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NEW JERSEY REGISTER

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 26 NUMBER 9

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(Includes adopted rules filed through April 11, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 22, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MARCH 21, 1994

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **June 1, 1994.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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July 5 issue:	
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Adoptions	**June 13**

NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 13(1994)
Rescission of State of Emergency Concerning Gas Transmission Pipeline Pressure

Issued: March 29, 1994.
Effective: March 29, 1994.
Expiration: Indefinite.

WHEREAS, a natural gas transmission pipeline located in the Township of Edison, County of Middlesex, exploded at or about midnight on March 24, 1994; and

WHEREAS, conditions and issues related to the explosion required that I invoke the emergency powers vested in the Governor by the Constitution and Statutes of this State, including, but not limited to, the provisions of the Laws of 1942, Chapter 251 (N.J.S.A. App. A:9-3 *et seq.*) and the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4); and

WHEREAS, I issued Executive Order No. 12 on March 25, 1994, declaring a state of emergency, which Order provided, among other things, that all natural gas suppliers reduce transmission pipeline pressure by five (5) percent of the Maximum Available Operating Pressure; and

WHEREAS, such Order also provided that the Commissioner of the Department of Environmental Protection and Energy and President of the Board of Regulatory Commissioners should meet with representatives of the affected natural gas suppliers and representatives of the gas utilities to obtain their recommendations, which meeting was held on March 29, 1994 and included representatives of the Federal Energy Regulatory Commission and the U.S. Department of Transportation, Office of Pipeline Safety; and

WHEREAS, the State of New Jersey and the federal government have agreed to conduct a joint investigation of all interstate natural gas transmission pipelines operating in the State of New Jersey; and

WHEREAS, the parties have agreed to cooperate with future federal and State regulatory inspections, and the U.S. Department of Transportation, Office of Pipeline Safety has ordered a reduction of pipeline pressure in the vicinity of the explosion with respect to the line involved,

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The state of emergency that prompted the issuance of Executive Order No. 12 having subsided, Executive Order No. 12 is hereby rescinded.

2. Nevertheless, the Acting Superintendent of the Division of State Police remains authorized and empowered to utilize all facilities owned, rented, operated, and maintained by the State of New Jersey to house and shelter persons who may need shelter as a consequence of the emergency.

3. The Acting Superintendent of the Division of State Police remains authorized to order the evacuation of all persons from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by the emergency.

4. The Department heads of the various agencies of State government who are called upon to provide assistance in the aftermath of the Edison explosion shall continue to lend assistance to ensure the protection of the health, safety, and resources of the residents of the Township of Edison and the State of New Jersey.

5. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 14(1994)
Advisory Panel on Higher Education in Restructuring

Issued: March 30, 1994.
Effective: March 30, 1994.
Expiration: Indefinite.

WHEREAS, the institutions of higher education are one of the most valuable and underutilized resources in the State; and

WHEREAS, the elimination of State oversight and its accompanying bureaucracy will serve to unleash the creativity and innovation of these institutions; and

WHEREAS, the Governor has proposed the elimination of the Department of Higher Education as of July 1, 1994 and the shifting of its core functions to other areas of State government and to the institutions themselves; and

WHEREAS, implementation of the proposal must provide that student aid programs be not only preserved but also strengthened and that the State continue to foster and encourage programs to promote diversity and accessibility; and

WHEREAS, higher education must continue to be affordable for students; and

WHEREAS, any legislation or executive order to accomplish these objectives should be proposed with the active participation of the entire higher education community;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitition and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Advisory Panel on Higher Education Restructuring is hereby established as set forth in this Order. The Advisory Panel shall consist of fifteen (15) members as follows:

a. Thirteen (13) members, including the chair and vice chair, appointed by the Governor, at least four of whom shall be presidents of higher education institutions in the State, and two of whom shall be members of the State Board of Higher Education;

b. One (1) member appointed by the President of the Senate;

c. One (1) member appointed by the Speaker of the General Assembly.

2. The Advisory Panel shall assist the Governor in proposing legislation to implement the restructuring of the system of higher education based upon the objectives set forth below.

3. The proposed legislation should address the following objectives:

a. Institutions of higher education must be given maximum autonomy with a minimum of bureaucratic controls in order to meet the specific needs of their students.

b. Higher education must be affordable and accessible.

c. Political influences must not intrude into the decision-making process.

d. The system must avoid administrative overlap and duplication.

4. The proposed legislation should provide for the elimination of the Department of Higher Education with the core functions of the department being shifted to the appropriate entities, including, but not limited to:

a. A coordinating council consisting of the presidents of each public or private institution of higher education, which council would be responsible for the coordination of programs among the various institutions; and

b. A commission for higher education, which commission would be responsible for long range planning for higher education.

5. The Advisory Panel shall present its recommendations on or before May 2, 1994.

6. The Advisory Panel is authorized to call upon any department, offices or agency of State government to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each departmemt, officer, division and agency of this State is hereby required to cooperate with the Advisory

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Panel and to furnish it with such information, personnel and assistance as is necessary to accomplish the purposes of this Order.

7. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 15(1994)
Office of the Business Ombudsman

Issued: April 5, 1994.
Effective: April 5, 1994.
Expiration: Indefinite.

WHEREAS, there has been a marked increase in the number and complexity of permits, licenses, certificates and other approvals that businesses and all other sectors of the economy must obtain from an increasing variety of State agencies to undertake various commercial, industrial, and residential projects or activities in the State; and

WHEREAS, this expanding maze of regulation has made the cost of doing business in the State higher than in other states in many instances; and

WHEREAS, the inefficiencies resulting from the excessive cost of regulation have impeded the overall development of the economy and the growth of the State's individual businesses; and

WHEREAS, such inefficiencies have also discouraged the location of new businesses and the expansion of existing ones in the State; and

WHEREAS, the combined effects of the inefficiencies have adversely affected the business climate in the State; and

WHEREAS, it is possible to uphold existing standards for the public health, safety, and welfare while at the same time expediting compliance with regulations; and

WHEREAS, State government must provide leadership in transforming the State business climate into one that is supportive of and open towards business; and

WHEREAS, there is a need for a single office to coordinate exclusively an efficient and timely process for submission, evaluation, and resolution of applications for business permits, licenses, certificates and other approvals;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby ORDER and DIRECT:

1. There is hereby created the Office of the Business Ombudsman (hereinafter "Office") to be located in the Department of State.

2. The Secretary of State shall serve as the Business Ombudsman or appoint her designee to this position.

3. The Business Ombudsman shall be empowered to lead the Office in its primary responsibility of directing a comprehensive effort to assist businesses in dealing efficiently with State regulations.

