

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 157.000: THE REGISTRATION AND OPERATION OF TEMPORARY NURSING SERVICE AGENCIES

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157.010: Scope and Applicability

105 CMR 157.000 applies to all temporary nursing service agencies required to be registered pursuant to M.G.L. c. 111, § 72Y.

157.020: Definitions

The following terms as used in 105 CMR 157.000 shall be interpreted as follows unless the context or subject matter clearly requires a different interpretation:

Administrator. A person qualified by training, education or experience to operate a temporary nursing service agency.

Commissioner. The Commissioner of Public Health or his or her designee.

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Department. The Department of Public Health.

Health Care Facility. A hospital or clinic, as defined in M.G.L. c. 111, § 52; a long-term facility which is an infirmary maintained in a town; a convalescent or nursing home, a rest home or a charitable home for the aged, as defined in M.G.L. c. 111D, § 71; a clinical laboratory subject to licensing under M.G.L. c. 111D; a public medical institution, which is any medical institution, and any institution, for the mentally ill or persons with developmental disabilities, supported in

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whole or in part by public funds, staffed by professional, medical and nursing personnel and providing medical care, in accordance with standards established through licensing, approval or certification for participation in programs administered under Titles XVIII and XIX of the Federal Social Security Act, by the Department of Public Health; and any part of such facilities; provided, however, that Health Care Facility shall not include a facility operated by a religious group relying solely on spiritual means through prayer and healing and in which health care by or under the supervision of doctors of medicine, osteopathy, or dentistry is not provided.

Medical Personnel. Nurses, nursing assistants, nurse aides, and orderlies.

Nurse. A licensed practical nurse or a registered nurse as defined by the Board of Registration in Nursing (M.G.L. c. 112, §§ 74 through 81C).

Nursing Assistant, Nurse Aide, and Orderly. Any individual who provides nursing care under the supervision of a nurse.

Temporary Nursing Agency (Agency) (also referred to as Nursing Pool in M.G.L. c. 111, § 72Y). Any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for medical personnel. Temporary Nursing Service Agency shall not include a medical personnel staff arrangement set up by a health care facility solely for its own use where the only costs are the salaries paid to such medical personnel; or an individual who only engages in providing his or her own services on a temporary basis to health care facilities.

Transfer of Ownership. A transfer of a majority interest in the ownership of a temporary nursing service agency.

157.100: Registration Required

Any person who operates a temporary nursing service agency shall register the agency with the Commissioner. Each separate location of the business of a temporary nursing service agency shall have a separate registration.

157.110: Application for Initial Registration

Any person initiating operation of a temporary nursing service agency or separate location thereof shall submit an application at least 30 days prior to the commencement of operations. Every application shall be signed by the applicant or applicants and shall include any information required by the Commissioner as part of the application package.

157.120: Application for Renewal Registration

Application for renewal registration shall be filed at least 30 days before the expiration of the previous registration.

157.125: Change of Location

An application for a change of existing location shall be filed at least 30 days prior to the change and shall be treated as a renewal application.

157.130: Transfer of Ownership

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In the case of a transfer of ownership, the new owner shall file an application for initial registration at least 30 days prior to the transfer.

157.140: Registration Fee

(A) A registration fee shall accompany each application for initial or renewal registration. The fee shall be \$750.00 for a single location, plus \$300.00 for each additional separate location operated by the temporary nursing service agency.

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(B) The fee for a transfer of ownership shall be \$250.00 for a single location plus \$100.00 for each additional separate location.

(C) The fee for a change of location shall be \$100.00 for each location.

157.150: Evaluation of Application

The Commissioner shall not approve an application for initial or renewal registration unless the application is substantially complete and indicates compliance with 105 CMR 157.000.

157.160: Registration

Upon approval of an application, the Commissioner shall register the temporary nursing service agency at each location approved for a period of two years subject to renewal. The registration shall not be transferable. The registrant shall comply with 105 CMR 157.000. A renewal application filed in accordance with the provisions of 105 CMR 157.120 and 157.140 shall have the effect of a registration until the application is acted upon by the Commissioner.

