900.4 Each nurse staffing agency must develop and implement policies and procedures in accordance with section 15 of the Act. The policies and procedures shall comply with the Act and these rules.

4901 LICENSING

4901.1 Each applicant for licensure as a nurse staffing agency must submit an application for initial licensure to the Department no later than ninety (90) days before its intended commencement of operation.

4901.2 As part of its initial application for licensure, the applicant must submit to the Department all information listed as required in section 4 of the Act, and the following other information:

- (a) All additional names, if any, under which the applicant or a subordinate part thereof intends to do business as a nurse staffing agency within the District of Columbia;
- (b) The name, professional title, and District of Columbia license number of the agency's nursing personnel and health aide supervisor(s), as further described in section 4904.2;
- (c) If the applicant's District of Columbia operations headquarters is located within the District of Columbia, a copy of the Certificate of Occupancy issued by the District of Columbia government to the applicant for that premises;
- (d) If the applicant's District of Columbia operations headquarters is located outside of the District of Columbia, a copy of each document certifying the responsible jurisdiction's approval of the use of that location or premises as a nurse staffing agency, including approval related to the appropriate zoning, building and fire codes, if applicable;
- (e) If the applicant's District of Columbia operations headquarters is located outside of the District of Columbia, the name, address and telephone number of:

- (1) If the applicant is a corporation, the corporation's registered agent within the District of Columbia, appointed pursuant to the District of Columbia Business Corporation Act, D.C. Law 9-144, D.C. Official Code §§ 29-101.10 through 101.12; or
 - (2) If the applicant is not a corporation, the applicant's attorney-in-fact or general agent, who must maintain a business office or residence within the District of Columbia, and who must be employed or appointed by the applicant as the person upon whom all judicial and other process or legal notice directed to the agency, relative to conduct governed by the Act and by these rules, may be served.
- (f) A copy of the agency's policies and procedures manual;
 - (g) The required fee(s); and
 - (h) Any other information that the Department may require in order to properly consider the application.

- 4901.3 Each nurse staffing agency seeking renewal of its license to operate must submit an application for license renewal to the Department no later than ninety (90) days before the expiration date of its current license. The required renewal license fee must accompany the application.
- 4901.4 The Department may impose a late application fee, in addition to the established license fee, if a nurse staffing agency fails to submit its license renewal application within the time prescribed.
- 4901.5 Each nurse staffing agency license shall be the property of the District of Columbia government, and must be returned to the Department immediately upon any of the following events:
- (a) Suspension or revocation of the license;
 - (b) Non-renewal of the license;
 - (c) Forfeiture of the license, consistent with section 4901.6; or
 - (d) If operation of the agency is discontinued by the voluntary action of the licensee.
- 4901.6 The Department shall issue each license only for the premises and the person or persons named as applicant(s) in the license application, and the license shall not be valid for use by any other person or persons or at any place other than that designated in the license. Any transfer as to person

or place without the approval of the Department shall cause the immediate forfeiture of the license.

- 4901.7 Each applicant for licensure intending to operate in premises located within the District of Columbia must comply with all applicable District of Columbia laws and regulations regarding zoning, fire safety and building construction for all agency premises before an initial or renewal license will be issued.
- 4901.8 Each applicant for licensure intending to operate in premises located outside the District of Columbia must provide proof of compliance with the applicable jurisdiction's laws regarding zoning, fire safety and building construction for all agency premises as part of the agency's application for an initial or renewal license.
- 4901.9 If a completed renewal application is filed timely pursuant to these rules, the continued operation of the nurse staffing agency past the stated expiration date on the current license shall not be unlawful if the Department has not yet taken official action on the application for renewal.
- 4901.10 The Department shall have the authority to issue regular, provisional, and restricted licenses, as further described in these rules, and to classify each issued license as regular, provisional or restricted.
- 4901.11 The Department shall issue a regular initial license or renewal license, for a period not to exceed one (1) year, to each nurse staffing agency that is in substantial compliance with the Act and with these rules.
- 4901.12 The Department may issue a provisional license, not to exceed ninety (90) days, to a nurse staffing agency that is not in substantial compliance with the Act or these rules, when the Department determines that the agency is taking appropriate ameliorative action in accordance with an established timetable.
- 4901.13 A provisional license issued pursuant to section 4901.12 may be renewed no more than once.
- 4901.14 The Department may issue a restricted license, prohibiting a nurse staffing agency from accepting new clients or from delivering one or more specified services, for a period not to exceed one (1) year, to an agency that is not in substantial compliance with the Act or these rules, as an alternative to suspension, revocation or denial of renewal of the agency's license.