4. Specifically, the Office shall function to provide guidance to persons who inquire about business permits, licenses, certificates and other business-related approvals. Any such similar functions of the Office of Business Advocacy in the Department of Commerce and Economic Development shall be transferred to the Office. The files, books and records of the Office of Business Advocacy that are relevant to its function of providing guidance to persons who inquire about business permits, licenses, certificates and other approvals shall be transferred from the Office of Business Advocacy to the Office.

5. Consistent with the consolidation of the aforementioned functions of the Office of Business Advocacy into the Office, the Secretary of State, or her designee, shall replace the Chief of the Office of Business Advocacy on the Cabinet Committee on Permit Coordination (hereinafter "Cabinet Committee"), which Cabinet Committee was reconstituted pursuant to Executive Order No. 100 of Governor Thomas H. Kean. Moreover, the Secretary of State, or her designee, shall replace the Commissioner of Commerce and Economic Development as Chairperson of the Cabinet Committee, and the Office shall assume the roles performed by the Office of Business Advocacy for the Cabinet Committee. The Secretary of State shall appoint an Executive Director of the Cabinet Committee.

6. All functions currently performed by the Office of Business Advocacy that do not relate to providing guidance to persons who inquire about business permits, licenses, certificates and other business-related approvals shall remain in said Office of Business Advocacy in the Department of Commerce and Economic Development.

7. The Office is hereby directed to provide guidance to persons who inquire about business permits, licenses, certificates and other approvals that are required to do business in this State.

8. The Business Ombudsman is hereby authorized to appoint and remove such staff as may be required to fulfill the mandates of this Order, subject to the provisions of Title 11A (Civil Service Act) of the Revised Statutes, when relevant, other applicable statutes, and the appropriations limit for the Office. Any persons appointed by the Business Ombudsman under this Order shall be designated employees of the Department of State.

9. The Business Ombudsman shall maintain the Office and such other quarters as deemed necessary to the proper functioning of the Office.

10. The Office is authorized to call upon any department, office, division or agency of this State to supply it with data and other information or assistance as deemed necessary to discharge the duties of the Office under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Business Ombudsman and provide such information and assistance as is necessary to accomplish the purpose of this Order. Notwithstanding anything in this Order to the contrary, the Office shall not supplant the function of any department, office, division or agency of the State to review and approve any governmental permit, license, certificate or other approvals.

11. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 16(1994)
Authority to Designate Places of Confinement for State-Sentenced Inmates

Issued: April 4, 1994.
Effective: April 4, 1994.
Expiration: Indefinite.

WHEREAS, the state prisons and other penal and correctional institutions of the New Jersey Department of Corrections continue to house populations of inmates in excess of their capacities and remain overcrowded; and

WHEREAS, as of March 1994 the total adult inmate population of State-sentenced prisoners was 23,608, including 4,020 State-sentenced inmates in county jails; and

WHEREAS, the State's adult and youth correctional institutions are currently operating at 134.3 percent of design capacity; and

WHEREAS, these conditions continue to endanger the safety, welfare, and resources of the residents of this State; and

WHEREAS, from June 1981, when Executive Order No. 106 (Byrne) was issued under the authority of the Disaster Control Act, until this month, the population of State-sentenced prisoners grew from 7,940 to 23,608, exceeding all predictions for inmate population growth and taxing all State correctional facilities; and

WHEREAS, the scope of this crisis prevents local governments from safeguarding the people, property, and resources of the State and warrants a centralized management approach to inmate housing assignments; and

WHEREAS, despite the construction of three prisons since the issuance of Executive Order No. 106 (Byrne), designed for 3,000 inmates and which now house 5,034 inmates at a construction cost of approximately $150 million, expansions of all existing facilities, and the opening of a facility at Fort Dix under a lease agreement with the federal government, the prison population growth has consistently outstripped infrastructure expansion throughout the past decade, exacerbating crowding conditions; and

WHEREAS, efforts are continuing to address the problem, including the planned construction of a new prison facility to be operational by the end of 1995; and

WHEREAS, the State continues to make a good faith effort to reduce the population of State-sentenced inmates housed in county facilities; and

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WHEREAS, the conditions specified in Executive Order No. 106 (Byrne) of June 19, 1981, continue to present a substantial likelihood of disaster, and in fact have worsened since that time as the prison population has expanded exponentially; and

WHEREAS, the Supreme Court of New Jersey has determined that executive authority to address these emergency conditions under the Disaster Control Act expires on April 22, 1994; and

WHEREAS, Executive Order No. 3 of January 19, 1994 was issued pursuant to the Disaster Control Act to address these emergency conditions and will expire on April 22, 1994; and

WHEREAS, the State Legislature, by enactment of P.L. 1994 c.12 (C.), has declared a continuing state of emergency in the State prisons and other penal and correctional institutions of the New Jersey Department of Corrections; and

WHEREAS, the State Legislature, by enactment of P.L. 1994, c.12 (C.), has conferred upon the Governor the authority to issue executive orders pursuant to that act in order to address the effects of the continuing state of emergency declared therein;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT as follows:

1. I invoke such powers as are conferred upon me by P.L. 1994, c.12 (C.).

2. I hereby direct that the authority to designate the place of confinement of any State-sentenced inmate shall be exercised for the duration of this Order by the designee of the Governor to address the emergency conditions within the State prisons and other penal and correctional institutions of the New Jersey Department of Corrections.

3. I hereby designate the Commissioner of the New Jersey Department of Corrections (the "Commissioner") to effectuate the provisions of this Order.

4. The Commissioner may designate as a place of confinement any available, suitable, and appropriate institution or facility, whether owned by the State, a county, or any political subdivision of this State, or any other person, for the confinement of inmates confined or to be confined in the State and/or county penal or correctional institutions.

5. The Commissioner shall consult with the appropriate county officials prior to implementation of any substantial change in the population of State-sentenced inmates housed in that county.

6. The Commissioner shall have full authority to adopt such rules, regulations, orders and directives as he shall deem necessary to effectuate the provisions of this Order.

7. The Commissioner shall establish a per diem rate in accordance with existing law to compensate counties that house State-sentenced inmates.

8. This Order shall take effect immediately.

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Withdrawal of Rule Proposal
Special Hearing Rules
Family Development Hearings
Withdrawal: Proposed New Rules: N.J.A.C. 1:10-14.2 and 14.3
Proposed Amendments: N.J.A.C. 1:10-1.1, 9.1, 9.2, 14.1 and 18.1

Withdrawn By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Take notice that on August 22, 1993, the Division of Family Development (DFD) proposed amendments creating an administrative disqualification process for Aid to Families with Dependent Children (AFDC) intentional program violations. 25 N.J.R. 3408(a). On September 7, 1993 the Office of Administrative Law (OAL) proposed amendments to its special rules for DFD cases. 25 N.J.R. 3888(a). These proposed amendments set forth a hearing process for the AFDC intentional program violation cases.