157.170: Denial, Revocation and Refusal to Renew Registration

(A) A registration may be denied, revoked or refused renewal for cause which includes, but need not be limited to, any of the following:

- (1) Failure to submit the required fees.
- (2) Violation of any state statute pertaining to regulation of temporary nursing service agencies.
- (3) Failure to comply with reporting requirements as may be established under 101 CMR 345.000: *Temporary Nursing Services*.
- (4) Having outstanding fines, or otherwise violating 101 CMR 345.000: *Temporary Nursing Services*.
- (5) Violation of any applicable provision of 105 CMR 157.000.

(B) Whenever the Commissioner denies an application for initial registration or determines that a registration should be revoked or refused renewal, the Commissioner shall provide written notice thereof to the applicant or registrant.

(C) Within 21 days after receipt of notice that an application for initial registration has been denied or a determination that a registration should be revoked or refused renewal, the applicant or registrant may appeal such action by filing a Notice of Claim for an Adjudicatory Proceeding pursuant to 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*.

(D) The decision of a hearing officer in any adjudicatory proceeding conducted under 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure* shall be reviewed by the Commissioner and his or her decision upon this review shall constitute final agency action.

(E) Notwithstanding anything in 105 CMR 157.000 to the contrary, no registration may be revoked or refused renewal until there has been final agency action pursuant to 105 CMR 157.170(D), except where the Commissioner makes an initial determination requiring immediate agency action during any pending appeal and has so notified the registrant in writing pursuant to 105 CMR 157.170(B).

157.200: Administrator

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(A) The temporary nursing service agency, at each separate location thereof, shall have an administrator qualified by training, experience or education to operate the temporary nursing service agency.

(B) The administrator shall have the following responsibilities:

(1) contracting the services of the temporary nursing service agency to health care facilities;

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- (2) verifying that medical personnel assigned meet the requirements of 105 CMR 157.300;
- (3) assigning medical personnel in conformance with 105 CMR 157.400;
- (4) evaluating the performance of medical personnel in conformance with 105 CMR 157.500; and
- (5) reporting as required under 105 CMR 157.600.

157.210: Hours of Operation

The temporary nursing service agency shall maintain hours of operation at each of its locations sufficient to meet the obligations under its written agreements with health care facilities.

157.220: Written Agreements

(A) Temporary nursing service agencies shall provide the services of medical personnel to health care facilities only under the terms of a written agreement with the facility.

(B) Written agreements shall include the following at a minimum:

- (1) types and qualifications of medical personnel available for assignment through the temporary nursing service agency;
- (2) any requirement for minimum advance notice in order to assure prompt arrival of assigned medical personnel;
- (3) fees established under 101 CMR 345.000: *Temporary Nursing Services*;
- (4) procedures for investigation and resolution of complaints about the performance of medical personnel assigned including interviews with the medical personnel who may be the subject of the complaint, and other relevant witnesses;
- (5) procedures for notice from health care facilities of failure of medical personnel to report to assignments and for back-up staff in such instances; and
- (6) procedures for notice of actual or suspected abuse, theft, tampering or other diversion of controlled substances by medical personnel. Such procedures shall include:
at a minimum that the administrator or his or her designee of the health care facility shall immediately notify the Department's Drug Control Program and file a report" in accordance with the guidelines of the Department. Whenever a Agency employee is suspected of abuse, theft, tampering or other diversion of controlled substances, the administrator of the health care facility shall also send a copy of the report to the Agency for filing in the personnel record of the Agency employee.
- (7) a program for monitoring the quality of the temporary nursing service agency's performance which may include questionnaires or other survey of health care facilities with which the temporary nursing service agency has written agreements;
- (8) the requirements of written agreements as stated in 101 CMR 345.000: *Temporary Nursing Services*.

157.300: Current Registration, License or Certification

The temporary nursing service agency shall establish policies and procedures to verify that all medical personnel maintain current licenses, registrations or certifications as applicable.