4901.15 Each licensed nurse staffing agency that ceases to operate within the District of Columbia must notify the Department within five (5) business days of ceasing operation, and must return its license to the Department within ten (10) business days of ceasing operation.

4902 FEES

4902.1 The fee for each initial license shall be \$1000.

4902.2 The fee for each renewal license shall be \$1000.

4902.3 The additional fee for a late application shall be \$100.

4902.4 A fee of \$50 shall be charged for a duplicate license.

4902.5 A fee may be imposed for an on-site inspection of an agency located outside of the Washington Metropolitan Statistical Area, as further explained in Section 4906.3.

4903 INSURANCE

4903.1 Each nurse staffing agency must maintain the following minimum amounts of insurance coverage:

- (a) Blanket malpractice insurance for all professional employees in the amount of at least one million dollars (\$1,000,000) per occurrence and at least three million dollars (\$3,000,000) in the aggregate; and
- (b) General liability insurance covering personal property damages and bodily injury in the amount of at least one million dollars (\$1,000,000) per occurrence and at least three million dollars (\$3,000,000) in the aggregate.

4904 PERSONNEL

4904.1 All nursing personnel and health aides, as defined in the Act and in these rules, must be employees of the nurse staffing agency.

4904.2 All nursing personnel and health aides, as defined in the Act and in these rules, must be evaluated by and must report to a Registered Nurse licensed in the District of Columbia who is a full-time employee of the nurse staffing agency.

4904.3 Each nurse staffing agency must have written personnel policies, that are available to each employee and staff member, and that include the following:

- (a) Terms of employment or contract, including wage scale, hours of work, vacation, sick leave, insurance, and other benefits, if any;
- (b) Provisions for monitoring and evaluating each employee's or staff member's performance by appropriate supervisors;
- (c) Provisions pertaining to probationary periods, promotions, disciplinary actions, termination and grievance procedures;
- (d) A position description for each category of employee and staff member; and
- (e) Provisions for orientation, periodic training or continuing education, and periodic competency evaluation.

4904.4

Each nurse staffing agency must maintain accurate personnel records, which shall include the following information for each employee and staff member:

- (a) Name, address and social security number;
- (b) Current professional license, certification or registration number, if required;
- (c) Documentation of current CPR certification, if required;
- (d) Resume of education, training certificates acquired, prior employment including references, skills checklist, and evidence of attendance at orientation and in-service training, workshops and/or seminars;
- (e) Verification of previous employment;
- (f) Documentation of reference checks;
- (g) Documentation of any required criminal background check as provided in section 15(j) of the Act;
- (i) Results of all competency testing;
- (j) A position description;
- (k) Copies of completed performance evaluations;
- (l) Documentation of all disciplinary actions, if any;

- (m) Health certification as required by section 4904.7 or 4904.8;
- (m) Documentation of acceptance or declination of immunizations; and
- (n) Documentation of drug testing, as required by clients.

4904.5 Each nurse staffing agency must maintain its personnel records for all nursing personnel and health aides rendering services within the District of Columbia, and for all staff members performing duties ancillary to nursing services rendered within the District of Columbia, in its District of Columbia operations headquarters.

4904.6 Each employee and staff member must have the right to review his or her personnel records.

4904.7 At the time of initial employment of each employee or staff member for whom it is reasonably foreseeable that he or she will come into contact with one or more patients, the nurse staffing agency must verify that the employee or staff member has been screened for communicable disease within the previous six (6) months, according to the guidelines issued by the federal Centers for Disease Control and Prevention, and that the employee or staff member is certified to be free of communicable disease.

4904.8 Each employee or staff member for whom it is reasonably foreseeable that he or she will come into contact with one or more patients must be screened at least annually for communicable disease, according to the guidelines issued by the federal Centers for Disease Control and Prevention, and must be certified to be free of communicable disease.

