ALABAMA STATE COMMITTEE OF PUBLIC HEALTH
ALABAMA DEPARTMENT OF PUBLIC HEALTH
DIVISION OF LICENSURE AND CERTIFICATION
ADMINISTRATIVE CODE

CHAPTER 420-5-4
ASSISTED LIVING FACILITIES

420-5-4-.02 The License.

(1) **Classifications of Licenses.** All licenses are granted for the calendar year and shall expire on December 31 unless renewed by the owner for the succeeding year.

(a) Regular License. A regular license shall be granted by the State Board of Health upon a determination by the Board or its authorized agents that the operator or operators of the assisted living facility are willing and capable of achieving and maintaining substantial compliance with the rules herein adopted.

(b) Probational License. At its discretion, the Board may grant a probational license when it determines that the following conditions exist:

1. The facility has engaged in one or more deficient practices which are serious in nature, chronic in nature, or which the facility has failed to correct.

2. The facility's current governing authority has demonstrated the capability and willingness to correct cited problems and to maintain compliance.

3. This license shall be granted when the Board is satisfied that the health and safety of residents will not be endangered during this period. Maximum length of time for probationary status is one year.

(c) A facility on probation may not add additional beds during the probational period.

(2) **Application.**

(a) An applicant for initial licensure shall provide all information on the application form prescribed by the Department, including all information required by law, these rules, and the policies and procedures of the Department, and shall submit such additional information as shall be required by the Department in its discretion to demonstrate that the applicant has the ability and the willingness to comply with these rules. Each application shall be signed by the

applicant, if the applicant is a natural person, or if the applicant is not a natural person, shall be signed by a natural person who is authorized to bind the applicant to the representations in the application and any supporting documentation.

(b) Fee. An initial license application, an application for license renewal, an application for an increase in the number of licensed beds, or an application for a change in ownership, shall be accompanied by the application fee as specified in §22-21-24, *Code of Ala. 1975*. Fees shall be paid by cash, check, or money order made payable to the Alabama Department of Public Health. An application for a name change, an application for a decrease in licensed bed capacity, or an application for a relocation is not subject to a license application fee. An application fee is non-refundable. Any application fee submitted in the incorrect amount shall nevertheless be deposited. If the fee submitted is too large, a refund for the difference shall be processed using the Department's usual procedures. If the fee submitted is too small, the applicant shall be notified and the application shall not be considered until the difference is received. Any application submitted without any fee shall be returned to the applicant. If an incomplete application is submitted, the application fee shall be deposited, and the applicant shall be notified in writing of the defects in the application. If the applicant fails to submit all required additional information within 10 working days of the date of the notice, the application shall be denied. The Department may in its discretion extend the deadline for submitting additional information. Denial of an application as incomplete shall not prejudice the applicant from submitting a new application, accompanied by the requisite fee, at a future date.

(c) Name of Assisted Living Facility. Each assisted living facility shall be designated by a permanent, distinctive, and unique name which shall be used in applying for a license and which shall not be changed without first notifying the Board in writing. A notice of name change shall specify the name to be discontinued as well as the new name. The words "hospital," "nursing home," "clinic," "sanatorium," "specialty care facility," "dementia care facility," "impaired memory unit," "Alzheimer's care facility," or any other term which would indicate that the facility is a different type of facility shall not be used as the name of an assisted living facility. An assisted living facility shall use its licensed name on all stationary, all signage, and on all other material that may be visible to the public, to residents of the facility, or to families of residents. An assisted living facility shall not hold itself out to the public as having a name other than its licensed name. No facility shall hold itself out to the public as an assisted living facility unless the facility has a current, valid license as an assisted living facility.

(d) Number of Beds. Each application for license and license renewal shall specify the bed capacity of the assisted living facility. In the event of a natural disaster or other catastrophic emergency, the Department may grant a temporary bed increase to any facility for reasons of public health or public safety. A temporary bed increase may be granted only for a specified number and shall expire by its terms after a specific, finite period of time.

