DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

BUREAU OF COMMUNITY AND HEALTH SYSTEMS

NURSE AIDE, NURSE AIDE TRAINER, AND NURSE AIDE TRAINING PROGRAM, CERTIFICATE OF REGISTRATION AND PERMIT PROGRAM

(By authority conferred on the department of licensing and regulatory affairs by section 21923 of the public health code, 1978 PA 368, MCL 333.21923)

PART 1: GENERAL PROVISIONS

R 400.301 Definitions

Rule 301. (1) As used in these rules:

(a) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Abuse includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychological well-being. Instances of abuse of all patients, irrespective of any mental or physical condition, cause physical harm, pain, or mental anguish. Abuse includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. Verbal abuse occurs when an individual purposely uses negative or demeaning words directed at a resident. Willful means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

(b) "Act" means the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(c) "Applicant" means a person applying to the department for a certificate or permit as provided in the act or these rules.

(d) "Article 15" means article 15 of the act, MCL 333.16101 to 333.18838.

(e) "Article 17" means article 17 of the act, MCL 333.20101 to 333.22260.

(f) "Business day" means a day other than a Saturday, Sunday, or any legal holiday.

(g) "Complaint" means an allegation that a person or program has violated the act or administrative rules promulgated under the act.

(h) "Department" means the department of licensing and regulatory affairs.

(i) "Health facility or agency" means that term as defined in section 20106 of the act, MCL 333.20106, except for an ambulance operation, aircraft transport operation, non-transport prehospital life support operation, medical first response service, or health maintenance organization.

(j) "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a patient's belongings or money without the resident's consent.

(k) "Neglect" means the failure of the nurse aide to provide goods and services to a patient that are necessary to avoid physical harm, pain, mental anguish, or emotional distress. Failure as used in the definition of neglect means the omission of required goods and

services or the failure to provide the goods and services as required in a patient's care documents.

(l) "Physician" means an individual licensed to engage in the practice of medicine or the practice of osteopathic medicine and surgery under part 170 or 175 of the act, MCL 333.17001 to 333.17097 and MCL 333.17501 to 333.17556.

(m) "Proprietary school" means a school that provides training in a specific trade, occupation, or vocation and is required to be licensed by this state pursuant to the proprietary schools act, 1943 PA 148, MCL 395.101 to 395.103.

(n) "Registered professional nurse" means an individual who is licensed to practice nursing pursuant to part 172 of the act, MCL 333.17201 to 333.17242.

(o) "State approved testing program" means a competency evaluation as required by 42 CFR 483.154.

(p) "State permitted training program" means a nurse aide training and competency evaluation program as required by 42 CFR 483.151 and 483.152.

(2) Unless otherwise specified, a term defined in the act has the same meaning when used in these rules.

History: 2023 AACS.

R 400.303 Compliance; local; state; federal; law; rule; regulation; standard.

Rule 303. (1) An applicant or a certified nurse aide, permitted nurse aide trainer, and permitted nurse aide training program shall comply with applicable local, state, and federal laws, rules, regulations, and standards.

(2) During review of an application or when conducting an inspection or complaint investigation, the department may use or request information or documentation of noncompliance from local, state, or federal authorities.

(3) The department may only cite this rule if the local, state, or federal authority that has jurisdiction regarding the specific law, rule, regulation, or standard has found an applicant, a certified nurse aide, permitted nurse aide trainer, or permitted nurse aide training program to be non-compliant, in writing, and there is a need to protect the health, safety, and welfare of individuals receiving care or services in or from a certified nurse aide, permitted nurse aide trainer, or permitted nurse aide training program.

History: 2023 AACS.

PART 2: CERTIFICATION OF NURSE AIDES

SUBPART A: INITIAL APPLICATION REQUIREMENTS

R 400.311 Application; nurse aide certification; requirements.

Rule 311. (1) Before submitting an initial application to the department, an applicant for nurse aide certification shall successfully complete both of the following:

(a) A state-approved training program.

(b) A state-approved testing program.

(2) The maximum number of state-approved testing attempts is 3. After 3 failed attempts an applicant shall successfully complete another nurse aide training program before re-testing.

