

CHARLIE CRIST
GOVERNOR



HOLLY BENSON
SECRETARY

July 1, 2009

Dear Nursing Home Administrator:

During the 2009 Florida Legislative session, new laws were enacted that affect nursing home providers in this State. The primary legislation affecting nursing homes is Senate Bill 1986 (SB 1986). Most provisions of SB 1986 are effective July 1, 2009.

This bill does the following:

Eliminates the requirement to obtain a State Certificate of Exemption and pay a fee for clinical laboratories that perform only waived tests. Nursing homes that perform waived tests will continue to be regulated by the federal CLIA program, which is administered by the Agency.

Adverse incidents reporting has changed as follows:

Abuse, neglect, and exploitation are no longer part of the definition of an adverse incident; however, they must still be reported to the Agency per federal reporting requirements and to the Department of Children and Families, as required by law.

Events reported to law enforcement for investigation are considered adverse incidents if they relate to an event over which facility personnel could exercise control and which is associated in whole or in part with the facility's intervention, rather than the condition for which such intervention occurred.

Elopement is considered an adverse incident if the elopement places the resident at risk of harm or injury.

Enrollment information for submitting adverse incident reports online is enclosed.

- The monthly report of bed vacancies is no longer required; however, providers will be required to enter this information into the Emergency Status System (ESS) upon request by the Agency.
- The nurse monitor program is eliminated, along with their quarterly visits to all nursing homes in Florida.
- Nursing homes are no longer required to post their policy on minimizing the risk of theft or loss of resident property in places accessible to residents. However, a copy



of the policy shall be provided to every employee and to each resident and the resident's representative, if appropriate, at admission and when revised.

Changes were made as follows under Chapter 408, Part II: Health Care Licensing for all provider types regulated by the Agency, with the following of specific interest for nursing homes:

- The definition of change of ownership is changed to: "An event in which the licensee sells or otherwise transfers its ownership to a different individual or legal entity as evidenced by a change in federal employer identification number; or an event in which 51% or more of the ownership, shares, membership, or controlling interest of a licensee is in any manner transferred or otherwise assigned." This does not apply to a licensee that is publicly traded on a recognized stock exchange. The requirement for all licensed providers to routinely submit affidavits of voluntary board members is eliminated, although the Agency may still require documentation be submitted, as needed.

Applications will be returned if submitted more than 120 days prior to expiration or the requested effective date.

Additional offenses have been added as disqualifying for persons who require background screening and apply to persons hired after October 1, 2009. A person who serves as a controlling interest or is an employee on September 30, 2009 will not have to be rescreened if they have previously met the background screening requirements. However, if they have one of the new disqualifying offenses on their record, they may apply for an exemption from the Agency or the appropriate board prior to September 30, 2009. A listing of these additional disqualifying offenses can be found in the bill.

- Any information required to be reported to the Agency must be submitted within 21 calendar days after the report period or effective date of the information, whichever is earlier. This includes, but is not limited to, any change of information contained in the most recent application for licensure and required insurance or bonds.

Providers must notify the resident and their representatives, if any, where to report Medicaid fraud prior to any services being rendered. This information will also be added to the poster nursing homes are required to display, pursuant to 400.141 (13), Florida Statutes. The Agency shall provide a written description of Medicaid fraud and the toll-free number to call as follows:

Medicaid Fraud means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law as it relates to Medicaid. The office of the Inspector General at the Agency for Health Care Administration accepts complaints regarding suspected fraud and abuse in the Florida Medicaid system by phone at 1-888-419-3456 or on the Agency web site at http://ahca.myflorida.com/Executive/Inspector_General/medicaid.shtml.

- Additional grounds are authorized for denial of applications if the applicant or a controlling interest has been convicted, plead guilty or no contest for a felony under chapter 409, chapter 817, chapter 893, 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, or has been terminated for cause from the Federal Medicare or Medicaid programs. Certain timeframes apply.
- A safety liaison must be designated as the primary contact for emergency operations, and licensees providing residential or inpatient services must utilize an online database approved by the Agency to report information to the Agency regarding the provider's emergency status, planning, or operations. This system is the Emergency Status System, available at <http://ess.myflorida.com>.
- Provides that a certificate of need (CON) issued to an entity on or before April 1, 2009 will terminate 36 months after the date of issuance (instead of 18), unless the applicant has commenced construction, or the applicant has incurred an enforceable capital expenditure commitment for a project, if the project does not provide for construction.

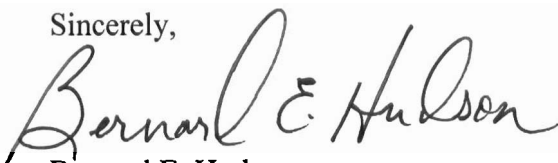
During last year's 2008 session, Florida House Bill 5003 suspended penalties for failure to meet certain staffing ratios. However, this suspension expires July 1, 2009. Therefore all nursing homes are reminded they must be in compliance with s. 400.23(3)(a)1.a., F.S., and have, as a minimum, no fewer than 2.7 hours of direct care per resident, per day. The minimum weekly average certified nursing assistant staffing is 2.9 hours of direct care per resident, per day.

In addition, Senate Bill 2602, effective July 1, 2009 and continuing for one year through June 30, 2010, all nursing facilities licensees operating the facility as a leasehold shall not be required to submit the nonrefundable 1% lease bond fee or be required to provide proof of lease bond.

To access the full text of these new laws, please visit: <http://laws.flrules.org/2009>.

If you have any questions regarding adverse incidents please contact the Risk Management & Patient Safety Program at (850) 414-8075. For questions regarding licensing changes, please contact the Long Term Care Unit at (850) 488-5861.

Sincerely,



Bernard E. Hudson
Unit Manager
Long Term Care