4904.9 No employee may provide nursing or health aide services, and no nurse staffing agency may knowingly permit an employee to provide such services, if the employee:

- (a) Is under the influence of alcohol, any mind-altering drug, or any combination thereof; or
- (b) Has a communicable disease which poses a confirmed health risk to other persons.

4905 COMPLAINT, INCIDENT, AND DISCIPLINARY REPORTING PROCEDURES

4905.1 Each nurse staffing agency must develop and implement policies and procedures for:

- (a) Receiving, recording, and investigating complaints;
- (b) Recording, reporting, and investigating incidents; and
- (c) Reporting to the Board of Nursing or to the Department, as required by the Act and by this Chapter, information that may be grounds for disciplinary action under the Health Occupations Revision Act or the Certified Nurse Aide regulations.

- 4905.2 Each agency's policies and procedures must provide that a complaint may be presented orally or in writing.
- 4905.3 Each agency must respond to each complaint received by it within fourteen (14) calendar days of receipt of the complaint, must investigate the complaint as soon as reasonably possible, and must, upon completion of the investigation, provide the complainant with the results of the investigation.
- 4905.4 Each agency must report any incident, as further defined in this Chapter, to the Department, if that incident is related to the operation of the nurse staffing agency or to the services provided by the agency's employees and if that incident results in injury, illness, harm, or the potential for significant harm to any patient or client receiving services from the agency.
- 4905.5 Each agency must report each incident described in subsection 4905.4, above, to the Department no later than twenty-four (24) hours after the agency learns of the incident, must investigate the incident as soon as reasonably possible, and must provide the Department with the results of the investigation upon completion of the investigation.
- 4905.6 Each agency must report any action taken by, or any condition affecting the fitness to practice of, a Licensed Practical Nurse or a Registered Nurse that might be grounds for enforcement or disciplinary action under the Health Occupations Revision Act to the Board of Nursing within (5) business days of the nurse staffing agency's receipt or development of the information.
- 4905.7 Each agency must report any action taken by a Certified Nurse Aide that might be grounds for listing that individual on the Nurse Aide Abuse Registry to the Department within five (5) business days of the nurse staffing agency's receipt or development of the information.
- 4905.8 Each agency must develop and implement a system of recording complaints and incidents, which must reflect all complaint, incident, and

investigative activity for each calendar year, and which must include, for each complaint or incident:

- (a) The name, address and phone number of the complainant, if known;
- (b) If the complaint is anonymous, a statement so indicating;
- (c) The date on which the complaint is received;
- (d) The date and time the incident occurred;
- (e) The date and time the incident is reported to the Department;
- (f) A description of the complaint or incident;
- (g) The date on which the complaint or incident investigation is completed;
- (h) Whether the complaint is substantiated; and
- (i) Any subsequent action taken as a result of the complaint or incident, and the date on which that action is taken.

4905.9 The information required pursuant to subsection 4905.8, above, must be maintained by each agency for at least three (3) years after the date on which the complaint is received or on which the agency learns of the incident.

4905.10 All records related to incidents and complaints must be made accessible to the Department at all times, and must be furnished to the Department immediately upon request.

4906 INSPECTIONS AND INVESTIGATIONS BY THE DEPARTMENT

4906.1 The Department shall be authorized to take the following actions to determine whether an applicant or a licensee is in compliance with the Act and with these rules:

- (a) On-site inspection, which may include review of records, interviews of employees, staff members, clients, and patients, and observation of nursing personnel and other staff;
- (b) Review of records, timely delivered to the Department upon its request, by the applicant or licensee;

(c) Interviews of persons authorized by the applicant or licensee to represent the nurse staffing agency; or

(d) Any combination of the above.

4906.2 In the case of a nurse staffing agency whose District of Columbia operations headquarters is located outside of the District of Columbia, the Department may require that the agency's responsible party, owner or president, and/or other authorized representative, present himself or herself in person at the Department to submit the agency's application and/or to verify required information at the request of Department officials.

4906.3 In the case of a nurse staffing agency whose District of Columbia operations headquarters is located outside of the Washington Metropolitan Statistical Area, and of which the Department determines that an on-site inspection is required in order to assess the agency's compliance with the Act and these rules, the Department may impose a fee for the inspection, not to exceed the Department's actual costs in performing the inspection.

