

## **N.J.A.C. 8:36**

### **STANDARDS FOR LICENSURE OF ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL CARE HOMES, AND ASSISTED LIVING PROGRAMS**

**Effective Date:** February 5, 2007  
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## **N.J.A.C. 8:43E**

### **GENERAL LICENSURE PROCEDURES AND ENFORCEMENT OF LICENSURE REGULATIONS**

**Effective Date:** August 18, 2006  
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**To make a complaint about a New Jersey licensed  
Assisted Living Residence, Comprehensive Personal  
Care Home or an Assisted Living Program  
call 1-800-792-9770 (toll-free hotline)**

**Note:** This is an unofficial version of the rules. The official rules can be found in the New Jersey Administrative Code, as published by LexisNexis at N.J.A.C. 8:36 and 8:43E. This booklet contains corrected addresses that differ from those in the administrative code.



**N.J.A.C. 8:36**

**STANDARDS FOR LICENSURE OF  
ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL  
CARE HOMES, AND ASSISTED LIVING PROGRAMS**

**TABLE OF CONTENTS**

<b><u>Rule</u></b>	<b><u>Content</u></b>	<b><u>Page</u></b>
<b>SUBCHAPTER 1. GENERAL PROVISIONS</b>		<b>1</b>
8:36-1.1	Scope	1
8:36-1.2	Purpose	1
8:36-1.3	Definitions	2
<b>SUBCHAPTER 2. LICENSURE PROCEDURES</b>		<b>12</b>
8:36-2.1	Certificate of need	12
8:36-2.2	Application for licensure	12
8:36-2.3	Newly constructed or expanded facilities	16
8:36-2.4	Surveys	17
8:36-2.5	License	18
8:36-2.6	Surrender of license	19
8:36-2.7	Waiver	19
8:36-2.8	Action against a license	20
8:36-2.9	Hearings	20
8:36-2.10	Advertisement of assisted living	20
<b>SUBCHAPTER 3. ADMINISTRATION</b>		<b>21</b>
8:36-3.1	Appointment of administrator	21
8:36-3.2	Qualifications of the administrator of an assisted living residence or comprehensive personal care home	21
8:36-3.3	Qualifications of trainers for assisted living administrators	23
8:36-3.4	Administrator's responsibilities	24
8:36-3.5	Actions against an assisted living administrator	25
8:36-3.6	Assisted Living Administrators Panel	26

<u>Rule</u>	<u>Content</u>	<u>Page</u>
<b>SUBCHAPTER 4. RESIDENT RIGHTS</b>		<b>28</b>
8:36-4.1	Posting and distribution of statement of resident rights	28
<b>SUBCHAPTER 5. GENERAL REQUIREMENTS</b>		<b>33</b>
8:36-5.1	Types of services provided to residents	33
8:36-5.2	Ownership	35
8:36-5.3	Transfer of ownership	36
8:36-5.4	Submission and availability of documents	37
8:36-5.5	Personnel	37
8:36-5.6	Staffing requirements	38
8:36-5.7	Policy and procedure manual	39
8:36-5.8	Resident transportation	40
8:36-5.9	Written agreements	40
8:36-5.10	Reportable events	41
8:36-5.11	Notices	42
8:36-5.12	Maintenance of records	42
8:36-5.13	Admission and retention of residents	42
8:36-5.14	Involuntary discharge	43
8:36-5.15	Notification requirements	44
8:36-5.16	Interpretation services	44
8:36-5.17	Referral and transfer agreements	44
8:36-5.18	Managed risk agreements	45
<b>SUBCHAPTER 6. RESIDENT CARE POLICIES</b>		<b>46</b>
8:36-6.1	Resident care policies and procedures	46
8:36-6.2	Financial arrangements and full disclosure	47
8:36-6.3	Personal needs allowance	48
<b>SUBCHAPTER 7. RESIDENT ASSESSMENTS AND CARE PLANS</b>		<b>50</b>
8:36-7.1	Initial assessments and resident service plans	50
8:36-7.2	Health care assessment and health service plan	50
8:36-7.3	General and health service plans	52
8:36-7.4	Health care services	53
8:36-7.5	Provision of health care services	53

<u>Rule</u>	<u>Content</u>	<u>Page</u>
<b>SUBCHAPTER 8. NURSING SERVICES</b>		<b>55</b>
8:36-8.1	Qualifications of professional nurses	55
8:36-8.2	Nurse staffing requirements	55
<b>SUBCHAPTER 9. PERSONAL CARE ASSISTANTS, CERTIFIED MEDICATION AIDES, AND OTHER DIRECT CAREGIVERS</b>		<b>56</b>
8:36-9.1	Qualifications of personal care assistants	56
8:36-9.2	Certified Medication Aides	59
8:36-9.3	Minimum personal care assistant staffing	62
<b>SUBCHAPTER 10. DINING SERVICES</b>		<b>63</b>
8:36-10.1	Qualifications of dietitians	63
8:36-10.2	Provision of meals	63
8:36-10.3	Designation of a food service coordinator	63
8:36-10.4	Responsibilities of dietitians	63
8:36-10.5	Requirements for dining services	63
8:36-10.6	Commercial food management services	65
<b>SUBCHAPTER 11. PHARMACEUTICAL SERVICES</b>		<b>66</b>
8:36-11.1	Qualifications of pharmacists	66
8:36-11.2	Provision of pharmaceutical services	66
8:36-11.3	Supervision of medication administration	66
8:36-11.4	Administration of medications	66
8:36-11.5	Certified Medication Aide Program	67
8:36-11.6	Designation of a pharmacist	69
8:36-11.7	Storage and control of medications	70
<b>SUBCHAPTER 12. RESIDENT ACTIVITIES</b>		<b>73</b>
8:36-12.1	Provision of resident activities	73
<b>SUBCHAPTER 13. SOCIAL WORK SERVICES</b>		<b>74</b>
8:36-13.1	Qualifications of social workers	74
8:36-13.2	Provision of social work services	74

<u>Rule</u>	<u>Content</u>	<u>Page</u>
<b>SUBCHAPTER 14.</b>	<b>EMERGENCY SERVICES AND PROCEDURES</b>	<b>75</b>
8:36-14.1	Emergency medical services	75
8:36-14.2	Emergency plans and procedures	75
8:36-14.3	Drills and tests	76
<b>SUBCHAPTER 15.</b>	<b>RESIDENT RECORDS</b>	<b>77</b>
8:36-15.1	Health record	77
8:36-15.2	Record availability	77
8:36-15.3	Confidentiality	77
8:36-15.4	Record retention	77
8:36-15.5	Register	77
8:36-15.6	Residents' individual records	78
8:36-15.7	Record of death	78
<b>SUBCHAPTER 16.</b>	<b>PHYSICAL PLANT</b>	<b>80</b>
8:36-16.1	Scope	80
8:36-16.2	Restrictions	80
8:36-16.3	Ventilation	80
8:36-16.4	Exit access passageways and corridors	80
8:36-16.5	Automatic fire detection system	80
8:36-16.6	Fire suppression systems	81
8:36-16.7	Interior finish requirement	81
8:36-16.8	General residential unit requirements	81
8:36-16.9	Toilets, baths and handwashing sinks	81
8:36-16.10	Kitchenettes	82
8:36-16.11	Community space	82
8:36-16.12	Laundry equipment	82
8:36-16.13	Dietary department	83
8:36-16.14	Administration and public areas	83
8:36-16.15	Fire extinguisher specifications	84
8:36-16.16	Sounding devices	84
8:36-16.17	Telecommunications	84

<u>Rule</u>	<u>Content</u>	<u>Page</u>
<b>SUBCHAPTER 17.</b>	<b>HOUSEKEEPING, SANITATION, SAFETY AND MAINTENANCE</b>	<b>85</b>
8:36-17.1	Provision of services	85
8:36-17.2	Housekeeping	85
8:36-17.3	Resident environment	85
8:36-17.4	Waste removal	87
8:36-17.5	Heating and air conditioning	88
8:36-17.6	Water supply	88
8:36-17.7	Building and grounds maintenance	89
8:36-17.8	Laundry services	89
<b>SUBCHAPTER 18.</b>	<b>INFECTION PREVENTION AND CONTROL SERVICES</b>	<b>91</b>
8:36-18.1	Infection control program	91
8:36-18.2	Development of infection control policies and procedures	91
8:36-18.3	General infection control policies and procedures	93
8:36-18.4	Employee health and resident policies and procedures for infection prevention and control	94
8:36-18.5	Staff education and training for infection prevention and control	95
8:36-18.6	Regulated medical waste	96
<b>SUBCHAPTER 19.</b>	<b>ALZHEIMER'S/DEMENTIA PROGRAMS</b>	<b>97</b>
8:36-19.1	Scope and purpose	97
8:36-19.2	Alzheimer's/dementia program policies and procedures	97
8:36-19.3	Staff training program for Alzheimer's/dementia	97
8:36-19.4	Services for residents with Alzheimer's/dementia	98
<b>SUBCHAPTER 20.</b>	<b>STANDARDS FOR RESPITE CARE SERVICES</b>	<b>99</b>
8:36-20.1	Scope and purpose	99
8:36-20.2	Mandatory policies and procedures	99
8:36-20.3	Staffing	100

<u>Rule</u>	<u>Content</u>	<u>Page</u>
<b>SUBCHAPTER 21.</b>	<b>QUALITY IMPROVEMENT</b>	<b>101</b>
8:36-21.1	Quality improvement program	101
8:36-21.2	Use of restraints	102
8:36-21.3	Personal care services	102
<b>SUBCHAPTER 22.</b>	<b>COMPREHENSIVE PERSONAL CARE HOMES</b>	<b>103</b>
8:36-22.1	Eligibility	103
8:36-22.2	Services provided to residents	104
8:36-22.3	Physical plant	104
8:36-22.4	Other requirements	105
8:36-22.5	Prohibition of resident discharge on conversion of facility	105
8:36-22.6	Combination of license categories	105
8:36-22.7	Supplemental Security Income recipients	105
<b>SUBCHAPTER 23.</b>	<b>ASSISTED LIVING PROGRAMS</b>	<b>107</b>
8:36-23.1	Tenant/resident eligibility	107
8:36-23.2	Service provider requirements	107
8:36-23.3	Services provided to residents	109
8:36-23.4	Policy and procedure manual	109
8:36-23.5	Resident transportation	109
8:36-23.6	Notices	110
8:36-23.7	Maintenance of records	110
8:36-23.8	Notification requirements	111
8:36-23.9	Administration and staffing	111
8:36-23.10	Financial arrangements	112
8:36-23.11	Resident assessments, service plans, health care plans and health care services	112
8:36-23.12	Dining services and meal preparation assistance	112
8:36-23.13	Pharmaceutical services	113
8:36-23.14	Resident activities	114
8:36-23.15	Resident records	115
8:36-23.16	Resident rights and responsibilities	115
8:36-23.17	Reportable events	115
8:36-23.18	Other requirements	116



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# **STANDARDS FOR LICENSURE OF ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL CARE HOMES, AND ASSISTED LIVING PROGRAMS**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **8:36-1.1 Scope**

(a) The rules in this chapter pertain to all facilities which provide assisted living services. These rules constitute the basis for the licensure of assisted living residences, comprehensive personal care homes, and assisted living programs by the New Jersey State Department of Health and Senior Services.

(b) Assisted living residences shall comply with N.J.A.C. 8:36-1 through 21; comprehensive personal care homes shall comply with N.J.A.C. 8:36-1 through 21, where applicable, and 22; and assisted living programs shall comply with N.J.A.C. 8:36-1 through 22, where applicable, and 23.

#### **8:36-1.2 Purpose**

(a) The purpose of this chapter is to establish minimum standards with which an assisted living residence, comprehensive personal care home or assisted living program must comply in order to be licensed to operate in New Jersey.

(b) The purpose of these rules is to establish standards for assisted living residences, comprehensive personal care homes (which may be collectively referred to as assisted living facilities) and assisted living programs, all of which are intended to promote "aging in place" in a homelike setting for frail elderly and disabled persons, including persons who require nursing home level of care. Assisted living residences, comprehensive personal care homes and assisted living programs assure that residents receive supportive health and social services as they are needed to enable them to maintain their independence, individuality, privacy, and dignity in an apartment-style living unit or, in the case of assisted living programs, a living unit in publicly subsidized housing. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation and promotes resident self direction and personal decision-making while protecting residents' health and safety.

(c) An assisted living residence or comprehensive personal care home offers a suitable living arrangement for persons with a range of capabilities, disabilities, frailties, and strengths. In general, however, assisted living is not appropriate for individuals who are incapable of responding to their environment, expressing volition, interacting, or demonstrating any independent activity. For example, individuals in a persistent vegetative state should not be placed or cared for in an assisted living residence, comprehensive personal care home or assisted living program.

(d) In the case of hospice, the purpose of these rules is to promote the establishment of assisted living residences or comprehensive personal care homes to serve terminally ill persons who lack adequate caregiving support to meet their needs while residing at home.

### **8:36-1.3 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Activities of daily living (ADL)" means the functions or tasks for self-care, which are performed either independently or with supervision or assistance. Activities of daily living include dressing, bathing, toilet use, transfer, locomotion, bed mobility, and eating.

"Advanced practice nurse" means an individual who is certified by the New Jersey State Board of Nursing in accordance with N.J.S.A. 45:11-23 et seq.

"Aging in place" means a process whereby individuals remain in their living environment despite the physical and/or mental decline and growing needs for supportive services that may occur in the course of aging. For aging in place to occur, services are added, increased, or adjusted to compensate for the individual's physical and/or mental decline.

"Assistance with transfer" means providing the physical assistance of no more than two facility staff while the resident moves between bed and a standing position or between bed, chair or wheelchair.

"Assisted living" means a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services including persons who require nursing home level of care. Assisted living promotes resident self direction and participation in decisions that emphasize independence, individuality, privacy, dignity, and homelike surroundings.

"Assisted living program" means the provision of or arrangement for meals and assisted living services, when needed, to the tenants (also known as residents) of publicly subsidized housing which because of any Federal, State, or local housing laws, rules, regulations or requirements cannot become licensed as an assisted living residence. An assisted living program may also provide staff resources and other services to a licensed assisted living residence and a licensed comprehensive personal care home.

"Assisted living program provider" means an organization licensed by the New Jersey Department of Health and Senior Services to provide all services required of an assisted living program.

"Assisted living residence" means a facility which is licensed by the Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, for four or more adult persons unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

"Assisted living values" means the organization, development and implementation of services and other facility or program features so as to promote and encourage each resident's choice, dignity, independence, individuality and privacy in a homelike environment. Assisted living values promote the concepts of aging in place and shared responsibility.

"Available" means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined.

"Bedridden" means physically unable to rise from bed, even with assistance with transfer from the bed.

"Bounded choice" means limits placed on a resident's choice as a result of an assessment, in accordance with N.J.A.C. 8:36-5.18, which indicates that such resident's choices or preferences place the resident or others at a risk of harm or lead to consequences which violate the norms of the facility or program or the rights of others.

"Center" or "Centers" means ecologically designed compact forms of development and redevelopment that are necessary to assure efficient infrastructure and protection of natural resources in the various regions of the State of New Jersey pursuant to the State Plan for Development and Redevelopment created pursuant to the requirements of the State Planning Act, N.J.S.A. 52:18A-196 through 207.

"Choice" means the number of opportunities and viable options available to residents to act on their preferences and to exercise control over their lives.

"Commissioner" means the New Jersey State Commissioner of Health and Senior Services.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which occurs through transmission of that agent or its products from a reservoir to a susceptible host.

"Comprehensive personal care home" means a facility which is licensed by the Department of Health and Senior Services to provide room and board and to assure that assisted living services are available when needed, to four or more adults unrelated to the proprietor. Residential units in comprehensive personal care homes house no more than two residents and have a lockable door on the unit entrance.

"Continuing care retirement community" means a facility that has received a certificate of authority pursuant to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330 et seq.

"Customized resident medication package" means a unit-of-use package prepared by a pharmacist for a specific resident comprising a series of containers and containing two or more prescribed solid oral dosage forms, and so designed or labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

"Defibrillator" means a medical device heart monitor and defibrillator that has received approval of its pre-market notification filed pursuant to 21 U.S.C. § 360(k) from the United States Food and Drug Administration, is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, is capable of determining, without intervention by an operator, whether defibrillation should be performed, and upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

"Department" means the New Jersey State Department of Health and Senior Services.

"Dignity" means the self-worth of a resident. Dignity is enhanced and supported when the facility or program, and its staff and policies and procedures, demonstrate courtesy, respect the resident's right to make decisions, and allow personal assistance and care to be provided in privacy, with acceptance of disabilities and emphasis on abilities. (See N.J.A.C. 8:36-1.2(b)).

"Direct supervision" means supervision on the premises.

"Documented" means written, signed, and dated.

"Drug regimen review" means an individual resident record review conducted by the consultant or provider pharmacist, including, but not limited to, laboratory tests, dietary requirements, medication administration records, physician's, advanced practice nurse's, or physician assistant's and nurse's clinical notes, physician's, advanced practice nurse's, or physician assistant's orders and progress notes, in order to monitor for potentially significant adverse drug reactions, drug-to-drug and drug-food interactions, allergies, contraindications, rationality of therapy, drug use evaluation and laboratory test results.

"Employee" means a person who is gainfully employed in the assisted living facility on a full- or part-time basis and for whom a record of hours worked and wages paid are maintained and who meets the health, age and other requirements of this chapter. Reimbursement for such employment may include salaries, wages, room and board, or any combination thereof. A person placed in the assisted living facility under a purchase of care or service agreement by the facility, or the resident, is not considered an employee.

"Full-time" means a time period established by the facility as a full working week as defined in the facility's policies and procedures.

"Governing authority" means the organization, person, or persons designated to assume legal responsibility for the management, operation, and financial viability of the facility.

"Guardian" means a person appointed by a court of competent jurisdiction to handle the affairs and protect the rights of any resident of the facility who has been declared a mental incompetent. Guardian does not include a person affiliated with the facility, its operations or personnel, unless so ordered by the court.

"Half-time" means a time period established by the facility as a half working week as defined in the facility's policies and procedures.

"Health care facility" means a facility defined in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

"Health care service" means any service provided to a resident of an assisted living residence or comprehensive personal care home that is ordered by a physician and required to be provided or delegated by a licensed, registered or certified health care professional. Any other service, whether or not ordered by a physician, that is not required to be provided by a licensed, registered or certified health care professional is not to be considered a health care service. For purposes of this definition, a certified health care professional excludes certified homemaker/home health aides, certified nurse aides, certified personal care assistants, and certified medication aides.

"Homelike environment" means a residential setting where a sense of family and community pervades to foster emotional attachment to people and place and in which a resident's preferred lifestyle, habits and use of personal belongings are encouraged and supported.

"Hospice" means a program of palliative and supportive services provided to terminally ill persons and their families in the form of physical, psychological, social, and spiritual care.

"Independence" means the support and enhancement of resident capabilities and facilitation of resident abilities so that the resident's preferences and choices may be implemented within a barrier-free environment.

"Individuality" means each resident's unique needs, capabilities, personalities, backgrounds and preferences.

"Job description" means written specifications developed for each position in the facility, containing the qualifications, duties and responsibilities, and accountability required of employees in that position.

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical nurses licensed by the New Jersey State Board of Nursing in accordance with N.J.A.C. 13:37.

"Managed risk" means the process of balancing resident choice and independence with the health and safety of the resident and other persons in the facility or program. If a resident's preference or decision places the resident or others at risk or is likely to lead to adverse consequences, such risks or consequences are discussed with the resident, and, if the resident agrees, a resident representative, and a formal plan to avoid or reduce negative or adverse outcomes is negotiated, in accordance with the provisions of N.J.A.C. 8:36-5.18.

"Managed risk agreement" means the written formal plan developed in consideration of shared responsibility, bounded choice and assisted living values and negotiated between the resident and the facility or program to avoid or reduce the risk of adverse outcomes which may occur in an assisted living environment.

"Medication administration" means a procedure in which a prescribed medication or biological is given to a resident by an authorized individual in accordance with all laws and regulations governing such procedures. The complete process of administration includes:

1. Removing an individual dose from a previously dispensed, properly labeled container (including a unit dose or unit-of-use container);
2. Verifying it with the prescriber's orders;
3. Giving the individual dose to the resident;
4. Seeing that the resident takes it (if oral); and
5. Recording the required information, including but not limited to the method of administration, time administered, initials of individuals who administered the medication, and effect of the medication when "prn" or as-needed medications are administered.

"Medication administration record" or "MAR" means an individual resident record that contains, but is not limited to: resident name, date of birth, diagnosis(es), age, physician, name and medication strength, dosage form, route of administration, frequency, date and time of administration, initials of individual administering the medication, a section containing the full signature and title of each individual who initials the MAR, date medication ordered, stop date if applicable, allergies, and all other professionally acceptable information appropriate to MARs.

"Medication aide" means a person who is qualified in accordance with N.J.A.C. 8:36-9.2.

"Medication Aide Training Competency and Evaluation Program" or "MATCEP" means a Department approved minimal 30-hour training course conducted by a Department approved registered professional nurse and registered pharmacist, to instruct certified nurse aides, certified homemaker/home health aides or certified personal care assistants, in the administration of medications to residents, within assisted living residences, comprehensive personal care homes and assisted living programs.

"Medication dispensing" means a procedure entailing the interpretation of the original or direct copy of the prescriber's orders for a medication or a biological and, pursuant to that order, the proper selection, measuring, labeling, packaging, and issuance of the medication or biological to a resident or a service unit of the facility, in conformance with all applicable Federal, State, and local rules and regulations.

"Medication error" means any preventable event that may cause or lead to inappropriate medication use or resident harm, while the medication is in the control of the health care professional. Such events may be related to professional practice, health care products, procedures, and systems including: prescribing; order communication; product labeling, packaging and nomenclature; compounding; dispensing; distribution; administration; education; monitoring; and use. The error may or may not be seen by the surveyor during an observation of a resident receiving medication.

"Nursing home-level care" means that an individual requires "nursing facility services" as defined at N.J.A.C. 8:85-2.1. Nursing home-level care is provided to individuals who have chronic medical condition(s) resulting in moderate to severe impairments in physical, behavioral, cognitive, and/or psychosocial functioning. The need for nursing home-level care and services is determined by a registered professional nurse and identified in a plan of care.

"Nursing supervision" means services which are provided to a resident whose condition requires continued monitoring of vital signs and physical and cognitive status. Such services shall be medically complex enough to require ongoing assessment, planning, or intervention by a nurse; required to be performed by or under the supervision of licensed nursing personnel or other professional personnel for safe and effective performance; required on a daily basis; and consistent with the nature and severity of the resident's condition or the disease state or stage.

"Pain management," in accordance with N.J.A.C. 8:43E-6, means the assessment of pain and, if appropriate, treatment in order to assure the needs of patients or residents of health care facilities who experience problems with pain are met. Treatment of pain may include the use of medications or application of other modalities and medical devices such as, but not limited to, heat or cold, massage, transcutaneous electrical nerve stimulation (TENS), acupuncture, and neurolytic techniques such as radiofrequency coagulation and cryotherapy.

"Personal care" means services supportive to residents' care and comfort, including, but not limited to, assistance with activities of daily living. Except as required by these rules, personal care need not be provided by a personal care assistant.



"Personal care assistant" means an individual who is qualified in accordance with N.J.A.C. 8:36-9.1.

"Pharmacist" means an individual who is licensed by the New Jersey State Board of Pharmacy, in accordance with N.J.A.C. 13:39-3.

"Physician" means an individual who is licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey, in accordance with N.J.A.C. 13:35.

"Physician assistant" means an individual who is licensed by the New Jersey State Board of Medical Examiners, pursuant to N.J.S.A. 45:9-27.10 et seq.

"Privacy" means a resident's degree of control over a specific physical area and/or time; levels of intimacy with family and others; and communication and contact with others outside the facility or program environment.

"Program site" means a licensed assisted living residence, a licensed comprehensive personal care home or a publicly subsidized housing unit whose tenants may voluntarily be receiving the services of a licensed assisted living program provider.

"Publicly subsidized housing" means any housing for which the construction costs and/or the permanent financing have been underwritten with funds from any local, State or Federal entity (including low-income housing tax credits) for the purpose of making the housing affordable to persons with incomes below the area median. For the purpose of this definition, "publicly subsidized housing" can also mean rental housing developments in which all individual units available for rent are receiving rental assistance from a local, State, or Federal entity in order to make the units affordable to individuals with incomes below the area median.

"Resident" means an individual who lives in an assisted living residence or comprehensive personal care home or is a tenant in publicly subsidized housing who voluntarily participates in an assisted living program.

"Residential unit" means a separate apartment or unit where one or more individuals reside within the assisted living residence or a room or rooms where residents reside within a comprehensive personal care home.

"Responsible person" means a person who has been designated by the resident and who has agreed to assist the resident, as needed, in arranging for health, social and financial services or making decisions regarding such services.

"Self administration" means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a resident to himself or herself.

"Shared responsibility" means that residents (and if the resident wishes, the resident's family) and providers of assisted living services share responsibility for planning and decision making affecting residents. To participate fully in shared responsibility, residents shall be provided with clear and understandable information about the possible consequences of their decision-making, in accordance with the provisions of N.J.A.C. 8:36-5.18(a)2.

"Shift" means a time period defined as a full working day by the facility in its policy manual.

"Signature" means, at a minimum, the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D., D.O., R.Ph.) of an individual, legibly written with his or her own hand. A controlled electronic signature system may be used.

"Specialized long-term care" or "specialized care" means the care of individuals who must use a respirator or mechanical ventilator, and the care of individuals with severe behavior management problems, such as combative, disruptive, and aggressive behaviors.

"Staff education plan" means a written plan which describes a coordinated program for employee education for each service, including inservice programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Supervision" means authoritative procedural guidance by a qualified individual for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity.

"Total bed complement" means the resident census.

"Unit dose drug distribution system" means a system in which medications are delivered to the resident areas in single unit packaging, and which meets the following criteria:

1. Each medication shall be individually wrapped and labeled with the generic or trade (brand) name and strength of the medication, lot number or reference code, expiration date, and manufacturer's name, and shall be ready for administration to the resident;

2. Cautionary instructions shall appear on the resident's record of medication administration, and the system shall include provisions for noting additional information, including, but not limited to, special times or routes of administration and storage conditions; and,

3. Commercial repackagers shall comply with 21 CFR 201.1, incorporated herein by reference, as amended and supplemented, and N.J.A.C. 8:39.

"Unit-of-use" means a system in which medications are delivered to the resident areas either in single unit packaging, bingo or punch cards, blister or strip packs, or other system where each medication is physically separate. Individually labeled unit dose medications may be combined in a "bingo or punch card" to create a unit-of-use drug distribution system.

1. Labeling shall conform to paragraph 1 in the definition of "unit dose drug distribution system" above.

2. Cautionary instructions shall appear on the resident's record of administration and/or unit-of-use package, and the system shall include provisions for noting additional information, including, but not limited to, special times or routes of administration and storage conditions.

## **SUBCHAPTER 2. LICENSURE PROCEDURES**

### **8:36-2.1 Certificate of need**

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, licensed to operate, or closed except upon application for, and receipt of, a certificate of need issued by the Commissioner in accordance with N.J.A.C. 8:33.

(b) In accordance with N.J.A.C. 8:33, application forms for a certificate of need and instructions for completion may be obtained from:

Office of Certificate of Need and Healthcare Facility Licensure  
New Jersey State Department of Health and Senior Services  
PO Box 358  
Trenton, New Jersey 08625-0358  
609-292-5960

(c) The facility or program shall implement all conditions imposed by the Commissioner as specified in the certificate of need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with N.J.S.A. 26:2H-1 et seq., and amendments thereto.

