

R432. Health and Human Services, Health Care Facility Licensing.

R432-2. General Licensing Provisions.

R432-2-1. Legal Authority.

This rule is authorized by Section 26B-2-202.

R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies shall follow to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the department in accordance with Section 26B-2-206.

R432-2-3. Definitions.

The definitions of this section supplement the definitions listed in Rule R432-1.

(1) "Branch Location" means a licensed home health, personal care or hospice agency location which is:

- (a) administered by a parent agency within the scope of the parent agency's current license; and
- (b) is approved by the department as a branch location under the parent agency's license.

(2) "Conditional License" means a remedial license issued to a licensee if there is a determination by the department

of:

- (a) substandard quality of care;
- (b) immediate jeopardy;
- (c) a pattern of violations which would result in a ban on admissions at the facility; or
- (d) if the licensee is found to have:
 - (i) a class I violation or a class II violation, as outlined in Rule R432-3, that remains uncorrected after the specified time for correction;

- (ii) more than three cited repeat class I or II violations from the previous survey; or

- (iii) fails to fully comply with administrative requirements for licensing.

(3) "Owner" means any person or entity:

- (a) ultimately responsible for operating a health care facility; or

- (b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

(4) "Provisional License" means an initial license issued to an applicant for a probationary period of six months upon the department's determination that the facility has the potential to provide services and be in full compliance with licensing rules during the six-month period.

(5) "Remote" means the location of a prospective satellite or branch service before gaining approval from the department to operate.

(6) "Satellite Operation" means a health care treatment service that:

- (a) is administered by a parent facility licensee within the scope of the parent facility licensee's current license;

- (b) is located further than 250 yards from the licensed parent facility or other areas determined by the department to be a part of the provider's campus;

- (c) does not qualify for licensing under Section 26B-2-201; and

- (d) is approved by the department for inclusion under the parent facility's license and identified as a remote service.

(7) "Standard License" means a license issued to a licensee if:

- (a) the licensee meets the conditions attached to a provisional or conditional license;

- (b) the licensee corrects any identified rule violations; or

- (c) the licensee completes each licensing renewal requirement as outlined in Rule R432-2.

R432-2-4. Exempt Facilities.

Entities identified in Section 26B-2-205 are exempt from licensure.

R432-2-5. Distinct Part.

A licensee that seeks to offer services outside the scope of their license, with the exception of federally recognized swing bed units, shall submit a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined, by the department to require a license, the licensee shall meet the definition of a distinct part entity, as defined in Rule R432-1, and all applicable codes and standards and obtain a separate license.

R432-2-6. Requirements for a Satellite Service Operation.

(1) A licensee that seeks to offer a satellite operation shall submit a program narrative and one set of construction drawings for department review. The licensee shall ensure that the program narrative defines the following:

- (a) street address of the remote facility;

- (b) capacity of the remote facility;

- (c) license category of the parent facility;

- (d) service authorized under the parent facility license that will be provided at the remote facility;

- (e) ancillary administrative and support services to be provided at the remote facility; and

- (f) international building code occupancy classification of the remote facility physical structure.
- (2) Upon receipt of the satellite service program narrative and construction drawings, the department shall make a determination of the applicable licensing requirements including the need for licensing the service. The following items are required for department verification:
 - (a) there is only a single health care treatment service provided at the remotesite and that it falls within the scope of the parent facility license;
 - (b) the remote facility physical structure is compliant with all construction codes appropriate for the service provided;and
 - (c) all necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to ensure the health, safety, and welfare of the clients.
- (3) If a licensee qualifies as a single satellite service treatment center, the department shall issue a separate license identifying the facility as a satellite service of the licensed parent facility. This license shall be subject to all requirements set forth in this rule.
 - (4) A parent facility that seeks to offer more than one health care service at the same remote site shall either:
 - (a) obtain a satellite service license for each service offered; or
 - (b) obtain a license for the remote complex as a free-standing health care facility.
 - (5) A licensed hospital is limited to one emergency department satellite location. If a healthcare corporation owns and operates more than one hospital in the state:
 - (a) it may have up to two emergency department satellite locations associated with a licensed hospital; and
 - (b) the health care corporation's total number of emergency department satellite locations may not exceed the total number of licensed hospitals it owns and operates in the state.