(3) An applicant shall successfully complete a state-approved testing program within 24 months after completing the nurse aide training program.

(4) Subrule (1) of this rule does not apply if an applicant meets either of the following:

(a) Has an active nurse aide certificate issued by another state, is in good standing in that state, and that state's training program is recognized by the department.

(b) Has successfully completed a nurse aide training program in another state that is recognized by the department and the applicant has successfully completed this state's approved testing program.

(5) An applicant shall complete and submit the department-approved application form and pay the corresponding fee.

History: 2023 AACS.

SUBPART B: INITIAL APPLICATION REVIEW AND PROCESSING

R 400.313 Application for nurse aide certification; processing; registry.

Rule 313. (1) As authorized in article 17, an application for initial certification must be made on the most recent applicable form authorized and provided by the department. The department shall process a completed application within 30 calendar days.

(2) An application is not considered complete by the department until both of the following are received:

(a) Completed application form and required documents as identified in R 400.311.

(b) Application fee.

(3) If an application is not complete, the department shall notify the applicant of the deficiencies in the application within 30 days after receipt. The applicant has 30 days from the date of the notice by the department to submit the requested information. Failure to submit requested information will result in closure of the application.

(4) In order to be certified, an applicant shall successfully complete a state-permitted training program and a state approved testing program within the previous 24 months.

(5) Upon determination of compliance, the department shall issue a certificate that identifies all the following:

(a) Name of the person.

(b) Certificate number.

(c) Expiration date.

(6) If a certificate is not issued, the department shall notify the applicant of the basis for not issuing a certificate. This action is not subject to an administrative appeal hearing. The applicant may resubmit an application correcting those items that resulted in the certificate not being issued.

History: 2023 AACS.

SUBPART C: CERTIFICATE DURATION AND RENEWAL

R 400.315 Certificate duration; renewal process.

Rule 315. (1) A certificate issued before the effective date of these rules will be renewed by the department to an effective date established by the department that will not exceed a 2-year period.

(2) An initial or renewal certificate issued after the effective date of these rules is valid for 2 years unless otherwise specified on the certificate.

(3) An application for an initial or renewal of a certificate must be completed on the most recent applicable form or through an electronic web-based system authorized and provided by the department.

(4) The department shall renew a certificate when the individual submits all of the following:

(a) Electronic payment of the fee.

(b) An attestation that within the last 24-consecutive-month renewal period the individual worked a minimum of 40 hours as a certified nurse aide providing nursing or nursing-related services for monetary compensation.

(c) Beginning not less than 12 months after the effective date of these rules, an attestation that the individual has completed at least 12 hours annually of continuing education within the renewal period.

(5) Continuing education must ensure the continuing competence of the nurse aide and must include abuse, neglect, and care plan training.

(6) The department has the authority to require additional information and documentation to verify information within this rule including, but not limited to, proof of employment and continuing education.

History: 2023 AACS.

SUBPART D: CERTIFIED NURSE AIDE REGISTRY

R 400.317 Certified nurse aide registry.

Rule 317. (1) The department shall maintain a registry system that includes all the following on any individual to whom a nurse aide certificate has been issued:

(a) Name of the nurse aide.

(b) Address of the nurse aide.

(c) Date of birth of the nurse aide.

(d) Social security number of the nurse aide.

(e) Certificate number for the nurse aide.

(f) Expiration date of the certificate.

(g) Name of the state-permitted training program where the nurse aide completed training.

(h) Date of completion of the state-permitted training program where the nurse aide completed training.

(i) Contact information for the certified nurse aide including, but not limited to, telephone numbers and email address.

(2) The department may contract the daily operation and maintenance of the registry to a non-state entity. However, the state shall maintain accountability for overall operation of the registry and compliance with these regulations.

History: 2023 AACS.

R 400.319 Findings on nurse aide registry.

Rule 319. The department shall place on the registry findings of abuse, neglect, or misappropriation of property. This information must be included in the registry within 10 business days of the finding and must remain in the registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the department is notified of the individual's death.

History: 2023 AACS.