### **8:36-2.2 Application for licensure**

(a) Following receipt of a certificate of need, any person, organization, or corporation desiring to operate an assisted living residence, comprehensive personal care home or assisted living program shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director  
Office of Certificate of Need and Healthcare Facility Licensure  
New Jersey State Department of Health and Senior Services  
PO Box 358  
Trenton, New Jersey 08625-0358  
609-292-5960

(b) Any long-term care facility, residential health care facility, or Class "C" boarding home planning to provide assisted living services shall obtain licensing approval from the Department prior to initiating services.

(c) A copy of the assisted living residence or comprehensive personal care home admission agreement or other document stating the scope of a facility's services shall be forwarded to the Director, Long-Term Care Licensing and Certification (see (a) above for address) for review when application for licensure is made. Review shall ensure that the admission agreement does not violate any requirements contained herein, any conditions placed on certificate of need approval, or any applicable State or Federal statutes. This subsection shall not apply when a continuing care retirement community (CCRC) contracts with its residents to provide assisted living pursuant to a continuing care agreement. This subsection does apply, however, when a CCRC provides assisted living to a person who is not a party to a continuing care agreement. The admission agreement shall include, but not be limited to, the following:

1. Proposed charges for room, board and all levels of service and care and for all additional services and care not included in the standard package of rates in accordance with N.J.A.C. 8:36-6.2;

2. Specification of how and when the resident will be notified of any change in charges, and a statement that each resident has the right to request written justification of any increase in charges in accordance with N.J.A.C. 8:36-6.2;

3. A statement that each resident has the right to appeal an involuntary discharge as specified at N.J.A.C. 8:36-5.14(b); and

4. Specification of the criteria identified at N.J.A.C. 8:36-5.1(d) which will be used to discharge residents and an explanation of how the discharge process will be implemented, including which facility staff will participate and the extent of resident participation.

(d) The Department shall charge a nonrefundable fee of \$1,500 plus \$15.00 per bed (for the number of licensed beds) for the filing of an application for licensure and each annual renewal of an assisted living residence or comprehensive personal care home license thereafter. The facility shall apply for a license for the maximum number of beds available in its residential units. These fees shall not exceed the maximum caps set forth at N.J.S.A. 26:2H-12, as may be amended from time to time.

(e) The application shall include, but not be limited to, the following:

1. An evaluation of the previous licensing track record of the proposed licensed operator in New Jersey and other states, where applicable. This evaluation shall include assisted living and other licensed health care facilities owned, operated or managed by the prospective licensed operator and any such facilities owned, operated, or managed by any entity affiliated with the proposed operator;

2. The proposed licensed operator's capacity to comply with licensing requirements;

3. A description of the physical plant, including the number and type of beds requested;

4. An evaluation of any requested waivers to licensing requirements that are sought in accordance with N.J.A.C. 8:36-2.7;

5. A description of how the architectural design will promote the essential values of assisted living, including privacy, choice, independence, dignity and a home-like environment;

6. A description of how the physical plant will facilitate the care of residents with common long-term care problems, such as reduced mobility, incontinence and dementia; and

7. A statement of the proposed licensed operator's commitment to assuring access to assisted living for individuals with nursing home level of care needs, as defined in N.J.A.C. 8:36-1.3. This statement shall indicate that within 36 months after licensure, at least 20 percent of the facility's residents shall be individuals with nursing home-level of care needs. This percentage shall be computed based on the number of resident days per calendar year and may include direct admissions as well as maintained residents with nursing home-level of care needs.

(f) In addition to the application requirements of (e) above, if an applicant is required to submit plans under N.J.A.C. 8:36-2.3, the applicant shall submit a description of how the location of the proposed facility will promote the physical integration or social connection of the residents into a neighborhood, center or other area with existing services or amenities.

(g) The Department shall charge a nonrefundable fee of \$750.00 for the filing of an application to add bed or non-bed related services to an existing assisted living residence or comprehensive personal care home.

(h) The Department shall charge a nonrefundable fee of \$375.00 for the filing of an application to reduce bed or non-bed related services at an existing assisted living residence or comprehensive personal care home.

(i) The Department shall charge a nonrefundable fee of \$375.00 for the filing of an application for the relocation of an assisted living residence or comprehensive personal care home.

(j) The Department shall charge a nonrefundable fee of \$1,500 for the filing of an application for the transfer of ownership of an assisted living residence or comprehensive personal care home.

(k) All applicants shall demonstrate that they have the capacity to operate an assisted living residence or program or a comprehensive personal care home in accordance with the rules in this chapter. An application for a license or change in service shall be denied if the applicant cannot demonstrate that the premises, equipment, personnel, including principals and management, finances, rules and bylaws, and standards of health care are fit and adequate and that there is reasonable assurance that the health care facility will be operated in accordance with the standards required by these rules. The Department shall consider an applicant's prior history in operating a health care facility either in New Jersey or in other states in making this determination. Any evidence of licensure violations representing serious risk of harm to residents may be considered by the Department, as well as any record of criminal convictions representing a risk of harm to the safety or welfare of residents.

(l) The Department shall charge a nonrefundable fee of \$1,125.00 for the filing of an application for licensure and each annual renewal of an assisted living program. The application shall include, but not be limited, to the following:

1. A copy of the written contract between the program provider and the publicly subsidized housing unit in accordance with N.J.A.C. 8:36-23.2(c);
2. A copy of the written agreement or contract between the program provider and residents that will be used at each program site, including clearly addressing N.J.A.C. 8:36-23.3(d); and
3. An evaluation of the requirements specified in (e)1 and 2 above.

(m) Each licensed assisted living program office site may provide services in an area that covers no more than two contiguous counties, although the facility may apply to establish and license sufficient sites to provide services for multiple counties, up to and including a Statewide service area.

(n) Each applicant for a license to operate a facility or program may make an appointment for a preliminary conference at the Department with the Long-Term Care Licensing Program.

(o) Each assisted living residence and comprehensive personal care home shall be assessed a biennial inspection fee of \$1,500. This fee shall be assessed in the year the facility will be inspected, along with the annual licensure fee for that year. The fee shall be added to the initial licensure fee for new facilities. Failure to pay the inspection fee shall result in non-renewal of the license for existing facilities and the refusal to issue an initial license for new facilities. This fee shall be imposed only every other year even if inspections occur more frequently and only for the inspection required to either issue an initial license or to renew an existing license. It shall not be imposed for any other type of inspection.

(p) Each assisted living program shall be assessed a biennial inspection fee of \$750.00. This fee shall be assessed in the year the facility will be inspected, along with the annual licensure fee for that year. The fee shall be added to the initial licensure fee for new facilities. Failure to pay the inspection fee shall result in non-renewal of the license for existing facilities and the refusal to issue an initial license for new facilities. This fee shall be imposed only every other year even if the inspections occur more frequently and only for the inspection required to either issue an initial license or to renew an existing license. It shall not be imposed for any other type of inspection.

### **8:36-2.3 Newly constructed or expanded facilities**

(a) Any assisted living residence or comprehensive personal care home with a construction program, whether a certificate of need is required or not, shall submit plans to the Health Care Plan Review Services, Division of Codes and Standards, Department of Community Affairs, P.O. Box 815, Trenton, N.J. 08625-0815, for review and approval prior to the initiation of construction.

(b) The licensure application for a newly constructed, renovated or expanded facility shall include the written final release of the physical plant construction plans by:

Health Care Plan Review Program  
Division of Codes and Standards  
New Jersey Department of Community Affairs  
PO Box 815  
Trenton, N.J. 08625-0815  
609-633-8151



(c) Prior to occupying a new or renovated building, the facility shall submit a certificate of occupancy, issued by the local municipality, to the Health Care Plan Review Program of the New Jersey Department of Community Affairs (DCA), and shall submit the following items to the Long-Term Care Licensing Program of the Department of Health and Senior Services:

1. A copy of the certificate of occupancy; and
2. A copy of the letter from DCA recommending approval to the Department of the construction or renovation that was completed.

#### **8:36-2.4 Surveys**

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Assisted Living Assessment and Survey Program of the Department shall be conducted to determine if the facility adheres to the provisions of this chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.
2. The facility shall notify the Assisted Living Assessment and Survey Program of the Department when the deficiencies, if any, have been corrected, and the Assisted Living Assessment and Survey Program shall schedule one or more resurveys of the facility prior to occupancy.

(b) A license shall be issued to a facility when the following conditions are met:

1. A preliminary conference to review the conditions for licensure (see N.J.A.C. 8:36-2.2(d)1 through 8) and operation has taken place between the Long-Term Care Licensing Program and representatives of the facility, who will be advised that the purpose of the conference is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;
2. The initial survey required by N.J.A.C. 8:36-2.4(a) results in a finding of substantial compliance with the requirements of this chapter;
3. The completed licensure application is on file with the Department;
4. The fee for filing of the application has been received by the Department;
5. A copy of the admission agreement is on file with the Department;

6. The applicant has submitted approvals from the local zoning, fire, health, and building authorities, and a copy of the certificate of occupancy or a certificate of continued occupancy that has been issued by the appropriate local authority, to the Long-Term Care Licensing Program of the Department;

7. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system; and

8. Personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit residents to the facility until the facility has the written approval and/or license issued by the Long-Term Care Licensing Program of the Department. Violators of this requirement shall be subject to penalties for operating a facility without a license, pursuant to N.J.S.A. 26:2H-14 and N.J.A.C. 8:43E-1.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and resident records and conferences with residents.

#### **8:36-2.5 License**

(a) A license shall be issued if surveys by the Department have determined that the facility is in substantial compliance with the requirements of this chapter, and is operated as required by N.J.S.A. 26:2H-1 et seq.

(b) A license shall be granted for a period of one year or less, as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license shall not be assignable or transferable. The license shall be immediately void if the facility permanently ceases to operate or if its ownership changes.

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department.

(f) The license shall not be renewed if local rules, regulations and/or requirements are not met, on a case-by-case basis.

### **8:36-2.6 Surrender of license**

The facility shall notify each resident, the resident's physician, and any guarantors of payment at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of license. In such cases, the license shall be returned to the Long-Term Care Licensing Program of the Department within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

### **8:36-2.7 Waiver**

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and this chapter, waive sections or part of sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of residents or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing and Certification Unit of the Department.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;
2. The reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;
3. An alternative proposal which would ensure resident safety; and
4. Documentation to support the request for waiver.

(d) The Department reserves the right to request additional information before processing a request for waiver, depending upon the waiver requested.

(e) All requests for waivers to the physical plant requirements in N.J.A.C. 8:36-16 and 22 shall be fully explained, justified, and made a part of the certificate of need application submitted in accordance with N.J.S.A. 26:2H-1 et seq. and N.J.A.C. 8:36-2.1(a).

### **8:36-2.8 Action against a license**

(a) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine and in accordance with N.J.A.C. 8:43E-1.1 et seq. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of residents from a facility whenever he or she determines that there is imminent danger to any resident.

### **8:36-2.9 Hearings**

(a) If the Department proposes to suspend, revoke, deny, assess a monetary penalty, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) Prior to transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

### **8:36-2.10 Advertisement of assisted living**

Only facilities licensed as assisted living residences or comprehensive personal care homes may describe and offer themselves to the public as providing assisted living services and care or other similar services. Violation of this requirement shall constitute operation of a health care facility without a license, and shall be subject to penalty in accordance with N.J.S.A. 26:2H-14 and N.J.A.C. 8:43E-1.

## **SUBCHAPTER 3. ADMINISTRATION**

### **8:36-3.1 Appointment of administrator**

(a) An administrator shall be appointed and an alternate shall be designated in writing to act in the absence of the administrator. The administrator or a designated alternate shall be available at all times and shall be on-site at the facility on a full-time basis in facilities that have 60 or more licensed beds, and on a half-time basis in facilities that have fewer than 60 licensed beds, in accordance with the definition of "full-time" and "half-time" at N.J.A.C. 8:36-1.3.

### **8:36-3.2 Qualifications of the administrator of an assisted living residence or comprehensive personal care home**

(a) The administrator of an assisted living residence or comprehensive personal care home shall:

1. Be at least 21 years of age;
2. Possess a high school diploma or equivalent; and
3. Hold a current New Jersey license as a nursing home administrator or hold a current New Jersey certification as an assisted living administrator.

(b) An applicant for certification as an assisted living administrator shall successfully complete an assisted living training course which covers the concepts and rules of assisted living as outlined in this chapter, given by a trainer qualified in accordance with N.J.A.C. 8:36-3.3.

1. An applicant for certification as an assisted living administrator shall sit for the Assisted Living Competency Examination within two years of successful completion of the assisted living training course.

(c) An applicant for certification who fails the competency examination for an assisted living administrator will be permitted to re-take the examination in accordance with the following:

1. Following a first examination failure, an applicant shall be permitted to sit for re-examination.
2. Following a second examination failure, the applicant shall be required to re-take, and successfully complete, an assisted living training course approved by the Department in accordance with this section.

3. Written documentation of successful completion of a training program required by (b) above shall be submitted to the Certification Program, Department of Health and Senior Services, PO Box 367, Trenton, NJ 08625-0367 at least 10 days prior to the next examination the applicant will take.

(d) Certification shall be granted only to those candidates who:

1. Successfully complete the training program listed in (b) above;
2. Pass the competency examination; and
3. Successfully complete the criminal background check as required by N.J.A.C. 8:43I-4.

(e) An individual who has successfully completed the required training program and who has passed the competency examination shall be eligible for a conditional certification in accordance with N.J.A.C. 8:43I-4.5. Conditionally certified individuals may perform the duties of a certified assisted living administrator only for the period of time specified in N.J.A.C. 8:43I-4.5.

(f) The owner of an assisted living residence who meets the qualifications listed in (a) above may also serve as the administrator.

(g) An assisted living administrator certification shall be valid for a period of three years from date of issue.

(h) At least once every three years, on a schedule to be determined by the Department, an assisted living administrator shall file an application for renewal of current certification.

(i) In order to be eligible to renew a current certification, an assisted living administrator shall:

1. Complete at least 30 hours of continuing education regarding assisted living concepts and related topics, as specified and approved by the Department of Health and Senior Services. Continuing education courses shall cover the topics described in the training program for assisted living administrators in N.J.A.C. 8:36-3.3(a)2, and be earned between the time the current certificate was issued and is due to expire; and

2. Complete a criminal history record background check as required by N.J.A.C. 8:43I-1.

(j) If a certified assisted living administrator fails to fulfill the certification renewal requirements at the prescribed time, the certification shall be considered inactive.

(k) An individual may apply for recertification without re-examination within three years of the certification renewal date and upon submitting a request for restoration of said certification, in writing, to the Certification Program.

(l) An individual requesting restoration of his or her certification from inactive status within three years of inactivity shall be required to pay the then-current certification fee and comply with the education requirements identified at (b) above.

(m) The applicant shall be required to complete 10 hours of continuing education credit for each year in which the certification was inactive in addition to the required 30 hours of continuing education for the last completed triennial certification period in which the applicant's certification was active.

(n) An administrator whose certification is in an inactive status and who subsequently fails to meet the requirements identified at (j) through (m) above shall be required to apply in writing for restoration of certification under the requirements as determined by the Certification Program on an individual basis and as provided for in these rules.

### **8:36-3.3 Qualifications of trainers for assisted living administrators**

(a) Qualified trainers for assisted living administrators shall possess either the education and experience described in (a)1 through 3 below or the experience described in (a)4 and 5 below:

1. Two years experience as an administrator in the areas of housing, hotel management, or health care or two years experience in teaching adults, or any combination thereof; and

2. Completion of at least 40 hours in assisted living administrator training, which shall include basic concepts of assisted living, age-related changes and aging in place, assessments, scope of services and service planning, shared responsibility and managed risk, documentation, staffing patterns, nursing activities and medication administration, and promoting a home-like environment; and

3. A practicum, consisting of a minimum of 16 hours, at a New Jersey licensed assisted living facility which shall include satisfactory completion of a resident service needs assessment, service plan and risk management agreement; or

4. Two years of experience as a certified assisted living administrator in a licensed assisted living facility or two years experience in teaching adults, or any combination thereof; and

5. A practicum, consisting of a minimum of 16 hours, at a New Jersey licensed assisted living facility which shall include satisfactory completion of a resident service needs assessment, service plan, and risk management agreement.

#### **8:36-3.4 Administrator's responsibilities**

(a) The administrator or designee shall be responsible for, but not limited to, the following:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including resident rights;

2. Planning for, and administration of, the managerial, operational, fiscal, and reporting components of the facility;

3. Ensuring that all personnel are assigned duties based upon their ability and competency to perform the job and in accordance with written job descriptions;

4. Ensuring the provision of staff orientation and staff education;

5. Establishing and maintaining liaison relationships and communication with facility staff and services and with residents and their families; and

6. Establishing and maintaining liaison relationships and communications with community hospitals, social service agencies, and mental health service agencies.



### **8:36-3.5 Actions against an assisted living administrator**

(a) A certificate issued to an assisted living administrator in accordance with this subchapter may be revoked, suspended or restricted for improper practice. Improper practice means, but is not limited to:

1. Finding of abuse, neglect or misappropriation of property of a resident of an assisted living residence, comprehensive personal care home, or assisted living program, or of a patient, resident, or client of any other facility or agency licensed by the Department;

2. Conviction of any offense that is a disqualifying offense pursuant to N.J.S.A. 26:2H-7.17 and N.J.A.C. 8:43I-4;

3. Improper practice as an assisted living administrator, as defined by this chapter;

i. The Department may request that the Assisted Living Administrators Panel, defined at N.J.A.C. 8:36-3.6, review any allegations of improper practice, and to advise the Department as to the scope and severity of any alleged improper practice, or whether the practice is acceptable.

4. Any violation of these or other regulations applicable to the operation of an assisted living facility or program; and

5. Falsification or fraudulent use of any required documents, including documents submitted in order to obtain or renew a certification issued by the Department.

(b) Any individual who has his or her certificate revoked or suspended, or who has his or her practice restricted in accordance with (a) above, shall have the right to appeal the matter to the Office of Administrative Law in accordance with N.J.S.A. 52:14B-1 et seq. The Department shall request that any such matter be docketed for a hearing within 30 days of the request. All proceedings shall be in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) The Commissioner or his or her designee may summarily suspend the certificate of an assisted living administrator when the continued certification of an individual poses an immediate threat to the health, safety or welfare of the public, including residents of assisted living facilities or programs and other licensed health care facilities or agencies. An individual whose certificate is summarily suspended shall have the right to appeal to the Commissioner for an expedited hearing at the Office of Administrative Law, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and

N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. If the summary suspension is upheld at the Office of Administrative Law, the individual whose certificate has been summarily suspended shall have the right to apply for injunctive relief in the Superior Court of New Jersey. Nothing in this subsection shall be construed to prevent the Commissioner from thereafter revoking the license in accordance with (a) above.

### **8:36-3.6 Assisted Living Administrators Panel**

(a) An Assisted Living Administrators Panel shall be formed whose purpose shall be to advise the Department on the training, education and administrative practice issues for all certified assisted living administrators and those individuals attempting to obtain certification as an assisted living administrator.

(b) The panel shall consist of 11 members, in accordance with the following criteria:

1. One member shall be from the Department's Long-term Care Licensing Program;
2. One member shall be from the Department's Long-term Care Assessment and Survey Program;
3. One member shall be from the Department's Medicaid Waiver Program;
4. One member shall be the Ombudsman for the Institutionalized Elderly, or his or her designee;
5. One member shall be a certified assisted living administrator affiliated with a for-profit assisted living facility;
6. One member shall be a certified assisted living administrator affiliated with a not-for-profit assisted living facility;
7. One member shall be a certified assisted living administrator affiliated with an assisted living facility that is affiliated with an acute care hospital;
8. One member shall be a certified assisted living administrator affiliated with an assisted living program;
9. Two members shall be registered professional nurses with experience in assisted living, one of whom shall be currently employed in an assisted living facility or program; and

10. One member shall be a representative of a consumer advocacy group for the elderly.

(c) Members of the panel listed in (b)5 through 10 above shall serve terms of a maximum of three years.

1. In order to maintain continuity, the initial members of the panel listed in (b)5 through 10 above shall have their terms abbreviated in order to provide that no more than three members' terms expire at one time. Individuals appointed to the initial panel shall be advised of the term expiration date upon appointment.

(d) An individual who is serving as an assisted living administrator shall maintain a current assisted living administrator certification issued by the Department and shall remain affiliated with the facility type that the assisted living administrator was appointed to represent. Failure to meet these requirements will result in the member forfeiting his or her seat.

(e) The Department may refer matters pertaining to the practice of assisted living administrators to the panel for review and advice and recommendations, including potential violations of this chapter. The panel is authorized to review such matters, and to make recommendations to the Department regarding any practice issues that may arise.

(f) The panel shall meet on a schedule to be determined by the Department, which shall be at least quarterly.

(g) For the purposes of this section, the panel may act provided a quorum of seven members is present at any meeting.

(h) The Department will provide administrative and support services to the panel in the conduct of its activities.

## **SUBCHAPTER 4. RESIDENT RIGHTS**

### **8:36-4.1 Posting and distribution of statement of resident rights**

(a) Each assisted living provider will post and distribute a statement of resident rights for all residents of assisted living residences, comprehensive personal care homes, and assisted living programs. Each resident is entitled to the following rights:

1. The right to receive personalized services and care in accordance with the resident's individualized general service and/or health service plan;
2. The right to receive a level of care and services that addresses the resident's changing physical and psychosocial status;
3. The right to have his or her independence and individuality;
4. The right to be treated with respect, courtesy, consideration and dignity;
5. The right to make choices with respect to services and lifestyle;
6. The right to privacy;
7. The right to have or not to have families' and friends' participation in resident service planning and implementation;
8. The right to receive pain management as needed, in accordance with N.J.A.C. 8:43E-6;
9. The right to choose a physician, advanced practice nurse, or physician assistant;
10. The right to appeal an involuntary discharge as specified at N.J.A.C. 8:36-5.14(b);
11. The right to receive written documentation that fee increases based on a higher level of care are based on reassessment of the resident and in accordance with N.J.A.C. 8:36-6.2;
12. The right to receive a written explanation of fee increases that are not related to increased services, upon request by the resident;
13. The right to participate, to the fullest extent that the resident is able, in planning his or her own medical treatment and care;

14. The right to refuse medication and treatment after the resident has been informed, in language that the resident understands, of the possible consequences of this decision;

15. The right to refuse to participate in experimental research, including the investigations of new drugs and medical devices. The resident shall be included in experimental research only when he or she gives informed, written consent to such participation;

16. The right to be free from physical and mental abuse and/or neglect;

17. The right to be free from chemical and physical restraints, unless a physician, advanced practice nurse, or physician assistant authorizes the use for a limited period of time to protect the resident or others from injury. Under no circumstances shall the resident be confined in a locked room or restrained for punishment, for the convenience of the facility staff, or with the use of excessive drug dosages;

18. The right to manage his or her own finances or to have that responsibility delegated to a family member, an assigned guardian, the facility administrator, or some other individual with power of attorney. The resident's authorization must be in writing, and must be witnessed in writing;

19. The right to receive an admission agreement describing the services provided by the facility and the related charges. Such admission agreement must be in compliance with all applicable State and Federal laws. This agreement must also include the facility's policies for payment of fees, deposits, and refunds. The resident shall receive this agreement prior to or at the time of admission, and afterwards, all addenda to this agreement, whenever there are any changes, in accordance with N.J.A.C. 8:36-6.2;

20. The right to receive a quarterly written account of all resident's funds and itemized property that are deposited with the facility for the resident's use and safekeeping and of all financial transactions with the resident, next of kin, or guardian. This record shall also show the amount of property in the account at the beginning and end of the accounting period, as well as a list of all deposits and withdrawals, substantiated by receipts given to the resident or his or her guardian;

21. The right to have daily access during specified hours to the money and property that the resident has deposited with the facility. The resident also may delegate, in writing, this right of access to his or her representative;

22. The right to live in safe and clean conditions in a facility that does not admit more residents than it can safely accommodate while providing services and care;

23. The right not to be moved to a different bed or room in the facility if the relocation is arbitrary and capricious;

24. The right to wear his or her own clothes;

25. The right to keep and use his or her personal property, unless this would be unsafe, impractical, or an infringement on the rights of other residents. The facility shall take precautions to ensure that the resident's personal possessions are secure from theft, loss, and misplacement;

26. The right to have reasonable opportunities for private and intimate physical and social interaction with other people. The resident shall be provided an opportunity to share a room with another individual unless it is medically inadvisable;

27. The right to receive confidential treatment of information about the resident. Information in the resident's records shall not be released to anyone outside the facility without the resident's approval, unless the resident transfers to another health care facility, or unless the release of the information is required by law, a third-party payment contract, or the New Jersey State Department of Health and Senior Services;

28. The right to receive and send mail in unopened envelopes, unless the resident requests otherwise. The resident also has a right to request and receive assistance in reading and writing correspondence unless it is medically contraindicated, and documented in the record by a physician, advanced practice nurse, or physician assistant;

29. The right to have a private telephone in his or her living quarters at the resident's own expense;

30. The right to meet with any visitors of the resident's choice, at any time, in accordance with facility policies and procedures;

31. The right to take part in activities, and to meet with and participate in the activities of any social, religious, and community groups, as long as these activities do not disrupt the lives of other residents;

32. The right to refuse to perform services for the facility;

33. The right to request visits at any time by representatives of the religion of the resident's choice and, upon the resident's request, to attend outside religious services at his or her own expense. No religious beliefs or practices shall be imposed on any resident;

34. The right to participate in meals, recreation, and social activities without being subjected to discrimination based on age, race, religion, sex, marital status, nationality, or disability. The resident's participation may be restricted or prohibited only upon the written recommendation of his or her physician, advanced practice nurse, or physician assistant;

35. The right to organize and participate in a Resident Council that presents residents' concerns to the administrator of the facility. A resident's family has the right to meet in the facility with the families of other residents in the facility;

36. The right to be transferred or discharged only in accordance with the terms of the admission agreement and only in accordance with N.J.A.C. 8:36-5.1(d);

37. The right to receive written notice at least 30 days in advance when the facility requests the resident's transfer or discharge, except in an emergency. This written notice shall include the name, address, and telephone number of the New Jersey Office of the Ombudsman for the Institutionalized Elderly, and shall also be provided to the resident's legally appointed guardian, if applicable, or, with the resident's consent, to the resident's family, 30 days in advance;

38. The right to be given a written statement of all resident rights as well as any additional regulations established by the facility involving resident rights and responsibilities. The facility shall require each resident or his or her legally appointed guardian to sign a copy of this document. In addition, a copy shall be posted in a conspicuous, public place in the facility;

39. The right to retain and exercise all the Constitutional, civil and legal rights to which the resident is entitled by law. The facility shall encourage and help each resident to exercise these rights;

40. The right to voice complaints without being threatened or punished. Each resident is entitled to complain and present his or her grievances to the administrator and staff, to government agencies, and to anyone else without fear of interference, discharge, or reprisal. The facility shall provide each resident and his or her legally appointed guardian, if applicable, and the resident's family member with the names, addresses, and telephone numbers of the government agencies to which a resident can complain and ask questions, including the Department and the Office of the Ombudsman for the Institutionalized Elderly. These names, addresses, and telephone numbers shall also be posted in a conspicuous place in the facility;

41. The right to hire a private caregiver/companion at the resident's expense and responsibility, as long as the caregiver/companion complies with the facility's policies and procedures; and

42. The right to obtain medications from a pharmacy of the resident's choosing, as long as the pharmacy complies with the facility's medication administration system, if applicable.

