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CERTIFICATE OF EMERGENCY AMENDMENTS

The Department of Public Health, State of Illinois, certifies that the attached hereto is a true and correct copy of:

Heading for the Part: Medically Complex for the Developmentally Disabled Facilities Code

Code Citation: 77 Ill. Adm. Code 390

Sections Involved:


- 390.282
- 390.340
- 390.759

which was duly amended by emergency action by this Agency.

Reason for Emergency: These emergency amendments are adopted in response to Governor JB Pritzker's Gubernatorial Disaster Proclamations related to COVID-19.

Section 5-45 of the Illinois Administrative Procedure Act [5 ILCS 100/5-45] defines "emergency" as "the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare." The COVID-19 outbreak in Illinois is a significant public health crisis that warrants these emergency amendments.

Statutory Authority: Implementing and authorized by the MC/DD Act [210 ILCS 46].


Amaal V. E. Tokars
Acting Director

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TITLE 77: PUBLIC HEALTH
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 390
MEDICALLY COMPLEX FOR THE
DEVELOPMENTALLY DISABLED FACILITIES CODE

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 - 390.620 Resident Care Policies
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AUTHORITY: Implementing and authorized by the MC/DD Act [210 ILCS 46].

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SOURCE: Adopted at 6 Ill. Reg. 1658, effective February 1, 1982; emergency amendment at 6 Ill. Reg. 3223, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11622, effective September 14, 1982; amended at 6 Ill. Reg. 14557 and 14560, effective November 8, 1982; amended at 6 Ill. Reg. 14678, effective November 15, 1982; amended at 7 Ill. Reg. 282, effective December 22, 1982; amended at 7 Ill. Reg. 1927, effective January 28, 1983; amended at 7 Ill. Reg. 8574, effective July 11, 1983; amended at 7 Ill. Reg. 15821, effective November 15, 1983; amended at 7 Ill. Reg. 16988, effective December 14, 1983; amended at 8 Ill. Reg. 15585, 15589, and 15592, effective August 15, 1984; amended at 8 Ill. Reg. 16989, effective September 5, 1984; codified at 8 Ill. Reg. 19823; amended at 8 Ill. Reg. 24159, effective November 29, 1984; amended at 8 Ill. Reg. 24656, effective December 7, 1984; amended at 8 Ill. Reg. 25083, effective December 14, 1984; amended at 9 Ill. Reg. 122, effective December 26, 1984; amended at 9 Ill. Reg. 10785, effective July 1, 1985; amended at 11 Ill. Reg. 16782, effective October 1, 1987; amended at 12 Ill. Reg. 931, effective December 24, 1987; amended at 12 Ill. Reg. 16780, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18243, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6301, effective April 17, 1989; amended at 13 Ill. Reg. 19521, effective December 1, 1989; amended at 14 Ill. Reg. 14904, effective October 1, 1990; amended at 15 Ill. Reg. 1878, effective January 25, 1991; amended at 16 Ill. Reg. 623, effective January 1, 1992; amended at 16 Ill. Reg. 14329, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2390, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7974, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15073, effective September 3, 1993; amended at 17 Ill. Reg. 16167, effective January 1, 1994; amended at 17 Ill. Reg. 19235, effective October 26, 1993; amended at 17 Ill. Reg. 19547, effective November 4, 1993; amended at 17 Ill. Reg. 21031, effective November 20, 1993; amended at 18 Ill. Reg. 1453, effective January 14, 1994; amended at 18 Ill. Reg. 15807, effective October 15, 1994; amended at 19 Ill. Reg. 11525, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 535, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10106, effective July 15, 1996; amended at 20 Ill. Reg. 12101, effective September 10, 1996; amended at 22 Ill. Reg. 4062, effective February 13, 1998; amended at 22 Ill. Reg. 7188, effective April 15, 1998; amended at 22 Ill. Reg. 16576, effective September 18, 1998; amended at 23 Ill. Reg. 1069, effective January 15, 1999; amended at 23 Ill. Reg. 8021, effective July 15, 1999; amended at 24 Ill. Reg. 17283, effective November 1, 2000; amended at 25 Ill. Reg. 4890, effective April 1, 2001; amended at 26 Ill. Reg. 4890, effective April 1, 2002; amended at 26 Ill. Reg. 10645, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2258, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5509, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5947, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14250, effective August 15, 2003, for a maximum of 150 days; emergency expired January 12, 2004; amended at 27 Ill. Reg. 15949, effective September 25, 2003; amended at 27 Ill. Reg. 18204, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3565, effective November 15, 2003; amended at 28 Ill. Reg. 11231, effective July 22, 2004; emergency amendment at 29 Ill. Reg. 12025, effective July 12, 2005, for a maximum of