4906.4 Each nurse staffing agency or applicant for licensure as a nurse staffing agency must permit authorized officials of the Department, upon presentation of identification, to enter all premises of the agency, regardless of whether the officials' visit is previously announced or unannounced, and must permit these officials to conduct unimpeded inspection, as the officials deem is needed, to:

(a) Determine whether a licensee is in compliance or noncompliance with the Act and these rules; or

(b) Verify information submitted by an applicant to determine whether the applicant qualifies for licensure.

4906.5 Each nurse staffing agency must permit authorized officials of the Department, upon presentation of identification or upon presentation of an official letter of request, to have unimpeded access to all records relating to the District of Columbia operations of the agency, including client records, employee and staff records, policies and procedures, contracts, and any other information deemed necessary by the Department to determine compliance with the Act and these rules.

4906.6 Failure to permit entry and/or inspection as described in subsection 4906.4, or failure to permit access to records as described in subsection 4906.5, shall be cause for refusal to issue, refusal to renew, revocation, or suspension of the agency's license.

4906.7 Authorized officials of the Department, upon presentation of identification, shall have the right to enter and inspect all premises of an entity which the Department has reason to believe is operating as a nurse staffing agency without being licensed as required by the Act and these rules, provided that they obtain:

- (a) The permission of the owner or operator; or
- (b) An Order of the Superior Court of the District of Columbia.

4906.8 The Department may refer, for appropriate legal action, any case involving an unlicensed entity that the Department has reason to believe is operating as a nurse staffing agency in violation of the Act or of these rules.

4907 ENFORCEMENT

4907.1 The Department may refuse to issue, refuse to renew, revoke, or suspend a nurse staffing agency's license for any of the following reasons:

- (a) Willful submission or use of false or misleading information in connection with an application for or with the use of a license;
- (b) Violation of the Act, of these rules, or of any other federal or District of Columbia law or regulation applicable to nurse staffing agencies operating in the District of Columbia;
- (c) Failure to meet or maintain the standards required by the Act or by these rules;
- (d) Failure to allow inspection or access to records as provided by these rules;
- (e) Failure to comply with any lawful order of the Department pursuant to the Act or to these rules; or
- (f) Any act that constitutes a threat to the public's health or safety.

4907.2 Each nurse staffing agency licensee, and each nurse staffing agency applicant that has submitted a complete application, shall be afforded notice and an opportunity to be heard prior to the action of the Department, if the intent of the Department is to refuse to issue, refuse to renew, revoke, or suspend the agency's license, except that a license may be summarily suspended before a hearing in accordance with this Section as further described below.

- 4907.3 If the Department intends to refuse to issue, refuse to renew, revoke, or suspend an agency's license, it must provide the agency with a written notice, which must include:
- (a) The violation(s) and/or other unlawful or harmful act(s) that form the basis of the Department's proposed action, including a brief description of the facts of each violation or unlawful or harmful act; and
 - (b) A statement informing the agency that the proposed action will become final unless the agency submits, within fifteen (15) days, a written request to the Office of Adjudication and Hearings for a hearing on the proposed action.
- 4907.4 If the agency does not respond to the notice within the time and in the manner specified in the notice, the Department may, without a hearing, take the action contemplated in the notice, at which time it must notify the agency, in writing, of the action taken.
- 4907.5 The Department may summarily suspend a nurse staffing agency's license if the operation of the agency poses an imminent danger to the health, safety or welfare of the public.
- 4907.6 If the Department summarily suspends a nurse staffing agency's license, it must immediately provide the agency with written notice of the action, which must include:
- (a) A copy of the order of suspension;
 - (b) A statement of the violation(s) and/or other unlawful or harmful act(s) that form the basis of the suspension, including a brief description of the facts of each violation or unlawful or harmful act; and
 - (c) A statement informing the agency that it may, within seven (7) days of its receipt of the notice, appeal the suspension by submitting a written request to the Office of Adjudication and Hearings for an expedited hearing on the suspension.
- 4907.7 If a nurse staffing agency files a timely request for a hearing on the summary suspension of its license, as provided in subsection 4907.6, the Department, by and through the Office of Adjudication and Hearings, must convene the hearing within three (3) business days of its receipt of the agency's timely request.