(3) **License.** If an applicant submits a timely and complete application accompanied by the appropriate license fee and any supporting documentation that may be required by the Department, and if the Department is satisfied that the applicant is likely willing and capable of compliance with these rules, and if granting such a license would not violate any other state or federal law or regulation, then the Department, as agent for the Board, may grant a license to the applicant. All licenses granted shall expire at midnight on December 31 of the year in which the license is granted. The Department, as agent for the Board, may deny a license. A license shall only be valid at the licensed premises and for the individual or business entity licensed. It is a condition of licensure that the licensee must continuously occupy the licensed premises and remain open as an assisted living facility, fully staffed and otherwise capable of admitting and providing assisted living services. If a facility fails to remain open and staffed as required for a period of 30 days, its license shall become void unless the Department has been notified that services are temporarily suspended for remodeling or minor alterations. If a licensee abandons the licensed premises, the license shall immediately become void.

(a) Issuance of License Certificate. The license certificate issued by the State Board of Health shall set forth the name and location of the assisted living facility, the classification of the assisted living facility, and the facility's bed capacity.

(b) Separate Licenses. Each assisted living facility shall be separately licensed, regardless of whether it is owned or managed by the same entity as another assisted living facility.

(c) Posting of License Certificate. The license certificate shall be posted in a conspicuous place on the licensed premises.

(d) License Renewal. Licenses may be renewed by the applicant as a matter of course upon submission of a completed renewal application and payment of the required fee. When the Department has served written notice on the facility of its intent to revoke or downgrade the license, a renewal application shall be filed but does not affect the proposed adverse licensure action.

(e) Failure to Renew a License. Any licensee who fails to renew a license on or before the close of business on the last business day in December shall be assessed a late fee equal to the amount of the original license fee. A license may only be renewed with the payment of a late fee before the close of business on the last business day in January of the succeeding calendar year. A license which has not been renewed by the end of January has expired and shall be void.

(f) Change of Ownership. An assisted living facility license is not transferrable. In the event that the legal ownership of the right to occupy a facility's premises is withdrawn or transferred to an individual or entity other than the licensee, the facility license shall become void and continued operation of the facility shall be unlawful pursuant to §22-21-22, *Code of Ala. 1975*, and subject to penalties as provided in §22-21-33, *Code of Ala. 1975*, unless an application for a change of ownership has been submitted to and approved by the Department prior to the transfer of legal ownership. At least 30 days prior to any proposed change in ownership, the new prospective licensee of an assisted living facility shall file a change of ownership application with the State Board of Health. An application for change of ownership shall be submitted on the form prescribed by the Department, shall be accompanied by the requisite application fee set forth in §22-21-24, *Code of Ala. 1975*, and shall be subject to the same requirements and considerations as are set forth above for initial license applications. An application for a change of ownership shall be submitted and signed by the prospective new licensee, or its agent, and also either signed by the current licensee or its agent, or accompanied by a court order demonstrating that the current licensee has been dispossessed of the legal right to occupy the premises and that the prospective new licensee has been awarded the legal right to occupy the premises. Upon approval of a change of ownership, the Department shall notify the current licensee and the new license applicant, and shall issue a license certificate to the new licensee.

Indicia of ownership of a facility include the right to hire, terminate, and to determine the compensation and benefits paid to the facility's administrator and other staff; the right to receive payment from residents and third parties for services provided by the facility; the right to establish and to change the policies, procedures, and protocols under which the facility operates; and the right to overrule operational decisions made by the facility administrator and other staff.

(g) Change in Bed Capacity. A facility may apply for a change in licensed bed capacity by submitting a completed application on a form prescribed by the Department and accompanied by the fee prescribed in §22-21-24, *Code of Ala. 1975*, together with such other documentation as the Department may require. Upon

approval of a change of bed capacity, the Department shall notify the licensee and shall issue a revised license certificate to the licensee, which may be predicated on the return of the old license certificate.