The DFD has informed the OAL that it does not intend to adopt its proposal concerning AFDC intentional program violations. In view of this decision, the OAL is withdrawing its proposal. Obviously, without authorization for imposing administrative penalties in AFDC intentional program violation cases, there is no need for an administrative process for hearing such cases.

The OAL proposal also included new rules incorporating procedures required by Federal regulation. These proposed new rules, as well as some clarifying amendments are being separately reproposed in this issue of the New Jersey Register.

(b)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules
Family Development Hearings
Proposed Amendments: N.J.A.C. 1:10-1.1
Reproposed New Rules: N.J.A.C. 1:10-14.2 and 14.3

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1994-271.

Submit comments by June 1, 1994, to:
Jeff S. Masin, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On September 7, 1993, the Office of Administrative Law proposed amendments to the special rules for cases from the Division of Family Development. (See 25 N.J.R. 3888(a).) Although the proposal's primary purpose was to establish a hearing process for individuals charged with intentionally committing an Aid to Family with Dependent Children program violation, the proposal also clarified OAL's existing procedures in several respects. While the OAL is withdrawing the proposal because the AFDC intentional program violation hearing process will not be needed, it is reproposing the provisions which clarify its process and ensure compliance with the applicable Federal regulations.

The proposed amendment to N.J.A.C. 1:10-1.1 updates the agency reference from Division of Economic Assistance to Division of Family Development. The proposed amendment also reiterates that these rules are established in implementation of Federal law and therefore may not be relaxed except as provided by Federal regulation.

Reproposed new rule N.J.A.C. 1:10-14.2 specifies the right of the charged applicant/recipient at a food stamp program violation hearing to remain silent and to refuse to answer questions, as required by Federal regulation. This process has been applied in food stamp intentional program violation hearings, but was not clearly delineated in the OAL rules.

Reproposed new rule, N.J.A.C. 1:10-14.3 tracks the Federal rules; it permits the administrative law judge to order an independent medical assessment or professional evaluation at county welfare agency or municipal welfare department expense for good cause.

Social Impact

These proposed amendments and reproposed new rules specifically incorporate Federally mandated requirements concerning the hearing process into the OAL hearing rules. Since the Federal regulations are controlling, these provisions have been applied in hearings, but have not been set forth in OAL's rules.

Economic Impact

These proposed amendments and reproposed new rules set forth provisions concerning the hearing process which are mandated by Federal regulation and which have been previously applied. No economic impact is anticipated.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and reproposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules apply to county and municipal welfare agencies and to individual applicants and recipients for AFDC and food stamp benefits.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

1:10-1.1 Applicability

(a) The rules in this chapter shall apply to matters transmitted to the Office of Administrative Law by the Division of [Economic Assistance (DEA)] **Family Development (DFD)** where an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency (CWA) or a local decision or inaction by a municipal welfare department (MWD). These rules also apply to food stamp intentional program violations. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, 7 C.F.R. 273.16; 45 C.F.R. §205.10; 7 C.F.R. §273.15. In any case where these rules can be construed as conflicting with Federal requirements, the Federal requirements shall apply. Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided pursuant to Federal law.

1:10-14.2 Intentional program violation hearings

At an intentional program violation hearing, the charged applicant/recipient has a right to remain silent and may refuse to answer questions. 7 C.F.R. 273.16(e)(2)(iii); 45 C.F.R. 235.113(b)(3)(ii)(K).

1:10-14.3 Independent medical assessment

For good cause, the administrative law judge may order an independent medical assessment or professional evaluation when the hearing involves medical issues. Such medical assessment shall be obtained at CWA or MWD expense. 7 C.F.R. 273.15(m)(2)(v); 7 C.F.R. 273.16(e)(2)(ii); 45 C.F.R. 205.10(a)(iii)(10); 45 C.F.R. 235.113(b)(6).

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ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION

Coastal Permit Program Rules Enforcement

Proposed New Rules: N.J.A.C. 7:7-8

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 12:5-1 et seq., 13:1D-1 et seq., 13:19-1 et seq. and 13:9A-1 et seq.

DEPE Docket Number: 21-94-03/428.

Proposal Number: PRN 1994-264.

A **public hearing** concerning this proposal will be held on the following date at the following location.

Tuesday, May 17, 1994
10:00 A.M.
New Jersey Department of Environmental Protection and Energy
401 East State Street (1st floor)
Trenton, New Jersey 08625

Submit written comments, identified by the Docket Number given above, by June 1, 1994 to:

Janis Hoagland, Esq.
Administrative Practice Officer
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Coastal Permit Program Rules at N.J.A.C. 7:7 establish the procedures by which the Department reviews permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19-1 et seq.), the Wetlands Acts of 1970 (N.J.S.A. 13:9A-1 et seq.), and the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.). In 1984, the Department promulgated the Coastal Permit Program Rules by consolidating the procedural rules governing the permit review process for the coastal permit programs authorized by the above three statutes. As authorized by the three statutes, the Coastal Permit Program Rules govern the following types of activities: (1) under CAFRA, certain construction within the coastal area described in Section 4 of CAFRA (N.J.S.A. 13:19-4); (2) under the Wetlands Act of 1970, the draining, dredging, excavation, or deposition of material, and the erection of structures, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act (a list of these maps and a full list of regulated activities appear in N.J.A.C. 7:7-2.2); and (3) under the Waterfront Development Act, the filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways (see N.J.A.C. 7:7-2.3).

CAFRA was amended on July 19, 1993. The amended law tightens existing regulatory thresholds for the issuance of permits, pursuant to CAFRA, and makes a number of administrative changes to CAFRA including new civil administrative penalty provisions. The Department recently proposed amendments to the Coastal Permit Program rules at N.J.A.C. 7:7, the Coastal Zone Management rules at N.J.A.C. 7:7E and the Ninety-day Construction Permit rules at N.J.A.C. 7:1C, implementing the regulatory requirements of the 1993 legislative amendments to CAFRA. These rule proposals were published in the February 22, 1994 New Jersey Register at 26 N.J.R. 918(a), 943(a) and 913(a), respectively.