(b) Each resident, resident's family member, and resident's legally appointed guardian, if applicable, shall be informed of the resident rights enumerated in this subchapter, and each shall be explained to him or her.

(c) The facility shall have policies and procedures to ensure the implementation of resident rights as listed in (a) above.



## **SUBCHAPTER 5. GENERAL REQUIREMENTS**

### **8:36-5.1 Types of services provided to residents**

(a) The assisted living residence, comprehensive personal care home or assisted living program shall provide and/or coordinate personal care and services to residents, based on assessment by qualified persons, in accordance with the New Jersey Nurse Practice Act, N.J.S.A. 45:11-23 and N.J.A.C. 13:37, this chapter, and the individual needs of each resident, in a manner which promotes and encourages assisted living values.

(b) The assisted living residence or comprehensive personal care home shall be capable of providing at least the following services: assistance with personal care, nursing, pharmacy, dining, activities, recreational, and social work services to meet the individual needs of each resident.

(c) The assisted living residence, comprehensive personal care home, or assisted living program shall provide supervision of self-administration of medications, and administration of medications by trained and supervised personnel, as needed by residents and in accordance with this chapter.

(d) The assisted living residence, comprehensive personal care home, or assisted living program shall be capable of providing nursing services to maintain residents, including residents who require nursing home level of care. However, the resident may be, but is not required to be moved from the facility or program if it is documented in the resident record that a higher level of care is required, as demonstrated by one or more of the following characteristics:

1. The resident requires 24-hour, seven day a week nursing supervision;
2. The resident is bedridden for more than 14 consecutive days;
3. The resident is consistently and totally dependent in four or more of the following activities of daily living: dressing, bathing, toilet use, transfer, locomotion, bed mobility, and eating;
4. The resident has a cognitive decline severe enough to prevent the making of simple decisions regarding activities such as bathing, dressing and eating and cannot respond appropriately to cueing and simple directions;

5. The resident requires treatment of a stage three or four pressure sore or multiple stage two pressure sores. However, a resident who requires treatment of a single stage two pressure sore shall be retained and a plan of care developed and implemented to stabilize the pressure sore and the condition which caused it;

6. The resident requires more than "assistance with transfer";

7. The resident is a danger to self or others; or

8. The resident has a medically unstable condition and/or has special health problems, and a regimen of therapy cannot be appropriately developed and implemented in the assisted living environment.

(e) The facility's or program's admission agreement with each resident shall clearly specify if the facility or program will or will not retain residents with one or more characteristics described in (d) above, to what extent, and, if applicable, at what additional cost. This subsection shall not apply when a continuing care retirement community (CCRC) contracts with its residents to provide assisted living pursuant to a continuing care agreement. This subsection shall apply, however, when a CCRC provides assisted living to a person who is not a party to a continuing care agreement.

(f) Residents who require "specialized long-term care" shall not remain in the assisted living residence or comprehensive personal care home and shall be transferred to a long-term care facility that provides the applicable form of specialized care.

(g) The assisted living residence, comprehensive personal care home, or assisted living program shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

(h) In accordance with N.J.S.A. 26:2H-12.16 et seq., a new assisted living residence or comprehensive personal care home licensed on or after September 1, 2001, shall attain a level of occupancy by Medicaid-eligible persons of at least 10 percent of its total bed complement within three years of licensure and shall maintain this level of Medicaid occupancy thereafter.

(i) An existing assisted living residence or comprehensive personal care home which increases its number of licensed beds on or after September 1, 2001, shall occupy at least 10 percent of the additional beds with Medicaid-eligible persons and shall maintain this level of Medicaid occupancy thereafter.

(j) In cases in which either the total bed complement or the total number of beds added in an existing facility is less than 10, at least one bed shall be reserved for a Medicaid-eligible person.

(k) For the purposes of this section, "Medicaid-eligible person" means an individual who has been determined as satisfying the financial eligibility criteria for medical assistance under the Medicaid program, has been assessed as being in need of nursing home-level care as specified at N.J.A.C. 8:85-2.1, and has been approved by the Department for participation in a Federally approved waiver program for assisted living services. "Medicaid-eligible person" includes persons who were:

1. Admitted to the facility as private paying residents and subsequently became eligible for Medicaid; and

2. Admitted directly to the facility as Medicaid-eligible.

(l) The Commissioner or his or her designee may waive or reduce the 10 percent Medicaid occupancy requirement in (i) through (k) above for some or all regions of the State if it is determined that sufficient numbers of licensed beds are available in the State to meet the needs of Medicaid-eligible persons within the limits of the Federally approved waiver program for assisted living services.

1. The Commissioner or his or her designee shall waive this 10 percent Medicaid occupancy requirement if there are limitations on funding.

2. A licensed assisted living residence or comprehensive personal care home may submit a written request for a waiver of the 10 percent Medicaid occupancy requirement in accordance with N.J.A.C. 8:36-2.7.

(m) In accordance with N.J.S.A. 26:2H-12.16 et seq., this section shall not apply to an assisted living residence or a comprehensive personal care home operated by a continuing care retirement community.

### **8:36-5.2 Ownership**

(a) The ownership of the facility or program and the property on which it is located shall be disclosed to the Department.

(b) No facility or program shall be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility or program.

(c) The owner or governing authority of the facility or program shall assume legal responsibility for the management, operation, and financial viability of the facility or program.

### **8:36-5.3 Transfer of ownership**

(a) Prior to transferring ownership of a facility or program, the prospective new owner shall submit an application to the Long-Term Care Licensing Program, including the following items:

1. The transfer of ownership fee of \$ 1,500, in accordance with N.J.A.C. 8:36-2.2(i);

2. A cover letter stating the applicant's intent to become the licensed operator of the facility and identification of the facility by name, address, county, and number and type of licensed beds;

3. A description of the proposed transaction including:

i. Identification of the current owner(s) (the "seller");

ii. Identification of 100 percent of the proposed new owner, including the names and addresses of all principals (individuals and/or entities with 10 percent or greater ownership), and for non-profits the names and addresses of the members of the Board;

iii. A copy of organizational charts, including parent companies and wholly owned subsidiaries, if applicable;

iv. A copy of the agreement of sale or letter of intent, signed by both parties, and if applicable, any lease or management agreements; and

v. Disclosure of any licensed health care facilities owned, operated, or managed in New Jersey or any other state. If facilities are owned, operated or managed in other states, letters from the regulatory agencies in each of the respective states, verifying that the facilities have operated in substantial compliance during the last 12-month period and have had no enforcement actions during that period of time, shall be included in the application.

4. Approval of a transfer of ownership is contingent upon a review of the applicant's track record in accordance with N.J.A.C. 8:33-4.10 and 8:43E-5.1.

5. Approval of a transfer of ownership is contingent upon payment of all outstanding State penalties issued by the Department against the current owner, or written verification by the applicant that the applicant will assume responsibility for payment of such State penalties.

6. When a transfer of ownership application has been reviewed and deemed acceptable, an approval letter from the Long-Term Care Licensing Program shall be sent to the applicant along with licensure application forms and the licensure fee request.

7. Within five working days after the transaction has been completed, the applicant shall submit the following documents to the Long-Term Care Licensing Program:

- i. Completed licensure application forms and the licensure fee;
- ii. A notarized letter stating the date when the transaction occurred; and
- iii. A certificate of continuing occupancy from the local authority or a letter from the local authority verifying a policy of not issuing any such document for changes of ownership.

#### **8:36-5.4 Submission and availability of documents**

(a) The facility or program shall, upon request, submit in writing any documents which are required by this chapter to the Director of the Long Term Care Licensing and Certification Unit of the Department. Additionally, upon request of the Department, the facility or program shall submit in writing data related to utilization, demographics, costs, charges, staffing, and other planning and financial data necessary to evaluate the services provided.

(b) The facility shall report the number of resident days per calendar year to the Department's Long-Term Care Licensing Program by April 15 of each year, for the prior calendar year.

#### **8:36-5.5 Personnel**

(a) The facility or program shall develop and implement written job descriptions to ensure that all personnel are assigned duties based upon their education, training, and competencies and in accordance with their job descriptions.

(b) All personnel who require licensure, certification, or authorization to provide resident care shall be licensed, certified, or authorized under the appropriate laws or rules of the State of New Jersey.

#### **8:36-5.6 Staffing requirements**

(a) The facility or program shall maintain and implement written staffing schedules. Actual hours worked by each employee shall be documented.

(b) The facility or program shall develop and implement a staff orientation and a staff education plan, including plans for each service and designation of person(s) responsible for training. All personnel shall receive orientation at the time of employment and at least annual in-service education regarding, at a minimum, the following:

1. The provision of services and assistance in accordance with the concepts of assisted living and including care of residents with physical impairment;
2. Emergency plans and procedures;
3. The infection prevention and control program;
4. Resident rights;
5. Abuse and neglect;
6. Pain management; and
7. The care of residents with Alzheimer's and related dementia conditions and in accordance with N.J.A.C. 8:36-19.

(c) The staffing level in this chapter is minimum only and the assisted living residence, comprehensive personal care, or assisted living program shall employ staff in sufficient number and with sufficient ability and training to provide the basic resident care, assistance, and supervision required, based on an assessment of the acuity of residents' needs.

(d) Personnel, including staff under contract, with a reportable communicable disease or infection shall be excluded from the assisted living residence, comprehensive personal care home, or assisted living program until examined by a physician who shall certify to the administrator that the condition will not endanger the health of residents or other employees.

(e) The facility or program shall employ reasonable efforts to ensure that no employee has been convicted of a crime relating adversely to the person's ability to provide resident care, such as homicide, assault, kidnapping, sexual offenses, robbery, and crimes against the family, children or incompetents, except where the applicant or employee with a criminal history has demonstrated his rehabilitation in order to qualify for employment at the facility or program.

### **8:36-5.7 Policy and procedure manual**

(a) A policy and procedure manual(s) for the organization and operation of the facility or program shall be developed, implemented, and reviewed at least annually. Each review of the manual(s) shall be documented, and the manual(s) shall be available in the facility or program to representatives of the Department at all times. The manual(s) shall include at least the following:

1. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and resident care services of the facility or program;

2. A description of the services which the assisted living residence, comprehensive personal care home or assisted living program is capable of providing;

3. Policies and procedures for maintaining security;

4. Policies and procedures for reporting all alleged and/or suspected cases of resident abuse or exploitation to the Complaints Program of the Division of Long-Term Care Systems at 1-800-792-9770. If the resident is 60 years of age or older, the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly shall also be notified, in compliance with N.J.S.A. 52:27G-7.1 et seq., at 1-877-582-6995;

5. Policies and procedures for maintaining confidentiality of resident records, including policies and procedures for examination of resident records by the resident and other authorized persons and for release of resident records to any individual outside the facility or program, as consented to by the resident or as required by law or third-party payor;

6. Policies and procedures for the maintenance of personnel records for each employee, including at least his or her name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, records of orientation and inservice education, and evaluation of job performance;

7. Policies and procedures, including content and frequency, for physical examinations and immunizations and tuberculin testing upon employment and subsequently for employees and individuals providing direct resident care services in the facility through contractual arrangements or written agreement; and

8. Policies and procedures delineating the responsibilities of the facility's staff in making prompt notification regarding the death of a resident as required by N.J.S.A. 26:2H-5e and N.J.A.C. 8:36-15.7(a).

(b) The facility shall have a policy and procedure that addresses how policy and procedure manuals will be made available to residents, guardians, designated responsible individuals, prospective applicants, and referring agencies.

#### **8:36-5.8 Resident transportation**

(a) The facility shall be capable of providing resident transportation, either directly or by arrangement, to and from health care services provided outside the facility, and shall promote reasonable plans for security and accountability for the resident and his or her personal possessions, as well as transfer of resident information to and from the provider of the service, as required by individual residents and specified in resident service plans.

(b) The facility or program shall assist residents, if needed, in arranging for transportation to activities of social, religious, and community groups in which the resident chooses to participate.

#### **8:36-5.9 Written agreements**

The facility or program shall have a written agreement or its equivalent, or a linkage for services not provided directly by the facility or program. If the facility or program provides care to residents with psychiatric disorders, the facility or program shall also have a written agreement with one or more community mental health centers specifying which services will be provided by the mental health center. The written agreements shall require that services be provided in accordance with this chapter.



### **8:36-5.10 Reportable events**

(a) The facility shall notify the Department immediately by telephone at 609-633-9034 (609-392-2020 after business hours), followed within 72 hours by written confirmation, of the following:

1. Interruption for three or more hours of basic physical plant services, such as heat, light, power, water, food, or staff;
2. Any major occurrence or incident of an unusual nature, including, but not limited to, all fires, disasters, elopements, and all deaths resulting from accidents or incidents in the facility or related to facility services. Reports of such incidents shall contain information about injuries to residents and/or personnel, disruption of services, and extent of damages;
3. All suspected cases of resident abuse, neglect, or misappropriation of resident property, including, but not limited to, those which have been reported to the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly for residents over 60 years of age;
4. All alleged or suspected crimes which are serious crimes committed by or against residents, which have also been reported at the time of occurrence to the local police department;
5. Occurrence of epidemic disease in the facility; and
6. Termination of employment of the administrator, and the name and qualifications of his or her replacement.

(b) The written notification to the Department, as required by (a) above, shall be forwarded by the facility to the following address:

Director  
Office of Certificate of Need and Healthcare Facility Licensure  
New Jersey State Department of Health and Senior Services  
PO Box 358  
Trenton, New Jersey 08625-0358  
609-292-5960

### **8:36-5.11 Notices**

(a) The facility shall conspicuously post a notice that the following information is available in the facility during normal business hours, to residents and the public:

1. All waivers granted by the Department;
2. A copy of the last annual licensure inspection survey report and the list of deficiencies from any valid complaint investigation during the past 12 months;
3. Policies and procedures regarding resident rights;
4. Business hours of the facility;
5. Policies and procedures for maintaining security of the assisted living residence and comprehensive personal care home;
6. The toll-free hot line number of the Department; telephone numbers of county agencies and of the State of New Jersey Office of the Ombudsman; and
7. The names of, and a means to formally contact, the owner and/or members of the governing authority.

### **8:36-5.12 Maintenance of records**

(a) The facility shall maintain an annual chronological listing of residents admitted and discharged, including the destination of residents who are discharged.

(b) Statistical data, such as resident census and facility characteristics, shall be forwarded to the Department on request, in a format provided by the Department.

### **8:36-5.13 Admission and retention of residents**

(a) The administrator of the assisted living residence, comprehensive personal care home, or assisted living program or the administrator's designee shall conduct an interview with the resident and, if the resident agrees, the resident's family, guardian, or interested agency, prior to or at the time of the resident's admission. The interview shall include at least orientation to the facility's or program's policies, business hours, fee schedule, services provided, resident rights, and criteria for admission and discharge. Documentation of the resident interview shall be included in the resident record.

(b) At the initial interview prior to, or at the time of, admission of each resident, the administrator or the administrator's designee should be provided with the name, address, and telephone number of a family member, guardian, or responsible person who can be notified in the event of the resident's illness, incident, or other emergency. This information is voluntary on the part of the resident. A resident shall not be denied admission to the facility or program solely for declining to provide this information.

(c) If a facility or program has reason to believe, based on a resident's behavior, that the resident poses a danger to himself or herself or others, and that the facility or program is not capable of providing proper care to the resident, then the attending physician or the physician on call, in consultation with facility or program staff and a resident representative, shall determine whether the resident is appropriately placed in that facility or program. The facility or program or resident representative shall initiate the mental health screening process in accordance with N.J.S.A. 30:4-27.1 et seq., and N.J.A.C. 10:31, Screening and Screening Outreach Process, and, based on the results and recommendations of that screening process, shall attempt to locate a new placement if necessary.

(d) If an applicant, after applying in writing, is denied admission to the assisted living residence, comprehensive personal care home, or assisted living program, the applicant and/or his or her family, guardian, or responsible person shall, upon written request, be given the reason for such denial in writing, signed by the administrator, within 15 days of the receipt of the written request.

(e) If there is an infirmary in the facility, residents shall be transferred to the infirmary only if they have consented to such transfer and shall remain in the infirmary for a limited time only, generally not to exceed one week.

#### **8:36-5.14 Involuntary discharge**

(a) Written notification by the administrator shall be provided to a resident and/or his or her family, guardian, or designated responsible person, of a decision to involuntarily discharge the resident from the facility or program. Such involuntary discharge shall only be upon grounds contained in the facility's or program's policies and procedures and shall occur only if the resident has been notified and informed of such policies in advance. The notice of discharge shall be given at least 30 days in advance and shall include the reason for discharge and the resident's right to appeal. This 30 day advance notice shall not apply if the discharge is for reasons in accordance with the criteria specified at N.J.A.C. 8:36-5.1(d). A copy of the notice shall be entered in the resident's record.

(b) In an emergency situation, as stated in N.J.A.C. 8:36-5.1(d), for the protection of the life and safety of the resident or others, the facility or program may transfer the resident without 30 days notice. The Department shall be notified in the event of such discharge.

#### **8:36-5.15 Notification requirements**

(a) The resident's family, guardian, and/or designated responsible person or community agency shall be notified, when known, and with the resident's consent, immediately after the occurrence, in the event of the following:

1. The resident acquires an acute illness requiring medical care;
2. Any serious accident, criminal act or incident occurs which involves the resident and results in serious harm or injury or results in the resident's arrest or detention;
3. The resident is transferred from the facility; or
4. The resident expires.

(b) Notification of any occurrence noted in (a) above shall be documented in the resident's record. The documentation with regard to an occurrence noted in (a)4 above shall include confirmation and written documentation of that notification.

#### **8:36-5.16 Interpretation services**

The facility or program shall demonstrate the ability to provide a means to communicate with any resident admitted who is non-English-speaking and/or has a communication disability, using available community or on-site resources.

#### **8:36-5.17 Referral and transfer agreements**

Each licensed assisted living residence and comprehensive personal care home shall maintain written referral and/or transfer agreements with at least one licensed acute care hospital in New Jersey, at least one licensed State, county, or private psychiatric hospital in New Jersey, and with at least one licensed New Jersey long-term care facility. A written agreement with an acute care hospital with licensed adult psychiatric beds in New Jersey shall enable compliance with the psychiatric hospital component of this requirement.

### **8:36-5.18 Managed risk agreements**

(a) The choice and independence of action of a resident may need to be limited when a resident's individual choice, preference and/or actions are identified as placing the resident or others at risk, lead to adverse outcome and/or violate the norms of the facility or program or the majority of the residents. When the resident assessment process identified in N.J.A.C. 8:36-7 indicates that there is a high probability that a choice or action of the resident has resulted or will result in any of the preceding, the assisted living residence, comprehensive personal care, home or assisted living program shall:

1. Identify the specific cause(s) for concern;
2. Provide the resident (and if the resident agrees, the resident's family or representative) with clear, understandable information about the possible consequences of his or her choice or action;
3. Seek to negotiate a managed risk agreement with the resident (or legal guardian) that will minimize the possible risk and adverse consequences while still respecting the resident's preferences; and
4. Document the process of negotiation and, if no agreement can be reached, the lack of agreement and the decisions of the parties involved.

(b) Managed risk agreements shall be negotiated with the resident or legal guardian and shall address the following areas in writing:

1. The specific cause(s) for concern;
2. The probable consequences if the resident continues the choice and/or action identified as a cause for concern;
3. The resident's preferences;
4. Possible alternatives to the resident's current choice and/or action;
5. The final agreement reached by all parties involved; and
6. The date the agreement is executed and, if needed, the time frames in which the agreement will be reviewed.

(c) A copy of the managed risk agreement shall be provided to the resident or legal guardian and a copy shall be placed in the resident's record at the time it is implemented.

## **SUBCHAPTER 6. RESIDENT CARE POLICIES**

### **8:36-6.1 Resident care policies and procedures**

(a) Written resident care policies and procedures shall be established, implemented, and reviewed at intervals specified in the policies and procedures. Each review of the policies and procedures shall be documented. Policies and procedures shall include, but not be limited to, the following:

1. Resident rights;
2. Advance directives, including but not limited to, the following:
  - i. The circumstances under which an inquiry will be made of individuals regarding the existence and location of an advance directive;
  - ii. Requirements for provision of a written statement of resident rights regarding advance directives, approved by the Commissioner or his or her designee, to residents upon admission; and
  - iii. Requirements for documentation in the resident record;
3. The determination of staffing levels to ensure delivery of services and assistance as needed for each resident of the facility or program during each 24-hour period. Services may be provided directly by staff employed by the facility or program or in accordance with a written contract;
4. The delivery of personal care and assistance to residents in accordance with assisted living concepts which specify that each resident will be encouraged to maintain his or her independence and personal decision making abilities;
5. The referral of residents to health care providers in accordance with individual needs and resident service plans;
6. Emergency medical and dental care of residents, including notification of the resident's family, guardian, or responsible person, when known, and with the resident's consent, and care of residents during periods of acute illness;
7. Resident instruction and health education;
8. The control of smoking in the facility, in accordance with N.J.S.A. 26:3D-55 et seq. and the rules promulgated thereunder;
9. Discharge, termination by the facility, transfer, and readmission of residents, including criteria for each;

10. The care and control of pets if the facility permits pets in the facility or on its premises; and

11. A policy to determine those circumstances where the resident's absence should be investigated.

### **8:36-6.2 Financial arrangements and full disclosure**

(a) The facility shall disclose in the admission agreement the service it will provide, the public programs or benefits that it accepts or delivers, the policies that affect a resident's ability to remain in the residence and any waivers that have been granted of the regulations regarding physical plant requirements at N.J.A.C. 8:36-14 for assisted living residences or N.J.A.C. 8:36-22 for comprehensive personal care homes.

(b) Concerning financial arrangements, the facility shall:

1. Upon admission and at the time of any change in charges, inform the residents in writing, of any and all fees for services provided and charges for supplies routinely provided by the facility. The facility shall also inform the resident of the costs of supplies which are specially ordered. At the resident's request, this information may be provided instead to the resident's family, guardian, or responsible person;

2. Impose no additional charges for increased level of care without documentation of reassessment by the registered nurse that necessitates the increase;

3. Impose no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, unless written notification is provided to the resident.

i. Where there is written documentation of the resident's agreement to the purchase and cost of supplies which are purchased through the facility;

4. Maintain a written record of all financial arrangements with the resident and/or his or her family, guardian, or responsible person with copies furnished to the resident; and

5. Provide the resident with information about obtaining financial assistance available from third-party payors and/or other payors and referral systems for resident financial assistance.

(c) All residents who have advanced a security deposit to a facility prior to or upon their admission shall be entitled to receive interest earnings, which have accumulated on such funds or property.

1. The facility shall hold such funds or property in trust for the resident and they shall remain the property of the resident and shall be returned to the resident or the resident's estate upon discharge or death minus any outstanding payment owed to the facility by the resident, in accordance with the resident admission agreement.

2. All such funds shall be held in an interest-bearing account as established under requirements of N.J.S.A. 30:13-1 et seq.

3. The facility may deduct an amount not to exceed one percent per annum of the amount so invested or deposited for costs of servicing and processing the accounts.

4. The facility, within 60 days of establishing an account, shall notify the resident, in writing, of the name of the bank or investment company holding the funds and the account number. The facility shall thereafter provide a quarterly statement to each resident it holds security funds in trust for identifying the balance, interest earned, and any deductions for charges or expenses incurred in accordance with the terms of the contract or agreement of admission.

### **8:36-6.3 Personal needs allowance**

(a) The administrator or his or her representative shall develop a policy and procedure for handling the monthly personal needs allowance for each resident who receives Supplemental Security Income (SSI) or other forms of public assistance. The personal needs allowance shall be at least the amount specified by the New Jersey State Department of Human Services pursuant to N.J.S.A. 44:7-87(h) and N.J.A.C. 10:123-3.

(b) Every administrator to whom resident's personal funds are entrusted shall maintain written records, such as a ledger, including the date each payment was received, the amount of payment, the date of each disbursement, the amount of each disbursement, the reason for each disbursement and to whom each disbursement was made. The personal needs allowance shall not be commingled with any other facility operating account and shall be deposited into an interest bearing account. Each resident shall receive his or her personal needs allowance within 72 hours of the receipt of the check by the administrator.



(c) The resident or, if the resident is not competent, the resident's representative with financial power of attorney, shall sign to acknowledge receipt of funds, goods or services purchased with such funds at the time of disbursement.

## **SUBCHAPTER 7. RESIDENT ASSESSMENTS AND CARE PLANS**

### **8:36-7.1 Initial assessments and resident service plans**

(a) Upon admission, each resident shall receive an initial assessment by a registered professional nurse to determine the resident's needs.

(b) If this initial assessment indicates the resident has general service needs, a general service plan shall be developed within 14 days of the resident's admission.

(c) The general service plan shall include, but not be limited to, the following:

1. The resident's need, if any, for assistance with activities of daily living (ADL);
2. The resident's need, if any, for assistance with recreational and other activities; and
3. The resident's need, if any, for assistance with transportation.

### **8:36-7.2 Health care assessment and health service plan**

(a) Within 30 days prior to admission to the assisted living residence, comprehensive personal care home, or assisted living program, a physician, advanced practice nurse or physician assistant shall specify in writing that the resident is appropriate for this level of care.

(b) At the time of admission, arrangements shall be made between the administrator and the resident, guardian, or responsible person regarding the physician and dentist to be called in case of illness, or the individual to be called for a resident who, because of religious affiliation, is opposed to medical treatment.

(c) If the initial assessment in N.J.A.C. 8:36-7.1(a) indicates that the resident requires health care services, a health care assessment shall be completed within 14 days of admission by a registered professional nurse using an assessment instrument available from the Department, or an assessment instrument that has been adopted by the facility or program, equivalent to the instrument available from the Department, and which meets the requirements of (d) below.

(d) Each health care assessment by the registered professional nurse shall include, at a minimum, evaluation of the following:

1. Need for assistance with "activities of daily living";
2. Cognitive patterns;
3. Communication/hearing patterns;
4. Vision patterns;
5. Physical functioning and structural problems;
6. Continence;
7. Psychosocial well-being;
8. Mood and behavior problems;
9. Activity pursuit patterns;
10. Disease diagnoses;
11. Health conditions and preventive health measures, including, but not limited to, pain, falls, and lifestyle;
12. Oral/nutritional status;
13. Oral/dental status;
14. Skin conditions;
15. Medication use;
16. Special treatment and procedures;
17. Restraint use; and
18. Outside service utilization.

(e) Based on the health care assessment, a written health service plan shall be developed. The health service plan shall include, but not be limited to, the following:

1. Orders for treatment or services, medications, and diet, if needed;
2. The resident's needs and preferences for himself or herself;
3. The specific goals of treatment or services, if appropriate;
4. The time intervals at which the resident's response to treatment will be reviewed; and
5. The measures to be used to assess the effects of treatment.

(f) The initial health care assessment shall be documented by the registered nurse and shall be updated as required, in accordance with the rules of this chapter and professional standards of practice.

(g) The facility shall make reasonable effort to have documentation of services provided by outside health care professionals entered in the resident record.

### **8:36-7.3 General and health service plans**

(a) The resident general service plan shall be reviewed and, if necessary, revised semi-annually, and more frequently as needed based upon the resident's response to the care provided and any changes in the resident's physical or cognitive status.

(b) The resident health service plan shall be reviewed, and if necessary, revised quarterly, and as needed, based upon the resident's response to the care provided and any changes in the resident's physical or cognitive status.

(c) Documentation in the resident's record shall indicate review and any necessary revision of the resident service plan and/or health service plan.

(d) The resident shall participate in and, if the resident agrees, family members shall be invited to participate in, the development of the resident service plan and health service plans, if plans are needed. Participation shall be documented in the resident's record.