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150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15301, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12988, effective August 2, 2005; amended at 30 Ill. Reg. 1473, effective January 23, 2006; amended at 30 Ill. Reg. 5383, effective March 2, 2006; amended at 31 Ill. Reg. 6145, effective April 3, 2007; amended at 31 Ill. Reg. 8864, effective June 6, 2007; amended at 33 Ill. Reg. 9406, effective June 17, 2009; amended at 34 Ill. Reg. 19239, effective November 23, 2010; amended at 35 Ill. Reg. 3495, effective February 14, 2011; amended at 39 Ill. Reg. 5503, effective March 25, 2015; amended at 42 Ill. Reg. 6716, effective March 29, 2018; amended at 43 Ill. Reg. 3564, effective February 26, 2019; emergency amendment at 44 Ill. Reg. 8573, effective May 5, 2020, for a maximum of 150 days; emergency amendment to emergency rule at 44 Ill. Reg. 16317, effective September 15, 2020, for the remainder of the 150 days; emergency rule as amended expired October 1, 2020; emergency amendment at 44 Ill. Reg. 16920, effective October 2, 2020, for a maximum of 150 days; emergency expired February 28, 2021; emergency amendment at 44 Ill. Reg. 19068, effective November 19, 2020, for a maximum of 150 days; emergency expired April 17, 2021; emergency amendment at 45 Ill. Reg. 469, effective December 18, 2020, for a maximum of 150 days; emergency amendment to emergency rule at 45 Ill. Reg. 2141, effective January 27, 2021, for the remainder of the 150 days; emergency rule as amended expired May 16, 2021; emergency amendment at 45 Ill. Reg. 3072, effective March 1, 2021, for a maximum of 150 days; emergency amendment repealed by emergency rulemaking at 45 Ill. Reg. 10115, effective July 25, 2021; emergency amendment at 45 Ill. Reg. 5648, effective April 18, 2021, for a maximum of 150 days; emergency expired September 14, 2021; emergency amendment at 45 Ill. Reg. 6763, effective May 17, 2021, for a maximum of 150 days; emergency expired October 13, 2021; emergency amendment at 45 Ill. Reg. 12079, effective September 15, 2021, for a maximum of 150 days; emergency amendment to emergency rule at 45 Ill. Reg. 14688, effective November 4, 2021, for the remainder of the 150 days; emergency expired February 11, 2022; emergency amendment at 45 Ill. Reg. 13769, effective October 14, 2021, for a maximum of 150 days; emergency expired March 12, 2022; emergency amendment at 46 Ill. Reg. 3387, effective February 12, 2022, for a maximum of 150 days; emergency expired July 11, 2022; emergency amendment at 46 Ill. Reg. 5403, effective March 13, 2022, for a maximum of 150 days; amended at 46 Ill. Reg. 8192, effective May 6, 2022; emergency amendment at 46 Ill. Reg. _____, effective JUL 15 2022 for a maximum of 150 days.

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**Section 390.282 Conditions for Assessment of Penalties
EMERGENCY**

The Department shall consider the assessment of a monetary penalty against a facility under the following conditions:

- a) *A licensee who commits a Type "AA" violation, as defined in Section 1-128.5 of the Act, is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine of up to \$25,000 per violation. For a facility licensed to provide care to fewer than 100 residents, but no fewer than 17 residents, the fine shall be up to \$18,500 per violation. For a facility licensed to provide care to fewer than 17 residents, the fine shall be up to \$12,500 per violation. (Section 3-305(1) of the Act)*
- b) *A licensee who commits a Type "A" violation, as defined in Section 1-129 of the Act, is automatically issued a conditional license for a period of 6 months to coincide with an acceptable plan of correction and assessed a fine of up to \$12,500 per violation. For a facility licensed to provide care to fewer than 100 residents, but no fewer than 17 residents, the fine shall be up to \$10,000 per violation. For a facility licensed to provide care to fewer than 17 residents, the fine shall be up to \$6,250 per violation. (Section 3-305(1.5) of the Act)*
- c) *A licensee who commits a Type "AA" or Type "A" violation, as defined in Section 1-128.5 or 1-129 of the Act, that continues beyond the time specified in Section 3-303(a), that is cited as a repeat violation shall have its license revoked and shall be assessed a fine of 3 times the fine computed under subsection (a). (Section 3-305(3) of the Act)*
- d) *A licensee who commits a Type "B" violation, as defined in Section 1-130 of the Act, shall be assessed a fine of up to \$1,100 per violation. For a facility licensed to provide care to fewer than 100 residents, but no fewer than 17 residents, the fine shall be up to \$750 per violation. For a facility licensed to provide care to fewer than 17 residents, the fine shall be up to \$550 per violation. (Section 3-305(2) of the Act)*
- e) *A licensee who fails to satisfactorily comply with an accepted plan of correction for a Type "B" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 of the Act or this Part shall be automatically issued a conditional license for a period of not less than 6 months. A second or subsequent acceptable plan of correction shall be filed. A fine shall be assessed in accordance with subsection (d) when cited for the repeat violation. This fine shall be computed for all days of the violation, including the duration of the first plan of correction compliance time. (Section 3-305(4) of the Act)*

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- f) *A licensee who commits 8 or more Type "C" violations, as defined in Section 1-132 of the Act, in a single survey shall be assessed a fine of up to \$250 per violation. A facility licensed to provide care to fewer than 100 residents, but no fewer than 17 residents, that commits 8 or more Type "C" violations in a single survey, shall be assessed a fine of up to \$200 per violation. A facility licensed to provide care to fewer than 17 residents, that commits 8 or more Type "C" violations in a single survey, shall be assessed a fine of up to \$175 per violation. (Section 3-305(2.5) of the Act)*
- g) *If an occurrence results in more than one type of violation, as defined in the Act (that is, a Type "AA", Type "A", Type "B", or Type "C" violation), then the maximum fine that may be assessed for that occurrence is the maximum fine that may be assessed for the most serious type of violation charged. For purposes of the preceding sentence, a Type "AA" violation is the most serious type of violation that may be charged, followed by a Type "A", Type "B", or Type "C" violation, in that order. (Section 3-305(8) of the Act)*
- h) *If any facility willfully makes a misstatement of fact to the Department or willfully fails to make a required notification to the Department and that misstatement or failure delays the start of a survey or impedes a survey, then it will constitute a Type "B" violation. The minimum and maximum fines that may be assessed pursuant to this subsection (h) shall be 3 times those otherwise specified for any facility. (Section 3-305(9) of the Act)*
- i) *If the Department finds that a facility has violated a provision of this Part that has a high-risk designation, or that a facility has violated the same provision of this Part 3 or more times in the previous 12 months, then the Department may assess a fine of up to 2 times the maximum fine otherwise allowed. (Section 3-305(10) of the Act)*
- j) For the purposes of calculating certain penalties pursuant to this Section, violations of the following requirements shall have the status of "high-risk designation".
- 1) Section 390.681
 - 2) Section 390.700
 - 3) Section 390.750(b)
 - 4) Section 390.760

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- 5) Section 390.1010
 - 6) Section 390.1040
 - 7) Section 390.1310
 - 8) Section 390.1316
 - 9) Section 390.2740(f)
 - 10) Section 390.3040(f)
 - 11) Section 390.3240
 - 12) Section 390.759
- k) *When the Department finds that a provision of Article II of the Act has been violated with regard to a particular resident, the Department shall issue an order requiring the facility to reimburse the resident for injuries incurred, or \$100, whichever is greater. In the case of a violation involving any action other than theft of money belonging to a resident, reimbursement shall be ordered only if a provision of Article II of the Act has been violated with regard to that or any other resident of the facility within the 2 years immediately preceding the violation in question. (Section 3-305(6) of the Act)*
- l) *In the case of a Type "AA" or Type "A" violation, a penalty may be assessed from the date on which the violation is discovered.*
- m) *In the case of a Type "B" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 of the Act or this Part, a penalty shall be assessed on the date of notice of the violation.*
- n) *In the case of a Type "B" or Type "C" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 of the Act or this Part, the facility shall submit a plan of correction as provided in Section 390.278.*
- o) *If a plan of correction is approved and carried out for a Type "C" violation, the fine provided under Section 3-305 of the Act shall be suspended for the time period specified in the approved plan of correction.*
- p) *If a plan of correction is approved and carried out for a Type "B" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 of the Act or this Part, with respect to a violation that continues after the date of notice*

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of violation, the fine provided under Section 3-305 shall be suspended for the time period specified in the approved plan of correction.