4907.8 An agency's request for a hearing, as provided in subsections 4907.6 and 4907.7, shall not serve to stay the order suspending the agency's license.

4908 CIVIL PENALTIES

4908.1 Civil fines, penalties, and fees may be imposed as sanctions for any violation of the Act or of these rules, pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Official Code § 2-1801.01, *et seq.*) and to the regulations promulgated pursuant thereto.

4909 CONDUCT OF HEARINGS

4909.1 Hearings shall be conducted and appeals shall be heard in accordance with the rules governing the conduct of administrative hearings for health-care facilities, located at 22 DCMR 3110, 3111 and 3112.

4999 DEFINITIONS

For the purposes of these rules, the following terms shall be defined as follows:

Applicant - a person or entity that has timely filed an application for initial licensure or license renewal.

Board or Board of Nursing - the District of Columbia Board of Nursing.

Client - a health care facility or agency, or an individual, which enters into an agreement or a contract with a nurse staffing agency for the provision or referral of nursing personnel, Home Health Aides or Personal Care Aides.

Complaint – a report, by whatever means, made to a nurse staffing agency, that alleges a problem related to the operation of a nurse staffing agency or to the services provided by the agency's employees.

Department - the District of Columbia Department of Health.

District of Columbia operations headquarters – the nurse staffing agency's office from which the agency conducts its business for the provision of nursing services within the District of Columbia.

Health aide – a Home Health Aide or Personal Care Aide, qualified and authorized to perform home health aide services or personal care services in accordance with Title 29 of the District of Columbia Municipal Regulations, Chapters 50 and 51.

Health care facility or agency - any entity providing health care services that is defined or designated as a health care facility or agency pursuant to the Health-Care and

Community Residence Facility, Hospice and Home Care Licensure Act of 1983, D.C. Law 5-48, D.C. Official Code § 44-501 *et seq.* This includes, but is not limited to, hospitals, nursing homes, hospices, community residence facilities, maternity centers, ambulatory surgical facilities, renal dialysis facilities, and home care agencies.

Health Occupations Revision Act or HORA – the District of Columbia Health Occupations Revision Act, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

Incident – an occurrence related to the operation of a nurse staffing agency or to the services provided by the agency’s employees that results in injury, illness, harm, or the potential for significant harm to any patient or client receiving services from the agency. “Incident” includes, but may not be limited to: death; physical, sexual, or verbal abuse; mistreatment; exploitation; neglect; physical injury; improper use of restraints; medication error; illness resulting from mistreatment or neglect, whether intentional or unintentional; theft of a patient or client’s personal property or funds; and any other occurrence requiring the services of a law enforcement agency or of emergency personnel.

Licensee - a nurse staffing agency operating under the authority of a license that has not been denied, suspended or revoked.

Nurse Aide Abuse Registry – a listing of Certified Nurse Aides who have been found to have abused, neglected, or misappropriated funds of one or more patients, pursuant to Title 29 of the D.C. Municipal Regulations, Chapter 32.

Nurse staffing agency - any person, firm, corporation, partnership, or other business entity engaged in the business of providing or referring nursing personnel to a health care facility or agency, or to an individual, for the purpose of rendering temporary nursing services within the District of Columbia, and as further defined in the Nurse Staffing Agency Act of 2003, effective March 10, 2004, D.C. Law 15-74, D.C. Official Code § 44-1051.01 *et seq.*

Nursing personnel - any individual who is licensed by the District of Columbia Board of Nursing as a Licensed Practical Nurse or as a Registered Nurse, or any individual who is certified as a Certified Nurse Aide in accordance with Title 29 of the District of Columbia Municipal Regulations, Chapter 32.

Patient – any individual who receives nursing services from one or more staff members or employees of a nurse staffing agency.

Responsible party - the employee or other affiliate of a nurse staffing agency who directs the nurse staffing agency’s day-to-day nurse staffing operation.

Washington Metropolitan Statistical Area – an area composed of the District of Columbia and portions of the surrounding states, also known as the Washington DC-VA-MD-WV Metropolitan Statistical Area, and so designated by the Executive Office of the

President of the United States, Office of Management and Budget, as a core area containing a substantial population nucleus, together with adjacent communities having a high degree of social and economic integration with that core.