SUBPART E: NURSE AIDE REQUIREMENTS

R 400.320 Nurse aide requirements.

Rule 320. Once issued a certificate, a nurse aide shall do all of the following:

(a) Practice only with a valid and active certificate.

(b) Provide nursing or nursing-related services pursuant to facility policies and procedures, a patient plan of care or other related care plans, and other delegated duties unless superseded by a verifiable written or verbal order or direction from a licensed health care professional.

(c) Provide nursing or nursing-related services free from abuse, neglect, or misappropriation of property.

(d) Provide services and communications to a resident or residents with dignity and respect.

(e) Cooperate with the department in an investigation.

(f) Not financially exploit a resident and not have any financial relationship with a resident, unless a familial relationship exists. A nurse aide shall not accept, take, or borrow money, possessions, or valuables from a resident, even with the consent of the resident.

(g) Update the department within 30 calendar days after a name or address change.

History: 2023 AACS.

PART 3: PERMIT FOR NURSE AIDE TRAINERS

SUBPART A: INITIAL APPLICATION REQUIREMENTS

R 400.321 Application; nurse aide trainer permit; requirements.

Rule 321. (1) Before submitting an initial application to the department, an applicant for a nurse aide trainer permit shall meet all of the following requirements:

(a) Have a valid registered professional nurse license in this state.

(b) Have 2 years of nursing experience as a registered professional nurse within the last 5 years immediately preceding the application.

(c) Have 1 year of nursing experience as a registered professional nurse in a long-term care facility or experience in a setting that provides skilled nursing care and related services to individuals that require non-hospital residential medical, nursing, or rehabilitative services. Long-term care facilities may include, but are not limited to, nursing homes, hospital long-term care units, county medical care facilities, homes for the aged, assisted living facilities, hospices, and other like provider types serving an aged population. Other like provider types can be accepted at the discretion of the department.

(d) Completed a course in teaching adults as evidence by a certificate of completion or have experience in teaching adults or supervising nurse aides as evidence by employment documentation or self-attestation.

(2) An applicant shall complete and submit a department-approved application form and pay the corresponding fee.

(3) As used in this rule, a minimum of 1,600 hours is required to meet 1 year of nursing experience as a registered professional nurse. An applicant shall provide documentation to verify the hours worked or provide a self-attestation affirming the hours worked.

History: 2023 AACS.

SUBPART B: INITIAL APPLICATION REVIEW AND PROCESSING

R 400.323 Application for nurse aide trainer permit; processing.

Rule 323. (1) As authorized in article 17, an application for an initial permit must be made on the most recent applicable form authorized and provided by the department. The department shall process a completed application within 30 calendar days.

(2) An application is not considered complete by the department until both of the following are received:

(a) Completed application form and required documents as identified in R 400.321.

(b) Application fee.

(3) If an application is not complete, the department shall notify the applicant of the deficiencies in the application within 30 calendar days of after receipt. The applicant has 30 calendar days from the date of the notice by the department to submit the requested information. Failure to submit requested information will result in closure of the application.

(4) Upon determination of compliance, the department shall issue a permit that identifies all of the following:

(a) Name of the person.

(b) Permit number.

(c) Expiration date of permit.

(5) If a permit is not issued, the department shall notify an applicant of the basis for denial. Denial of an application is not subject to an administrative appeal hearing. The applicant may resubmit an application correcting those items that resulted in the certificate not being issued.

History: 2023 AACS.

SUBPART C: PERMIT, DURATION AND RENEWAL

R 400.325 Permit duration; renewal process.

Rule 325. (1) A permit issued before the effective date of these rules will be renewed by the department to an effective date established by the department that will not exceed a 2-year period.

(2) An initial permit issued after the effective date of these rules is good for 2 years unless otherwise specified on the permit.

(3) A renewed permit is good for 2 years.

(4) The renewal of a permit must be completed on the most recent applicable form or through an electronic web-based system authorized and provided by the department.

(5) The department shall renew a permit when the individual submits an electronic payment and submits proof of a valid registered professional nurse license.

(6) The department has the authority to require additional information and documentation to verify information within this rule including, but not limited to, proof of licensure.