(e) If the resident does not have any general service needs or health services needs, a general or health service plan is not necessary.

(f) The facility shall be responsible for reassessing residents who have neither a general service or health service plan in response to changes in the resident's functional and/or cognitive status at least annually and more frequently if such reassessment is predicated on a change in the resident's functional and/or cognitive status.

#### **8:36-7.4 Health care services**

(a) The assisted living residence, comprehensive personal care home, or assisted living program shall ensure that the resident receives "health care services" under the direction of a registered professional nurse, in accordance with the health service plan.

(b) A registered professional nurse shall be responsible for developing nursing practice policies and procedures and the coordination of all health care services required in the resident's health service plan.

(c) Written policies and procedures shall be developed and implemented to ensure, but not be limited to, the following:

1. Assessment of all residents with a general service plan at least semi-annually, and those residents who have a health service plan shall be reassessed at least quarterly and more often on an as-needed basis, including and upon the resident's return to the facility from the hospital;
2. Monitoring of the condition of all residents on an as needed basis;
3. Notification of the registered professional nurse if there are significant changes in a resident's condition;
4. Assessment of the resident's need for referral to a physician, advanced practice nurse or physician assistant, or community agencies as appropriate; and
5. Maintenance of records as required.

#### **8:36-7.5 Provision of health care services**

(a) The facility or program shall arrange for health care services to be provided to residents as needed, in accordance with assessments and with the health service plan. The administrator shall develop a system to identify the residents receiving health care services.

(b) If a resident who has not been receiving a health care service requires a health care service on a temporary basis (meaning a period of time reasonably expected to be 14 days or less and not involving a significant change in condition or a life-threatening illness), neither a health care assessment nor a health service plan shall be required. The administrator shall develop a system to identify the residents receiving a health care service on a temporary basis.

(c) The registered professional nurse shall be called at the onset of illness, injury or change in condition of any resident to arrange for assessment of the resident's nursing care needs or medical needs and for needed nursing care intervention or medical care.

(d) The resident's physician or the physician's designee, that is, another physician or an advanced practice nurse or physician assistant, shall be notified by the licensed professional nurse of any significant changes in the resident's physical or cognitive/mental condition and any intervention by the physician shall be recorded.

(e) Each resident shall have an annual physical examination by a physician, advanced practice nurse or physician assistant, which shall be documented in the resident's record. The physician, advanced practice nurse or physician assistant shall certify annually that the resident does not have needs which exceed the care that the facility or program is capable of providing.

(f) If it is determined that there is a medical need for a transfer of a resident to another health care facility because the assisted living residence, comprehensive personal care home or assisted living program cannot meet the resident's needs, such transfers shall be initiated promptly, in accordance with N.J.A.C. 8:36-5.1(d). The registered professional nurse shall be notified to ensure that the resident is receiving appropriate care during the transfer period.

(g) If the resident is not transferred within seven days, the Department shall be notified and assistance shall be requested from the Department to arrange for transfer of the resident.

## **SUBCHAPTER 8. NURSING SERVICES**

### **8:36-8.1 Qualifications of professional nurses**

(a) Each registered professional nurse shall be licensed by the New Jersey State Board of Nursing in accordance with N.J.A.C. 13:37.

(b) Each licensed practical nurse shall be licensed by the New Jersey State Board of Nursing, in accordance with N.J.A.C. 13:37.

### **8:36-8.2 Nurse staffing requirements**

A facility shall have at least one registered professional nurse available at all times.

## **SUBCHAPTER 9. PERSONAL CARE ASSISTANTS, CERTIFIED MEDICATION AIDES, AND OTHER DIRECT CAREGIVERS**

### **8:36-9.1 Qualifications of personal care assistants**

(a) For the purposes of this subchapter, each personal care assistant shall be an individual who is employed by the facility and who has completed:

1. A nurse aide training course approved by the New Jersey State Department of Health and Senior Services in accordance with N.J.A.C. 8:39-43, and shall have passed the New Jersey Nurse Aide Certification Examination;

2. A homemaker-home health aide training program approved by the New Jersey Board of Nursing and shall be certified by the Board in accordance with N.J.A.C. 13:37-14; or

3. A personal care assistant training course approved by the New Jersey Department of Health and Senior Services and the competency evaluation program approved by the Department resulting in personal care assistant certification.

i. No individual shall be certified as a personal care assistant pursuant to (a)3 above unless that individual has completed the criminal history background check required by N.J.A.C. 8:43I.

(b) Each personal care assistant and each direct caregiver shall receive orientation prior to or upon employment and on-going in-service education regarding the concepts of assisted living.

(c) Personal care assistant certification shall be valid for a period of two years from the date of issue.

(d) At least once every two years, on a schedule to be determined by the Department, a certified personal care assistant shall file an application for renewal of current certification and shall complete an updated criminal history background check as required by N.J.A.C. 8:43I.

(e) In order to be eligible to renew a current certification, the certified personal care assistant shall complete at least 20 hours, every two years, of continuing education in assisted living concepts and related topics, including cognitive and physical impairment and dementia.



(f) If an individual fails to become recertified in accordance with (e) above, the name of the individual shall be removed from the New Jersey certified personal care assistant registry.

(g) In order for an individual to be reentered onto the New Jersey personal care assistant registry, the individual shall successfully complete a training course approved in accordance with the training requirements at (a)3 above in effect at the time of application and shall pass the New Jersey competency evaluation. If the individual initially became certified within the five years immediately preceding reapplication, the individual shall be recertified upon passing the New Jersey competency evaluation, and completion of a training course shall not be required.

(h) The facility shall maintain records sufficient to verify the continuing education record of present and previous employees for at least one renewal period.

(i) A certified nurse aide or certified homemaker-home health aide, functioning as a personal care assistant, shall be subject to the continuing education requirements in (e) above and the annual registry and background checks in (j) and (k) below.

(j) No licensed assisted living residence, comprehensive personal care home, or assisted living program shall employ a person as a personal care assistant without making inquiry to the New Jersey Certified Personal Care Assistant Registry, the New Jersey Certified Nurse Aide Registry, or to any other State agency registry in which the facility has a good faith belief the personal care assistant is registered.

1. Registry confirmation of a personal care assistant certification or nurse aide certification or homemaker-home health aide certification shall not be sufficient to satisfy the requirement for reference checks identified at N.J.A.C. 8:43I.

(k) A certificate issued to a personal care assistant in accordance with this section shall be suspended, denied or revoked in the following cases:

1. Substantiated findings of resident abuse or neglect or misappropriation of resident property in any health care facility licensed in accordance with N.J.S.A. 26:2H-1 et seq.;

2. Failure to complete the criminal history background check required by N.J.A.C. 8:43I, or failure to obtain a determination of rehabilitation as required by N.J.S.A. 26:2H-83 et seq.; or

3. Sale, purchase, or alteration of a certificate; use of fraudulent means to secure the certificate, including filing false information on the application; or forgery, imposture, dishonesty, or cheating on an examination.

(l) If the Department proposes to sanction the employee or to suspend, deny or revoke the certification of a personal care assistant in an assisted living residence, comprehensive personal care home, or assisted living program, the aggrieved person may request a hearing, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(m) Upon receipt of a finding that a certified personal care assistant has abused, neglected, or misappropriated the property of a resident, resulting from an investigation by the Office of the Ombudsman for the Institutionalized Elderly, the Department, or other State or local governmental agency, including criminal justice authorities, the Department shall determine whether the finding is valid and is to be entered onto the personal care assistant abuse registry at which time a disciplinary hearing process shall be initiated in accordance with (n) below.

(n) Prior to entering the finding on the personal care assistant abuse registry, the Department shall provide a notice to the certified personal care assistant identifying the intended action, the factual basis and source of the finding, and the individual's right to a hearing.

1. The notice in (n) above shall be transmitted to the individual so as to provide at least 30 days for the individual to request a hearing prior to abuse registry placement. If a hearing is requested, it shall be conducted by the Office of Administrative Law or by a Departmental hearing officer in accordance with the hearing procedures established by the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq., and 52:14F-1, et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2. No further right to an administrative hearing shall be offered to individuals who have been afforded a hearing before a State or local administrative agency or other neutral party, or in a court of law, at which time the personal care assistant received adequate notice and an opportunity to testify and to confront witnesses, and where there was an impartial hearing officer who issued a written decision verifying the findings of abuse, neglect, or misappropriation of resident property. The individual shall have the right to enter a statement to be included in the abuse registry contesting such findings.

(o) An order of suspension, denial, or revocation may contain such provisions regarding reinstatement of the certification as the Department shall recommend. In the absence of any such provisions regarding reinstatement in the order of a denial, suspension, or revocation, the action shall be deemed to be permanent.

### **8:36-9.2 Certified Medication Aides**

(a) Certified medication aides shall meet the following requirements:

1. Certification as a nurse aide, homemaker-home health aide, or personal care assistant;

2. Successful completion of the medication administration training course approved by the Department of Health and Senior Services; and

3. Successful completion of a Department of Health and Senior Services approved standardized examination regarding medication administration for personal care assistants.

i. An oral examination shall not substitute for the written component of this examination.

(b) Medication aide certification shall be valid for a period of two years from the date of issue.

(c) An applicant for medication aide certification shall sit for the standardized examination within six months of successful completion of an approved medication administration training course.

(d) At least once every two years, on a schedule to be determined by the Department, a medication aide shall file an application for renewal of current certification.

1. In order to be eligible to renew a current certification, the medication aide shall have completed at least 10 hours of continuing education, seminars, or in-service training every two-year certification period.

i. The continuing education requirement shall include five hours for review of the fundamental principals of medication administration and the skills and knowledge necessary for the task of medication administration and five hours of continuing education and in-service training on topics of current drug use relevant to the elderly.

ii. The continuing education requirement shall be in addition to the continuing education requirement in N.J.A.C. 8:36-9.1(e).

2. The facility shall maintain records sufficient to verify the continuing education record of present and previous employees for at least one medication aide certificate renewal period.

(e) An individual whose name has been removed from the New Jersey medication aide registry for a period of more than one year shall be required to retrain and retest in accordance with the rules for medication aide certification in effect at the time of retraining and retesting in order to be reentered on said registry.

(f) Registry confirmation of a medication aide certification shall not be sufficient to satisfy the requirement for reference checks identified at N.J.A.C. 8:43I.

(g) A certificate issued to a medication aide in accordance with this section shall be suspended, denied, or revoked in the following cases:

1. Substantiated findings of resident abuse or neglect or misappropriation of resident property;

2. Revocation of any certification as a nurse aide, homemaker-home health aide, or personal care assistant as a result of the criminal history background checks required by N.J.A.C. 8:43I;

3. Sale, purchase, or alteration of a certificate; use of fraudulent means to secure the certificate, including filing false information on the application; or forgery, imposture, dishonesty, or cheating on an examination; or

4. Documented and verified incompetence and/or negligence in the performance of duties which fall within the scope of practice of the certified medication aide as delegated by the registered professional nurse.

(h) If the Department proposes to suspend, deny or revoke the certification of a certified medication aide in an assisted living residence, comprehensive personal care home, or assisted living program, the aggrieved person may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(i) Upon receipt of a finding that a certified medication aide has abused, neglected, or misappropriated the property of a resident, or was negligent or incompetent in the performance of the individual's duties, resulting from an investigation by the Office of the Ombudsman for the Institutionalized Elderly, the Department, or other State or local governmental agency, including criminal justice authorities, the Department shall determine whether the finding is valid and is to be entered onto the certified medication aide abuse registry, at which time a disciplinary hearing process shall be initiated.

(j) Prior to entering the finding on the certified medication aide abuse registry, the Department shall provide a notice to the certified medication aide, identifying the intended action, the factual basis and source of the finding, and the individual's right to a hearing.

1. The notice in (j) above shall be transmitted to the individual so as to provide at least 30 days for the individual to request a hearing prior to abuse registry placement. If a hearing is requested, it shall be conducted by the Office of Administrative Law or by a Departmental hearing office in accordance with the hearing procedures established by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2. No further right to an administrative hearing shall be offered to individuals who have been afforded a hearing before a State or local administrative agency or other neutral party, or in a court of law, at which time the certified medication aide received adequate notice and an opportunity to testify and to confront witnesses, and where there was an impartial hearing officer who issued a written decision verifying the findings of abuse, neglect, or misappropriation of resident property or negligence or incompetence in the performance of the individual's duties. The individual shall have the right to enter a statement to be included in the abuse registry contesting such findings.

(k) An order of suspension, denial, or revocation may contain such provisions regarding reinstatement of the certification as the Department shall recommend. In the absence of any such provisions regarding reinstatement in the order of a denial, suspension, or revocation, the action shall be deemed to be permanent.

**8:36-9.3 Minimum personal care assistant staffing**

(a) The facility shall provide on the premises at all times the following minimum numbers of employees:

1. At least one awake personal care assistant in accordance with N.J.A.C. 8:36-9.1(a); and
2. At least one additional employee.

(b) Any facility with more than one free standing building with residents shall provide on the premises at all times at least one personal care assistant in each building. In such cases, the two personal care assistants shall satisfy the requirements of (a) above, except both personal care assistants shall be awake.

(c) The staffing level in this chapter is minimum only and the assisted living residence, comprehensive personal care, or assisted living program shall employ both professional and unlicensed staff in sufficient number and with sufficient ability and training to provide the basic resident care, assistance, and supervision required, based on an assessment of the acuity of residents' needs.

## **SUBCHAPTER 10. DINING SERVICES**

### **8:36-10.1 Qualifications of dietitians**

The dietitian shall possess a bachelor's degree from an accredited college or university with a major area of concentration in a nutrition-related field of study, and one year of full-time professional experience or graduate-level training in nutrition.

### **8:36-10.2 Provision of meals**

The assisted living residence or comprehensive personal care home shall provide dining services to meet the daily nutritional needs of residents, directly in the facility.

### **8:36-10.3 Designation of a food service coordinator**

The facility shall designate a food service coordinator who, if not a dietitian, functions with scheduled consultation from a dietitian. When meals are prepared in the facility, the food service coordinator or designee shall be present in the facility. The food service coordinator shall ensure that dining services are provided as specified in the dining portion of the health care plan.

### **8:36-10.4 Responsibilities of dietitians**

(a) If indicated, according to residents' needs, a dietitian shall be responsible for providing resident care, including, but not limited to, the following:

1. Assessing the nutritional needs of the resident. If indicated, preparing the dietary portion of the health care plan on the basis of the assessment, providing dietary services to the resident as specified in the dietary portion of the health plan, reassessing the resident, and revising the dietary portion of the health care plan. Each of these activities shall be documented in the resident's record; and

2. Providing nutritional counseling and education to residents.

### **8:36-10.5 Requirements for dining services**

(a) The facility and personnel shall comply with the provisions of N.J.A.C. 8:24, Retail Food Establishments and Food and Beverage Vending Machines Chapter XII of the New Jersey Sanitary Code.

(b) A current diet manual shall be available to the dining service personnel and to the nursing service personnel.

(c) Meals shall be planned, prepared, and served in accordance with, but not limited to, the following:

1. At least three meals shall be prepared and served daily to residents;
2. The facility shall select foods and beverages, which include fresh and seasonal foods, and shall prepare menus with regard to the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal preference of residents;
3. Written, dated menus shall be planned at least 14 days in advance for all diets. The same menu shall not be used more than once in any continuous seven-day period;
4. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus shall be posted in a conspicuous place in residents' area, and/or a copy of the menu shall be provided to each resident. Any changes or substitutes in menus shall be posted or provided in writing to each resident. Menus, with changes or substitutes, shall be kept on file in the facility for at least 30 days;
5. Diets served shall be consistent with the diet manual, the dietitian's instructions, and, if applicable for special diets, shall be served in accordance with physicians' orders;
6. Nutrients and calories shall be provided for each resident, based upon current recommended dining allowances in the Dietary Reference Intake Tables of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, incorporated herein by reference, as amended and supplemented, available on the Internet at <http://www.iom.edu/Object.File/Master/21/372/0.pdf> or by calling 1-800-624-6242. These allowances are to be adjusted for age, sex, weight, physical activity, and therapeutic needs of the resident, if applicable;
7. Between-meal snacks and beverages shall be available at all times for each resident, unless medically contraindicated as documented by a physician in the resident's health care plan;
8. Substitute foods and beverages of equivalent nutritional value shall be available to all residents;
9. In the case of a resident who has a health care plan in which diet is identified as a service, the staff shall observe whether meals are refused or missed and shall document this information;



10. All meals shall be served at the proper temperature and shall be attractive when served to residents. Place settings and condiments shall be appropriate to the meal;

11. Seatings shall be arranged for each meal in order to accommodate individual resident's meal-time preferences, in accordance with facility policies;

12. In the case of a resident who has a health service plan in which diet is identified as a service, a record shall be maintained for such resident, identifying the resident by name, diet order, if applicable, and other information, such as meal patterns, when on a calculated diet and allergies; and

13. If the resident is ill, meals shall be served in his or her apartment, as indicated in the resident service plan and in accordance with facility policy.

#### **8:36-10.6 Commercial food management services**

If a commercial food management firm provides dining services, the firm shall be required to conform to the standards of this subchapter.

## **SUBCHAPTER 11. PHARMACEUTICAL SERVICES**

### **8:36-11.1 Qualifications of pharmacists**

Each pharmacist shall be registered by the New Jersey State Board of Pharmacy, in accordance with N.J.A.C. 13:39.

### **8:36-11.2 Provision of pharmaceutical services**

The assisted living residence, comprehensive personal care home, or assisted living program shall be capable of ensuring that pharmaceutical services are provided to residents in accordance with the prescriber's orders, each resident's health care plan, and in accordance with the rules of this chapter and all applicable State and Federal laws and regulations.

### **8:36-11.3 Supervision of medication administration**

(a) If indicated in the resident's health service plan or resident's general service plan, a designated employee shall provide resident supervision of self-administration of medications in accordance with physicians' orders. Any employee who has been designated to provide resident supervision of self-administration of medications shall have received training from the licensed professional nurse or the licensed pharmacist, and such training shall be documented.

1. The facility or program shall document the provision of training to each employee who has been designated to provide resident supervision of self-administration of medications;
2. The facility or program shall document any instance where medications are not taken in accordance with the prescriber's orders; and
3. The facility shall keep a record of all prescribed medications for which the resident is receiving supervision of medication administration.

### **8:36-11.4 Administration of medications**

(a) Notwithstanding the definition of "health care service," the administration of medication in accordance with N.J.A.C. 8:36-11.3 and this section, in and of itself, shall not be considered a health care service.

(b) All medications shall be administered by qualified personnel in accordance with prescriber orders, facility or program policy, manufacturer's requirements, cautionary or accessory warnings, and all Federal and State laws and regulations.

## **8:36-11.5 Certified Medication Aide Program**

(a) The administration of medications is within the scope of practice and remains the responsibility of the registered professional nurse.

(b) The registered professional nurse may choose to delegate the task of administering medications in accordance with N.J.A.C. 13:37-6.2 to certified medication aides, as defined in this chapter.

1. A unit-of-use/unit dose drug distribution system shall be developed and implemented whenever the administration of medication is delegated by the registered professional nurse to a certified medication aide;

i. Over-the-counter (OTC) solid and liquid dosage forms may be dispensed in a non unit-of-use or non unit-dose medication distribution system.

ii. Prescription liquid medications (that is, conventional bottles, concentrates) may be dispensed in a non unit-of-use, non unit-dose, or conventional medication distribution system.

2. If an appropriate delegation is made, and in accordance with the facility's policies and procedures and all applicable State and Federal laws and regulations, the certified medication aide may:

i. Administer medications through the routes of oral, ophthalmic, otic, inhalant, nasal, rectal, vaginal, topical, and by the percutaneous endoscopic gastrostomy (PEG) tube route of administration;

ii. Administer any prescription or OTC medications as described in (b)1 above;

iii. Administer regularly scheduled medications, including prescription, OTC, and Schedule II-V medications;

iv. Administer "prn" or as-needed prescription, OTC and Schedule II-V medications except that residents receiving the following medications shall be assessed by the registered professional nurse at least once every seven days:

(1) Residents receiving prn Schedule II narcotic analgesics;

(2) Residents receiving Schedule III-IV narcotic analgesics; and

(3) Residents receiving Schedule III-IV central nervous system agents;

v. Administer medications that have been dispensed by a pharmacy, in accordance with N.J.S.A. 45:14 et seq., N.J.S.A. 24:21 et seq., N.J.A.C. 13:39, and the requirements of this chapter; or

vi. Administer experimental and/or research medications in accordance with 45 CFR Part 46, Protection of Human Subjects, incorporated herein by reference, as amended and supplemented.

3. The certified medication aide shall not:

i. Administer any injection other than pre-drawn properly packaged and labeled insulin as described in (b)1 above;

ii. Calculate a medication dosage;

iii. Pre-pour medications for more than one resident at a time;

iv. Contact prescribers for changes in medication, to clarify an order, or contact the pharmacist for questions regarding a dispensed medication; or

v. Administer bolus doses of enteral feedings, or stop and/or start an existing enteral feeding pump or gravity-fed system.

4. The certified medication aide shall contact the registered professional nurse for any questions or clarification regarding medication administration.

5. The delegating nurse shall review with the certified medication aide medication actions and untoward effects for each drug to be administered. Pertinent information about medications' adverse effects, side effects, contraindications, and potential interactions shall be incorporated into the plan of care for each resident, with interventions to be implemented by the personal care assistant and other caregiving staff, and documented on the medication administration record (MAR).

6. At least weekly, a registered professional nurse shall review and sign off on any modifications or additions to the MAR that were made by the certified medication aide under the registered professional nurse's delegation.

7. Registered professional nurses who participate in certified medication aide training shall attend a Department offered one-day Train-the-Trainer Medication Aide Workshop prior to providing such training to certified medication aides.

8. Registered pharmacists, who participate in certified medication aide training, shall attend a Department offered one-day Train-the-Trainer Medication Aide Workshop prior to providing such training to certified medication aides.

9. The fee charged by the Department for a two-year approval of a medication aide training program shall be \$100.00 and is non-refundable.

10. The facility shall keep a record of all prescription and non-prescription medications administered to each resident.

(c) Each resident shall be identified prior to medication administration.

(d) Medication prescribed for one resident shall not be administered to another resident. Borrowing shall not occur.

(e) The registered professional nurse shall report medication errors and adverse drug reactions immediately to the prescriber, to the provider pharmacist and/or consultant pharmacist, and shall document the incident in the resident's record.

(f) Medications shall be accurately administered and documented by properly authorized individuals, in accordance with prescribed orders.

#### **8:36-11.6 Designation of a pharmacist**

(a) The facility or program shall designate a pharmacist who shall direct pharmaceutical services and provide consultation to the physician, facility, or program staff, and residents, as needed. The pharmacist shall assist the facility or program with, at a minimum, the following:

1. The training of employees;
2. Educating residents regarding medications;
3. Establishing policies and procedures which ensure safe and appropriate self-administration of medications;
4. Reviewing medication administration records on a quarterly basis; and
5. At least quarterly, inspecting all common areas of the facility or program where medications are stored or administered, documenting any problems and proposing solutions to these problems, and maintaining records of such inspections.

### **8:36-11.7 Storage and control of medications**

(a) The administrator shall provide an appropriate and safe medication storage area, either in a common area or in the resident's unit, for the storage of medications that are not self-administered by the residents. The storage area requirement may be satisfied through the use of a locked medication cart.

1. The storage area shall be kept locked when not in use.
2. The storage area shall be used only for storage of medications and medical supplies.
3. The key to the storage area shall be kept on the person of the employee on duty who is responsible for resident supervision.
4. Each resident's medications shall be kept separated within the storage area, with the exception of large volume medications which may be labeled and stored together in the storage area.
5. Medications shall be stored in accordance with manufacturer's instructions, and/or extemporaneously applied pharmacy labels and/or directions, and/or United States Pharmacopoeia Drug Information (USP DI) Volume I, Drug Information for the Health Care Professional, 2005, incorporated herein by reference, as amended and supplemented and USP DI Volume II: Advice for the Patient, incorporated herein by reference, as amended and supplemented. USP DI Volume I: Drug Information for the Health Care Professional and USP DI Volume II: Advice for the Patient can be obtained by contacting Thomson-Micromedex, 6200 S. Syracuse Way, Suite 300, Greenwood Village, CO 80111, (303) 486-6400.

(b) All medications shall be kept in their original containers and shall be properly labeled and identified.

1. The label of each resident's prescription medication container shall be permanently affixed and contain the resident's full name, prescriber's name, prescription number, name and strength of medication, lot number, quantity, date of issue, expiration date, manufacturer's name if generic, directions for use, and cautionary and/or accessory labels. Required information appearing on individually packaged medications or within an alternate medication delivery system need not be repeated on the label.

2. If a generic substitute is used, the drug shall be labeled according to N.J.A.C. 8:71 and/or the provisions identified in the publication of the Office of Generic Drugs in the Office of Pharmaceutical Science of the Center for Drug Evaluation and Research of the United States Department of Health and Human

Services, "Approved Drug Products with Therapeutic Equivalence Evaluations," 24th Edition, incorporated herein by reference, as amended and supplemented, commonly known as the "Orange Book." The Orange Book can be obtained by contacting the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, (202) 512-1800 or toll-free (866) 512-1800, and is available on-line at <http://www.fda.gov/cder/oranqe/default.htm> and at <http://www.fda.gov/cder/ob/default.htm>.

3. All over-the-counter medications repackaged by the pharmacy shall be labeled with the name and strength of the medication, expiration date, lot number, date of issue, manufacturer's name, and cautionary and/or accessory labels, in accordance with (a)5 above. Original manufacturer's containers shall be labeled with at least the resident's name, and the name label shall not obstruct any of the aforementioned information.

4. For non-liquid prescription medications, where a unit-of-use drug distribution system shall be used, each dose of medication shall be individually packaged in a hermetically sealed, tamper-proof container, and shall carry full manufacturer's disclosure information on each discrete dose. Disclosure information shall include, but not be limited to, the following: product name and strength, lot number, expiration date, and manufacturer's or distributor's name.

5. If a customized resident medication package is utilized, it shall conform with the provisions of USP DI Volume III, Approved Drug Products and Legal Requirements, 2005, incorporated herein by reference, as amended and supplemented. USP DI Volume III, Approved Drug Products and Legal Requirements can be obtained by contacting Thomson-Micromedex, 6200 S. Syracuse Way, Suite 300, Greenwood Village, CO 80111, (303) 486-6400, under license granted by the United States Pharmacopeial Convention, Inc.

(c) Single use and disposable items shall not be reused.

(d) No stock supply of medications shall be maintained, unless prior approval is obtained from the Department.

(e) Discontinued or expired medications shall be destroyed within 30 days in the facility, or, if unopened and properly labeled, returned to the pharmacy for credit, if allowable, and in conformance with N.J.A.C. 13:39 and other State and Federal laws, codes, and regulations.

(f) All medication destruction in the facility shall be witnessed and documented by two individuals, each of whom shall be either the administrator, the registered professional nurse, the licensed practical nurse, or the provider or consultant pharmacist.

(g) The facility shall generate a crediting mechanism for medications dispensed in a unit-of-use medication distribution system, or other system that allows for the re-use of medications in accordance with all applicable State and Federal laws and regulations. The crediting system shall be monitored by the provider pharmacist and/or the consultant pharmacist and a facility representative.

(h) If the facility utilizes medications marked "sample," the provider pharmacist and/or consultant pharmacist, and the registered professional nurse, shall develop a mechanism for the control and limitation of these medications, in accordance with N.J.A.C. 13:35 and 13:39.