- q) *If a good faith plan of correction is not received within the time provided by Section 3-303 of the Act, a penalty may be assessed from the date of the notice of the Type "B" or "C" violation or an administrative warning issued pursuant to Sections 3-401 through 3-413 of the Act or this Part, until the date of the receipt of a good faith plan of correction, or until the date the violation is corrected, whichever is earlier.*
- r) *If a violation is not corrected within the time specified by an approved plan of correction or any lawful extension thereof, a penalty may be assessed from the date of notice of the violation, until the date the violation is corrected. (Section 3-308 of the Act)*

(Source: Emergency amendment at 46 Ill. Reg. _____, effective JUL 15 2022, for a maximum of 150 days)

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**Section 390.340 Incorporated and Referenced Materials
EMERGENCY**

- a) The following regulations, guidelines, and standards are incorporated in this Part:
- 1) ANSI/ASME Standard No. A17.1-2007, Safety Code for Elevators and Escalators, which may be obtained from the American Society of Mechanical Engineers (ASME) International, 22 Law Drive, Box 2900, Fairfield, New Jersey 07007-2900.
 - 2) ANSI/ASHRAE/ASHE Standard 170-2008, Ventilation of Health Care Facilities, which may be accessed at:
http://sspc170.ashraepcs.org/pdf/170_2008_FINAL.pdf
 - 3) American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), Handbook of Fundamentals (2009), and Handbook of Applications (2007), which may be obtained from the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.
 - 4) American Society for Testing and Materials (ASTM), International Standard No. E90-02 (2009): Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements, and Standard No. E84-16, Standard Test Method for Surface Burning Characteristics of Building Materials (2006), which may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959.
 - 5) International Building Code (IBC) (2012), which may be obtained from Building Officials and Code Administrators (BOCA) International, 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795.
 - 6) For existing facilities (see Subpart N), National Fire Protection Association (NFPA) 101 (2012): Life Safety Code, Chapter 19 (Existing Health Care Occupancies), and all appropriate references under Chapter 12 (New Assembly Occupancies), which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169.
 - 7) For new facilities (see Subpart M), NFPA 101 (2012): Life Safety Code, Chapter 18 (New Health Care Occupancies), including all appropriate references under Chapter 2 (Definitions) and Chapter 18, and excluding Chapter 5 (Performance Based Options), and all other references to

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performance based options. NFPA 101A: Alternative Approaches to Life Safety shall not apply to new construction. In addition to the publications referenced in Chapter 2, the following standards, which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169, shall be applicable for all long-term facilities:

- A) NFPA 20 (2010), Standard for the Installation of Stationary Pumps for Fire Protection
 - B) NFPA 22 (2008), Standard for Water Tanks for Private Fire Protection
 - C) NFPA 24 (2010), Standard for the Installation of Private Fire Service Mains and Their Appurtenances
 - D) NFPA 50 (2001), Standard for Bulk Oxygen Systems at Consumer Sites
- 8) The following standards, which may be obtained from Underwriters Laboratories (UL), Inc., 333 Pfingsten Rd., Northbrook, Illinois 60062:
- A) Fire Resistance Directory (2015 Edition)
 - B) Building Material Directory (2015 Edition)
- 9) The following guidelines of the Center for Infectious Diseases, Centers for Disease Control and Prevention, United States Public Health Service, Department of Health and Human Services, which may be obtained from the National Technical Information Services (NTIS), 5301 Shawnee Rd., Alexandria, Virginia 22313, info@ntis.gov:
- A) Guideline for Prevention of Catheter-Associated Urinary Tract Infections (June 6, 2019), available at <https://www.cdc.gov/infectioncontrol/guidelines/cauti-guidelines-H.pdf>
 - B) Guideline for Hand Hygiene in Health-Care Settings (October 2002), available at <https://www.cdc.gov/infectioncontrol/guidelines/hand-hygiene/index.html>
 - C) Guidelines for Prevention of Intravascular Catheter-Related