(7) If a permit is not renewed within 30 days after the expiration date, the permit is null and void. A permit holder who did not renew within 30 days after the expiration date must apply for a new permit and follow the initial application process. Pursuant to section 21915(2) of the act, MCL 333.21915, the permit holder shall not offer services until the permit is renewed or a new permit is issued.

History: 2023 AACS.

SUBPART D: NURSE AIDE TRAINER PERMITTING SYSTEM

R 400.327 Nurse aide trainer permitting system; requirements.

Rule 327. The department shall maintain a permitting system that includes all of the following:

(a) Name of trainer.

(b) Address of trainer.

(c) Permit number for the trainer.

(d) Expiration date of the permit for the trainer.

(e) Contact information for the trainer including, but not limited to, telephone number and email address.

History: 2023 AACS.

SUBPART E: NURSE AIDE TRAINER REQUIREMENTS

R 400.329 Nurse aide trainer requirements.

Rule 329. Once issued a permit, a nurse aide trainer shall do all of the following:

(a) Maintain an active nursing license that is in good standing.

(b) Instruct only with a valid, active permit.

(c) Cooperate with the department during any inspection or complaint investigation.

(d) Update the department within 30 days after a name, address, or licensure status change.

History: 2023 AACS.

PART 4: PERMIT FOR NURSE AIDE TRAINING PROGRAMS

SUBPART A: INITIAL APPLICATION REQUIREMENTS

R 400.331 Application; fee; form; nurse aide training program; permit; proprietary school.

Rule 331. (1) Before submitting an initial application to the department, an applicant for a nurse aide training program permit that is a proprietary school shall possess a proprietary school license.

(2) An applicant shall complete and submit the department approved application form and pay the corresponding fee.

History: 2023 AACS.

SUBPART B: INITIAL APPLICATION REVIEW, PROCESSING, AND DISPLAY

R 400.332 Application; nurse aide training program permit; processing; display.

Rule 332. (1) As authorized in article 17, an application for initial permit must be made on the most recent applicable form authorized and provided by the department. The department shall process a completed application within 30 calendar days.

(2) An application is not considered complete by the department until both of the following are received:

(a) Completed application form and required attachments.

(b) Application fee.

(3) If an application is not complete, the department shall notify the applicant of the deficiencies in the application within 30 calendar days after receipt. The applicant has 30 calendar days from the date of the notice by the department to submit the requested

information. Failure to submit requested information will result in closure of the application.

(4) The department shall conduct a pre-permit survey within 60 calendar days after an application being deemed complete. If the pre-permit survey identifies deficiencies, the department has 30 days to submit a report to the applicant and the applicant has 30 days to correct the deficiencies. The department will resurvey or conduct a desk review, as applicable, within 30 days after the applicant's identified corrective date.

(5) Upon determination of compliance, the department shall issue a permit that identifies all of the following:

(a) Name of the entity.

(b) Business name of the training program.

(c) Physical address of the training program.

(d) Type of training program.

(e) Permit number.

(f) Expiration date.

(6) A permit is not transferable and must state the entity, buildings, and properties to which it applies. A permit is for a single address location. If there is a change in ownership or location, a new initial application must be submitted to the department at least 90 days before the change, and the change cannot take effect until approved by the department.

(7) The nurse aide training program shall post in a conspicuous public area the original program permit and the original or copy of a permit of any nurse aide trainer used by the program.

(8) If a permit is not issued, the department shall notify an applicant of the basis for denial. Denial of a permit is not subject to an administrative appeal hearing. The applicant may resubmit an application correcting those items that resulted in the permit not being issued.

History: 2023 AACS.

SUBPART C: PERMIT, DURATION, RENEWAL

R 400.333 Permit duration; renewal process.

Rule 333. (1) A permit shall be renewed before August 1 of each even numbered calendar year unless otherwise specified on the permit.

(2) An initial permit issued after the effective date of these rules is good for 2 years unless otherwise specified on the permit.

(3) A renewed permit is good for 2 years.

(4) The renewal of a permit must be completed on the most recent applicable form or through an electronic web-based system authorized and provided by the department.