The CAFRA amendments take effect on July 19, 1994. Certain development is exempt from the new requirements if the developer has received preliminary site plan approval pursuant to the Municipal Land Use Law or a final municipal building or construction permit prior to that date. In addition, residential development is exempt if by July 19, 1994, the developer has received preliminary subdivision approval or minor subdivision approval and no subsequent site plan approval is required. These exemptions remain valid provided that construction begins by July 19, 1997 and continues to completion without interruption of more than one year. However, these exemptions do not apply to any development which previously required a CAFRA permit.

The CAFRA amendments provide that within 150 feet of the mean high water line or the landward limit of a beach or dune, whichever is most landward, any development which constitutes a "first use" in that area is subject to permit review. However, if there is an intervening structure within 150 feet of the water, beach or dune that is ("first use"), only residential development with three or more units, commercial developments with five or more parking spaces, and all public and industrial developments require permit review.

Beyond 150 feet from the mean high water line or landward limit of a beach or dune, residential developments of 25 or more units, commercial developments with 50 or more parking spaces and all industrial and public developments are subject to permit review under the CAFRA amendments.

In urban coastal municipalities, the threshold is further modified for land more than 500 feet from the mean high water line or landward limit of a beach or dune. In these areas, permit review will be required for residential developments of 75 or more units and commercial developments with 150 or more parking spaces. This higher threshold applies in Asbury Park, Atlantic City, Bridgeton, Keansburg, Lakewood, Long Branch, Millville, Neptune, Pleasantville, and Salem City. The list of urban areas, specified in the legislation, is based largely on the eligibility criteria for "urban aid."

Also exempted from regulation under the new legislative amendments are the reconstruction of any development that was damaged or destroyed by fire, storm, natural hazard or act of God; enlargements that do not increase the footprint or number of dwelling units of the development; the construction of a patio, deck or similar structure at a residential development; the routine reconstruction, maintenance or repair of a public highway, including safety and repaving improvements; the construction of seasonal or temporary structures related to the tourism industry; and the expansion of an existing, functional amusement pier provided such expansion is located 150 feet landward of the mean high water line, beach or dune.

The CAFRA region extends from the confluence of the Cheesequake Creek and Raritan Bay in Middlesex County, along the Atlantic Ocean coastline and Delaware Bay, and then northwest along the Delaware River to Pennsville, Salem County. It includes all riparian, tidelands, and coastal wetlands acreage, encompassing 1,376 square miles of land area, and ranges in widths from a few thousand feet to 24 miles, totaling 18 percent of the State's land area.

The Department is herein proposing new rules to reflect and effectively administer the enforcement provisions of the legislative mandates. As amended, CAFRA authorizes the Department to assess civil administrative penalties up to a maximum of $25,000 per violation, and requires the Department to adopt a uniform penalty policy governing the calculation and assessment of civil administrative penalties. Since the rules at N.J.A.C. 7:7 governs the permit process under the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.) and the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), the Department is also proposing new rules to administer the enforcement provisions for those statutes. Generally, the Waterfront Development Act authorizes the Department to assess civil administrative penalties up to a maximum of $1,000 per violation with additional penalties of not more than $100.00 for each day during which the violation continues after receipt of an administrative order from the Department. Civil penalties may be imposed by Superior Court for violations of the Wetlands Act of 1970 up to a maximum of $1,000 per violation.

Violations of CAFRA which cause egregious environmental harm and/or impact a greater area will subject the violator to fines approaching or reaching the statutory limit of $25,000 per violation per day. The Department is proposing to assess lower penalties for violations that impact a smaller area and are less likely to cause environmental harm. These types of unauthorized activities are generally undertaken by residential property owners and small business interests. The Department first established a based penalty based on conduct of the violator, area disturbed and special area or resources impacted by the violation. The Department allows for reductions of a penalty by 50 percent in situations in which: (1) a violation can be mitigated, such as the removal of a small structure, within 30 days of receipt of notice of the violation from the Department; or (2) a permit can be obtained for an unauthorized development without the need for mitigation since this indicates that the development has caused no serious environmental harm. The ability

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to reduce penalties in this manner advances the Department's existing policy of encouraging the implementation of subsequent remedial measures.

To the extent possible, the Department has drafted these proposed penalty assessment provisions so that they are similar to the penalty provisions of other Department regulations, such as those developed purusant to the Water Pollution Control Act and the Solid Waste Management Act. Thus the proposed penalty schemes takes into account the conduct of the violator and the degree of environmental harm caused by the violation. The proposed penalty provisions differentiate among acts that are intentional; acts that are unintentional but foreseeable; and any other conduct. Additionally, the proposed penalty rules differentiate between violations that cause, or have the potential to cause, serious harm; substantial harm; and minimal harm.

The Department is proposing to account for actual environmental harm in the calculation of a CAFRA penalty by including a method for increasing a penalty based on the impact to areas which possess certain characteristics or conditions which warrant special protection from inappropriate development because of their environmental importance. These sensitive areas are classified as "special areas or resources" and are defined in the rules on Coastal Zone Management at N.J.A.C. 7:7E-3. The Coastal Zone Management rules impose special restrictions upon development activity in these special areas. Because of their inherent environmental sensitivity, the Department believes that development in the special areas provides sufficient indicia of harm to justify a higher penalty assessment.

The Department also considers square footage disturbed by an unpermitted development to correspond to the degree of actual or potential environmental harm caused by a violation. Accordingly, a violation that results in the disturbance of less than 270 square feet, which may correspond with the unpermitted development of a commercial parking space or residential outbuilding, for example, would warrant a small penalty, reflecting minimal environmental impact. Progressively higher penalties would be assessed in fixed increments as the areas disturbed increases.

The following is a summary of the substantive provisions of each section in the proposed subchapter:

N.J.A.C. 7:7-8.1 addresses the Department's authority to seek remedies for violations under CAFRA and the Waterfront Development Act. Where authorized by statute, these remedies include issuing orders, bringing a civil action, levying a civil administrative penalty and bringing an action for a civil penalty.

N.J.A.C. 7:7-8.2 sets forth the Department's process for issuing an order for violations under CAFRA and the Waterfront Development Act. The ordered party may contest an order issued under CAFRA in accordance with N.J.A.C. 7:7-8.4 and an order issued under the Waterfront Development Act in accordance with N.J.A.C. 7:7-8.11.

N.J.A.C. 7:7-8.3 describes the Department's process for assessing penalties for violations under CAFRA. This section also identifies when payment of a penalty is due. In contested cases, payment is due upon the issuance of a final order. In cases where a hearing request is denied by the Department, a notice of civil administrative penalty (NOCAPA) becomes a final order and payment is due upon receipt of the notice of denial. When no hearing is requested, a NOCAPA becomes a final order on the 21st day following receipt of the NOCAPA and payment becomes due. The Department is authorized under CAFRA to assess interest charges from the date payment is due when payment is not received within 30 days from the due date. The Department also proposes factors that may be considered in determining whether and how to settle an administrative penalty.