(i) Medication containers and carts shall be kept clean, and handled properly to prevent damage to the contents, and to prevent injury and harm to staff and/or residents.

(j) Needles and syringes shall be stored, used, and disposed of in accordance with N.J.S.A. 26:24-5.10 et seq. N.J.A.C. 8:43E-7, 7:26-3A, 29 CFR 1910.1930, and a record shall be maintained of the purchase, storage, and disposal of needles and syringes.

(k) Controlled dangerous substances shall be stored, and records shall be maintained, in accordance with the Controlled Dangerous Substances Acts, N.J.S.A. 24:21-1 et seq. and all other Federal and State laws and regulations concerning the procurement, storage, dispensation, administration, and disposition of same.

(l) Any theft of Scheduled or Controlled Substances shall be reported to the New Jersey Department of Law and Public Safety, Division of Consumer Affairs, Enforcement Bureau of Professional Boards at (973) 504-6300, and/or to any other municipal, county, State, or Federal authority having jurisdiction over theft of such substances.



## **SUBCHAPTER 12. RESIDENT ACTIVITIES**

### **8:36-12.1 Provision of resident activities**

(a) A planned, diversified program of resident activities shall be offered daily for residents, including individual and/or group activities, on-site or off-site, to meet the individual needs of residents.

(b) Residents shall have the opportunity to organize and participate in a resident council that presents the resident's concerns to the administrator of the facility.

## **SUBCHAPTER 13. SOCIAL WORK SERVICES**

### **8:36-13.1 Qualifications of social workers**

Each social worker shall be licensed or certified by the New Jersey State Board of Social Work Examiners in accordance with N.J.A.C. 13:44G.

### **8:36-13.2 Provision of social work services**

The facility shall arrange for the provision of social work services to residents who require them, by social workers licensed in accordance with N.J.S.A. 45:15BB and N.J.A.C. 13:44G.

## **SUBCHAPTER 14. EMERGENCY SERVICES AND PROCEDURES**

### **8:36-14.1 Emergency medical services**

- (a) Emergency medical services shall be available to or arranged for residents requiring these services.
- (b) The facility shall develop a written plan for arranging for emergency transportation of residents for medical care and returning them to the assisted living residence.
- (c) At least one employee trained in cardiopulmonary resuscitation and the Heimlich maneuver shall be available in the facility at all times.
- (d) The facility shall have an automatic external defibrillator (AED) on site. At least one employee trained in the use of the AED shall be available in the facility at all times.

### **8:36-14.2 Emergency plans and procedures**

- (a) The facility shall develop written emergency plans, policies, and procedures which shall include plans and procedures to be followed in case of medical emergencies, power failures, fire, and natural disasters. The emergency plans shall be filed with the Department and the Department shall be notified when the plans are changed. Copies of emergency plans shall also be forwarded to other agencies in accordance with State and municipal laws.
- (b) The emergency plans, including a written evacuation diagram specific to the unit that includes evacuation procedure, location of fire exits, alarm boxes, and fire extinguishers, and all emergency procedures shall be conspicuously posted throughout the facility. All employees shall be trained in procedures to be followed in the event of a fire and instructed in the use of fire-fighting equipment and resident evacuation as part of their initial orientation and at least annually thereafter. All residents shall be instructed in emergency evacuation procedures.
- (c) Procedures for emergencies shall specify persons to be notified, process of notification and verification of notification, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating residents, procedures for reentry and recovery, frequency of fire drills, tasks and responsibilities assigned to all personnel, and shall specify medications and records to be taken from the facility upon evacuation and to be returned following the emergency.
- (d) Nothing in these rules shall supersede or imply non-compliance with the Uniform Fire Act or Uniform Fire Code, N.J.A.C. 5:70, or NFPA 101.

### **8:36-14.3 Drills and tests**

(a) The facility shall conduct at least one drill of the emergency plans every month. The 12 drills shall be conducted on a rotating basis, to ensure that four drills occur during each working shift on an annual basis. The facility shall maintain documentation of all drills, including the date, hour, description of the drill, participating staff, and signature of the person in charge. In addition to drills for emergencies due to fire, the facility shall conduct at least one drill per year for emergencies due to a disaster other than fire, such as storm, flood, other natural disaster, bomb threat, or nuclear accident (a total of 12 drills). All staff shall participate in at least one drill annually, and selected residents may participate in drills.

(b) The facility shall request of the local fire department that at least one joint fire drill be conducted annually. Upon scheduling a joint fire drill, the facility shall notify first aid and civil defense agencies of this drill and shall participate in community-wide disaster drills.

(c) The facility shall test at least one manual pull alarm each month of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

(d) Fire extinguishers shall be conspicuously hung, kept easily accessible, shall be visually examined monthly and the examination shall be recorded on a tag which is attached to the fire extinguisher. Fire extinguishers shall also be inspected and maintained in accordance with manufacturers' and applicable NFPA requirements and N.J.A.C. 5:70. Each fire extinguisher shall be labeled to show the date of such inspection and maintenance.

(e) Nothing in these rules shall supersede or imply non-compliance with the New Jersey Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq. or Uniform Fire Code, N.J.A.C. 5:70.

## **SUBCHAPTER 15. RESIDENT RECORDS**

### **8:36-15.1 Health record**

A current, complete health record shall be maintained for each resident who is receiving health care services.

### **8:36-15.2 Record availability**

The records required by this subchapter shall be maintained for all residents and shall be kept available on the premises for review at any time by representatives of the Department.

### **8:36-15.3 Confidentiality**

(a) Records and information regarding the individual resident shall be considered confidential and the resident shall have the opportunity to examine such records, in accordance with facility or program policies.

(b) The written consent of the resident shall be obtained for release of his or her records to any individual outside the facility or program, except in the case of the resident's transfer to another health care facility, or as required by law, third-party payor, or authorized government agencies.

### **8:36-15.4 Record retention**

All records shall be maintained for a period of 10 years after the discharge of a resident from the assisted living residence, comprehensive personal care home or assisted living program.

### **8:36-15.5 Register**

(a) A register which contains a current census of all residents, along with other pertinent information, shall be maintained by each assisted living residence, comprehensive personal care home, or assisted living program. The following standards for maintaining the register shall apply:

1. The administrator or the administrator's designee shall make all entries in the register and shall be responsible for its maintenance and safe-keeping;

2. The register shall be kept up-to-date at all times. Admissions, discharges and discharge destination, and other changes shall be recorded within 48 hours;

3. The register, which is a permanent record, shall be kept in a safe place; and

4. All entries into the register shall be clear, legible, and written in ink or typed.

#### **8:36-15.6 Residents' individual records**

(a) Each resident's record shall include at least the following:

1. The resident's completed admission application and all records forwarded to the facility;

2. The resident's name, last address, date of birth, name and address of sponsor or interested agency, date of admission, date of discharge (and discharge destination) or death, the name, address and telephone number of physician to be called, and the name and address of nearest relative, guardian, responsible person, or interested agency, together with any other information the resident wishes to have recorded;

3. A copy of the resident's advanced directive, if applicable; and

4. A copy of the resident's general service plan and/or health service plan, if applicable.

(b) All assessments and treatments by health care and service providers shall be entered according to the standards of professional practice. Documentation and/or notes from all health care and service providers shall be entered according to the standards of professional practice.

#### **8:36-15.7 Record of death**

(a) Whenever a resident dies in the assisted living residence, the administrator or the administrator's designee shall:

1. Promptly notify a family member, guardian or other designated person of the death of the resident. Notification shall be made at the time of the occurrence, and the time between the resident's death and notification shall not exceed one hour; and

2. Include in the resident's record written documentation from the physician of the date and time of death, the name of the person who pronounced the death, disposition of the body, and a record of notification of the family. The administrator or administrator's designee shall include in the record of notification of the family confirmation and written documentation of that notification.

(b) A physician, registered nurse or paramedic may make a determination and pronouncement of death in accordance with N.J.A.C. 13:35-6.2(d) and (e).

## **SUBCHAPTER 16. PHYSICAL PLANT**

### **8:36-16.1 Scope**

(a) The standards in this subchapter shall apply to new construction of assisted living residences or alterations or renovations to existing buildings to create assisted living residences.

(b) New buildings and alterations, renovations and additions to existing buildings for assisted living residences shall conform with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-3, Use Group I-2 of the subcode.

### **8:36-16.2 Restrictions**

Mixed use occupancy shall not be permitted in buildings classified as High Hazard (H), Factory (F) or Assembly (A-2) Use Groups.

### **8:36-16.3 Ventilation**

(a) Means of ventilation shall be provided in accordance with the Uniform Construction Code, N.J.A.C. 5:23, either by windows or by mechanical ventilation for every habitable room.

(b) Means of ventilation shall be provided for every bathroom or water closet (toilet) compartment. Ventilation shall be provided either by a window with an openable area or by mechanical ventilation.

### **8:36-16.4 Exit access passageways and corridors**

The width of passageways, aisles and corridors shall have a minimum of 44 inches of clear space.

### **8:36-16.5 Automatic fire detection system**

(a) Smoke detectors shall be provided in all residents' bedrooms, living rooms, and "studio apartment" units, whether or not the facility contains a comprehensive automatic fire suppression system throughout.

(b) All fire detection systems shall be installed in accordance with the Uniform Construction Code, N.J.A.C. 5:23, N.J.A.C. 5:70 and the National Fire Alarm Code, National Fire Protection Association (NFPA) 72, 1999 Edition, incorporated herein by reference, as amended and supplemented. National Fire Protection Association publications are available from: NFPA, One Batterymarch Park, Quincy, MA, 02269-9101.



### **8:36-16.6 Fire suppression systems**

All facilities shall be provided with a fire suppression system in accordance with the Uniform Construction Code, N.J.A.C. 5:23.

### **8:36-16.7 Interior finish requirement**

Interior wall, ceiling and floor finishes shall be in compliance with the Uniform Construction Code, N.J.A.C. 5:23.

### **8:36-16.8 General residential unit requirements**

(a) Residential units occupied by one person shall have a minimum of 150 square feet of clear and usable floor area. Any calculation of clear and usable floor area shall exclude closets, bathroom, kitchenette, hallways, corridors, vestibules, alcoves and foyers unless the applicant submits a written request to the Department to consider an alcove, foyer or vestibule as clear and usable floor area within the context and purpose of these rules and the Department grants such a request. Such request shall be made in writing during the certificate of need process or, if exempt, as part of the licensing application review process.

(b) In units occupied by more than one resident, there shall be a minimum of 80 additional square feet for an additional occupant. No residential unit in an assisted living residence shall be occupied by more than two individuals.

(c) Residential units shall be lockable by the occupant(s). Egress from the unit shall be possible at all times and locking hardware shall enable occupant(s) to gain egress from within by means of a simple operation. All residential units shall be accessible by means of a master key or similar system which is available at all times in the facility, and available at all times for use by designated staff.

(d) Each residential unit shall have an exterior glazed area equal to at least eight percent of the clear floor area.

### **8:36-16.9 Toilets, baths and handwashing sinks**

(a) A bathroom with a toilet, bathtub and/or shower, and handwashing sink shall be located in each residential unit.

(b) Additional toilet facilities shall be provided to meet the needs of residents, staff and visitors to the facility and shall be located in areas other than the residential units.

### **8:36-16.10 Kitchenettes**

(a) Each residential unit shall contain, at a minimum, a small refrigerator, a wall cabinet for food storage, a small bar-type sink, and a counter with work space and electrical outlets suitable for small cooking appliances, for example, a microwave, a two-burner cooktop, or a toaster-oven.

1. Upon entering the assisted living facility, the resident and the resident's family or representative shall be asked if they wish to have a cooking appliance. If so, the appliance shall be provided by the facility, in accordance with facility policies. If the resident and resident's family or representative wish to provide their own cooking appliance, it shall meet the facility's safety standards.

2. If the resident and the resident's family or representative do not want a cooking appliance or if resident assessments indicate that having a cooking appliance in the living unit endangers the resident, no cooking appliance shall be provided or allowed in the living unit.

### **8:36-16.11 Community space**

The facility shall provide a minimum of 30 square feet per resident of community spaces for dining and for active and passive recreation.

### **8:36-16.12 Laundry equipment**

(a) Each assisted living facility shall provide at least one non-commercial washer and dryer to be used exclusively for residents' personal items.

(b) Where laundry equipment is limited to non-commercial type, (ordinary household or residential types), no special fire protective measures shall be required.

(c) When commercial type laundry equipment is utilized, it shall be installed in a separate laundry room. The remainder of the home shall be protected from the laundry room by fire separation assemblies of at least one-hour rated construction. Openings in all fire separation assemblies shall be protected in accordance with the Uniform Construction Code, N.J.A.C. 5:23.

(d) All dryers shall be vented to the outside of the building and properly maintained including the removal of lint.

### **8:36-16.13 Dietary department**

(a) Construction, equipment, and installation of food service facilities shall meet the requirements of the dietary programs as contained in this chapter.

(b) The facilities shall provide, at a minimum, the following:

1. A control station for receiving food supplies;
2. Minimum storage facilities for four days' food supply, including refrigeration and freezer for cold storage items;
3. Food preparation facilities;
4. Handwashing facilities located in the food preparation area;
5. Facilities for food distribution to residents;
6. Warewashing space;
7. Potwashing facilities and facilities for cart washing;
8. Storage areas for cans and carts;
9. Waste storage facilities;
10. Offices or desk space for dietitian(s) and the dietary service manager;
11. A janitor's closet; and
12. Self-dispensing icemaking facilities.

### **8:36-16.14 Administration and public areas**

(a) A grade level barrier-free entrance, sheltered from the weather and able to accommodate wheelchairs shall be provided, and shall include a reception and information counter or desk and waiting space with seating.

(b) Space for private interviews shall be provided.

(c) An individual mailbox for each resident shall be provided.

(d) General or individual offices for records, administrative and professional staffs shall be provided.

(e) Space shall be provided for storing employee's personal possessions.

(f) Separate space shall be provided for storage of office supplies, sterile or pharmaceutical supplies, and housekeeping supplies.

(g) A room(s) for examination and treatment of residents, which is adequate for an overnight stay and includes toilet facilities, may be provided. The room shall have a minimum floor area of 100 square feet, excluding space for vestibule, toilet and closet. The room shall contain a lavatory or sink equipped for handwashing, a work counter, storage facilities, and a desk, counter or shelf for writing.

(h) An infirmary may be provided for residents who may need 24-hour observation on a temporary basis. Clear space of at least three feet shall be provided at each side and at the foot of each bed in the infirmary. Toilet facilities shall be provided in the infirmary.

#### **8:36-16.15 Fire extinguisher specifications**

(a) Fire extinguishers shall comply with National Fire Protection Association (NFPA) 10, Standards For Portable Fire Extinguishers, 2002 edition, incorporated herein by reference, as amended and supplemented. National Fire Protection Association publications are available from: NFPA, One Batterymarch Park, Quincy, MA, 02269-9101.

(b) All fire extinguishers shall bear the seal of the Underwriters Laboratories.

(c) Nothing in these rules shall supersede or imply non-compliance with N.J.A.C. 5:70, the Uniform Fire Code.

#### **8:36-16.16 Sounding devices**

If self-locking doors are used at the main entrance and other entrances which open onto a roof or balconies, they shall be equipped with a sounding device, such as a bell, buzzer or chime, which is in operating condition. The sounding device shall be affixed to the outside of the door or to the adjacent exterior wall for use in the event that a person is unable to enter the building, and shall ring at an area staffed 24 hours a day.

#### **8:36-16.17 Telecommunications**

Each residential unit shall be pre-wired for telephone and television reception.

**SUBCHAPTER 17. HOUSEKEEPING, SANITATION, SAFETY AND MAINTENANCE**

**8:36-17.1 Provision of services**

(a) The facility shall provide and maintain a sanitary and safe environment for residents.

(b) The facility shall provide housekeeping, laundry, pest control, and maintenance services, and shall provide assistance to residents who require assistance with these services in their residential units.

**8:36-17.2 Housekeeping**

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility. The facility shall have a written schedule that determines the frequency of cleaning and maintenance of all equipment, structures, areas, and systems.

(b) Housekeeping personnel shall be trained in cleaning procedures, including the use and care of equipment.

**8:36-17.3 Resident environment**

(a) The housekeeping and sanitation conditions in paragraphs 1 through 12 below shall be met. Application of this requirement with respect to the individual living environment shall take into consideration residents' personal preferences for style of living:

1. The facility and its contents, including all surfaces such as tables, floors, walls, beds and dressers, shall be clean to sight and touch and free of dirt and debris;

2. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;

3. All resident areas shall be free of noxious odors;

4. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Items which are broken or worn to the extent that they may cause discomfort or present danger to residents shall be repaired, replaced, or removed promptly;

5. All equipment and materials necessary for cleaning, disinfecting, sanitizing, and sterilizing (if applicable) shall be provided;

6. For central kitchens, thermometers which are accurate to within three degrees Fahrenheit shall be kept in a visible location within refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration. Temperatures shall be maintained in accordance with N.J.A.C. 8:24-3.2;

7. Lighted and ventilated storage spaces shall be provided in the facility for the proper storage of residents' clothing, linens, drugs, food, cleaning and other supplies;

8. Articles in storage shall be elevated from the floor and away from walls (if moisture is present), ceilings, and air vents;

9. Unobstructed aisles shall be provided in storage areas;

10. Effective and safe controls shall be used to minimize and eliminate the presence of rodents, flies, roaches and other vermin in the facility;

11. When facility housekeeping services are provided, items such as bedpans, toilets and sinks shall be disinfected, using a process for disinfection established by the facility; and

12. Toilet tissue, soap, paper towels or air dryers, and waste receptacles shall be provided in each common area toilet facility at all times. A self-draining dish or device shall be provided for storage of bar soap, if bar soap is used. Residents' personal cloth towels may be used in residential units.

(b) The following safety conditions shall be met:

1. Non-carpeted floors in public areas shall be coated with slip-resistant floor finish, and any carpeting in public areas shall be kept clean and odor free and shall not be frayed, worn, torn, or buckled;

2. All equipment shall have unobstructed space provided for operation;

3. Pesticides shall be applied in accordance with N.J.A.C. 7:30;

4. All household and cleaning products used by facility staff shall be identified, labeled, and secured. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room. The telephone number of the poison control center shall be conspicuously posted in the facility;

5. Combustible materials shall be stored in accordance with fire safety requirements specified in the New Jersey Uniform Fire Code, N.J.A.C. 5:70;

6. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in accordance with fire safety requirements specified in the New Jersey Uniform Fire Code, N.J.A.C. 5:70;

7. If pets are allowed in the facility, the facility shall provide safeguards to prevent interference in the lives of residents. Guidelines for pet facilitated therapy may be requested from the Department of Health and Senior Services;

8. An electrician licensed in accordance with N.J.A.C. 13:31 shall annually inspect and provide a written statement that the electrical circuits and wiring in the facility are satisfactory and in safe condition;

i. The written statement shall include the date of inspection, and shall indicate that circuits are not overloaded, that all wiring and permanent fixtures are in safe condition, and that all portable electrical appliances, including lamps, are Underwriters Laboratories (U.L.) approved; and

ii. The written statement shall be available for review by the Department during survey.

#### **8:36-17.4 Waste removal**

(a) All solid or liquid waste, garbage, and trash shall be collected, stored, and disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and this chapter. Solid waste which is stored within the building shall be stored in insect-proof, rodent-proof, fireproof, nonabsorbent, watertight containers with tightfitting covers and collected from storage areas regularly so as to prevent nuisances such as odors. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24.

(b) If garbage compactors are used, they shall comply with all the International Mechanical Code, 2003 Edition, incorporated herein by reference, as amended and supplemented, and local codes. Copies of the International Mechanical Code are available from: International Code Council at 1-800-786-4452 or on the Internet at <http://www.iccsafe.org/>.

### **8:36-17.5 Heating and air conditioning**

(a) The heating and air conditioning system shall be adequate to maintain the required temperature in all areas used by residents. Residents may have individually controlled thermostats in residential units in order to maintain temperatures at their own comfort level.

1. During the heating season, the temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) during the day ("day" means the time between sunrise and sunset) and 68 degrees Fahrenheit (20 degrees Celsius) at night, when residents are in the facility.

2. The facility or residents shall not utilize portable heaters.

3. During warm weather conditions, the temperature within the facility shall not exceed 82 degrees Fahrenheit.

i. The facility shall provide for and operate adequate ventilation in all areas used by residents.

ii. All areas of the facility used by residents shall be equipped with air conditioning and the air conditioning shall be operated so that the temperature in these areas does not exceed 82 degrees Fahrenheit.

4. Residents may regulate temperature controls in residential units, and may, by choice, exceed 82 degrees Fahrenheit.

(b) Filters for heaters and air conditioners shall be provided as needed and maintained in accordance with manufacturer's specifications.

### **8:36-17.6 Water supply**

(a) The water supply used for drinking or culinary purposes shall be adequate in quantity, of a safe and sanitary quality, and from a water system which shall be constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., N.J.A.C. 7:10 and local laws, ordinances, and regulations. Copies of the Safe Drinking Water Act can be obtained from the Department of Environmental Protection, Bureau of Potable Water, P.O. Box 209, Trenton, New Jersey 08625.

(b) The temperature of the hot water used for bathing and handwashing shall be at least 105 degrees and shall not exceed 120 degrees Fahrenheit.



(c) Equipment requiring drainage, such as ice machines, shall be drained to a sanitary connection, in accordance with the International Mechanical Code, 2003 Edition, incorporated herein by reference, as amended and supplemented and local codes. Copies of the International Mechanical Code are available from: International Code Council at 1-800-786-4452 or on the Internet at <http://www.iccsafe.org/>.

(d) The sewage disposal system shall be maintained in good repair and operated in compliance with N.J.S.A. 52:27D-123 et seq., the Uniform Construction Code, N.J.A.C. 5:23, and local ordinances and codes.

### **8:36-17.7 Building and grounds maintenance**

The building and grounds shall be well maintained at all times. The interior and exterior of the building shall be kept in good condition to ensure an attractive appearance, provide a pleasant atmosphere, and safeguard against deterioration. The building and grounds shall be kept free from fire hazards and other hazards to resident's health and safety.

### **8:36-17.8 Laundry services**

(a) Written policies and procedures shall be established and implemented for the facility's laundry services, including, but not limited to, policies and procedures regarding the following:

1. Storage and transportation of laundry;
2. Collection and storage of soiled laundry in a ventilated area;
3. Protection of clean laundry from contamination during processing, transporting, and storage; and
4. Handling and laundering of resident's clothing and personal items separately from other laundry.

(b) Soiled laundry shall be stored in a ventilated, vermin-proof area, separate from other supplies, and shall be stored, sorted, rinsed, and laundered only in areas specifically designated for those purposes.

(c) All soiled laundry from resident rooms and other service areas shall be stored, transported, collected, and delivered in a covered laundry bag or cart. Laundry carts shall be in good repair, kept clean, and identified for use with either clean or soiled laundry.

(d) Clean laundry shall be protected from contamination during processing, storage, and transportation within the facility.

(e) Soiled and clean laundry shall be kept separate. An established procedure shall be followed to reduce the number of bacteria in the fabrics. Equipment surfaces that come into contact with laundry shall be sanitized.

(f) Residents who choose to launder their personal items shall be provided with in-house assistance in accordance with facility policy.

(g) If the facility provides a laundry service on site in lieu of using a commercial laundry service, it shall provide a receiving, holding, and sorting area with hand-washing facilities. The walls, floors, and ceilings of the area shall be clean and in good repair. The flow of ventilating air shall be from clean to soiled areas, and ventilation shall be adequate to prevent heat and odor build-up.

**SUBCHAPTER 18.            INFECTION PREVENTION AND CONTROL SERVICES**

**8:36-18.1    Infection control program**

(a) The facility shall develop and implement an infection prevention and control program.

(b) The licensed professional nurse, in coordination with the administrator, shall be responsible for the direction, provision, and quality of infection prevention and control services. The health care services director, in coordination with the administrator, shall be responsible for, but not limited to, developing and maintaining written objectives, a policy and procedure manual, and an organizational plan for the infection prevention and control service.

**8:36-18.2    Development of infection control policies and procedures**

(a) The facility shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control. Written policies and procedures shall be consistent with the following Centers for Disease Control publications and OSHA standards, incorporated herein by reference, as amended and supplemented:

1. Guidelines for Hand Hygiene in Health Care Settings, MMWR/51 (RR-16), October 25, 2002;
2. Prevention and Control of Tuberculosis in Facilities Providing Long-Term Care to the Elderly, Recommendations of the Advisory Committee for Elimination of Tuberculosis, MMWR/39 (RR-10), July 13, 1990;
3. Guidelines for Preventing Health Care-Associated Pneumonia, MMWR/53 (RR-03), March 26, 2004;
4. Bloodborne Pathogens, Occupational Safety and Health Standards, 29 CFR 1910.1030, as amended and supplemented; and
5. Fact Sheet on Respiratory Hygiene/Cough Etiquette in Healthcare Settings, December 17, 2003, Department of Health and Human Services, Centers for Disease Control and Prevention.

(b) Centers for Disease Control publications can be obtained from:  
National Technical Information Service  
U.S. Department of Commerce  
5285 Port Royal Road  
Springfield, VA 22161  
(703) 605-6000  
(800) 553-6847

or

Superintendent of Documents  
U.S. Government Printing Office  
Washington, D.C. 20402

(c) The facility shall document evidence of annual vaccination against influenza for each resident, in accordance with the General Recommendations on Immunization of the Advisory Committee on Immunization Practices of the Centers for Disease Control, February 8, 2002, incorporated herein by reference, as amended and supplemented, unless such vaccination is medically contraindicated or the resident has refused the vaccine, in accordance with N.J.A.C. 8:36-4.1(a). The General Recommendations on Immunization of the Advisory Committee on Immunization Practices of the Centers for Disease Control, February 8, 2002, which are available on the Internet at <http://www.cdc.gov/nip/publications/acip-list.htm>. Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year. Residents admitted after this date, during the flu season and up to February 1, shall, as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident.

(d) The facility shall document evidence of vaccination against pneumococcal disease for all residents who are 65 years of age or older, in accordance with the General Recommendations on Immunization of the Advisory Committee on Immunization Practices of the Centers for Disease Control, February 8, 2002, incorporated herein by reference, as amended and supplemented, unless such vaccination is medically contraindicated or the resident has refused offer of the vaccine in accordance with N.J.A.C. 8:36-4.1(a). The General Recommendations on Immunization of the Advisory Committee on Immunization Practices of the Centers for Disease Control, February 8, 2002, which are available on the Internet at <http://wwwcdc.gov/nip/publications/acip-list.htm>. The facility shall provide or arrange for pneumococcal vaccination of residents who have not received this immunization, prior to or on admission unless the resident refuses offer of the vaccine.

### **8:36-18.3 General infection control policies and procedures**

(a) Written policies and procedures shall be established and implemented regarding infection prevention and control, including, but not limited to, policies and procedures for the following:

1. In accordance with Chapter II, New Jersey State Sanitary Code, Communicable Diseases, at N.J.A.C. 8:57, a system for investigating, reporting, and evaluating the occurrence of all infections or diseases which are reportable or conditions which may be related to activities and procedures of the facility, and maintaining records for all residents or personnel having these infections, diseases, or conditions;

2. Infection control in accordance with OSHA Standards 29 CFR 1910.1030, Bloodborne pathogens, incorporated herein by reference, as amended and supplemented;

3. Exclusion from work, and authorization to return to work, for personnel with communicable diseases;

4. Surveillance techniques to minimize sources and transmission of infection;

5. Techniques to be used during each resident contact, including handwashing before and after caring for a resident;

6. Protocols for identification of residents with communicable diseases and education of residents regarding prevention and spread of communicable diseases;

7. Sterilization, disinfection, and cleaning practices and techniques used in the facility, including, but not limited to, the following:

i. Care of utensils, instruments, solutions, dressings, articles, and surfaces;

ii. Selection, storage, use, and disposition of disposable and nondisposable resident care items. Disposable items shall not be reused;

iii. Methods to ensure that sterilized materials are packaged, labeled, processed, transported, and stored to maintain sterility and to permit identification of expiration dates; and

iv. Care of urinary catheters, intravenous catheters, respiratory therapy equipment, and other devices and equipment that provide a portal of entry for pathogenic microorganisms; and

8. Needles and syringes used by residents as part of home self-care shall be disposed of in accordance with N.J.S.A. 2C:136-6.1 and N.J.A.C. 8:43E-7, and amendments thereto.