(5) The department shall renew a permit when the program submits an electronic payment.

(6) The department has the authority to require additional information and documentation to verify information within this rule.

(7) If a permit is not renewed within 30 days after the expiration date, the permit is null and void. A permit holder who did not renew within 30 days after the expiration date must apply for a new permit and follow the initial application process. Pursuant to section

21915(2) of the act, MCL 333.21915, the permit holder shall not offer services until the permit is renewed or a new permit is issued.

History: 2023 AACS.

SUBPART D: NURSE AIDE TRAINING PROGRAM PERMITTING SYSTEM

R 400.334 Nurse aide training program; permitting system; requirements.

Rule 334. The department shall maintain a nurse aide training program permitting system that includes all the following:

(a) Name of program.

(b) Owner of program.

(c) Address of program.

(d) Permit number for the program.

(e) Expiration date of the permit for the program.

(f) List of permitted nurse aide trainers in the program.

(g) List of supplemental instructors in the program.

(h) A list of active programs.

(i) Contact information for the program including, but not limited to, authorized representative, telephone numbers, and email address.

History: 2023 AACS.

SUBPART E: NURSE AIDE TRAINING PROGRAM REQUIREMENTS

R 400.335 Program requirements.

Rule 335. (1) Once issued a permit, a nurse aide training program shall do all of the following:

(a) Provide sufficient permitted nurse aide trainers to meet the needs of the nurse aide candidates during classroom, laboratory, and clinical hours.

(b) Provide a permitted nurse aide trainer during classroom hours.

(c) Provide a permitted nurse aide trainer onsite and engaged during laboratory and clinical hours.

(d) Provide a course consisting of 16 classroom hours, 16 clinical hours, and any combination of 43 classroom, laboratory, or clinical hours, for a total of 75 hours of training. A minimum of 16 classroom hours are required before the student's direct contact with a resident. Clinical and laboratory hours must be done in-person, but classroom hours may be in-person or virtual. If a virtual classroom is used, there must be a mechanism or method for student feedback and interaction with a nurse aide trainer.

(e) Classroom, laboratory, and clinical hours must be documented and available to the department upon request.

(f) Comply with the curriculum of the state-permitted training program requirements listed in 42 CFR 483.152(b) and the state-approved training program curriculum.

(g) Maintain a physical and social environment that is conducive to learning.

(h) Update its information as to any changes to name or address or closures within 30 calendar days after the change.

(i) Maintain a proprietary education license if a training program is a proprietary education program.

(j) Provide, upon request, the program's policy and procedure describing how a student can transfer into or from the program to or from another nurse aide training program. The policy and procedure may prohibit transferring to the program.

(2) A nurse aide training program may utilize a supplemental instructor to assist a permitted nurse aide trainer if the supplemental instructor is a licensed health professional with 1 year of experience in the field that he or she is licensed in and under the supervision of a permitted nurse aide trainer.

History: 2023 AACS.

SUBPART F: INSPECTIONS AND EVALUATION OF NURSE AIDE TRAINING PROGRAMS

R 400.337 Inspection and evaluation process.

Rule 337. (1) A pre-permit inspection must be scheduled and announced. All other permit inspections may be unannounced.

(2) An inspection may be conducted by the department during any hours of operation of the permitted nurse aide training program.

(3) An applicant or permitted program shall provide access to the program area and relevant documents that are required to be maintained for the department to evaluate compliance with the act and these rules. Documents may include, but are not limited to, scores of each candidate enrolled in the program.

(4) The department shall conduct an inspection of the program at least once every 2 years.

(5) The department shall issue a report to the provider of the findings of the inspection within 60 days after the inspection.

(6) During an inspection or evaluation process, failure to allow access to the program area or failure to have authorized staff available during the identified hours of operations is a violation of the act and these rules and the department shall enforce 42 CFR 483.151(f).

History: 2023 AACS.

R 400.339 Plan of correction.