(h) Change of Name. A facility may apply for a change of name by submitting a completed application on a form prescribed by the Department. There is no application fee for a change of name application. The Department may in its discretion deny an application for a change of name if the Department determines that the proposed name is misleading to the public or that the name is overly similar to the name of an already licensed facility. Separately licensed facilities owned by the same governing authority may have names that are similar to one another and distinguished from one another in some other manner, such as a geographic description. Upon approval of a change of name, the Department shall notify the licensee and shall issue a revised license certificate to the licensee, which may be predicated on the return of the old license certificate.

(i) Denial of a License. The Board may deny a license to any applicant on grounds of insufficient evidence of the willingness or ability to comply with §§22-21-20 through 22-21-34, *Code of Ala. 1975*, or these rules, including the following reasons:

1. The applicant or any principal associated with the applicant has violated any provision of §§22-21-20 through 22-21-34, *Code of Ala. 1975*.

2. The applicant or any principal associated with the applicant has been convicted of engaging in, permitting, aiding, or abetting the commission of an illegal act in any licensed health care facility.

3. The applicant or any principal associated with the applicant has engaged in conduct or practices deemed by the Board to be detrimental to the welfare of the residents of the health care facility.

4. Conduct and practices deemed detrimental to the welfare of residents of a facility or provide grounds pursuant to this subsection for denial of a license include:

(i) The applicant or an agent authorized by the applicant has deliberately falsified any material information or record submitted as part of the application for licensure.

(ii) The applicant has changed its corporate name, charter, entity, or its partnership name or

composition to avoid the imposition of liens or court action.

(iii) The applicant or any principal associated with the applicant has been convicted of engaging in the physical, mental, or sexual abuse or in the financial exploitation of a patient or patients.

(iv) The applicant or any principal associated with the applicant has operated a health care facility in Alabama or in any other jurisdiction in a manner that resulted in one or more violations of applicable laws or other requirements and as a result caused death, injury, disability, or serious risk of death, injury, or disability to any resident or patient of the facility and such past conduct causes the Department to reasonably believe that granting a license to the applicant would likely be detrimental to the life, health, or safety of prospective residents of the facility for which licensure is sought.

(v) The applicant or any principal associated with the applicant has been convicted of fraud in this or any other jurisdiction.

(vi) The applicant or any principal associated with the applicant has in the past deliberately falsified records or has otherwise made a deliberate and material misrepresentation of facts to an employee of the Department in an attempt to influence the outcome of a survey or some other regulatory compliance determination by the Department.

(vii) The applicant or any principal associated with the applicant has in the past induced or attempted to induce a subordinate employee to falsify records or to otherwise make a deliberate and material misrepresentation of facts to an employee of the Department in an attempt to influence the outcome of a survey or some other regulatory compliance determination by the Department.

(viii) The applicant or any principal associated with the applicant is operating, or has in the past operated, an unlicensed health care facility.

(ix) The applicant or any principal associated with the applicant has at any time been debarred from participation in the Medicare or Medicaid programs.

(x) Other serious misconduct which, in the judgment of the Board, poses a serious risk to patient health or safety.

5. An applicant may appeal the denial of a license pursuant to the provisions of the Alabama Administrative Procedure Act, §41-22-1, et seq., *Code of Ala. 1975*, and the Board's Rules *for Hearing of Contested Cases, Chapter 420-1-3, Ala. Admin. Code*.

(4) **Revocation of License.**

(a) The State Board of Health may revoke or downgrade the license of an assisted living facility for any of the following reasons:

1. Violation of any of the provisions of these rules.

2. Permitting, aiding, or abetting the commission of any unlawful act in the assisted living facility.

3. Conduct or practices deemed by the State Board of Health to be detrimental to the lives, health, safety, or welfare of the residents of the assisted living facility. Conduct and practices deemed detrimental to the welfare of residents of a facility include:

(i) The administrator of the facility, the governing authority of a facility, or an agent authorized by the governing authority of the facility has deliberately falsified any material information or record submitted as part of the application for licensure or on a Department survey.

(ii) The facility or its governing authority has changed its corporate name, charter, entity, or its partnership name or composition to avoid the imposition of liens or court action.