**8:36-18.4 Employee health and resident policies and procedures for infection prevention and control**

(a) Each new employee upon employment shall receive a two-step Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions shall be employees with documented negative two-step Mantoux skin test results (zero to nine millimeters of induration) within the last year, employees with a documented positive Mantoux skin test result (10 or more millimeters of induration), employees who have received appropriate medical treatment for tuberculosis, or when medically contraindicated. Results of the Mantoux tuberculin skin tests administered to new employees shall be acted upon as follows:

1. If the first step of the Mantoux tuberculin skin test result is less than 10 millimeters of induration, the second step of the two-step Mantoux test shall be administered one to three weeks later.

2. If the Mantoux test is significant (10 millimeters or more of induration), a chest x-ray shall be performed and, if necessary, followed by chemoprophylaxis or therapy.

3. Any employee with positive results shall be referred to the employee's personal physician and shall be excluded from work until the physician provides written approval to return.

(b) The facility shall have written policies and procedures establishing timeframes, requiring annual Mantoux tuberculin skin tests for all employees except those exempted under (a) above.

(c) Employees who have signs or symptoms of a communicable disease shall not be permitted to perform functions that expose residents to risk of transmission of the disease.

(d) If a communicable disease prevents the employee from working for a period of more than three days, a physician's statement approving the employee's return shall be required prior to the employee's return to work.

(e) The facility shall develop and implement procedures for the care of employees who become ill while at work or who have a work-related accident.

(f) The facility shall maintain listings of all residents and personnel who have reportable infections, diseases, or conditions.

(g) High-level disinfection techniques approved by the Department shall be used for all reusable respiratory therapy equipment and instruments that touch mucous membranes.

(h) Disinfection procedures for items that come in contact with bedpans, sinks, and toilets shall conform to facility established protocols for cleaning and disinfection.

(i) All residents shall be provided with an opportunity to wash their hands before each meal and shall be encouraged to do so. Staff shall wash their hands before each meal and before assisting residents in eating.

(j) Personnel who have had contact with resident excretions, secretions, or blood, whether directly or indirectly, in activities such as performing a physical examination, providing catheter care, and emptying bedpans, shall wash their hands with soap and warm water for between 10 and 30 seconds or use other effective hand sanitation techniques immediately after such contact.

(k) Equipment and supplies used for sterilization, disinfection, and decontamination purposes shall be maintained according to manufacturers' specifications.

(l) The facility shall maintain records documenting contagious diseases contracted by employees during employment, as specified at N.J.A.C. 8:57-1.3(a) and (b).

#### **8:36-18.5 Staff education and training for infection prevention and control**

All staff members shall be informed about the facility's infection control procedures, including personal hygiene requirements.

**8:36-18.6 Regulated medical waste**

(a) The facility shall develop policies and procedures for the collection, storage, and handling of regulated medical waste.

(b) The facility shall comply with the provisions of N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules promulgated pursuant to the aforementioned Act, including, but not limited to, N.J.A.C. 7:26-3A.



## **SUBCHAPTER 19. ALZHEIMER'S/DEMENTIA PROGRAMS**

### **8:36-19.1 Scope and purpose**

(a) Assisted living facilities may establish programs to meet the needs of residents with Alzheimer's disease or other dementias. Such programs shall provide individualized care based upon assessment of the cognitive and functional abilities of Alzheimer's and dementia residents who have been admitted to the program.

### **8:36-19.2 Alzheimer's/dementia program policies and procedures**

(a) An assisted living facility that advertises or holds itself out as having an Alzheimer's/dementia program shall have written policies and procedures for the Alzheimer's/dementia program that are retained by the administrative staff and available to all staff and to members of the public, including those participating in the program.

(b) The facility shall have established criteria for admission to the program and criteria for discharge from the program when the resident's needs can no longer be met, based upon a registered professional nurse's assessment of the resident's cognitive and functional status.

### **8:36-19.3 Staff training program for Alzheimer's/dementia**

(a) In a facility that advertises or holds itself out as having an Alzheimer's/dementia program, training in specialized care of residents who are diagnosed by a physician as having Alzheimer's/dementia shall be provided to all licensed and unlicensed staff who provide direct care to residents with Alzheimer's or dementia, in accordance with N.J.S.A. 26:2M-7.2.

1. Copies of the mandatory training program may be obtained from the Department by submitting a written request to:

Long-Term Care Licensing and Certification Unit  
Division of Long-Term Care Systems  
New Jersey Department of Health and Senior Services  
PO Box 367  
Trenton, NJ 08625-0367

#### **8:36-19.4 Services for residents with Alzheimer's/dementia**

(a) A facility that advertises or holds itself out as having an Alzheimer's/dementia program shall, pursuant to N.J.S.A. 26:2M-7.1, compile and maintain daily records for each shift in the facility and provide to a member of the public, upon request, information that indicates for each shift, as appropriate:

1. The number of licensed and unlicensed staff providing direct care to residents diagnosed with Alzheimer's and related disorders.

(b) A facility that advertises or holds itself out as having an Alzheimer's/dementia program shall, pursuant to N.J.S.A. 26:2M-7.1, provide a member of the public seeking placement of a person diagnosed with Alzheimer's and/or related disorders in the facility with a clear and concise written list that indicates:

1. The activities that are specifically directed toward residents diagnosed with Alzheimer's and related disorders, including, but not limited to, those designed to maintain the resident's dignity and personal identity, enhance socialization and success, and accommodate the cognitive and functional ability of the resident;

2. The frequency of the activities listed in paragraph 1 above; and

3. The safety policies and procedures and any security monitoring system that is specific to residents diagnosed with Alzheimer's and related disorders.

## **SUBCHAPTER 20. STANDARDS FOR RESPITE CARE SERVICES**

### **8:36-20.1 Scope and purpose**

(a) Assisted living facilities are permitted to accept short-term residents whose regular caregivers are participating in a respite care program. A "caregiver" is defined as any individual, paid or unpaid, who provides regular in-home care for an elderly, disabled, or cognitively impaired person.

(b) When a caregiver desires respite from this responsibility, continuity of care for the elderly, disabled, or cognitively impaired person is available through temporary placement in an assisted living facility for a period of time specified in advance.

(c) The standards in this subchapter apply only to those assisted living facilities that operate a respite care program.

### **8:36-20.2 Mandatory policies and procedures**

(a) The assisted living facility shall have written respite care policies and procedures that are retained by the administrative staff and available to all staff and to members of the public, including those participating in the program.

(b) The facility shall obtain the following information from the resident's attending physician, advanced practice nurse, or physician assistant prior to admission:

1. A summary of the resident's medical history and most recent physical examination;

2. Signed and dated medication and treatment orders for the resident's stay in the facility; and

3. Phone numbers of the attending physician, advanced practice nurse, or physician assistant, and an alternate physician, advanced practice nurse or physician assistant, for consultation or emergency services.

(c) The facility shall choose whether to follow the resident care plan provided by the attending physician, advanced practice nurse, or physician assistant, or to establish a plan in accordance with N.J.A.C. 8:36-7. The facility is exempt from compliance with N.J.A.C. 8:36-7, if it chooses to follow the care plan provided by the resident's attending physician, advanced practice nurse or physician assistant.

(d) The facility shall obtain the following information from the resident's regular caregiver(s):

1. Nursing care needs, including personal hygiene and restorative maintenance care;
2. Dietary routine and preferences; and
3. Social and activity routine and preferences.

(e) The facility shall choose whether to follow the dietary and activity plan provided by the caregiver(s) or to establish a plan in accordance with N.J.A.C. 8:36-10 and 12, respectively. The facility is exempt from compliance with N.J.A.C. 8:36-10 and 12, if it chooses to follow the plan provided by the caregiver(s).

(f) The pharmacist shall establish policies and procedures for providing pharmacy services for the respite care program according to the New Jersey State Board of Pharmacy and other applicable rules and regulations. These policies and procedures shall include the following:

1. Options, if any, for provision of resident medications by sources other than the facility's usual provider(s);
2. Labeling and packaging of medications;
3. Self-administration of medications, if applicable; and
4. Control measures.

(g) The facility shall apply to respite care residents all the applicable standards contained in this chapter, except those exemptions cited in this section, and in N.J.A.C. 8:36-4.1(a)11 and 5.1(e).

### **8:36-20.3 Staffing**

The assisted living facility shall incorporate the care plan, as identified in N.J.A.C. 8:36-20.2(c) through (e) of each respite care resident into the regular schedule of care provided by the facility.

## **SUBCHAPTER 21.           QUALITY IMPROVEMENT**

### **8:36-21.1    Quality improvement program**

(a) The facility shall establish and implement a written plan for a quality improvement program for resident care. The plan shall specify a timetable and the person(s) responsible for the quality improvement program and shall provide for ongoing monitoring of staff and resident care services.

(b) Quality improvement activities shall include, but not be limited to, the following:

1. At least annual review of staff qualifications and credentials;
2. At least annual review of staff orientation and staff education;
3. Establishment of objective criteria for evaluation of the resident care provided by each service area;
4. Evaluation of resident care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, resident care statistics, and discharge planning services;
5. Review of medication errors and adverse drug reactions by the pharmacist; and
6. Evaluation by residents and their families of care and services provided by the facility.

(c) The results of the quality improvement program shall be submitted to the licensed operator at least annually and shall include, at a minimum, the deficiencies found and recommendations for corrections or improvements. Deficiencies that jeopardize resident safety shall be reported to the licensed operator immediately.

(d) The administrator shall implement measures to ensure that corrections or improvements are made.

### **8:36-21.2 Use of restraints**

(a) The facility shall develop policies and procedures that support a restraint-free environment for all residents.

(b) The use of any restraining device shall be based on an assessment and shall require a physician, advanced practice nurse or physician assistant order.

(c) The least restrictive device shall be used, in compliance with the prescriber's order.

(d) A specific plan of care shall be developed for the use of any restraining device.

### **8:36-21.3 Personal care services**

(a) The facility shall monitor that residents are maintaining personal hygiene, receiving medications as prescribed (which includes the renewal of prescriptions as necessary and the disposition of outdated or discontinued medications), and are offered the opportunity to participate in appropriate social and recreational activities, in accordance with residents' personal choice.

(b) Personal care services shall include education in assistance with activities of daily living and supervision of personal hygiene.

## **SUBCHAPTER 22. COMPREHENSIVE PERSONAL CARE HOMES**

### **8:36-22.1 Eligibility**

(a) Eligibility for conversion to a comprehensive personal care home shall be open exclusively to the following:

1. Freestanding residential health care facilities which were either licensed or certificate of need approved on or before December 20, 1993;
2. Residential health care beds located within a long-term care facility that were licensed or certificate of need approved on or before December 20, 1993;
3. Licensed long-term care beds; and
4. "Class C" boarding homes which were licensed by the Department of Community Affairs or under construction with approval from the Department of Community Affairs on or before December 20, 1993.

(b) Eligibility for the construction of new comprehensive personal care beds shall be open exclusively to the following:

1. Existing comprehensive personal care homes and existing facilities proposing conversion to a comprehensive personal care home that wish to add a limited number of beds. Within any five-year period the new construction of no more than 20 beds as an addition to an existing or proposed comprehensive personal care home may be proposed in accordance with N.J.A.C. 8:36-2.

i. Eligible facilities that wish to add more than 20 beds shall apply for approval as an assisted living residence.

2. Hospice programs which have been Medicare-certified for at least 12 consecutive months. If approved the facility shall be constructed using the most current New Jersey Uniform Construction Code, N.J.A.C. 5:23-3, Use Group I-2, applicable at the time plans are approved.

i. The facility shall be occupied exclusively by persons who are eligible for hospice services.

(c) Only applications proposing either conversion of the eligible facility's entire complement of licensed beds, or conversion of one or more separate and distinct units, wings, floors or other areas within the facility, shall receive consideration for approval to convert to comprehensive personal care.

### **8:36-22.2 Services provided to residents**

Each comprehensive personal care home shall comply with the following: N.J.A.C. 8:36-1 through 15, 16.8(c), 16.15, 16.16, 17 (except 17.5(a)4), and 18 through 22.

### **8:36-22.3 Physical plant**

(a) Each comprehensive personal care home shall, at a minimum:

1. Maintain substantial compliance with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-3, and the Uniform Fire Code, N.J.A.C. 5:70, Use Group I-2 of the subcode;

2. Maintain a comprehensive automatic fire-suppression system throughout the facility. Buildings presently in Use Group I-2 or buildings which comply with the construction requirements for an I-2 use may apply to the Department for an exemption to this requirement, provided they can document compliance with the New Jersey Uniform Fire Code, N.J.A.C. 5:70, with regard to construction type;

3. Maintain compliance with N.J.A.C. 5:23-7, regarding barrier-free accessibility, applicable at the time plans are approved.

4. Provide smoke detectors in all resident bedrooms, living rooms, and public areas; and

5. Provide corridor widths of at least 36 inches of clear space.

(b) Ventilation requirements for comprehensive personal care homes are as follows:

1. Means of ventilation shall be provided either by a window with an openable area or by mechanical ventilation for every habitable room. If mechanical ventilation is used, there shall be at least two air changes per hour.

2. Means of ventilation shall be provided for every bathroom or water closet compartment (toilet). Ventilation shall be provided either by a window with an openable area or by mechanical ventilation.

3. All hallway corridors and passageways shall have a minimum of two outside air changes per hour.

(c) Interior wall, ceiling and floor finishes shall be in compliance with the Uniform Construction Code, N.J.A.C. 5:23.



(d) Residential units occupied by one person shall have a minimum of 80 square feet of clear and useable floor area. ("Clear and useable floor area" means space exclusive of closets, bathroom and, if provided, kitchenette.)

(e) In units occupied by more than one resident, there shall be a minimum of 50 additional square feet of clear floor area.

(f) No residential unit in a comprehensive personal care home may be occupied by more than two individuals. An exception may be considered in those instances where an eligible facility at the time of conversion to a comprehensive personal care home has more than two individuals in a unit. However, as attrition occurs the number of individuals per residential unit shall be reduced to no more than two.

#### **8:36-22.4 Other requirements**

Each comprehensive personal care home administrator, manager, or their designee shall explain to all residents assisted living concepts, services to be provided based on these concepts, and all charges for these services.

#### **8:36-22.5 Prohibition of resident discharge on conversion of facility**

An eligible existing facility converting to a comprehensive personal care home shall not discharge any current resident solely because of the conversion. If compliance with this section results in more than two individuals per residential unit, the facility shall apply for the exception noted at N.J.A.C. 8:36-22.3(f).

#### **8:36-22.6 Combination of license categories**

Another licensed bed category may be located within a distinct and separate section of the comprehensive personal care home. The comprehensive personal care home shall comply fully with all licensure requirements applicable to each licensed component.

#### **8:36-22.7 Supplemental Security Income recipients**

(a) In converting to a comprehensive personal care home from a residential health care facility or Class "C" boarding home, the facility shall maintain its existing residents who are Supplemental Security Income (SSI) eligible recipients and those who are former psychiatric patients.

(b) On an ongoing, annual basis, at least five percent of each comprehensive personal care home's residents shall be SSI-eligible recipients, at least half of whom shall be former psychiatric patients. This percentage shall be computed based on the number of resident days per calendar year. The facility shall report this information to the Long-Term Care Licensing and Certification Program by April 15 of each year for the prior calendar year.

1. Facilities approved for conversion to comprehensive personal care which maintain less than the five percent SSI-eligible requirement noted above shall have one year from the date of licensure as comprehensive personal care to comply.

2. In the event that the Supplemental Security Income payment rate for Comprehensive Personal Care Homes is set at a level below the SSI payment rate for residential health care facilities, the five percent occupancy requirements for SSI-eligible residents noted above shall not take effect. However, comprehensive personal care homes shall maintain their existing residents who are Supplemental Security Income-eligible, as required above.

(c) Subsections (a) and (b) above shall not apply when a continuing care retirement community (CCRC) contracts to provide assisted living services pursuant to a continuing care agreement. These subsections do apply, however, when a CCRC provides assisted living to a person who is not a party to a continuing care agreement.

(d) Subsections (a) and (b) above shall not apply when a new comprehensive personal care home is constructed and dedicated exclusively to the care of residents who require hospice services.

## **SUBCHAPTER 23. ASSISTED LIVING PROGRAMS**

### **8:36-23.1 Tenant/resident eligibility**

(a) Participation in the services of an assisted living program shall be voluntary on the part of any tenant of any publicly subsidized housing.

(b) A tenant voluntarily receiving the services of an assisted living program shall be assessed according to the provisions of N.J.A.C. 8:36-7.1(a) through (g).

(c) Neither the legal rights and responsibilities enjoyed by a tenant under law nor the legal requirements pertaining to publicly subsidized housing shall be abridged, diminished or abrogated by a resident's participation in the assisted living program.

### **8:36-23.2 Service provider requirements**

(a) Assisted living programs shall provide their services exclusively in a licensed assisted living residence, comprehensive personal care home, and/or within publicly subsidized housing units. Housing units which are not publicly subsidized are eligible to apply for a certificate of need for an assisted living residence and, if approved, a license.

(b) Assisted living program providers which provide staffing, management or other services to licensed assisted living residences or comprehensive personal care homes shall do so in accordance with the licensing standards which are applicable to the particular facility. In such cases, the licensing standards for assisted living residences and comprehensive personal care homes shall take precedence over the standards for assisted living programs. The assisted living residence and/or the comprehensive personal care home shall establish and maintain written contracts detailing all policies, procedures, and services to be provided by the licensed facility and the licensed program.

(c) Assisted living program providers shall establish and maintain a written contract with each publicly subsidized housing unit to be served.

1. The contract shall stipulate that a tenant shall not be prohibited from participation in the assisted living program due to the location or physical characteristics of the unit in which the tenant resides.

2. The contract shall stipulate that tenants shall not be involuntarily moved from one unit to another within the building for the purpose of receiving the services of the assisted living program.

3. The contract shall include a written acknowledgement by the publicly subsidized housing building manager and owner that each has reviewed the provisions of this chapter and will permit the assisted living program's operation in accordance with such provisions.

4. The contract shall state that there are policies and procedures for the publicly subsidized housing staff to notify the assisted living program of any substantial change in a resident's condition noticed by housing staff.

5. The contract shall state that there are policies and procedures which ensure the on-premises presence of at least one publicly subsidized housing staff or assisted living program provider staff 24 hours per day. This staff shall be responsible for contacting appropriate authorities, including the assisted living program, in the event of an emergency situation involving a resident or the building as a whole.

6. The assisted living program provider shall submit written documentation to the Department that each building for which it is contracting to provide services is a publicly subsidized housing building.

(d) The assisted living program provider shall submit to the Department a copy of the resident agreement/contract it shall utilize at each site at which it shall provide services. The agreement/contract shall include at least the following:

1. The services that will be provided;
2. The charges for services;
3. The circumstances under which services and charges will be revised, with at least 30 days prior written notice;
4. The circumstances and processes under which a resident will be discharged from the program in accordance with the provisions of N.J.A.C. 8:36-5.1(d) and (e); and
5. Resident rights and responsibilities.

### **8:36-23.3 Services provided to residents**

(a) Each assisted living program shall comply with the applicable provisions in N.J.A.C. 8:36-1 through 11, 13, 15 and 23.

(b) Each assisted living program provider shall be capable of providing or arranging for the provision of assistance with personal care, and of nursing, pharmaceutical, dietary and social work services to meet the individual needs of each resident.

(c) The assisted living program provider shall be capable of providing or arranging for the provision of nursing services to maintain residents, including residents who require long-term care. However, a resident may be, but is not required to be, removed from program participation if it is documented in the resident record that a higher level of care is required as demonstrated by one or more of the characteristics identified in N.J.A.C. 8:36-5.1(d).

(d) The assisted living program's service agreement with each resident shall clearly specify if the program will or will not continue to provide, or arrange for the provision of, services to residents with the characteristics described in N.J.A.C. 8:36-5.1(d)1 through 8, to what extent and, if applicable, at what additional cost.

(e) In the event that the assisted living program removes a resident from program participation as permitted by (c) above, it shall provide the resident with information to assist in obtaining the level of care required.

### **8:36-23.4 Policy and procedure manual**

A policy and procedure manual(s) for the organization and operation of the assisted living program shall be developed, implemented and reviewed in accordance with the provisions of N.J.A.C. 8:36-5.7. The manual(s) shall be available in all assisted living program sites, the assisted living program provider main office, and to representatives of the Department.

### **8:36-23.5 Resident transportation**

(a) The assisted living program provider shall have written policies and procedures for arranging resident transportation to and from health care services provided outside of the program site, and shall provide reasonable plans for security and accountability for the resident and his or her personal possessions.

(b) The assisted living program provider shall develop a mechanism for the transfer of appropriate resident information to and from the providers of service, as required by individual residents and as specified in their service plans.

### **8:36-23.6 Notices**

(a) The assisted living program provider and each program site shall conspicuously post a notice that the following information is available to residents and the public at the program site and at the assisted living program provider's main office during normal business hours:

1. All waivers from the provisions of this chapter granted by the Department;
2. A copy of the last annual licensure inspection survey report and the list of deficiencies from any valid complaint investigation during the past 12 months;
3. Policies and procedures regarding resident rights and responsibilities;
4. Business hours and telephone number of the assisted living program provider main office;
5. The toll-free hot line number of the Department; telephone numbers of county agencies dealing with senior service issues; and the telephone number of the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly; and
6. The names of, and a means to formally contact, the administration of the assisted living program provider.

### **8:36-23.7 Maintenance of records**

(a) The assisted living program shall maintain an annual listing of residents admitted and discharged, including the destination of residents who are discharged to a health care facility.

(b) Statistical data, such as resident census and program characteristics shall be forwarded on request, in a format provided by the Department.

### **8:36-23.8 Notification requirements**

(a) When known, and with the resident's consent, the resident's family, guardian, and/or designated responsible person or designated agency shall be notified promptly in the event of the following:

1. The resident acquires an acute illness requiring medical care;
2. Any serious accident, criminal act or incident occurs which involves the resident and results in serious harm or injury or results in the resident's arrest or detention. The Department's Long-Term Care Licensing and Certification Program shall also be notified in writing of these events;
3. The resident is discharged from the program; or
4. The resident expires. The assisted living program shall have a written procedure established with the program site to ensure that dual notifications of death do not occur.

(b) Notification of any occurrence noted in (a) above shall be documented in the resident's record. The documentation with regard to an occurrence noted in (a)4 above shall include confirmation and written documentation of that notification.

### **8:36-23.9 Administration and staffing**

(a) The administrator of an assisted living program shall:

1. Hold a current New Jersey license as a nursing home administrator; or
  - i. Have successfully completed an assisted living training course which covers the concepts and rules of assisted living as outlined in this chapter, given by a person(s) qualified to train assisted living administrators, in accordance with N.J.A.C. 8:36-3.2(a)4; and
  - ii. Have successfully completed a Department competency examination, which covers the concepts and rules delineated in this chapter; and
2. Comply with the requirements at N.J.A.C. 8:36-3.2(a)1 and 2.

(b) The assisted living program provider shall ensure that all personnel providing health care services are assigned duties based on their education, training, competencies, and pursuant to all laws, rules, and regulations applicable to State professional licensing and certification boards and agencies.

(c) Adequate staffing shall be provided based on all assessed needs of residents.

#### **8:36-23.10 Financial arrangements**

(a) If the assisted living program offers financial management services, it shall develop written policies and procedures for such services, including any charges for such services.

(b) The assisted living program shall:

1. Inform residents, in writing, of any and all fees for services and charges for supplies routinely provided by the program. Residents and/or their family, guardian or responsible person shall be given at least 30 days prior written notice of any change in fees for services or charges for supplies routinely provided. At the resident's request, this information shall be provided to the resident's family, guardian, or responsible person;

2. Maintain a written record of all financial arrangements with the resident and/or his or her family, guardian or responsible person, with copies furnished to the resident; and

3. Provide the resident with information regarding financial assistance available from third party payors and/or other payors and referral systems for resident financial assistance.

#### **8:36-23.11 Resident assessments, service plans, health care plans and health care services**

(a) Each resident living in publicly subsidized housing who elects to participate in an assisted living program shall receive an initial assessment pursuant to N.J.A.C. 8:36-7.1(a) and the applicable sections of N.J.A.C. 8:36-7.2 through 7.5.

#### **8:36-23.12 Dining services and meal preparation assistance**

(a) The assisted living program shall make available dining services and/or meal preparation assistance to meet the daily nutritional needs of residents.

(b) The assisted living program shall have a mechanism to assist residents with shopping and/or preparation of meals in accordance with their needs and plans of care.



(c) The assisted living program shall comply with N.J.A.C. 8:36-10.4(a)1 and 2, 10.5(c)10 and 12, and 10.6.

(d) The assisted living program shall review documentation that congregate kitchens in buildings in which meals are prepared for assisted living program residents comply with the provisions of N.J.A.C. 8:24, Retail Food Establishments and Food and Beverages Vending Machines Chapter XII of the New Jersey Sanitary Code.

(e) The assisted living program shall ensure that a current diet manual shall be available in each building in which the assisted living program provides services.

(f) The assisted living program shall ensure that meals are planned, prepared and served in accordance with, but not limited to, the following:

1. The nutritional needs of residents;

2. In congregate kitchens in buildings where meals are prepared for assisted living program residents, written dated menus shall be planned in advance. The same menu shall not be used more than once in any continuous seven-day period. Menus shall be posted in a conspicuous place and a copy of the menu shall be provided to each resident. Menus, with changes or substitutes, shall be kept on file for at least 30 days;

3. Diets served shall be consistent with the diet manual, the dietitian's instructions, if applicable, and, if necessary for special diets, shall be served in accordance with physicians' orders.

4. Where indicated in the health care plan nutrients and calories shall be provided for each resident, based upon current recommended dining allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the resident.

### **8:36-23.13 Pharmaceutical services**

(a) The assisted living program shall assist residents to obtain pharmaceutical services in accordance with physician's orders and with each resident's health service or general service plan.

(b) The assisted living program shall comply with N.J.A.C. 8:36-11.3(a)1 and 2, 11.4(a) and (b), 11.5(a) and (b)2 through 4, (e) and (f).

(c) Assisted living program staff shall report drug errors and adverse drug reactions immediately to the assisted living program registered professional nurse who shall comply with the reporting and documenting requirements of N.J.A.C. 8:36-11.5(e).

(d) For those residents who do not self-administer medications, the assisted living program shall provide an appropriate and safe medication storage area, either in a common area or in the resident's housing unit, for the storage of medication.