Rule 339. (1) If a deficient practice is identified by the department, either through an inspection and evaluation or a complaint investigation, the training program has 10 days to submit a plan of correction and identify specific dates to correct deficiencies not more than 30 days after the date of the report. Based upon the submitted plan of correction, the department shall determine if a re-visit is necessary to determine compliance.

(2) Failure to submit a plan of correction is considered a violation of the act or these rules.

History: 2023 AACS.

PART 5: COMPLAINTS AND INVESTIGATIONS

SUBPART A: CERTIFIED NURSE AIDES

R 400.341 Complaint filed with department regarding a nurse aide; procedure.

Rule 341. (1) Any individual or entity may file an allegation against a certified nurse aide who is listed on the registry for a violation of abuse, neglect, or misappropriation of patient property.

(2) A complaint filed with the department must be filed within 12 months after the alleged violation. If it is not filed within 12 months after the alleged violation, the department may investigate the complaint if the complainant shows good cause for the delay in filing the complaint.

(3) A complaint must be submitted in writing to the department.

(4) The complaint must be limited to matters involving an alleged violation of the act or these rules.

(5) A complainant shall provide enough information to identify the specific nurse aide and the applicable facility where the alleged violation took place.

(6) A complaint may be filed anonymously.

(7) The department shall receive, evaluate, and, if warranted, investigate a complaint of resident abuse, neglect, misappropriation of resident property or other violation of the act or these rules.

(8) The department shall send a letter of acknowledgement to each complainant upon evaluation of the complaint, except when a complaint is submitted anonymously.

(9) The department shall provide the complainant with the written findings of the complaint investigation not later than 60 days after the conclusion of the complaint investigation process. This subrule does not apply when a complaint is filed anonymously.

History: 2023 AACS.

R 400.343 Investigation by department.

Rule 343. (1) The department shall investigate a nurse aide for a complaint that alleges a violation of the act or these rules.

(2) An investigation may include, but is not limited to, all the following:

(a) Interviews with the complainant, staff, patients, and other relevant persons with their consent.

(b) Inspection of relevant administrative records, other documents, and media maintained by the health facility, agency, or other setting.

(3) The department employee may copy relevant records, documents, or media, and where applicable, allow the health facility, agency, or other setting an opportunity to redact non-relevant information. The department shall maintain and protect these materials pursuant to state and federal laws, including privacy laws. All of these records, documents, or media must be disposed of after the completion of the final investigation and appeal process.

(4) The department shall provide the nurse aide with its written findings within 60 days after completion of the investigation.

History: 2023 AACS.

SUBPART B: COMPLAINTS AGAINST NURSE AIDE TRAINER OR TRAINING PROGRAM

R 400.345 Complaint filed against a nurse aide trainer or training program.

Rule 345. (1) A complaint filed against a nurse aide trainer or nurse aide training program may be filed directly with the applicable nurse aide training program or the department.

(2) A nurse aide training program shall adopt and follow written policies and procedures to investigate complaints filed by a student of the program.

(3) A nurse aide training program shall notify the complainant of its findings within 10 business days after completion of the investigation. This subrule does not apply when a complaint is filed anonymously.

(4) A comment on a satisfaction survey or other method used by a nurse aide training program to gather feedback does not constitute a complaint.

(5) A nurse aide training program shall maintain for 3 years any complaints filed under its complaint procedure, all complaint investigation reports, and correspondence delivered to each complainant**,** and provide the documents as required in this rule when requested by the department.

History: 2023 AACS.

R 400.347 Complaint filed with department; procedure.

Rule 347. (1) A complaint filed with the department must be filed within 12 months after the alleged violation. If it is not filed within 12 months after the alleged violation, the department may investigate the complaint if the complainant shows good cause for the delay in filing the complaint.

(2) A complaint must be submitted in writing to the department.

(3) The complaint must be limited to matters involving an alleged violation of the act or these rules.

(4) A complainant shall provide enough information to identify the specific nurse aide trainer and the applicable nurse aide training program where the alleged violation took place.

(5) A complaint may be filed anonymously.

(6) The department shall receive, evaluate, and, if warranted, investigate a complaint.

(7) The department shall provide the complainant with the written findings of the complaint investigation no later than 30 days after the conclusion of the complaint investigation process. This subrule does not apply when a complaint is filed anonymously.