R432-2-7. Requirements for a Branch Location.

- (1) An applicant for a branch location license shall submit a narrative of the program for department review. The applicant shall include the following in the program narrative:
 - (a) street address of the parent agency and branch location;
 - (b) license category of the parent facility;
 - (c) service authorized under the parent agency license that will be provided at the branch location; and
 - (d) ancillary administrative and support services to be provided at the branch location.
- (2) Upon receipt of the branch location program narrative, the department shall make a determination of the applicable licensing requirements including the need for licensing the service. The following items are required for department verification:
 - (a) the service provided at the remote site falls within the scope of the parent agency license; and
 - (b) all necessary administrative and support services are available, on a continuous basis during the hours of operation, to ensure the health, safety, and welfare of the clients.
- (3) If a location qualifies as a branch location the department shall issue a separate license identifying the agency as a branch location of the licensed parent agency. This license shall be subject to all requirements set forth in this rule.

R432-2-8. Applications for License Actions.

- (1) An applicant for a license shall file a request for agency action or license application with the department on a form, or format furnished by the department.
- (2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:
 - (a) A certificate of fire clearance from the state fire marshal or designated local fire authority certifying compliance with local and state fire codes for:
 - (i) initial application;
 - (ii) renewal application;
 - (iii) change of ownership; and
 - (iv) any time new construction or remodeling has occurred;
 - (b) A satisfactory food services sanitation clearance report by a local health department is required for each applicant providing food service at initial application and upon a change of ownership; and
 - (c) certificate of occupancy from the local building official for:
 - (i) initial application;
 - (ii) change of location; or
 - (iii) at the time of any new construction or substantial remodeling.
- (3) The applicant shall submit contact information for the ownership of the legal entity including the names, phone numbers, email addresses and mailing addresses and the following written assurances regarding each of the listed individuals:
 - (a) none have been convicted of a felony;
 - (b) none have been found in violation of any local, state, or federal law that arises from or is otherwise related to the individual's relationship to a health care facility; and
 - (c) none have currently, or within the five years before the date of application, had previous interest in a licensed health care facility that has been any of the following:

- (i) subject of a patient care receivership action;
- (ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;
- (iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or
- (iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

R432-2-9. License Fee.

In accordance with Section 26B-2-202, the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the department upon request.

R432-2-10. Additional Information.

- (1) The licensee may be required to submit additional information to the department upon request.
- (2) Information the department may require includes:
 - (a) architectural plans and a description of the functional program;
 - (b) policy and procedure manuals;
 - (c) verification of individual licenses, registrations or certification required by the Utah Department of Commerce;
 - (d) data reports including the submission of the annual report at the departments request; and
 - (e) documentation that enough assets are available to provide services, staff, utilities, food supplies, and laundry for at least a two-month period.

R432-2-11. Initial License Issuance or Denial.

- (1) The department shall issue a decision on an initial license application within 60 days of receipt of a completed application packet.
- (2) Upon verification of compliance with licensing requirements the department shall issue a provisional license.
- (3) The department shall issue a written notice of agency decision under the procedures for adjudicative proceedings, in accordance with Rule R432-30, denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.
- (4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in Section R432-2-8.
- (5) The department shall assess an administrative fee on any denied license application. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-12. License Contents and Provisions.

- (1) The license shall document the following:
 - (a) the name of the health facility;
 - (b) licensee;
 - (c) type of facility;
 - (d) approved licensed capacity including identification of operational and secure unit beds;
 - (e) street address of the facility;
 - (f) issue and expiration date of license;
 - (g) construction variance information; and
 - (h) license number.
- (2) The license is not assignable or transferable.
- (3) Each license is the property of the department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the department.
- (4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

R432-2-13. Expiration and Renewal.

- (1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under Subsection (2) or (4) of this section.
- (2) If a licensee is operating under a conditional license for a period extending beyond the expiration date of the current license, the licensee shall adhere to any new expiration date established by the office.
- (3) The licensee shall submit the following items 15 days before the current license expires:
 - (a) a request for agency action or license application form;
 - (b) applicable fees;
 - (c) applicable clearances; and
 - (d) the annual report for the previous calendar year, if required by the department under Section R432-2-10.
- (4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the department.
- (5) The department shall renew a standard license upon verification that the licensee and facility are compliant with all applicable license rules.
- (6) Facilities no longer providing patient care or client services may not have their license renewed.