157.310: Pre-employment Physical and Testing for Communicable Disease

The temporary nursing service agency shall establish policies and procedures to verify that all medical personnel have undergone pre-employment physicals and testing for communicable

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diseases as required by the Department, based upon and prior to assignment.

157.320: Personnel Records

The temporary nursing service agency shall maintain a record for each of the medical personnel it assigns to health care facilities. Such record shall include:

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- (A) evidence of current registrations, professional licensure or certification as applicable;
- (B) evidence that the individual has completed pre-employment physical and testing for communicable disease as applicable;
- (C) evidence of a background or reference check;
- (D) copies of reports required under 105 CMR 157.220(B)(6)(b) and 157.600; and
- (E) copies of annual performance reviews required under 105 CMR 157.500.

157.400: Assignment Procedures

The temporary nursing service agency shall maintain written procedures for meeting health care facility requests for medical personnel, including usual minimum notice time before medical personnel can be assigned and procedures for back-up if an assignment is not fulfilled.

157.500: Personnel Performance Review

The temporary nursing service agency shall establish a procedure for annually assessing its performance of medical personnel it assigns to a health care facility, including at a minimum:

- (A) review and response to any facility complaints about agency staff medical personnel;
- (B) a record of agency staff the reliability medical personnel in fulfilling assignments; and
- (C) on-site assessments of medical personnel placed in health care facilities on each shift for which medical personnel are assigned.

157.510: Agency Performance Review

The temporary nursing service agency shall establish a procedure for annually assessing its performance under the terms of written agreements developed with health care facilities to which the agency assigns medical personnel. This review shall include at a minimum:

- (1) reports on complaints from contracting health care facilities and their resolution; and
- (2) record of response to requests for assignment of medical personnel to health care facilities.

157.600: Reporting Requirements

(A) Suspected Abuse, Theft, Tampering or Other Diversion of Controlled Substances. Whenever the Agency administrator has knowledge of an incident of suspected abuse, theft, tampering or other diversion of controlled substances and has reason to believe that no written report has been filed with the Department, he or she shall immediately notify the Department's Drug Control Program and file a report in accordance with the guidelines of the Department in writing within seven days.

(B) Poor Nursing Practice. The temporary nursing service agency shall notify the Board of Registration in Nursing in writing of the name, license number, and circumstances, including the date or dates of the occurrence and the names of relevant witnesses and patients; and shall provide such other information and documentation, including but not limited to patient medical

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records, as the Board may require, within seven days of having knowledge of or a reasonable basis to suspect a nurse of poor nursing practice. Poor nursing practice shall include failure to adhere to standards of conduct for nurses set forth at 244 CMR 9.03: *Standards of Conduct for Nurses* and conduct that constitutes grounds for discipline set forth in 244 CMR 7.00: *Action on Complaints*.

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(C) Alleged Violations of the Patient Abuse Law. A temporary nursing service agency that receives a report of suspected abuse, neglect, mistreatment or misappropriation as defined by M.G.L. c. 111, § 72F from a health care facility with which it has or had a contract regarding any of the temporary nursing service agency's employees or former employees shall ensure that the health care facility has made a report to the Department as required. If the temporary nursing agency is not able to determine that a report has been made, or the temporary nursing service agency receives such a report from one of its medical personnel or a source other than a health care facility to which it has assigned medical personnel, the temporary nursing service agency shall make a report directly to the Department in accordance with the requirements of M.G.L. c. 111, § 72G.

157.700: Department Review and Investigation

(A) All records shall be complete, accurate, current, and available on the premises of the temporary nursing service agency for inspection and maintained in a form and manner approved by the Commissioner.

(B) The Commissioner may visit the temporary nursing service agency to inspect the agency's records during the course of normal business hours.

(C) Records of the temporary nursing service agency are to be made available upon request by the Commissioner.

157.800: Severability

The provisions of 105 CMR 157.000 are severable. If any provision in 105 CMR 157.000 is declared unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining portions shall not be so affected.

REGULATORY AUTHORITY

105 CMR 157.000: M.G.L. c. 111, § 72Y.