History: 2023 AACS.

R 400.349 Investigation by department.

Rule 349. (1) The department shall investigate a nurse aide training program, nurse aide trainer, or both, for a complaint that alleges violation of the act or these rules.

(2) An investigation may include, but is not limited to, both of the following:

(a) Interviews with the complainant, staff, and other relevant persons with their consent.

(b) Inspection of relevant administrative records, other documents, and media maintained by the nurse aide training program.

(3) The department employee may copy relevant records, documents, or media, and where applicable, allow the nurse aide training program an opportunity to redact non-relevant information. The department shall maintain and protect these materials pursuant to state and federal laws, including privacy laws. All of these records, documents, or media must be disposed of after completion of the final investigation and appeal process.

(4) The department shall provide the nurse aide training program with its written findings within 60 days after the exit date of the on-site investigation.

History: 2023 AACS.

PART 6: ENFORCEMENT, DISCIPLINARY ACTIONS, NOTIFICATIONS

SUBPART A: ENFORCEMENT

R 400.351 Monitoring compliance with certificate or permit; investigating allegations of noncompliance; violation; sanctions.

Rule 351. (1) The department shall monitor compliance with all certificates and permits issued.

(2) The department shall investigate allegations of noncompliance with the act or these rules. A finding of noncompliance may include that a nurse aide, nurse aide trainer, or a nurse aide training program provided false information during the application process and was issued a certificate or permit based on the false information unknown to the department at the time.

(3) If the department determines that the recipient of a certificate or permit is not in compliance with the terms of the certificate or permit or is in violation of the act or these rules, the department shall do 1 or more of the following:

(a) Permanently revoke the certificate of a nurse aide found to have abused a patient.

(b) Permanently revoke the certificate of a nurse aide found to have misappropriated the property of a patient.

(c) Revoke the certificate of a nurse aide found to have neglected a patient unless the nurse aide demonstrates that the neglect was caused by factors beyond his or her control. Factors beyond the control of the nurse aide include, but are not limited to, an immediate action to protect the health and safety of or prevent harm to the resident, an action that is directed by a licensed health professional under article 15, or a nurse aide has not been trained to complete an assigned task.

(d) Issue a summary suspension of the certificate or permit.

(e) Revoke or suspend the certificate or permit. A certificate or permit holder that has had his or her certificate or permit revoked cannot reapply for a minimum of 3 years after the effective date of revocation.

(f) Limit or modify the certificate or permit.

(g) Require probation, re-training, or a continuing education class.

(h) Issue a written reprimand.

(i) Take any other enforcement action authorized by the act or these rules.

(4) A nurse aide whose certificate has been revoked pursuant to subrule (2)(c) of this rule may petition the department to end the enforcement of the revocation 1 year after the effective date of the finding if both of the following conditions are met:

(a) The employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect.

(b) The neglect involved in the original finding was a singular occurrence.

(5) A certificate or permit holder may voluntarily surrender a certificate or permit by notifying the department in writing. The effective date of the voluntary termination will be the date the department receives the written request. The department shall honor the request unless there is an open investigation or pending disciplinary action against the individual or program.

(6) The department may agree to settle a pending disciplinary action.

History: 2023 AACS.

SUBPART B: DISCIPLINARY ACTIONS

R 400.352 Authority; hearings.

Rule 352. (1) Pursuant to section 21923(1) of the act, MCL 333.21923, the department shall investigate and take enforcement action for violations of the act or these rules.

(2) The department shall implement 42 USC 1395i-3(g)(1)(C) and (D) and 42 CFR parts 483 and 488 as they relate to nursing homes.

(3) The procedures for a hearing must comply with sections 71 to 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.292, and R 792.10101 to R 792.10137.

History: 2023 AACS.

R 400.353 Notice of intent.

Rule 353. (1) Except as provided in R 400.354, the department shall provide the certified nurse aide or permitted program or trainer with written notice, by certified mail or personal service to the address of record, of the facts or conduct that warrant the intended action before revoking, suspending, limiting, or modifying a certificate or permit. The written notice shall include, but is not limited to, all of the following:

(a) The nature of the allegations.