N.J.A.C. 7:7-8.4 sets forth the procedures for requesting an adjudicatory hearing to contest an administrative order and/or a NOCAPA issued pursuant to CAFRA.

N.J.A.C. 7:7-8.5 describes the process the Department will use to assess civil administrative penalties for violations of N.J.A.C. 7:7-2.1(a). Points are assessed for each violation based on the conduct of the violator; size of the area of disturbance; and the number of special areas or resources within which the development is built. The base penalty for a violation ranges from $500.00 to $25,000, depending upon the number of points assessed for each violation. The base penalty can be reduced by 50 percent if: (1) the violator can remove the unauthorized development and mitigate any effects within 30 days of the receipt of the notice of violation from the Department; or (2) if a permit can be obtained by the violator for the unauthorized development and no mitigation, modification or restoration is required. These reduction factors cannot both be applied to a single violation. The Department may also increase or decrease the amount of a penalty based on certain enumerated discretionary factors within a range that is defined by 25 percent of the base penalty and the statutory limit.

N.J.A.C. 7:7-8.6 contains the penalty matrix by which, for violations other than the failure to obtain a permit under CAFRA or where the Department believes that the penalty amount under N.J.A.C. 7:7-8.4 would be inappropriate in providing a necessary deterrent effect, the Department will assess penalties based on the conduct of the violator and the actual or potential environmental harm caused. This section also lists discretionary factors on the basis of which a penalty may be increased or decreased within the range of penalties.

N.J.A.C. 7:7-8.7 addresses the liability of a violator for civil penalties of not more than $25,000 for (1) each violation of CAFRA or any rule, permit, order, civil administrative penalty assessment issued pursuant to CAFRA and (2) each day for which the violation continues.

N.J.A.C. 7:7-8.8 sets forth penalties for violations of the Waterfront Development Act. These penalties will be based on the conduct of the violator and the size of the regulated structure. Higher penalties are proposed for intentional acts. Moderate penalties are proposed for unintentional but foreseeable acts. Lower penalties are proposed for all other conduct. The Department will assess: (1) lower penalties if the development was limited to four or less regulated pilings; (2) moderate penalties for regulated docks 100 square feet or less and breakwaters 40 linear feet or less; and (3) higher penalties for all other regulated structures. Penalties can range from $250.00 up to the statutory limit of $1,000. Penalties may be adjusted between $125.00 and $1,000 based on discretionary factors listed in this section.

N.J.A.C. 7:7-8.9 provides that the Department may assess additional civil administrative penalties under the Waterfront Development Act of not more than $100.00 for each day during which a violation continues.

N.J.A.C. 7:7-8.10 describes the Department's process for assessing penalties for violations under the Waterfront Development Act. This section also identifies when payment of a penalty is due. This section differs from N.J.A.C. 7:7-8.3 in that the Department is not authorized under the Waterfront Development Act to assess interest charges for a late penalty payment. Also, unlike CAFRA, the Waterfront Development Act does not provide that a notice of civil administrative penalty assessment becomes a final order when no hearing is requested or if the Department denies the hearing. Rather, the Department must issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment.

N.J.A.C. 7:7-8.11 sets forth the procedures for the violator to request an adjudicatory hearing to contest an administrative penalty assessment pursuant to the Waterfront Development Act. These procedures differ from those procedures found in proposed N.J.A.C. 7:7-8.4, which apply to requests for adjudicatory hearings to contest penalties imposed pursuant to CAFRA, in that the violator has 21 days, instead of 20 days, to submit a written request for a hearing.

N.J.A.C. 7:7-8.12 addresses the liability of a violator for civil penalties of not more than $1,000 for each violation of the Wetlands Act of 1970.

N.J.A.C. 7:7-8.13 provides that, as authorized by statutes, the Department can, when it deems appropriate, institute an action or proceeding in the Superior Court for injunctive and other relief for any violation of CAFRA, the Waterfront Development Act, or the Wetlands Act of 1970.

N.J.A.C. 7:7-8.14 provides that if any provision of this subchapter is held invalid, that such invalidity will not affect other provisions of the subchapter.

Social Impact

The Department's proposed new rules concerning the assessment of civil administrative penalties and the imposition of other civil actions will have a positive social impact by encouraging compliance and discouraging noncompliance with the Coastal Program Permit rules at N.J.A.C. 7:7. Compliance with N.J.A.C. 7:7 will significantly reduce environmental damage to the delicately balanced coastal areas of the State.

These proposed new rules will implement the legislative amendments to CAFRA, signed into law by Governor Florio on July 19, 1993. Those amendments provided for the assessment of civil administrative penalties for violations of CAFRA and any rules promulgated, or orders or permits issued pursuant to CAFRA. The new rules also set forth the procedures for enforcing the Waterfront Development Act and the Wetlands Act of 1970. The general public will benefit from the improved environmental quality of the coastal areas of the State which is expected to result from

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better compliance with the Coastal Program Permit Rules. Failure to adopt this enforcement subchapter of N.J.A.C. 7:7 would adversely affect property owners and those persons undertaking regulated activities in coastal areas by not establishing a uniform policy for administrative penalty assessments as provided for in the legislative amendments to CAFRA.

Economic Impact

These rules will have little economic impact upon persons complying with the Coastal Program Permit rules. The extent of the economic impact on violators will depend on factors such as the environmental impact of the offense and the conduct of the violator.

The 1993 legislative amendments to CAFRA require the Department to regulate smaller developments. As such, more property owners in the coastal area will be subject to permit requirements and may therefore be subject to penalties for conducting unauthorized activities if they fail to comply with the requirements of N.J.A.C. 7:7. The Department has structured the CAFRA penalty assessment process so as to differentiate between violations involving smaller developments, which may impact a smaller area and hence have a lesser environmental impact, and violations involving larger developments, which may impact a larger area and consequently have a greater environmental impact. Violations of CAFRA which cause more egregious environmental harm and/or impact a greater area will subject the violator to fines approaching or reaching the statutory limit of $25,000 per violation per day.

Over the long term, compliance with N.J.A.C. 7:7 will lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism, recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. Losses due to noncompliance with the rules will be offset by the economic loss avoided as a result of comprehensively regulating uses of the coastal area.

Environmental Impact

This rulemaking is intended to serve as a deterrent to those who would violate the provisions of N.J.A.C. 7:7. The Department anticipates that the proposed new rules will, by establishing civil administrative penalties for the violation of the Coastal Permit Program rules, provide the regulated community with a strong incentive to conduct their activities in conformance with the Department's rules, thereby protecting the natural resources of this State.