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- Infections (2011), available at
<https://www.cdc.gov/hai/pdfs/bsiguidelines-2011.pdf>
- D) Guideline for Prevention of Surgical Site Infection (2017), available at
<https://www.cdc.gov/infectioncontrol/guidelines/ssi/index.html>
- E) Guideline for Preventing Healthcare-Associated Pneumonia (2003), available at
<https://www.cdc.gov/infectioncontrol/pdf/guidelines/healthcare-associated-pneumonia-H.pdf>
- F) 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings (July 2019), available at
<https://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH-219/0219-010107-siegel.pdf>
- G) Infection Control in Healthcare Personnel: Infrastructure and Routine Practices for Occupational Infection Prevention and Control Services (October 25, 2019) available in two parts at:
<https://www.cdc.gov/infectioncontrol/pdf/guidelines/infectioncontrol-HCP-H.pdf> and
<https://www.cdc.gov/infectioncontrol/guidelines/healthcare-personnel/index.html>
- H) The Core Elements of Antibiotic Stewardship for Nursing Homes, available at: <https://www.cdc.gov/antibiotic-use/core-elements/pdfs/core-elements-antibiotic-stewardship-H.pdf> (August 20, 2021)
- I) The Core Elements of Antibiotic Stewardship for Nursing Homes, Appendix A: Policy and Practice Actions to Improve Antibiotic Use, available at: <https://www.cdc.gov/antibiotic-use/core-elements/pdfs/core-elements-antibiotic-stewardship-appendix-a-508.pdf>
- J) Nursing Home Antimicrobial Stewardship Guide, available at: <https://www.ahrq.gov/nhguide/index.html> (October 2016)
- K) Toolkit 3. Minimum Criteria for Common Infections Toolkit, available at: <https://www.ahrq.gov/nhguide/toolkits/determine-whether-to-treat/toolkit3-minimum-criteria.html> (September 2017)

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- L) TB Infection Control in Health Care Settings (May 14, 2019) available at:
<https://www.cdc.gov/tb/topic/infectioncontrol/TBhealthCareSettings.htm>
 - M) Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes (February 2, 2022) available at: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/long-term-care.html>
 - N) Implementation of Personal Protective Equipment (PPE) in Nursing Homes to Prevent Spread of Novel or Targeted Multidrug-resistant Organisms (MDROs) (July 29, 2019) available at:
<https://www.cdc.gov/hai/containment/PPE-Nursing-Homes.html>
 - O) Hospital Respiratory Protection Program Toolkit: Resources for Respirator Program Administrators (May 2015) available at:
<https://www.cdc.gov/niosh/docs/2015-117/pdfs/2015-117.pdf>
 - P) Respiratory Protection Guidance for the Employers of Those Working in Nursing Homes, Assisted Living, and Other Long-Term Care Facilities During the COVID-19 Pandemic available at:
<https://www.osha.gov/sites/default/files/respiratory-protection-covid19-long-term-care.pdf>
 - Q) Guidelines for Environmental Infection Control in Health-Care Facilities (July 2019) available at:
<https://www.cdc.gov/infectioncontrol/guidelines/environmental/index>
- 10) American College of Obstetricians and Gynecologists, Guidelines for Women's Health Care, Fourth Edition (2014), which may be obtained from the American College of Obstetricians and Gynecologists Distribution Center, P.O. Box 933104, Atlanta, Georgia 31193-3104 (800-762-2264). (See Section 390.3220.)
 - 11) The Prescribers Digital Reference (PDR) database, which may be accessed at: www.pdr.net
 - 12) The Lexicomp-online database, which may be accessed at:
www.wolterskluwer CDI.com/lexicomp-online/

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- 13) The American Society of Health-System Pharmacists (ASHP) database, which may be accessed at: www.ashp.org

- b) All incorporations by reference of federal regulations and the standards of nationally recognized organizations refer to the regulations and standards on the date specified and do not include any amendments or editions subsequent to the date specified.

- c) The following statutes and State regulations are referenced in this Part:
 - 1) Federal statutes and regulations:
 - A) Civil Rights Act of 1964 (42 USC 2000e et seq.)
 - B) Social Security Act (42 USC 301 et seq., 1395 et seq., and 1396 et seq.)
 - C) Controlled Substances Act (21 USC 802)
 - D) 42 CFR 483, Requirements for States and Long-Term Care Facilities (October 1, 2020)
 - E) 42 CFR 483.80, Infection Control (May 13, 2021)