R432-2-14. New License Required.

(1) A prospective licensee shall submit a request for agency action or license application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

- (a) occupancy of a new facility;
- (b) change of ownership; or
- (c) change in license category.

(2) Before the department may issue a change of ownership license, the applicant shall provide documentation that:

(a) any patient care records; personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee;

(b) the existing policy and procedures manual or a new manual has been adopted by the facility governing body before change of ownership occurs;

(c) any new contract for professional or other services not provided directly by the licensee have been secured;

(d) new transfer agreements have been drafted and signed;

(e) written documentation exists of clear ownership or lease of the facility by the new owner;

(f) the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner; and

(g) nursing care and small health care licensees shall provide a certificate from the Division of Medicaid and Health Financing's Bureau of Financial Services noting the current owner has no outstanding payments owed to the division.

(3) The applicant is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the department, is submitted by the prospective licensee before the change of ownership becomes effective.

(4) If a license is issued to the new owner, the previous licensee shall return their license to the department within five days of the new owner's receipt of the license.

R432-2-15. Change in Licensing Status.

(1) A licensee shall submit a request for agency action or license application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

- (a) increase or decrease of licensed capacity;
- (b) change in name of facility;
- (c) occupancy of a replacement facility;
- (d) change of license classification; or
- (e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

R432-2-16. Facility Ceases Operation.

(1) A licensee that voluntarily ceases operation shall complete the following:

(a) notify the department and the patients or their next of kin or legal guardian, as applicable, at least 30 days before the effective date of closure;

(b) ensure safe keeping of records;

(c) return all patients funds and valuables at the time of discharge; and

(d) return the license to the department within five days after the facility ceases operation.

(2) If the department revokes a license or if it issues an emergency closure order, the licensee shall document the following:

(a) the location and date of discharge for each resident;

(b) the date that notice and assistance with placement was provided to each resident and responsible party; and

(c) the date and time that the licensee complied with the closure order.

R432-2-17. Provisional License.

(1) A provisional license is nonrenewable.

(2) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

R432-2-18. Conditional License.

(1) A standard license is revoked by the issuance of a conditional license.

(2) The department may not issue a conditional license after the expiration of a provisional license.

(3) In granting a conditional license, the licensee shall provide assurance to the department that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(4) The department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(5) The department shall set conditions whereby the licensee shall comply with an accepted plan of correction.

(6) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-19. Variances.

(1) A licensee may submit a request for agency action to obtain a variance from state rules.

(a) An applicant requesting a variance shall file a request for agency action or license application with the department on forms or format furnished by the department.

(b) The department may require additional information from the facility before acting on the request.

(c) The department may take up to 60 days to issue a determination on a variance request.

(2) A variance may be renewable or non-renewable, as indicated by the department on the variance form. The licensee shall provide a copy of the approved variance to any interested party upon request.

(a) Only upon agreement between the department and the facility, the terms of a variance request may be modified.

(b) The department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(c) The department may limit the duration of any variance.

(3) The department shall issue a written notice of the reason for an agency decision denying a variance upon determination that the variance is not justified or adversely affects the health, safety, or welfare of the residents.

(4) The department may revoke a variance if:

(a) the variance adversely affects the health, safety, or welfare of the residents;

(b) the licensee fails to comply with the conditions of the variance as granted;

(c) the licensee notifies the department in writing that they wish to relinquish the variance and be subject to the rule previously varied; or

(d) there is a change in the statute, regulations, or rules.

R432-2-20. Change in Ownership.

(1) The owner of the health care facility is not required to own the real property or building where the facility operates.

(2) A property owner is considered an owner if they:

(a) retain the right or participate in the operation or business decisions of the enterprise;

(b) have engaged the services of a management company to operate the facility; or

(c) take over the operation of the facility.

(3) A licensed provider whose ownership or controlling ownership interest has changed shall submit a request for agency action or license application and fees to the department 30 days before the proposed change.

(4) A change in ownership that requires action includes any arrangement that:

(a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;

(b) removes, adds, or substitutes an owner or part owner; or

(c) in the case of an incorporated owner:

(i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20% or more from the board of the original licensee; or

(ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20% or more from the board of the original licensee.

(5) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.

(6) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

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