1. The common storage area shall be kept locked when not in use.
2. The common storage area shall be used only for the storage of medications and medical supplies.
3. The key to the common storage area shall be kept on the person of the assisted living program employee on duty.
4. Each resident's medications shall be kept separated within the common storage area, with the exception of large volume medications which shall be labeled but may be stored together in the common storage area.
5. Medications shall be stored in accordance with manufacturer's instructions, and/or extemporaneously applied pharmacy labels and/or directions, and/or USP DI Volume I: Drug Information for the Health Care Professional, 2005, incorporated herein by reference, as amended and supplemented and USP DI Volume II: Advice for the Patient, incorporated herein by reference, as amended and supplemented. USP DI Volume I: Drug Information for the Health Care Professional and USP DI Volume II: Advice for the Patient can be obtained by contacting Thomson-Micromedex, 6200 S. Syracuse Way, Suite 300, Greenwood Village, CO 80111, (303) 486-6400.
6. All medications shall be kept in their original containers and shall be properly labeled and identified.

#### **8:36-23.14 Resident activities**

(a) A planned, diversified program of activities shall be posted and offered daily for residents, including individual and/or group activities, on-site or off-site to meet the service needs of residents.

(b) The assisted living program shall provide assistance in obtaining transportation services for residents in accordance with N.J.A.C. 8:36-5.8(b).

### **8:36-23.15 Resident records**

(a) The assisted living program shall comply with N.J.A.C. 8:36-15.1 through 15.6.

(b) Whenever a resident dies, the assisted living program administrator or his or her designee shall document the date, cause of death, and location, if obtainable, in the resident's record and shall notify the resident's physician.

### **8:36-23.16 Resident rights and responsibilities**

To assure the highest quality of services, each assisted living program shall distribute and implement a statement of resident rights and responsibilities consistent with the provisions of N.J.A.C. 8:36-4.1.

### **8:36-23.17 Reportable events**

(a) The assisted living program's contract or agreement with a publicly subsidized housing program site, or with an assisted living residence or comprehensive personal care home for which it provides services, shall include procedures for the site to notify the assisted living program of all building and physical plant emergencies such as, but not limited to, interruption for three or more hours of basic services such as heat, light, power, water, telephone and site staff.

(b) The assisted living program shall notify the Department of Health and Senior Services immediately by telephone at (609) 633-9034 or (609) 392-2020 after business hours, followed within 72 hours by written confirmation, of the following:

1. Any interruption of basic building services, as noted in (a) above;
2. Any actual or expected interruption or cessation in assisted living program operations and services;
3. Termination of employment of the assisted living program administrator and the name and qualifications of his or her replacement;
4. Occurrence of all reportable infections and disease as specified in Chapter II of the State Sanitary Code Communicable Diseases at N.J.A.C. 8:57-1.1 through 1.12, among residents and, where known, at the program site;
5. Any deaths or accidents related to the program's services or activities and all residents who are determined to be missing, and all deaths among residents resulting from accidents in the publicly subsidized housing building or in

assisted living residences or comprehensive personal care homes for which services are provided, or related to other building services. Written confirmation of this shall contain information about injuries to residents and/or program personnel, disruption of program and/or building services and extent of damages;

6. Where known all alleged or suspected crimes committed by or against residents, which have also been reported at the time of occurrence to the local police department; and

7. All suspected cases of abuse, neglect or exploitation of residents which have been reported to the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly.

### **8:36-23.18 Other requirements**

(a) The assisted living program shall have a mechanism to provide information and referrals to other levels of care, as required by a resident. All necessary resident information shall also be transferred in accordance with the program's confidentiality requirements and with all applicable State and Federal laws and regulations.

(b) Records and information regarding the individual resident shall be considered confidential and the resident shall have the opportunity to examine such records, in accordance with facility or program policies. The written consent of the resident shall be obtained for release of his or her records to any individual outside the facility or program, except in the case of the resident's transfer to another health care facility, or as required by law, third-party payor, or authorized government agencies.

(c) The assisted living program and each publicly subsidized housing unit in which it provides services shall develop written policies and procedures to assure substantial compliance with N.J.A.C. 8:36-14, 17 and 18.

# N.J.A.C. 8:43E

## GENERAL LICENSURE PROCEDURES AND ENFORCEMENT OF LICENSURE REGULATIONS

### TABLE OF CONTENTS

<u>Rule</u>	<u>Content</u>	<u>Page</u>
<b>SUBCHAPTER 1. SCOPE AND GENERAL PURPOSE</b>		<b>1</b>
8:43E-1.1	Scope	1
8:43E-1.2	Purpose	1
8:43E-1.3	Definitions	1
<b>SUBCHAPTER 2. SURVEY PROCEDURES</b>		<b>3</b>
8:43E-2.1	Scope and Types of Surveys	3
8:43E-2.2	Deficiency Findings	4
8:43E-2.3	Informal Dispute Resolution	4
8:43E-2.4	Plan of Correction	5
<b>SUBCHAPTER 3. ENFORCEMENT REMEDIES</b>		<b>6</b>
8:43E-3.1	Enforcement Remedies Available	6
8:43E-3.2	Notice of Violations and Enforcement Actions	6
8:43E-3.3	Effective Date of Enforcement Actions	7
8:43E-3.4	Civil Monetary Penalties	7
8:43E-3.5	Failure to Pay a Penalty; Remedies	9
8:43E-3.6	Curtailment of Admissions	9
8:43E-3.7	Appointment of a Receiver	10
8:43E-3.8	Suspension of a License	11
8:43E-3.9	Revocation of a License	12
8:43E-3.10	Provisional License	12
8:43E-3.11	Cease and Desist Order	14
<b>SUBCHAPTER 4. HEARINGS</b>		<b>15</b>
8:43E-4.1	Hearings	15
8:43E-4.2	Settlement of Enforcement Actions	15

<u>Rule</u>	<u>Content</u>	<u>Page</u>
<b>SUBCHAPTER 5. LICENSURE PROCEDURES</b>		<b>17</b>
8:43E-5.1	Track Record Evaluation	17
8:43E-5.2	Facility Surveys	17
8:43E-5.3	Facility Licensure	18
8:43E-5.4	Conditional License	19
8:43E-5.5	Surrender of License	19
8:43E-5.6	Waiver	19
<b>SUBCHAPTER 6. PAIN MANAGEMENT PROCEDURES</b>		<b>20</b>
8:43E-6.1	Pain Management Standards; Scope	20
8:43E-6.2	Purpose	20
8:43E-6.3	Definitions	20
8:43E-6.4	Pain Assessment Procedures	21
8:43E-6.5	Staff Education and Training Programs	22
8:43E-6.6	Pain Management Continuous Quality Improvement	23
<b>SUBCHAPTER 7. REQUIREMENTS TO USE NEEDLES AND SHARP INSTRUMENTS CONTAINING INTEGRATED SAFETY FEATURES OF NEEDLELESS DEVICES</b>		<b>24</b>
8:43E-7.1	Use of Needles and Sharp Instruments Containing Integrated Safety Features	24
8:43E-7.2	Definitions	24
8:43E-7.3	Requirement and Responsibilities of Evaluation Committees	25
8:43E-7.4	Waiver from the Requirement to Utilize Available Sharp Devices with Integrated Safety Features or Needleless Devices	26
8:43E-7.5	Recording Requirements	27

<u>Rule</u>	<u>Content</u>	<u>Page</u>
<b>SUBCHAPTER 8. MANDATORY OVERTIME</b>		<b>28</b>
<b>8:43E-8.1</b>	<b>Mandatory Overtime; Scope and General Purpose</b>	<b>28</b>
<b>8:43E-8.2</b>	<b>Applicability</b>	<b>28</b>
<b>8:43E-8.3</b>	<b>Definitions</b>	<b>29</b>
<b>8:43E-8.4</b>	<b>Purpose</b>	<b>30</b>
<b>8:43E-8.5</b>	<b>Overtime Procedures</b>	<b>30</b>
<b>8:43E-8.6</b>	<b>Records; Dissemination of Information</b>	<b>31</b>
<b>8:43E-8.7</b>	<b>Enforcement and Administrative Penalties</b>	<b>32</b>
<b>8:43E-8.8</b>	<b>Policies and Procedures</b>	<b>33</b>
<b>8:43E-8.9</b>	<b>Discharge or Discrimination against an Employee Making a Complaint</b>	<b>33</b>
<b>8:43E-8.10</b>	<b>Complaint System</b>	<b>34</b>
<b>8:43E-8.11</b>	<b>Protection of the Right to Collective Bargaining</b>	<b>34</b>
<b>8:43E-8.12</b>	<b>Data</b>	<b>34</b>

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## **CHAPTER 43E**

### **GENERAL LICENSURE PROCEDURES AND ENFORCEMENT OF LICENSURE REGULATIONS**

#### **SUBCHAPTER 1. SCOPE AND GENERAL PURPOSE**

##### **8:43E-1.1 Scope**

The rules in this chapter pertain and apply to all health care facilities licensed by the Department pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. The rules set forth the procedures for the conduct of surveys of health care facilities, the basis and procedures for imposition of penalties and other enforcement actions and remedies, and the rights and procedures available to facilities to request a hearing to contest survey findings and the imposition of penalties.

##### **8:43E-1.2 Purpose**

The rules in this chapter are intended to promote the health, safety, and welfare of patients or residents of health care facilities through establishing rules and regulations implementing the Department's legislative mandate to enforce violations of licensing regulations. The rules also are intended to afford health care facilities with appropriate and adequate due process rights and procedures upon the finding of a violation or assessment of a penalty or other enforcement action.

##### **8:43E-1.3 Definitions**

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Commissioner" means Commissioner of the New Jersey Department of Health and Senior Services.

"Curtailement" means an order by the Department which requires a licensed health care facility to cease and desist all admissions and readmissions of patients or residents to the facility or affected service.

"Deficiency" means a determination by the Department of one or more instances in which a State licensing regulation or Federal certification regulation has been violated.

"Department" means the New Jersey Department of Health and Senior Services.

"Division" means Division of Health Care Systems Analysis, New Jersey Department of Health and Senior Services.

"Facility" means the entity which has been issued a license to operate a health care facility pursuant to N.J.S.A. 26:2H-1 et seq. For the purposes of this chapter, "facility" includes ambulance and invalid coach services.

"Immediate and serious threat" means a deficiency or violation that has caused or will imminently cause at any time serious injury, harm, impairment, or even death to residents or patients of the facility and therefore requires immediate corrective action.

"Patient" means an individual under the medical and nursing care and supervision of a licensed health care facility. For purposes of this chapter, "patient" is synonymous with "resident."

"Plan of correction" means a plan developed by the facility and reviewed and approved by the Department which describes the actions the facility will take to correct deficiencies and specifies the time frame in which those deficiencies will be corrected.

"Resident" means an individual residing in a licensed health care facility and under the supervision of that facility for the purpose of receiving medical, nursing, and/or personal care services. For purposes of this chapter, "resident" is synonymous with "patient."

"Survey" means the evaluation of the quality of care and/or the fitness of the premises, staff, and services provided by a facility as conducted by the Department and/or its designees to determine compliance or non-compliance with applicable State licensing regulations, statutes, or Federal Medicare/Medicaid certification regulations or statutes.

## **SUBCHAPTER 2. SURVEY PROCEDURES**

### **8:43E-2.1 Scope and types of surveys**

(a) The Department, or another State agency to which the Department has delegated the authority for conduct of surveys either partially or fully, may conduct periodic or special inspections of licensed health care facilities to evaluate the fitness and adequacy of the premises, equipment, personnel, policies and procedures, and finances, and to ascertain whether the facility complies with all applicable State and Federal licensure regulations and statutes.

(b) The Department or its designee may also conduct periodic surveys of facilities on behalf of the U.S. Department of Health and Human Services or other Federal agency for purposes of evaluating compliance with all applicable Federal regulations or Medicare and Medicaid certification regulations.

(c) The Department may evaluate all aspects of patient care, and operations of a health care facility, including the inspection of medical records; observation of patient care where consented to by the patient; inspection of all areas of the physical plant under the control or ownership of the licensee; and interview of the patient or resident, his or her family or other individuals with knowledge of the patient or care rendered to him or her.

(d) All information pertaining to an individual patient shall be maintained as confidential by the Department and shall not be available to the public in a manner that identifies an individual patient, unless so consented to by the patient or pursuant to an order by a court of law.

(e) The Department may conduct a survey of a facility upon the receipt of complaint or allegation by any person or agency, including a patient, his or her family, or any person with knowledge of the services rendered to patients or operations of a facility.

(f) The Department may evaluate the quality of patient care rendered by a facility through analysis of statistical data reported by facilities to the Department or other agency, or by review of reportable event information or other notices filed with the Department pursuant to regulation. Upon receipt of information indicating a potential risk to patient safety or violations of licensing regulations, the Department may conduct a survey to investigate the causes of this finding, or request a written response from the facility to ascertain the validity of the data and to describe the facility's plan or current actions to address the identified findings.

(g) Following a reasonable opportunity for facilities to review and comment on the validity of the Department's statistical data related to the quality of patient care by facilities, the Department may make such information, as appropriately amended available to the public.

### **8:43E-2.2 Deficiency findings**

(a) A deficiency may be cited by the Department upon any single or multiple determination that the facility does not comply with a licensure regulation. Such findings may be made as the result of either an on-site survey or inspection or as the result of the evaluation of written reports or documentation submitted to the Department, or the omission or failure to act in a manner required by regulation.

(b) At the conclusion of a survey or within 10 business days thereafter, the Department shall provide a facility with a written summary of any factual findings used as a basis to determine that a licensure violation has occurred, and a statement of each licensure regulation to which the finding of a deficiency relates.

### **8:43E-2.3 Informal dispute resolution**

(a) A facility may request an opportunity to discuss the accuracy of survey findings with representatives of the Department in the following circumstances during a survey:

1. During the course of a survey to the extent such discussion does not interfere with the surveyor's ability to obtain full and objective information and to complete required survey tasks; or
2. During the exit interview or other summation of survey findings prior to the conclusion of the survey.

(b) Following completion of the survey, an acute care facility may contact the Inspections, Complaints and Compliance Program and a long term care facility may contact the Long Term Care Assessment Survey Program to request an informal review of deficiencies cited. The request must be made in writing within 10 business days of the receipt of the written survey findings. The written request must include:

1. A specific listing of the deficiencies for which informal review is requested; and
2. Documentation supporting any contention that a survey finding was in error.

(c) The review will be conducted within 10 business days of the request by supervisory staff of the Inspections, Complaints and Compliance Program or the Long Term Care Assessment Survey Program, as applicable, who did not directly participate in the survey. The review can be conducted in person at the offices of the Department or, by mutual agreement, solely by review of the documentation as submitted.

(d) A decision will be issued by the Department within seven business days of the conference or the review, and if the determination is to agree with the facility's contentions, the deficiencies will be removed from the record. If the decision is to disagree with the request to remove deficiencies, a plan of correction is required within five business days of receipt of the decision. The facility retains all other rights to appeal deficiencies and enforcement actions taken pursuant to these rules.

#### **8:43E-2.4 Plan of correction**

(a) The Department may require that the facility submit a written plan of correction specifying how each deficiency that has been cited will be corrected along with the time frames for completion of each corrective action. A single plan of correction may address all events associated with a given deficiency.

(b) The plan of correction shall be submitted within 10 business days of the facility's receipt of the notice of violations, unless the Department specifically authorizes an extension for cause. Where deficiencies are the subject of informal dispute resolution pursuant to N.J.A.C. 8:43E-2.3, the extension shall pertain only to the plans of correction for the deficiencies under review.

(c) The Department may require that the facility's representatives appear at an office conference to review findings of serious or repeated licensure deficiencies and to review the causes for such violations and the facility's plan of correction.

(d) The plan of correction shall be reviewed by the Department and will be approved where the plan demonstrates that compliance will be achieved in a manner and time that assures the health and safety of patients or residents. If the plan is not approved, the Department may request that an amended plan of correction be submitted within five business days. In relation to violations of resident or patient rights, the Department may direct specific corrective measures that must be implemented by facilities.

## **SUBCHAPTER 3. ENFORCEMENT REMEDIES**

### **8:43E-3.1 Enforcement remedies available**

(a) Pursuant to N.J.S.A. 26:2H-13, 14, 15, 16 and 38, the Commissioner or his or her designee may impose the following enforcement remedies against a health care facility for violations of licensure regulations or other statutory requirements:

1. Civil monetary penalty;
2. Curtailment of admissions;
3. Appointment of a receiver or temporary manager;
4. Provisional license;
5. Suspension of a license;
6. Revocation of a license;
7. Order to Cease and Desist operation of an unlicensed health care facility; and
8. Other remedies for violations of statutes as provided by State or Federal law, or as authorized by Federal survey, certification, and enforcement regulations and agreements.

### **8:43E-3.2 Notice of violations and enforcement actions**

The Commissioner shall serve notice to a facility of the proposed assessment of civil monetary penalties, suspension or revocation of a license, or placement on a provisional license, setting forth the specific violations, charges or reasons for the action. Such notice shall be served on a licensee or its registered agent in person or by certified mail.

### **8:43E-3.3 Effective date of enforcement actions**

The assessment of civil monetary penalties, or revocation of a license, or the placement of a license on provisional status shall become effective 30 days after the date of mailing or the date personally served on a licensee, unless the licensee shall file with the Department a written answer to the charges and give written notice to the Department of its desire for a hearing in which case the assessment, suspension, revocation or placement on provisional license status shall be held in abeyance until the administrative hearing has been concluded and a final decision is rendered by the Commissioner. Hearings shall be conducted in accordance with N.J.A.C. 8:43E-4.1.

### **8:43E-3.4 Civil monetary penalties**

(a) Pursuant to N.J.S.A. 26:2H-13 and 14, the Commissioner may assess a penalty for violation of licensure regulations in accordance with the following standards:

1. For operation of a health care facility without a license, or continued operation of a facility after suspension or revocation of a license, \$1,000 per day from the date of initiation of services;

2. For violation of an order for curtailment of admissions, \$250.00 per patient, per day from the date of such admission to the date of discharge or lifting of the curtailment order;

3. For failure to obtain prior approval from the Inspections, compliance and Complaints Program or the Long Term Care Assessment and Survey Program, as applicable, for occupancy of an area or initiation of a service following construction or application for licensure, \$250.00 a day;

4. For construction or renovation of a facility without the Department of Community Affairs' approval of construction plans, \$1,000 per room or area renovated and immediate suspension of use in the room or area from the date of initial use until determined by the Department to be in compliance with licensure standards. This determination shall take into account any waivers granted by the Department.

5. For the transfer of ownership of a health care facility without prior approval of the Department, \$500.00 per day from the date of the transfer of interest to the date of discovery by the Department. Such fine may be assessed against each of the parties at interest;

6. For maintaining or admitting more patients or residents to a facility than the maximum capacity permitted under the license, except in an emergency as documented by the facility in a contemporaneous notice to the Department, \$25.00 per patient per day plus an amount equal to the average daily charge collected from such patient or patients;

7. For violations of licensure regulations related to patient care or physical plant standards that represent a risk to the health, safety, or welfare of patients or residents of a facility or the general public, \$500.00 per violation where such deficiencies are isolated or occasional and do not represent a pattern or widespread practice throughout the facility;

8. Where there are multiple deficiencies related to patient care or physical plant standards throughout a facility, and/or such violations represent a direct risk that a patient's physical or mental health will be compromised, or where an actual violation of a resident's or patient's rights is found, a penalty of \$1,000 per violation may be assessed for each day noncompliance is found;

9. For repeated violations of any licensing regulation within a 12-month period or on successive annual inspections, or failure to implement an approved plan of correction, where such violation was not the subject of a previous penalty assessment, \$500.00 per violation, which may be assessed for each day noncompliance is found. If the initial violation resulted in the assessment of a penalty, within a 12-month period or on successive annual inspections, the second violation shall result in a doubling of the original fine, and the third and successive violations shall result in a tripling of the original fine;

10. For violations resulting in either actual harm to a patient or resident, or in an immediate and serious risk of harm, \$2,500 per violation, which may be assessed for each day noncompliance is found;

11. For failure to report information to the Department as required by statute or licensing regulation, after reasonable notice and an opportunity to cure the violation, \$250.00 per day;

12. For failure to implement a Certificate of Need condition of approval, \$1,000 per day, which shall be assessed either from the date specified in the Certificate of Need for implementation of the specific condition of approval, if identified, or from the date on which the Certificate of Need was considered to be implemented; or

13. For violations of regulations governing the prohibition of mandatory overtime contained in N.J.A.C. 8:43E-8, \$1,000 per violation, which may be assessed for each day noncompliance is found.



(b) Except for violations deemed to be immediate and serious threats, the Department may decrease the penalty assessed in accordance with (a) above, based on the compliance history of the facility; the number, frequency and/or severity of violations by the facility; the measures taken by the facility to mitigate the effects of the current violation, or to prevent future violations; the deterrent effect of the penalty; and/or other specific circumstances of the facility or the violation.

(c) The Department may increase the penalties in (a) above up to the statutory maximum per violation per day in consideration of the economic benefit realized by the facility for noncompliance.

### **8:43E-3.5 Failure to pay a penalty; remedies**

(a) Within 30 days after the mailing date of a Notice of Proposed Assessment of a Penalty, a facility which intends to challenge the enforcement action shall notify the Department of its intent to request a hearing pursuant to the Administrative Procedure Act.

(b) The penalty becomes due and owing upon the 30th day from mailing of the Notice of Proposed Assessment of Penalties, if a notice requesting a hearing has not been received by the Department. If a hearing has been requested, the penalty is due 45 days after the issuance of a Final Agency Decision by the Commissioner, if the Department's assessment has not been withdrawn, rescinded, or reversed, and an appeal has not been timely filed with the New Jersey Superior Court, Appellate Division pursuant to New Jersey Court Rule 2:2-3.

(c) Failure to pay a penalty within 30 days of the date it is due and owing pursuant to (b) above may result in one or more of the following actions:

1. Institution of a summary civil proceeding by the State pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.); or
2. Placing the facility on a provisional license status.

### **8:43E-3.6 Curtailment of admissions**

(a) The Department may issue an order curtailing all new admissions and readmissions to a health care facility in the following circumstances:

1. Where violations of licensing regulations are found that have been determined to pose an immediate and serious threat of harm to patients or residents of a health care facility;

2. Where the Department has issued a Notice of Proposed Revocation or Suspension of a health care facility license, for the purpose of limiting the census of a facility if patients or residents must be relocated upon closure;

3. Where the admission or readmission of new patients or residents to a health care facility would impair the facility's ability to correct serious or widespread violations of licensing regulations related to direct patient care and cause a diminution in the quality of care; or

4. For exceeding the licensed or authorized bed or service capacity of a health care facility, except in those instances where exceeding the licensed or authorized capacity was necessitated by emergency conditions and where immediate and satisfactory notice was provided to the Department.

(b) The order for curtailment may be withdrawn upon a survey finding that the facility has achieved substantial compliance with the applicable licensing regulations or Federal certification requirements and that there is no immediate and serious threat to patient safety, or in the case of providers exceeding licensed capacity, has achieved a census equivalent to licensed and approved levels. Such order to lift a curtailment may reasonably limit the number and priority of patients to be admitted by the facility in order to protect patient safety.

#### **8:43E-3.7 Appointment of a receiver**

(a) Pursuant to N.J.S.A. 26:2H-42 et seq., the Department may seek an order or judgment in a court of competent jurisdiction, directing the appointment of a receiver for the purpose of remedying a condition or conditions in a residential health care facility, assisted living facility, or long-term care facility, that represent a substantial or habitual violation of the standards of health, safety, or resident care adopted by the Department or pursuant to Federal law or regulation.

(b) The Department shall review and approve the receiver's qualifications prior to submission for court approval. The receiver shall have experience and training in long-term care, assisted living, or residential health care, as appropriate, and, if the facility is a licensed long-term care provider, the receiver shall possess a current New Jersey license as a nursing home administrator and be in good standing. The Department shall maintain a list of interested and approved receivers.

(c) No receiver may be a current owner, licensee, or administrator of the subject facility or a spouse or immediate family member thereof.

### **8:43E-3.8 Suspension of a license**

(a) Pursuant to N.J.S.A. 26:2H-14, the Commissioner may order the summary suspension of a license of a health care facility or a component or distinct part of a facility upon a finding that violations pertaining to the care of patients or to the hazardous or unsafe conditions of the physical structure pose an immediate threat to the health, safety, and welfare of the public or the residents of the facility.

(b) Upon a finding described in (a) above, the Commissioner or the Commissioner's authorized representative shall serve notice in person or by certified mail to the facility or its registered agent of the nature of the findings and violations and the proposed order of suspension. Except in the case of a life-threatening emergency, the notice shall provide the facility with a 72-hour period from receipt to correct the violations and provide proof to the Department of such correction.

(c) If the Department determines the violations have not been corrected, and the facility has not filed notice requesting a hearing to contest the notice of suspension within 48 hours of receipt of the Commissioner's notice pursuant to (e) below, then the license shall be deemed suspended. Upon the effective date of the suspension, the facility shall cease and desist the provision of health care services and effect an orderly transfer of patients.

(d) The Department shall approve and coordinate the process to be followed during an evacuation of the facility or cessation of services pursuant to an order for suspension or revocation.

(e) If the facility requests a hearing within 48 hours of receipt of the Notice of Proposed Suspension of License in accordance with N.J.S.A. 26:2H-14, the Department shall arrange for an immediate hearing to be conducted by the Commissioner and a final agency decision shall be issued within 48 hours by the Commissioner. If the Commissioner shall affirm the proposed suspension of the license, the order shall become final. The licensee may apply for injunctive relief against the Commissioner's order in the New Jersey Superior Court, in accordance with the provisions set forth in N.J.S.A. 26:2H-14.

(f) Notwithstanding the issuance of an order for proposed suspension of a license, the Department may concurrently or subsequently impose other enforcement actions pursuant to these rules.

(g) The Department may rescind the order for suspension upon a finding that the facility has corrected the conditions which were the basis for the action.

### **8:43E-3.9 Revocation of a license**

(a) A Notice of the Proposed Revocation of a health care facility license may be issued in the following circumstances:

1. The facility has failed to comply with licensing requirements, posing an immediate and serious risk of harm or actual harm to the health, safety, and welfare of patients or residents, and the facility has not corrected such violations in accordance with an approved plan of correction or subsequent to imposition of other enforcement remedies issued pursuant to these rules;

2. The facility has exhibited a pattern and practice of violating licensing requirements, posing a serious risk of harm to the health, safety and welfare of residents or patients. A pattern and practice may be demonstrated by the repeated violation of identical or substantially-related licensing regulations during three consecutive surveys, or the issuance of civil monetary penalties pursuant to N.J.A.C. 8:43E-3.4 or other enforcement actions for unrelated violations on three or more consecutive surveys;

3. Failure of a licensee to correct identified violations which had led to the issuance of an order for suspension of a license, pursuant to N.J.A.C. 8:43E-3.6 or 3.8; or

4. Continuance of a facility on provisional licensure status for a period of 12 months or more.

(b) The notice shall be served in accordance with N.J.A.C. 8:43E-3.2, and the facility has a right to request a hearing pursuant to N.J.A.C. 8:43E-4.1.

### **8:43E-3.10 Provisional license**

(a) The Department may place a health care facility on provisional license status in the following circumstances:

1. Upon issuance of a Notice for Revocation or Suspension of a License, pursuant to N.J.A.C. 8:43E-3.8 or 3.9, for a period extending through final adjudication of the action;

2. Upon issuance of an order for curtailment of admissions pursuant to N.J.A.C. 8:43E-3.6, for a minimum period of three months and for a maximum period extending through 90 days following the date the Department finds the facility has achieved substantial compliance with all applicable licensing regulations;

3. For failure to satisfy a civil penalty due and owing pursuant to N.J.A.C. 8:43E-3.4; or

4. Upon a recommendation to the Federal government or the New Jersey Division of Medical Assistance and Health Services for termination of a provider agreement for failure to meet the Federal certification regulations.