The provisions of the Coastal Permit Program rules operate to minimize the impacts of coastal area projects on the environment. In general, the rules preserve the most ecologically sensitive and fragile areas along the coastal from inappropriate development and provide adequate environmental safeguards for construction that does occur in the coastal area. The rules steer development away from naturally hazardous and sensitive areas, protects estuarine and marine environments from adverse impacts, and promotes resource conservation and designs sensitive to the environment. Thus, to the extent that this subchapter deters noncompliance with N.J.A.C. 7:7, the environment will benefit.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a significant portion of builders and property owners affected by the proposed rules described above will be "small businesses" as defined in the Act. The Department has recognized that certain "threshold" violations will generally be conducted by homeowners and small businesses and is proposing to assess lesser penalties for those types of violations which can be expected to have less environmental impact. The Department is proposing a 50 percent reduction for violations corrected within 30 days or where a permit can be obtained without the need for modification, restoration, or mitigation of the unauthorized development. It is anticipated that small developments which have caused no environmental harm would fall under these reductions.

In developing the proposed rules, the Department has sought to protect the public and the environment from the adverse impacts of unregulated development in the coastal area while minimizing, to the extent possible, any adverse economic impact of the rules on small businesses. The Department has determined that there is no authority in the statutes to exempt small businesses from regulation and that to minimize the impact of the enforcement of the Coastal Permit Program rules on small businesses beyond what is proposed would go beyond the Department's statutory authority and would endanger public health, public safety and the environment by undermining the coordination of coastal development to such a degree as to make the coastal policy goals impossible to meet. Therefore, no exemption from coverage is provided in the proposed rules.

Full text of the proposed new rules follows:

SUBCHAPTER 8. ENFORCEMENT

7:7-8.1 Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, pursue the remedies specified in 1 through 4 below. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:7-8.2;

2. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:7-8.13;

3. Levy a civil administrative penalty in accordance with N.J.A.C. 7:7-8.5 or 7:7-8.6; and/or

4. Bring an action for a civil penalty in accordance with N.J.A.C. 7:7-8.7.

(b) Any development or improvement enumerated in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., shall be deemed to be a purpresture, a public nuisance and a violation of N.J.S.A. 12:5-1 et seq. and shall be abated in the name of the State by one or more of the following actions:

1. The issuance of an administrative order in accordance with N.J.A.C. 7:7-8.2;

2. The commencement of a civil action by the Department in Superior Court for injunctive or other appropriate relief in accordance with N.J.A.C. 7:7-8.13; and/or

3. The levying of an administrative penalty by the Department in accordance with N.J.A.C. 7:7-8.10 and 8.11.

(c) The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter and inspect any building or place for the purposes of ascertaining compliance or noncompliance with any codes, rules and regulations of the Department.

7:7-8.2 Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7-8.4. After the hearing and upon finding that a violation has occurred, the Department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

(b) Any development or improvement commenced or executed in violation of the Waterfront Development Act, N.J.S.A. 12:5-1 et seq., may be abated by the State by the issuance of an administrative order by the Commissioner specifying that there has been a violation of the provisions of this section, or any applicable rule, regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation. Procedures to request a hearing on an administrative

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order issued pursuant to this subsection are contained in N.J.A.C. 7:7-8.11.

7:7-8.3 Procedures for assessment, settlement and payment of civil administrative penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To assess a civil administrative penalty under N.J.S.A. 13:19-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order or permit violated;

2. Concisely state the alleged facts which constitute the violation;

3. Specify the amount of the civil administrative penalty to be imposed and the fact that interest may be due in accordance with (c) below; and

4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.4, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;

2. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(b), a notice of civil administrative penalty assessment becomes a final order on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;

3. If the Department denies the hearing request pursuant to N.J.A.C. 7:7-8.4(c), a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial; or

4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey. Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if:

1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within 30 days of the date that payment is due; or

2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within 30 days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.5 or 8.6 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:7-8.5(g)4, 8.6(g)5 or 8.8(h)6;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.5(f)1i or 8.6(g)3, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

4. Any other terms or conditions acceptable to the Department.

7:7-8.4 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) To request an adjudicatory hearing to contest administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 13:19-1 et seq., the violator shall submit the following information in writing to the Department of Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request.

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7-8.5 Civil administrative penalties for failure to obtain a permit for regulated activities pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $25,000 for each violation of N.J.A.C. 7:7-2.1.

(b) Each violation of N.J.A.C. 7:7-2.1 shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within the table in (e) below by determining the number of points pursuant to (d) below. The civil administrative penalty shall be the amount within the table in (e) below, unless adjusted pursuant to (f) and/or (g) below.

(d) The Department shall determine the number of points assigned to each violation by summing the points according to (d)1 through 3 below.

1. Conduct of violator:

Minor	1 point
Moderate	2 points
Major	3 points

i. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

ii. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

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iii. Minor shall include any other conduct not included in (d)1i or ii above.

2. Area of disturbance in square feet (sf):

Less than or equal to 270 sf	1 point
271 sf to 5,000 sf	2 points
5,001 sf to 10,000 sf	3 points
10,001 sf to 20,000 sf	4 points
Greater than 20,000 sf	5 points

The Department shall determine the area of disturbance as that area which was actually disturbed as a result of the violation.

3. Unauthorized activity conducted in special area or resources: Each special area or resource involved—1 point

The Department shall assess one point for each special area or resource, as defined in N.J.A.C. 7:7E-3, in which the unauthorized activity occurred.

(e) The table of civil administrative base penalties is as follows:

Points	Base Penalty
1-3	$ 500
4	$ 1,000
5	$ 5,000
6	$10,000
7	$15,000
8	$20,000
9	$25,000

(f) The Department shall adjust the amount of the base penalty assessed pursuant to (e) above based upon the mitigating penalty component as calculated in (f)1i or ii below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in (f)1i or ii below to obtain the mitigating penalty component. Where neither mitigating factor in (f)1i or ii below applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to (e) above, unless adjusted pursuant to (g) below.

Mitigating Factor	Multiplier
i. Where the nature, timing and effectiveness of any measures taken by the violator to remove the unauthorized development and to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Department; or	0.50
ii. Where a complete application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained for the unauthorized development without the need of any modification, mitigation or restoration.	0.50

2. To obtain the civil administrative penalty, the Department shall subtract the mitigating penalty component calculated pursuant to (f)1 above, where applicable, from the base penalty.

(g) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (e) or, where applicable, (f) above based upon any or all of the factors listed in (g)1 through 4 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 25 percent of the penalty pursuant to (e) above, or more than the statutory limit.