 - 2) State of Illinois statutes:
 - A) Substance Use Disorder Act [20 ILCS 301]
 - B) Boiler and Pressure Vessel Safety Act [430 ILCS 75]
 - C) Child Care Act of 1969 [225 ILCS 10]
 - D) Code of Civil Procedure [735 ILCS 5]
 - E) Court of Claims Act [705 ILCS 505]
 - F) Illinois Dental Practice Act [225 ILCS 25]
 - G) Election Code [10 ILCS 5]
 - H) Freedom of Information Act [5 ILCS 140]
 - I) General Not For Profit Corporation Act [805 ILCS 105]

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- J) Hospital Licensing Act [210 ILCS 85]
- K) Illinois Controlled Substances Act [720 ILCS 570]
- L) Illinois Health Facilities Planning Act [20 ILCS 3960]
- M) Illinois Municipal Code [65 ILCS 5]
- N) Life Care Facilities Act [210 ILCS 40]
- O) Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10]
- P) Medical Practice Act of 1987 [225 ILCS 60]
- Q) Mental Health and Developmental Disabilities Code [405 ILCS 5]
- R) Nurse Practice Act [225 ILCS 65]
- S) Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70]
- T) Nursing Home Care Act [210 ILCS 45]
- U) Illinois Occupational Therapy Practice Act [225 ILCS 75]
- V) Pharmacy Practice Act [225 ILCS 85]
- W) Illinois Physical Therapy Act [225 ILCS 90]
- X) Private Sewage Disposal Licensing Act [225 ILCS 225]
- Y) Probate Act of 1975 [755 ILCS 5]
- Z) Illinois Public Aid Code [305 ILCS 5]
- AA) Safety Glazing Materials Act [430 ILCS 60]
- BB) School Code [105 ILCS 5]
- CC) Illinois Administrative Procedure Act [5 ILCS 100]

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- DD) Clinical Psychologist Licensing Act [225 ILCS 15]
- EE) Dietitian Nutritionist Practice Act [225 ILCS 30]
- FF) Health Care Worker Background Check Act [225 ILCS 46]
- GG) Clinical Social Work and Social Work Practice Act [225 ILCS 20]
- HH) Illinois Living Will Act [755 ILCS 35]
- II) Powers of Attorney for Health Care Law [755 ILCS 45/Art. IV]
- JJ) Health Care Surrogate Act [755 ILCS 40]
- KK) Health Care Right of Conscience Act [745 ILCS 70]
- LL) Abused and Neglected Long-Term Care Facility Residents Reporting Act [210 ILCS 30]
- MM) Supportive Residences Licensing Act [210 ILCS 65]
- NN) MC/DD Act [210 ILCS 46]
- OO) Community Living Facilities Licensing Act [210 ILCS 35]
- PP) Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135]
- QQ) Counties Code [55 ILCS 5]
- RR) Podiatric Medical Practice Act of 1987 [225 ILCS 100]
- SS) Illinois Optometric Practice Act of 1987 [225 ILCS 80]
- TT) Physician Assistant Practice Act of 1987 [220 ILCS 95]
- UU) Alternative Health Care Delivery Act [210 ILCS 3]
- VV) Illinois Uniform Conviction Information Act [20 ILCS 2635]
- WW) Wrongs to Children Act [720 ILCS 150]
- XX) Assisted Living and Shared Housing Act [210 ILCS 9]

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- YY) Language Assistance Services Act [210 ILCS 87]
 - ZZ) State Fire Marshal Act [20 ILCS 2905]
 - AAA) Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110]
 - BBB) Home Health, Home Services, and Home Nursing Agency Licensing Act [210 ILCS 55]
 - CCC) Sex Offender Registration Act [730 ILCS 150]
 - DDD) ID/DD Community Care Act [210 ILCS 47]
 - EEE) Cannabis Control Act [720 ILCS 550]
 - FFF) Methamphetamine Control and Community Protection Act [720 ILCS 646]
 - GGG) Authorized Electronic Monitoring in Long-Term Care Facilities Act [210 ILCS 32]
- 3) State of Illinois rules:
- A) Boiler and Pressure Vessel Safety (41 Ill. Adm. Code 2120)
 - B) Illinois Accessibility Code (71 Ill. Adm. Code 400)
 - C) Control of Communicable Diseases Code (77 Ill. Adm. Code 690)
 - D) Control of Sexually Transmissible Diseases Code (77 Ill. Adm. Code 693)
 - E) Food Code (77 Ill. Adm. Code 750)
 - F) Illinois Plumbing Code (77 Ill. Adm. Code 890)
 - G) Private Sewage Disposal Code (77 Ill. Adm. Code 905)
 - H) Drinking Water Systems Code (77 Ill. Adm. Code 900)
 - I) Water Well Construction Code (77 Ill. Adm. Code 920)