(iii) The governing authority, any principal associated with the governing authority, or the administrator has been found to have engaged in the physical, mental, sexual, or verbal abuse or in the financial exploitation of a resident or residents of this facility or any other licensed health care facility.

(iv) The facility has been operated in a manner that resulted in one or more violations of applicable laws or other requirements and as a result caused death, injury, disability, or serious risk of death, injury, or disability to any resident or residents of the facility and such conduct causes the Department to reasonably believe that continued licensure of the facility to its current governing authority would likely be detrimental to the life, health, or safety of residents of the facility.

(v) The facility is unable to meet its financial obligations and, as a result, its residents are at risk, as evidenced by more than one utility cut-off notice for non-payment, inadequate amounts food or supplies, vendors placing the facility on cash on delivery only status due to non-payment of prior invoices, or the failure of banks to honor employee payroll checks due to insufficient funds on deposit.

(vi) The governing authority or any principal associated with the governing authority has been found to have committed fraud in this or any other jurisdiction.

(vii) The governing authority or any principal associated with the governing authority has falsified records or otherwise made a deliberate and material misrepresentation of facts to an employee of the Department in an attempt to influence the outcome of a survey or some other regulatory compliance determination by the Department.

(viii) The governing authority or any principal associated with the governing authority has induced or attempted to induce a subordinate employee to falsify records or to otherwise make a deliberate and material misrepresentation of facts to an employee of the Department in an attempt to influence the outcome of a survey or some other regulatory compliance determination by the Department.

(ix) The governing authority or any principal associated with the governing authority is operating, or has in the past operated, an unlicensed health care facility.

(x) Other serious misconduct or failure which, in the judgment of the Board, poses a serious risk to patient health or safety.

4. Refusal by the owner or administrator to permit full inspection or survey of the facility, to permit any resident assessment or interview, or to permit a review of any records deemed necessary by the Department to fulfill a survey.

5. Failure by the facility to submit an acceptable plan of correction for deficiencies cited by the Department.

(b) The proposed revocation of a license and downgrade of license shall be governed by the provisions of the Alabama Administrative Procedure Act, §41-22-1, et seq., *Code of Ala.*

1975, and the Board's Rules for Hearing of Contested Cases, Chapter 420-1-3, Ala. Admin. Code.

(i) Before any license to operate an assisted living facility is revoked or downgraded to probational status, written notice shall be given to the administrator of the assisted living facility, and may also be given to the governing authority, giving a brief explanation of the reason or reasons that the Board proposes to revoke or downgrade the license. The written notice shall also state a time and place at which a hearing or other lawful administrative proceeding shall occur to determine whether the license will be revoked or downgraded. The date of the hearing shall be not less than 30 days from the date of the notice. The notice shall be sent by registered or certified mail to the administrator of the facility as shown on the records of the Department, and shall be mailed to the address of the assisted living facility. The hearing or other administrative proceeding shall comply in all respects with the Alabama Administrative Procedure Act and the State Board of Health rules for contested case proceedings. The licensee may be represented by legal counsel at the hearing at their own expense.

(ii) If a license is revoked, a new license may be considered by the State Board of Health only after the conditions which resulted in the revocation have been corrected to the satisfaction of the Board.

(iii) Violations of these rules may result in a penalty under *Code of Ala. 1975*, Section 22-21-33.

(iv) Return of License Certificate. Each license certificate shall be returned to the Board immediately upon its revocation or after the facility voluntarily ceases operation.

(5) **Right of Appeal.** Any licensee dissatisfied with administrative decisions made in the application of these rules may appeal under the procedures of the Alabama Administrative Procedures Act, Code of Ala. 1975, Section 41-22-1 et seq.

(6) **Dispensations for Research.** Any licensee who is, or contemplates being, engaged in a bona fide scientific research program which may be in conflict with one or more specific provisions of these rules may make application for dispensation of the specific provisions in conflict. Application for dispensation shall be made in writing to the Licensure Advisory Board which shall, upon completion of its investigation, send its findings, conclusions, and recommendations to the State Board of Health for final action.

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