1. The compliance history of the violator;
2. The frequency with which any violation of N.J.S.A. 13:19-1 et seq., rules, permit or order occurred;
3. The deterrent effect of the penalty; and/or
4. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.6 Civil administrative penalty determination for N.J.S.A. 13:19-1 et seq. (CAFRA)—discretionary

(a) Notwithstanding N.J.A.C. 7:7-8.5, the Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than $25,000 for each violation of N.J.S.A. 13:19-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq. The Department shall assess penalties under this section in lieu of N.J.A.C. 7:7-8.5 when N.J.A.C. 7:7-8.5 is not applicable to the violation or when, because of the specific circumstances of a violation, the Department in its discretion believes that the penalty amount under N.J.A.C. 7:7-8.5 would not serve a deterrent function as required by N.J.S.A. 13:19-1 et seq.

(b) Each violation of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., or any rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) Notwithstanding N.J.A.C. 7:7-8.5, the Department may assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (g) below.

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	$20,000–$25,000	$15,000–$20,000	$10,000–$15,000
	Moderate	$15,000–$20,000	$10,000–$15,000	$ 5,000–$10,000
	Minor	$10,000–$15,000	$ 5,000–$10,000	$ 500–$ 5,000

(e) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health or the environment;
2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health or the environment; or
3. Minor seriousness shall apply to any violation not included in (e)1 or 2 above.

(f) The conduct of the violator shall be determined as major, moderate or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;
2. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator; and
3. Minor conduct shall include any other conduct not included in (f)1 or 2 above.

(g) The Department may, in its discretion, adjust the amount determined pursuant to (d), (e) and (f) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (d) above, on the basis of any or a combination of the factors listed in (g)1 through 5 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number and frequency of violation(s) by the violator;
3. The measures taken by the violator to mitigate the effects of the current violation;
4. The deterrent effect of the penalty; and/or
5. Any other extenuating, mitigating or aggravating circumstances.

7:7-8.7 Civil penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)

(a) Any person who violates the provisions of N.J.S.A. 13:19-1 et seq., any regulation, rule, permit, or order adopted or issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., an administrative order or a court order issued pursuant to N.J.S.A. 13:19-1 et seq., or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:7-8.3, shall be subject, upon order of a court, to a civil penalty of not more than $25,000 for each violation, and

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each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(b) Any penalty established pursuant to this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:19-1 et seq.

7:7-8.8 Civil administrative penalties for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than $1,000 for each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq.

(b) Each development or improvement commenced or executed in violation of N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., shall constitute an additional, separate and distinct violation.

(c) Where any requirement N.J.S.A. 12:5-3, or any rule promulgated or permit issued pursuant to N.J.S.A. 12:5-1 et seq., may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate and distinct violation.

(d) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty within the matrix in (e) below by:

i. Determining the seriousness of the violation pursuant to (f) below; and

ii. Determining the conduct of the violator pursuant to (g) below.

2. The civil administrative penalty shall be the amount within the matrix in (e) below, unless adjusted pursuant to (h) below.

(e) The matrix of civil administrative penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
	Major	$1,000	$900	$750
CONDUCT	Moderate	$900	$700	$500
	Minor	$750	$500	$250

(f) The seriousness of the violation shall be determined according to the category of activity regulated under N.J.A.C. 7:7-2.3, as follows:

1. Minor: Four or fewer pilings;

2. Moderate: Docks 100 square feet or less, breakwaters 40 linear feet or less or other similar structures;

3. Major: All other structures or activities; or those violations defined as minor or moderate which have a permanent adverse effect on a special area as defined in N.J.A.C. 7:7E-3.

(g) The Department shall determine the conduct of a violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate shall include any unintentional but foreseeable act or omission by the violator;

3. Minor shall include any other conduct not included in (g)1 or 2 above.

(h) The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to (d) above based upon any or all of the factors listed in (h)1 through 6 below. No such factor constitutes a defense to any violation. In no case shall the assessed penalty be less than 50 percent of the penalty determined pursuant to (d) above, or more than the statutory limit.

1. The compliance history of the violator;

2. The frequency with which any violation of N.J.S.A. 12:5-1 et seq., or rules promulgated, or permits issued pursuant to N.J.S.A. 12:5-1 et seq. occurred;

3. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of the violation from the Department or where a complete permit application is submitted within 30 days of receipt of the notice of the violation from the Department and a permit is subsequently obtained in accordance with N.J.S.A. 12:5-1 et seq., the assessed penalty may be reduced by 50 percent;

4. Where a permit is obtained in accordance with N.J.S.A. 12:5-1 et seq. without the need of any modification, mitigation or restoration and has not been considered under (h)3 above;

5. The deterrent effect of the penalty; and/or

6. Any other mitigating, extenuating or aggravating circumstances.

7:7-8.9 Civil administrative penalty for continuing violation of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

The Department may assess an additional penalty of not more than $100.00 for each day during which a violation continues after receipt of an administrative order from the Department pursuant to N.J.A.C. 7:7-8.2(b).

7:7-8.10 Procedures for assessment, settlement and payment of civil administrative penalties pursuant to N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To assess a civil administrative penalty under N.J.S.A. 12:5-1 et seq., the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This notice of civil administrative penalty assessment shall:

1. Identify the section of the statute, rule or permit violated;

2. Concisely state the facts which constitute the violation;

3. Specify the amount of the civil administrative penalty to be imposed; and

4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-8.11.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order.

1. If no hearing is requested pursuant to N.J.A.C. 7:7-8.11, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or

2. If the Department denies the hearing request, the Department shall issue a final order assessing the penalty specified in the notice of civil administrative penalty assessment; or

3. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-8.8 and 8.9 according to the factors identified in (c)1 through 4 below. No such factor constitutes a defense to any violation:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-8.8 and 8.9, including measures to clean up, reverse or repair environmental damage caused by the violation, or to remove the violation;

3. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; and/or

4. Any other terms or conditions acceptable to the Department.

7:7-8.11 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 12:5-1 et seq. (Waterfront Development)

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant to N.J.S.A. 12:5-1 et seq., the violator shall submit the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402:

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1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact stated in short and plain terms;

3. An admission or denial or each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.

(b) If the Department does not receive the written request for a hearing within 21 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being challenged, the Department shall deny the hearing request.

(c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:7-8.12 Civil penalties for violations of N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)

(a) Any person who violates any order by the Department, or violates any provisions of N.J.S.A. 13:9A-1 et seq., shall be subject, upon order of a court, to a civil penalty of not more than $1,000.