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- J) Illinois Water Well Pump Installation Code (77 Ill. Adm. Code 925)
- K) Access to Records of the Department of Public Health (2 Ill. Adm. Code 1127)
- L) Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)
- M) Skilled Nursing and Intermediate Care Facilities Code (77 Ill. Adm. Code 300)
- N) Sheltered Care Facilities Code (77 Ill. Adm. Code 330)
- O) Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)
- P) Long-Term Care Assistants and Aides Training Programs Code (77 Ill. Adm. Code 395)
- Q) Control of Tuberculosis Code (77 Ill. Adm. Code 696)
- R) Health Care Worker Background Check Code (77 Ill. Adm. Code 955)
- S) Language Assistance Services Code (77 Ill. Adm. Code 940)
- T) Health Facilities and Services Review Operational Rules (77 Ill. Adm. Code 1130)
- U) Illinois Controlled Substances Act (77 Ill. Adm. Code 3100)
- V) Pharmacy Practice Act (68 Ill. Adm. Code 1330)
- W) Department of Human Services, Alcoholism and Substance Abuse Treatment and Intervention Licenses (77 Ill. Adm. Code 2060)
- X) Department of Natural Resources, Regulation of Construction within Flood Plains (17 Ill. Adm. Code 3706)
- Y) Department of Healthcare and Family Services, Medical Payment (89 Ill. Adm. Code 140)

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(Source: Emergency amendment at 46 Ill. Reg. _____, effective **JUL 15 2022**, for a maximum of 150 days)

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**Section 390.759 COVID-19 Vaccination of Facility Staff
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- a) For the purposes of this Section:
- 1) "Staff" or "staff person" means any person who is employed by, volunteers for, or is contracted to provide services for a facility, or is employed by an entity that is contracted to provide services to a facility and is in close contact (fewer than 6 feet) with other persons in the facility for more than 15 minutes at least once a week on a regular basis as determined by the facility. The term "staff" or "staff person" does not include any person who is present at the facility for only a short period of time and whose moments of close physical proximity to others on-site are fleeting (e.g., contractors making deliveries to a site where they remain physically distanced from others or briefly entering a site to pick up a shipment).
 - 2) "COVID-19 vaccine" means a vaccine for COVID-19 that has been authorized for emergency use, licensed, or otherwise approved by the U.S. Food and Drug Administration (FDA).
 - 3) An individual is "up to date on COVID-19 vaccinations" when they have received all CDC-recommended COVID-19 vaccines, including any booster dose(s) when eligible.
 - 4) An individual is "not up to date" when they have not received all CDC-recommended COVID-19 vaccines, including any booster dose(s) when eligible.
- b) Each facility shall require all staff to be up to date on COVID-19 vaccinations or be tested in a manner consistent with the requirements of subsection (c) until they are up to date on COVID-19 vaccinations.
- 1) Each facility shall require staff who are up to date on COVID-19 vaccinations to submit proof of all COVID-19 vaccinations. Proof of vaccination may be met by providing to the facility one of the following:
 - A) A Centers for Disease Control and Prevention (CDC) COVID-19 vaccination record card or photo of the card;
 - B) Documentation of vaccination from a health care provider or electronic health record; or

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- C) State immunization records.
- 2) Each facility shall make available opportunities for staff to be up to date on COVID-19 vaccinations, either directly at the facility or indirectly, such as through an arrangement with a pharmacy partner, local health department, or other appropriate health entity.
 - 3) Each facility shall exempt individual staff members from the COVID-19 vaccination requirements if:
 - A) Vaccination is medically contraindicated, including any individual staff member who is entitled to an accommodation under the Americans with Disabilities Act or any other law applicable to a disability-related reasonable accommodation; or
 - B) Vaccination would require the individual staff member to violate or forgo a sincerely held religious belief, practice, or observance.
 - 4) Staff that fall within the exemption in subsection (b)(3) shall undergo the testing requirements set forth in subsection (c).
 - 5) Facilities may adopt more stringent policies requiring all staff to be vaccinated. Nothing in the Section supersedes or modifies the date such policies are designated by the facility to take effect.
 - 6) Facilities certified by the Centers for Medicare & Medicaid Services (CMMS) must maintain compliance with all applicable CMMS regulations and guidance including but not limited to requirements in 42 CFR 483.80.
- c) Each facility shall require its staff who are not up to date on COVID-19 vaccinations to undergo testing for COVID-19 once per week if the level of COVID-19 community transmission is moderate and twice per week if the level of COVID-19 community transmission is substantial or high, with twice weekly tests administered at least three days apart. No testing is required for facilities in counties where community transmission levels are low. COVID-19 community transmission levels shall be determined based on the CDC COVID Data Tracker available at: <https://covid.cdc.gov/covid-data-tracker>. Staff who are not up to date on COVID-19 vaccinations and not tested as required by this subsection shall not be permitted to enter or work at the facility.