(b) A facility placed on provisional license status shall be placed on notice of same, in accordance with the notice requirements set forth in N.J.A.C. 8:43E-3.2. Provisional license status is effective upon receipt of the notice, although the facility may request a hearing to contest provisional license status in accordance with the requirements set forth in N.J.A.C. 8:43E-4.1. Where a facility chooses to contest provisional license status by requesting a hearing in accordance with the provisions set forth herein and in N.J.A.C. 8:43E-4.1, provisional license status remains effective at least until the final decision or adjudication (as applicable) of the matter, or beyond in instances where the Department's action is upheld, in accordance with these rules. In addition, provisional license status remains effective in cases where the underlying violations which caused the issuance of provisional licensure status are the subject of appeal and/or litigation, as applicable, in accordance with these rules.

(c) While a facility is on provisional license status, the following shall occur:

1. Withholding of authorization or review of any application filed with the Department for approval of additional beds or services;

2. Notification of the action to the Certificate of Need Program, for consideration during any pending application. It may result in withholding of Certificate of Need approval or denial of the Certificate of Need, in accordance with Certificate of Need rules at N.J.A.C. 8:33, or applicable licensing regulations; and

3. Notification of facility placement on provisional license status to any public agency that provides funding or third party reimbursement to the facility or that has statutory responsibility for monitoring the quality of care rendered to patients or residents.

(d) A facility placed on provisional license status shall post the provisional license in a location within the facility which is conspicuous.

### **8:43E-3.11 Cease and desist order**

(a) Pursuant to N.J.S.A. 26:2H-14 and 15, the Commissioner or his or her designee may issue an order requiring the operation of an unlicensed or unauthorized care facility or service to cease and desist.

(b) The Commissioner may also impose other enforcement actions pursuant to these rules for operation of an unlicensed health care facility.

(c) The Department may maintain an action in the New Jersey Superior Court to enjoin any entity from operation of a health care facility without a license or after the suspension or revocation of a license pursuant to these rules.

## **SUBCHAPTER 4. HEARINGS**

### **8:43E-4.1 Hearings**

(a) Notice of a proposed enforcement action shall be afforded to a facility pursuant to N.J.A.C. 8:43E-3.2.

(b) A facility shall notify the Department of its intent to request a hearing in a manner specified in the Notice within 30 days of its receipt.

(c) The Department shall transmit the hearing request to the Office of Administrative Law.

(d) Hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1.

### **8:43E-4.2 Settlement of enforcement actions**

(a) The facility may request that the matter be settled in lieu of conducting an administrative hearing concerning an enforcement action.

(b) If the Department and the facility agree on the terms of a settlement, a written agreement specifying these terms shall be executed.

(c) Pursuant to N.J.S.A. 26:2H-16, civil penalties may be settled by the Department in cash or in-kind services to patients where circumstances warrant such agreement and the settlement does not compromise the health, safety, or welfare of patients. In no case shall such settlement reduce a penalty below \$250.00, or \$500.00 for second and subsequent offenses.

(d) The Department may agree to accept payment of penalties over a schedule not exceeding 18 months where a facility demonstrates financial hardship.

(e) All funds received in payment of penalties shall be deposited in the Health Care Facilities Improvement Fund. Such fund shall be designated for use by the Commissioner to make corrections in a health care facility which is in violation of a licensure standard and in which the owner or operator is unable or unwilling to make the necessary corrections. The owner of the facility shall repay the fund any monies plus interest at the prevailing rate that were expended by the State to correct the violation at the facility. If the owner fails to promptly reimburse the fund, the Commissioner shall have a lien in the name of the State against the facility for the cost of the corrections plus interest and for any administrative cost incurred in filing the lien.

(f) If a facility fails to meet the conditions of the settlement, the Department may immediately impose the original enforcement action without any further right to an administrative hearing.



## **SUBCHAPTER 5. LICENSURE PROCEDURES**

### **8:43E-5.1 Track record evaluation**

(a) In the case of an application for licensure of a long-term care facility, subacute care unit in an acute care general hospital, assisted living residence, comprehensive personal care home, assisted living program, alternate family care sponsor agency, or residential health care facility, for which a certificate of need is required, the applicant's track record shall be evaluated as part of the certificate of need application process, in accordance with N.J.A.C. 8:33-4.10.

(b) In the case of an application for which a certificate of need is not required, including an application for transfer of ownership of a long-term care facility, subacute care unit in an acute care general hospital, assisted living residence, comprehensive personal care home, assisted living program, alternate family care sponsor agency, adult day health care facility, or residential health care facility, an application to establish or expand an adult day health care facility or to expand a residential health care facility, and an application for any long-term care beds or services offered as part of a continuing care retirement community, the track record rules regarding certificate of need applications at N.J.A.C. 8:33-4.10 shall be applied. These rules include, but are not limited to, those addressing criteria for denial of applications, the scope of the track record review, the use of categories of health care service similarity or relatedness, the meaning of the term "applicant," and the duration of the waiting period following application denial.

(c) In the case of an application to add one or more beds in accordance with N.J.A.C. 8:39-2.12, for which a certificate of need is not required, the track record rules regarding certificate of need applications at N.J.A.C. 8:33-4.10 shall be applied only to the facility which is requesting the additional beds.

### **8:43E-5.2 Facility surveys**

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Department's Inspections, Complaints and Compliance Program or the Long Term Care Assessment and Survey Program, as applicable, shall be conducted to determine if the facility complies with the rules in this chapter.

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Department's Inspections, Complaints and Compliance Program or Long Term Care Assessment and Survey Program, as applicable, when the deficiencies, if any, have been corrected, and the program so notified will schedule one or more resurveys of the facility prior to occupancy.

(b) No facility shall admit patients to the facility until the facility has the written approval and/or license issued by the Certificate of Need and Acute Care Licensure Program or the Long Term Care Licensure Program of the Department.

(c) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and patient records and conferences with patients.

### **8:43E-5.3 Facility licensure**

(a) A license shall be issued only where the survey conducted pursuant to N.J.A.C. 8:43E-5.2 demonstrates that the facility meets the requirements as set forth in N.J.S.A. 26:2H-1 et seq. and the applicable rules duly promulgated pursuant thereto.

(b) A license shall be granted for a period of one year or less, as determined by the Department.

(c) The license shall be conspicuously posted in the facility.

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate, if the facility's ownership changes, or if the facility is relocated to a different state.

(e) The license, unless suspended or revoked in accordance with these rules, shall be renewed annually on the anniversary date of the issuance of the original license, or within 30 days thereafter. In cases where the license issues after, but within 30 days of, the anniversary date, it shall be deemed to have issued on the anniversary date and dated accordingly. The facility shall receive from the Department a request for licensure renewal fee 30 days prior to the expiration of the license. A renewed license shall not issue unless and until the licensure renewal fee is received by the Department.

(f) The license may not be renewed if local rules, regulations and/or other applicable requirements are not met, or if the Department determines that the facility is in violation of applicable licensure standards.

#### **8:43E-5.4 Conditional license**

A conditional license may be issued to a health care facility providing a type or category of health care service neither listed nor otherwise addressed in the applicable licensure chapter for that type of facility.

#### **8:43E-5.5 Surrender of license**

The facility shall notify each patient/resident, each patient/resident's physician, and any guarantors of payment at least 30 days prior to the surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of a license. In such cases, the license shall be returned to the Certificate of Need and Acute Care Licensure Program or the Long Term Care Licensure Program, as applicable, within seven working days after the surrender, revocation, non-renewal, or suspension of the license.

#### **8:43E-5.6 Waiver**

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and the licensure rules applicable to the type of facility in question, waive sections of applicable licensure rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking waiver pursuant to this rule shall apply in writing to the Director of the Certificate of Need and Acute Care Licensure Program or the Long Term Care Licensure Program, as applicable.

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is sought;
2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility if the waiver does not issue;
3. An alternative proposal, ensuring patient safety and compliance with the general intent and purpose of the applicable licensure rules; and
4. Documentation to support the request for waiver.

(d) In cases where the Department requests additional information before or during the course of processing a waiver request, the facility shall comply with the request for additional information or the waiver shall be denied.

## **SUBCHAPTER 6. PAIN MANAGEMENT PROCEDURES**

### **8:43E-6.1 Pain management standards; scope**

The standards set forth in this subchapter apply to all health care facilities licensed in accordance with N.J.S.A. 26:2H-1 et seq.

### **8:43E-6.2 Purpose**

The rules in this subchapter are intended to promote the health, safety, and welfare of patients or residents of health care facilities by establishing requirements for the assessment, monitoring and management of pain.

### **8:43E-6.3 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Pain" means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

"Pain management" means the assessment of pain and, if appropriate, treatment in order to assure the needs of patients or residents of health care facilities who experience problems with pain are met. Treatment of pain may include the use of medications or application of other modalities and medical devices such as, but not limited to, heat or cold, massage, transcutaneous electrical nerve stimulation (TENS), acupuncture, and neurolytic techniques such as radiofrequency coagulation and cryotherapy.

"Pain rating scale" means a tool that is age cognitive and culturally specific to the patient or resident population to which it is applied and which results in an assessment and measurement of the intensity of pain.

"Pain treatment plan" means a plan, based on information gathered during a patient/resident pain assessment, that identifies the patient's/resident's needs and specifies appropriate interventions to alleviate pain, to the extent feasible and medically appropriate.

#### **8:43E-6.4 Pain assessment procedures**

(a) A facility shall formulate a system for assessing and monitoring patients'/residents' pain using a pain rating scale.

1. A facility serving different patient/resident populations shall utilize more than one pain scale, as appropriate.

(b) Assessment of a patient's/resident's pain shall occur, at a minimum, upon admission, on the day of a planned discharge, and when warranted by changes in a patient's/resident's condition, self-reporting of pain and/or evidence of behavioral cues indicative of the presence of pain. In the case of individuals receiving home health care services, assessment shall coincide with a visit by staff of the home health service agency and assessment on the day of discharge is not required if the individual has been admitted to an inpatient or residential health care facility and discharge from the home health service agency takes place after the admission.

(c) If pain is identified, a pain treatment plan shall be developed and implemented within the health care facility or the patient/resident shall be referred for treatment or consultation.

(d) If the patient/resident is cognitively impaired or non-verbal, the facility shall utilize pain rating scales for the cognitively impaired and non-verbal patient/resident. Additionally, the facility shall seek information from the patient's/resident's family, caregiver or other representative, if available and known to the facility. The results of the pain rating scales and the response to the additional inquiry shall be documented in the patient's/resident's medical record.

(e) Pain assessment findings shall be documented in the patient's/resident's medical record. This shall include, but not be limited to, the date, pain rating, treatment plan and patient/resident response.

(f) The facility shall establish written policies and procedures governing the management of pain that are reviewed at least every three years and revised more frequently as needed. They shall include at least the following:

1. A written procedure for systematically conducting periodic assessment of a patient's/resident's pain, as specified in (b) above. At a minimum, the procedure must specify pain assessment upon admission, upon discharge, and when warranted by changes in a patient's/resident's condition and self-reporting of pain;

2. Criteria for the assessment of pain, including, but not limited to: pain intensity or severity, pain character, pain frequency or pattern, or both; pain location, pain duration, precipitating factors, responses to treatment and the personal, cultural, spiritual, and/or ethnic beliefs that may impact an individual's perception of pain;

3. A written procedure for the monitoring of a patient's/resident's pain;

4. A written procedure to insure the consistency of pain rating scales across departments within the health care facility;

5. Requirements for documentation of a patient's/resident's pain status on the medical record;

6. A procedure for educating patients/residents and, if applicable, their families about pain management when identified as part of their treatment; and

7. A written procedure for systematically coordinating and updating the pain treatment plan of a patient/resident in response to documented pain status.

#### **8:43E-6.5 Staff education and training programs**

(a) Each facility shall develop, revise as necessary and implement a written plan for the purpose of training and educating staff on pain management. The plan shall include mandatory educational programs that address at least the following:

1. Orientation of new staff to the facility's policies and procedures on pain assessment and management;

2. Training of staff in pain assessment tools; behaviors potentially indicating pain; personal, cultural, spiritual and/or ethnic beliefs that may impact a patient's/resident's perception of pain; new equipment and new technologies to assess and monitor a patient's/resident's pain status;

3. Incorporation of pain assessment, monitoring and management into the initial orientation and ongoing education of all appropriate staff; and

4. Patient/resident rights.

(b) Implementation of the plan shall include records of attendance for each program.

**8:43E-6.6 Pain management continuous quality improvement**

The facility's continuous quality improvement program shall include a systematic review and evaluation of pain assessment, management and documentation practices. The facility shall develop a plan by which to collect and analyze data in order to evaluate outcomes or performance. Data analysis shall focus on recommendations for implementing corrective actions and improving performance.

## **SUBCHAPTER 7. REQUIREMENT TO USE NEEDLES AND SHARP INSTRUMENTS CONTAINING INTEGRATED SAFETY FEATURES OR NEEDLELESS DEVICES**

### **8:43E-7.1 Use of needles and sharp instruments containing integrated safety features**

(a) All facilities shall purchase, for use by health care workers only, available sharp devices containing integrated safety features or available needleless devices designed to prevent needle stick injuries, in accordance with N.J.S.A. 26:2H-5.10 through 5.16, as well as this subchapter.

(b) In cases where there is no available sharp device containing integrated safety features or needleless device, for a specific patient use, facilities shall utilize the appropriate sharp device that is available for that specific patient use, including any sharp device which employs non-integrated, add-on safety features, until such time as an appropriate sharp device containing integrated safety features becomes available.

(c) The provisions of this section shall apply to both empty and pre-filled syringes upon the effective date of these rules.

### **8:43E-7.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Available" means cleared or approved for marketing by the Federal Food and Drug Administration and commercially offered for distribution.

"Department" means the New Jersey Department of Health and Senior Services.

"Emergency" means an unforeseen circumstance involving a patient in need of immediate medical attention in order to save the patient's life and/or limb or prevent serious and/or permanent injury.

"Evaluation committee" means a group of individuals appointed within each facility or health care system which satisfies the requirements of N.J.S.A. 26:2H-5.13 and N.J.A.C. 8:43E-7.3.

"Facility" means a health care facility licensed by the Department, pursuant to the provisions set forth in the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., as amended.



"Health care system" means a licensed health care provider/entity that either owns and operates more than one licensed facility within the State of New Jersey or can document operational control over more than one licensed facility within the State of New Jersey, but which is not a management company.

"Health care worker" or "health care professional" means a physician, physician assistant, advanced practice nurse, registered nurse, licensed practical nurse, or any other individual employed by the facility or having privileges at the facility whose job duties require the use of sharp devices, as that term is defined herein.

"Integrated safety features" means needles and all other sharp instruments with engineered injury prevention protections in the form of a built-in safety feature or mechanism designed to protect the user of the sharp device from needle stick injuries.

"Needleless device" means a device that does not use needles for the following procedures:

1. The collection or withdrawal of bodily fluids after initial venous or arterial access is established;
2. Administration of medication or other fluids; or
3. Any other procedure involving potential for exposure to blood or other potentially exposed infectious material.

"Needle stick injury" means the actual or potential parenteral introduction, into the body of a health care worker, of blood or other potentially exposed infectious material, by any type of sharp device, as that term is defined in this section.

"Sharp device(s)" means needles and all other sharp instruments used by health care workers to administer patient care, the use of which creates the potential for exposure to blood or other potentially exposed infectious material, regardless of whether the specific patient being treated has been diagnosed with a bloodborne disease or infection.

### **8:43E-7.3 Requirement and responsibilities of evaluation committees**

(a) Every licensed health care facility or health care system shall appoint an evaluation committee which shall be responsible for evaluating and selecting sharp devices with integrated safety features or needleless devices for use by health care workers at the facility or facilities.

(b) At least one half of all members of the evaluation committee shall be direct-care health care workers employed by the facility or health care system, whose job duties include the use of sharp devices to treat patients of the facility and resulting potential exposure to blood and other potentially exposed infectious material through accidental needle stick injuries. In the case of a health care system, not only shall at least one half of the evaluation committee be comprised of direct-care health care workers, but the evaluation committee shall also include at least one direct-care health care worker from every facility within the health care system.

(c) In determining which needles and other sharp devices or needleless devices to purchase in compliance with these rules, every evaluation committee shall establish and follow guidelines for determining which devices are to be purchased for use by facility staff. An example of such guidelines may be found in the June 1999 edition of the "California Guide to Preventing Sharps Injuries." That manual is available by contacting the California Healthcare Association by telephone at (800) 494-2001 or (916) 928-5123, via the internet at [www.calhealth.org](http://www.calhealth.org) or in writing at the following address:

California Healthcare Association  
Publication Sales Center  
1101 North Market Boulevard, #9  
Sacramento, CA 95834

Guidelines may also be found at [www.tdict.org](http://www.tdict.org).

(d) All facilities shall develop and maintain policies and procedures for the continual review and evaluation of sharp devices or needleless devices as they are newly introduced and become available. Review of newly marketed devices shall occur at a minimum frequency of once annually. The policies and procedures shall include a requirement that all health care workers receive appropriate training in the use of all safety devices, whether sharp or needleless, purchased for use during the course of their duties. Training shall be provided to the extent necessary to ensure the proper and appropriate use of all devices with integrated safety features or needleless devices used within the facility. The policies and procedures shall be reviewed and reevaluated every three years.

**8:43E-7.4 Waiver from the requirement to utilize available sharp devices with integrated safety features or needleless devices**

(a) All facilities shall develop policies and procedures setting forth a mechanism for health care professionals to request non-emergency waivers from the requirements set forth in N.J.A.C. 8:43E-7.1. All waiver requests shall be submitted to the evaluation committee on forms prescribed by the Department.

(b) Non-emergency waiver requests shall be presented to the evaluation committee for approval and shall be considered only for a specific device to be used for a specific medical procedure that shall be performed on a specific class of patients. In cases where the evaluation committee determines that the use of a sharp device with integrated safety features may potentially have a negative impact on patient safety or the success of a specific medical procedure, the waiver request shall be granted by the evaluation committee.

(c) In the case of an emergency, a health care professional may utilize sharp devices which do not contain integrated safety features without a waiver, provided:

1. The professional determines that use of a sharp device with integrated safety features potentially may have a negative impact on patient safety or the success of a specific medical procedure; and

2. The professional making the determination required in (c)1 above, notifies the evaluation committee, in writing, on a form prescribed by the Department, within five days of the date the sharp device was used, of the reasons why it was necessary to use a sharp device without integrated safety features.

#### **8:43E-7.5 Recording requirements**

All facilities shall maintain a record of needle stick injuries, either in a Sharps Injury Log or an OSHA 300 Log. All entries made pursuant to this subchapter shall include a description of the injury and the type and brand name of the sharp device involved in the injury.

## **SUBCHAPTER 8. MANDATORY OVERTIME**

### **8:43E-8.1 Mandatory overtime; scope and general purpose**

The procedures set forth in this subchapter apply to all health care facilities licensed in accordance with N.J.S.A. 26:2H-1 et seq., including a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to N.J.S.A. 56:8-1.1 et seq. The rules set forth the standards and procedures governing the use by health care facilities of required overtime by hourly wage employees involved in direct patient care activities or clinical services in health care facilities.

### **8:43E-8.2 Applicability**

(a) The rules in this subchapter do not apply to the following:

1. Physicians;
2. Volunteers;
3. Employees who volunteer to work overtime;
4. Employees of assisted living facilities that are licensed in accordance with N.J.A.C. 8:36 and who receive room and board as a benefit of employment and reside at the facility on a full-time basis;
5. Employees who assume on-call duty;
6. Employees participating in a surgical or therapeutic interventional procedure that is in progress, when it would be detrimental to the patient if the employee left. However, in the case of elective procedures, the rules do apply if the procedure was scheduled such that the length of time ordinarily required to complete the procedure would exceed the end of the employee's scheduled shift; and
7. Employees not involved in direct patient care activities or clinical services.

### **8:43E-8.3 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Chronic short staffing" means a situation characterized by long standing vacancies in that portion of the facility's master staffing plan applicable to the work unit of an employee who files a complaint where such vacancies are the result of open positions that continually remain unfilled over a period of 90 days or more despite active recruitment efforts.

"Commissioner" means the Commissioner of Health and Senior Services.

"Department" means the New Jersey Department of Health and Senior Services.

"Direct patient care activities" or "clinical services" means activities/services in which an employee provides direct service to patient/residents in a clinical setting, including the emergency department, inpatient bedside, operating room, other clinical specialty treatment area, or, in the case of a patient served by a home health care agency or health service firm, the individual's home.

"Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services and receives an hourly wage, but shall not include a physician.

"Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.

"Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.), a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L. 1960, c.39 (N.J.S.A. 56:8-1 et seq.).

"Licenses" means the action taken by a State agency to license, certify, or register a health care facility subject to the jurisdiction of that State agency.

"On-call time" means time spent by an employee who is not currently working on the premises of the place of employment, but who is compensated for availability, or as a condition of employment has agreed to be available, to return to the premises of the place of employment on short notice if the need arises.

"Reasonable efforts" means that the employer shall:

1. Seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance;
2. Contact all qualified employees who have made themselves available to work extra time;
3. Seek the use of qualified per diem staff; and
4. Seek qualified personnel from a contracted temporary agency when such staff is permitted by law, regulation or applicable collective bargaining agreements.

"Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

#### **8:43E-8.4 Purpose**

The rules in this subchapter are intended to promote the health, safety, and welfare of patients, residents and clients of health care facilities as well as of certain hourly wage employees of those facilities through establishing rules implementing the statutory limitations on health care facilities' authority to require certain hourly wage employees, involved in direct patient care activities or clinical services, to work overtime.

#### **8:43E-8.5 Overtime procedures**

(a) Except as provided for in (b) below, an employer shall not require an employee involved in direct patient care activities or clinical services to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week. The acceptance by any employee of work in excess of this shall be strictly voluntary. The refusal of an employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the employee.

(b) The requirements of (a) above shall not apply in the case of an unforeseeable emergent circumstance when:

1. The overtime is required only as a last resort, and is not used to fill vacancies resulting from chronic short staffing; and

2. The employer has exhausted reasonable efforts to obtain staffing. However, exhaustion of reasonable efforts shall not be required in the event of any declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services or causes the facility to activate its emergency or disaster plan.

(c) In the event that an employer requires an employee to work overtime pursuant to (b) above, the employer shall provide the employee with necessary time, up to a maximum of one hour, which may be taken on or off the facility's premises, to arrange for the care of the employee's minor children, or elderly or disabled family members.

(d) On-call time shall not be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

#### **8:43E-8.6 Records; dissemination of information**

(a) An employer shall establish a system for keeping records of circumstances where employees are required to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, or in excess of 40 hours per week. The records shall include, but not be limited to:

1. The employee's name and job title;
2. The name of the employee's work area or unit;
3. The date the overtime was worked, including start time;
4. The number of hours of overtime mandated;
5. The employee's daily work schedule for any week in which the employee is required to work excess time;
6. The reason why the overtime was necessary;
7. A description of the reasonable efforts that were exhausted prior to requiring overtime. This shall include:
  - i. The names of employees contacted to work voluntary overtime;
  - ii. A description of efforts to secure per diem staff; and
  - iii. A list of the temporary agencies contacted; and
8. The signature of individual authorizing the required mandatory overtime.

(b) An employer shall provide the employee with a copy of the documentation in accordance with the requirements set forth in (a) above upon requiring that the employee work overtime, except that the total number, rather than the names, of employees contacted in accordance with (a)7i above shall be provided.

(c) Records as set forth in (a) above shall be kept a period of two years.

(d) A facility shall post in a conspicuous place a notice prepared by the New Jersey Department of Labor concerning New Jersey Mandatory Overtime Restrictions for Health Care Facilities (N.J.S.A. 34:11-56a et seq.)

### **8:43E-8.7 Enforcement and administrative penalties**

(a) If the Commissioner of Labor determines that a facility has violated provisions of this subchapter, the Commissioner of Labor may issue sanctions in accordance with the wage and hour regulations contained at N.J.A.C. 12:56.

(b) In cases where the State agency that licenses the facility and/or Department of Labor requests additional information from a facility concerning mandatory overtime usage, the facility shall comply with this request within 10 working days. The State agency that requested the information from the facility may, at its discretion, grant an extension to this time frame if the facility can demonstrate good cause. Failure to provide these records shall result in the issuance of administrative penalties in accordance with N.J.A.C. 12:56-1.2 and 8:43E-3.4(a)13.

(c) If the State agency that licenses a facility subject to this chapter determines through a survey or complaint investigation that the facility exhibits a pattern or practice of noncompliance with N.J.A.C. 8:43E-8.5, that State agency shall notify the Department of Labor of the violation. The Department of Labor may also share with State agencies that license facilities subject to this chapter any information it develops on Statewide and facility-specific trends, such as number of mandatory overtime complaints filed; the number of complaints found to be valid; the number of enforcement actions appealed; and the number of enforcement actions upheld.

(d) In the event a facility licensed by the Department fails to develop and implement the required recordkeeping in accordance with N.J.A.C. 8:43E-8.6 and the required policies and procedures in accordance with this section, the Department shall take enforcement action in accordance with the provisions of N.J.A.C. 8:43E-3.4(a)13.



(e) Nothing in this subchapter shall be construed to relieve a facility of its obligation to comply with State licensure standards pertaining to minimum employee staffing levels.

#### **8:43E-8.8 Policies and procedures**

(a) A facility shall develop, revise as necessary and implement policies and procedures for the purpose of training and educating staff on mandatory overtime. The policies and procedures shall include mandatory educational programs that address at least the following:

1. The conditions under which an employer can require mandatory overtime;
2. Overtime procedures;
3. Employee rights; and
4. Complaint procedures.

(b) A facility shall establish a staffing plan designed to facilitate compliance with the requirements of this subchapter.

1. The staffing plan shall include procedures to provide for replacement staff in the event of sickness, vacations, vacancies and other employee absences.

(c) Upon request, the staffing plan and all related policies and procedures shall be made available to the Department of Labor and/or the State agency that licenses the facility.

#### **8:43E-8.9 Discharge or discrimination against an employee making a complaint**

An employer shall not discharge or in any other manner discriminate against an employee because such employee has made any complaint to his or her employer, including the employer's representative; to the Commissioner of Labor; or to the State agency that licenses the facility where the employee works that the employee has been required to work overtime in contravention to the provisions of this chapter.

#### **8:43E-8.10 Complaint system**

(a) An employee covered by this subchapter shall have a right to file a complaint up to two years following the date of the assigned mandatory overtime if he or she believes the overtime was not in response to an unforeseen emergent circumstance, and/or required reasonable efforts were not exhausted, and/or he or she was not provided the allowed time to make arrangements for the care of family members. All such complaints shall be submitted to:

Labor Standards and Safety Enforcement Directorate  
Division of Wage and Hour Compliance of the  
Department of Labor  
PO Box 389  
Trenton, New Jersey 08625-0389

1. If requested, records of such reports shall be made available upon request to the Department or to the Department of Law and Public Safety or to the Department of Human Services.

#### **8:43E-8.11 Protection of the right to collective bargaining**

Nothing in this subchapter shall be construed to impair or negate any employer-employee collective bargaining agreement or any other employer/employee contract in effect as of January 1, 2003 for licensed general hospitals and July 1, 2003 for all other facilities subject to these rules as set forth at N.J.A.C. 8:43E-8.1.

#### **8:43E-8.12 Data**

A facility shall submit data related to the effects of prohibiting mandatory overtime in accordance with this chapter as well as data required to determine whether chronic staffing shortages exist, as the State agency which licenses the facility shall request from time to time directly from each facility.