(b) The approximate date and time the allegations occurred.

(c) The right to request an administrative hearing to contest the allegations.

(d) The department's intent to revoke, suspend, limit, or modify a certificate or permit.

(e) Notice that if the certified nurse aide or permitted program or trainer does not request an administrative hearing in writing within 30 days after the date of the written notice, as provided for in subrule (3) of this rule, the department will enforce the sanction indicated in the written notice.

(f) The consequences of a finding through the administrative hearing process that the person committed the violations of legal requirements described in the written notice.

(g) The certified nurse aide or permitted program or trainer has the right to be represented by an attorney at the administrative hearing at the individual's expense.

(2) The department shall issue the written notice within 10 business days after the completion of the department's investigation. The department shall give a copy of the written notice to the administrator of the training program or the administrator of the health facility or agency that employs the subject of the notice.

(3) The certified nurse aide or permitted program or trainer may request an administrative hearing within 30 days after the date the department issued the written notice. The request for administrative hearing must be submitted in writing to the director or director's designee as instructed in the written notice.

(4) In addition to the written request for an administrative hearing, a certified nurse aide or permitted program or trainer may submit to the director or director's designee a written statement disputing the allegations listed in the department's written notice.

(5) Upon receipt of a written request for hearing, the department shall forward the request to the Michigan office of administrative hearings and rules for the scheduling of the administrative hearing.

(6) The Michigan office of administrative hearings and rules shall provide the notice of hearing to the applicant, certified nurse aide, or permitted program or trainer by certified mail to the address of record.

History: 2023 AACS.

R 400.354 Summary suspension.

Rule 354. (1) The department may summarily suspend a certificate or permit if the department finds that the public health, safety, or welfare requires emergency action in accordance with section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292. If the department summarily suspends a certificate or permit under this rule, a post-suspension hearing must be held promptly to determine if the suspension should remain in effect pursuant to section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.

(2) The record created at the post-suspension hearing becomes a part of the record at any subsequent hearing in the contested case.

History: 2023 AACS.

R 400.355 Opportunity to show compliance.

Rule 355. When the department issues a notice of intent under R 400.353, a notice of compliance conference must accompany the notice of intent. The notice of compliance

conference must state the date, time, and location or medium of the compliance conference and inform the individual of all of the following:

(a) The purpose of the compliance conference is to provide the individual or program the opportunity to demonstrate that the individual or program complied with all lawful requirements for a certificate or permit at the time of the department's investigation or inspection.

(b) If the individual or program is unable to reach a settlement with the department, the matter will proceed to an administrative hearing.

(c) The individual or program may waive the compliance conference and proceed directly to the administrative hearing.

History: 2023 AACS.

R 400.356 Subpoena.

Rule 356. (1) The department or presiding officer at an administrative hearing may issue a subpoena to do any of the following:

(a) Compel the attendance of a witness to testify at an administrative hearing.

(b) Produce books, papers, documents, or other items relevant to the hearing.

(2) If a subpoena is disobeyed, the director of the department or the director's designee may petition the circuit court to require the attendance of the witness or the production of books, papers, documents, or other items. The circuit court may issue an order requiring a person to appear and give testimony or produce books, papers, documents, or other items. Failure to obey the order of the circuit court may be punished by the court as contempt of court.

History: 2023 AACS.

SUBPART C: NOTIFICATIONS

R 400.357 Notifications for neglect, abuse, misappropriation of property.

Rule 357. (1) Within 10 business days after establishing neglect or abuse of a patient or misappropriation of the property of a patient, the department shall notify all of the following:

(a) The nurse aide.

(b) The current administrator of the health facility or agency or another employer where the incident occurred.

(c) The current administrator of the health facility or agency or other employer where the nurse aide currently provides nursing or nursing-related services, if known.

(2) Upon receipt of the notification described in subrule (1)(a) of this rule, the individual shall immediately cease providing nursing or nursing-related services as a certified nurse aide.

(3) The department shall update the nurse aide registry with these findings.

History: 2023 AACS.