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- 1) The COVID-19 test shall either have Emergency Use Authorization by the FDA or be operated pursuant to the Laboratory Developed Test requirements of the U.S. Centers for Medicare and Medicaid Services.
 - 2) Testing for staff who are not up to date on COVID-19 vaccinations shall be conducted on-site at the facility, or the facility must obtain proof or confirmation from the staff member of a negative test result obtained elsewhere.
 - 3) A laboratory RT-PCR test is the preferred test for COVID-19 infection; however, point-of-care (POC) antigen testing is acceptable. For a facility to conduct these tests with their own staff and equipment, the facility shall have, at a minimum, a Clinical Laboratory Improvement Amendments (CLIA) Certificate of Waiver.
 - 4) If a staff person tests positive for COVID-19, the facility shall exclude the staff person from the facility, and the staff person shall be subject to all applicable isolation and quarantine rules and facility policies.
 - 5) In the event COVID-19 RT-PCR or POC antigen testing is not available, staff may use at-home or self-tests if the tests are observed and verified by a health care provider, and reportable as required in subsection (g).
 - 6) Staff who are not up to date on COVID-19 vaccinations may be permitted to enter or work at the facility while they are waiting to receive the results of their most recent test.
- d) Each facility shall ensure that all individuals who administer the COVID-19 vaccines on site for staff pursuant to this Section are qualified and trained to administer the vaccine in accordance with all applicable federal and State laws and rules.
 - e) Each facility shall post conspicuous signage throughout the facility notifying staff that the facility makes available opportunities for staff to be up to date on COVID-19 vaccinations. The signs shall be on 8.5 by 11-inch white paper, with text in Calibri (body) font and 26-point type in black letters.
 - f) Each facility shall provide its unvaccinated staff a minimum of 90 minutes of clear and accurate instruction covering vaccine education, effectiveness, benefits, risks, common reactions, hesitancy, and misinformation. Records of training shall be made available to the Department upon request. Examples of Department-approved training and educational resources include those offered for health care professionals by the:

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- 1) Illinois Department of Public Health WebEx webinar recording: Vaccine Protection: Caring Communities Working Together available at: <https://illinois.webex.com/illinois/lsr.php?RCID=45ae739d9a0b1c34e884c1608fef2fd9>;
 - 2) CDC, available at <https://www2.cdc.gov/vaccines/ed/covid19/>; and
 - 3) Immunization Action Coalition (IAC), available at <https://www.immunize.org/covid-19/>.
- g) Each facility shall maintain a record of staff who are up to date on COVID-19 vaccinations, not up to date on COVID-19 vaccinations, and unvaccinated with an exemption pursuant to subsection (b)(3), and test results required per subsection (c). Facilities that are not required to report COVID-19 aggregate vaccination and testing data into the National Healthcare Safety Network (NHSN) shall report this data to the Department weekly utilizing the online form available at <https://app.smartsheet.com/b/form/fa2d7abfb102490b9d2622a2ba490744>.
- h) The facility shall maintain documentation in each staff person's confidential medical file, in accordance with federal and State privacy laws, regarding COVID-19 vaccinations and tests, including the following:
- 1) Proof of vaccination for the staff person;
 - 2) The results of COVID-19 tests for each staff person; and
 - 3) Written exemption from the vaccination.
- i) Nothing in this emergency amendment prohibits any facility from implementing vaccination or testing requirements for staff, residents, and visitors that exceed the requirements of this Section.
- j) Failure to comply with any of the requirements set forth in this Section creates a substantial probability of risk of death or serious mental or physical harm and shall result in a Type "A" violation as defined in Section 300.274(b)(2). Violations of the requirements of this Section shall have the status of "high risk designation."

(Source: Emergency rule added at 46 Ill. Reg. _____, effective JUL 15 2022, for a maximum of 150 days)

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