(b) Any penalty ordered as provided in this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the Penalty Enforcement Law in connection with N.J.S.A. 13:9A-1 et seq.

7:7-8.13 Civil actions for violations of N.J.S.A. 13:19-1 et seq. (CAFRA), N.J.S.A. 12:5-1 et seq. (Waterfront Development), and N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)

(a) The Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq. and 12:5-1 et seq. or any regulation, rule, permit, or order adopted or issued by the Department pursuant to any of these acts, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

1. A temporary or permanent injunction;

2. Assessment against the violator for any costs incurred by the Department in removing, correcting or terminating the violation of any provision of any of the acts, or any regulation or rule adopted, or permit or order issued, by the Department pursuant to any of these acts, for which the action under this section may have been brought; and/or

3. A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.

(b) For violations of N.J.S.A. 13:19-1 et seq., the Department may institute an action or proceeding in the Superior Court for the assessment against the violator for any costs incurred by the Department in terminating the adverse effects upon the land, or upon water or air quality, resulting from any violation of any provision of N.J.S.A. 13:19-1 et seq., or any rule promulgated or any permit or order issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., for which the action under this section may have been brought.

7:7-8.14 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof, and to this end, the provisions of this subchapter are declared to be severable.

HIGHER EDUCATION (a)

BOARD OF HIGHER EDUCATION

County Community Colleges; Rules Pertaining to the Curriculum Coordinating Committee

Proposed Repeal: N.J.A.C. 9:4-1.7

Authorized By: Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.

Authority: N.J.S.A. 18A:3-15 and P.L. 1993, c.375.

Proposal Number: PRN 1994-250.

Submit written comments by June 1, 1994 to:

Dr. Jeanne Oswald
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

In March, 1993, the Board of Higher Education approved a revised academic program approval procedure to make the process more efficient and less time-consuming for the Department and the institutions, while at the same time preserving the qualitative integrity of programs and the essential coordinating function of the Board. The revised procedures continue to require the institutions to develop and distribute a preliminary program announcement and the comprehensive program approval document. A new procedure provides for the hiring of a consultant, by the institutions, to review their proposals and submit a report to the Department following the standards and guidelines established by the Board of Higher Education. If the consultant's report recommends approval the Board may grant provisional approval for a period of up to three years. Prior to the expiration of provisional approval, the Department would hire a consultant to review the program and, if warranted, recommend permanent approval to the Chancellor.

The Council of County Colleges' Curriculum Coordinating Committee, whose review of associate degree programs and recommendations were considered by the Board of Higher Education under the former review process, is not included in the review process under the new program approval procedures. Therefore, the rule pertaining to the committee is being proposed for repeal at this time. The Department's Veteran Affairs Office will continue its regular review of all county community college academic program offerings to ensure compliance with Board regulations.

Social Impact

The proposed repeal will provide greater efficiency and be less time consuming for the colleges and the Department. This is essential to the county community colleges program development and will standardize the program approval process for all members of the higher education community. It will ensure that the county community colleges comply with Board of Higher Education program approval procedures.

Economic Impact

The proposed repeal will ensure that the county community colleges are responsive to the changing needs of their students, business and industry and the community-at-large. This responsiveness may result in increased revenue for those county colleges that can identify programs that will generate educational, business and employment opportunities for their constituencies.

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Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed rules do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules apply only to county community colleges.

Full text of the proposal follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

9:4-1.7 [Curriculum Coordinating Committee] **(Reserved)**

[(a) A curriculum coordinating committee shall be appointed by the council of county colleges, with the composition of the committee and the number of members and terms of office of the member to be determined by the council. The Chancellor of Higher Education shall designate a representative to the committee, who may participate in all meetings but have no vote.

(b) The curriculum coordinating committee shall review all new curriculum program proposals in New Jersey at or below the associate degree level, and with particular regard to those which are deemed by the Chancellor of Higher Education to require regional or statewide review because of unusual circumstances, such as high cost, low enrollment characteristics or otherwise. The Board of Higher Education shall, when approving new programs or approving discontinuance of existing programs, consider recommendation transmitted through the Chancellor of Higher Education from the curriculum coordinating committee.

(c) The curriculum coordinating committee shall establish its own by-laws subject to the approval of the council of county colleges and appoint its own officers.

(d) The Chancellor of Higher Education shall provide regional and statewide staff planning support for the curriculum coordinating committee.

(e) Rules concerning curriculum approvals include:

1. No curricular program shall be offered without prior determination of need, established to the satisfaction of the curriculum coordinating committee.

2. New diploma programs of 36-semester-credit hours or more in length, or the equivalent, shall be submitted, first, through and appropriate subcommittee, if such exists, and second, through the curriculum coordinating committee, to the Chancellor and Board of Higher Education for approval. Such submission shall be in the form specified by the committee and approved by the Department of Higher Education.

3. Prior to initiation new certificate programs of 36-semester-credit hours or less in length, or the equivalent, shall be submitted to the Chancellor for informational purposes.

(f) The curriculum coordinating committee shall suggest to the Chancellor and Board of Higher Education such regional specialization of program as it deems advisable together with the rationale for such recommendations concerning general curriculum offerings.]

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Administration; Eligibility for Services

Proposed New Rules: N.J.A.C. 10:48-4

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4-25.6.

Proposal Number: PRN 1994-251.

Submit comments by June 1, 1994 to:
James M. Evanochko
Administrative Practice Officer
CN 726
Trenton, New Jersey 08625

The agency proposal follows:

Summary

New Jersey law (N.J.S.A. 30:4-25.4) requires that when an individual is found to be eligible for the services of the Division of Developmental Disabilities, the Division shall advise the applicant of the particular service deemed most appropriate. N.J.S.A. 30:4-25.6 goes on to say that if the most appropriate service is not available, the Division shall provide an alternate service and place the individual on a waiting list for the preferred service pending its availability.

The Division is limited in the services that it can provide by the amount of funds it receives annually from the State Legislature. By 1985, the demand for residential, out of home, placements had exceeded the resources of the Division to provide them. As a result, the Division negotiated an interagency agreement with the Office of the Public Advocate to establish a waiting list procedure for individuals requesting residential placement in the community. That agreement called for individuals to be assigned to one of five categories based upon the effect that waiting for the desired service would have on the individual. At that time there were approximately 1,000 individuals awaiting residential placement. That agreement resulted in a Division policy statement known as Division Circular #8 which established the internal procedures for the assignment of an individual to a waiting list. In the years since that agreement was made with the Public Advocate, the number of individuals on the waiting list, including those who have never been placed and those awaiting the most appropriate placement, has increased to about 4,000 individuals despite consistent efforts by the Division to place individuals awaiting service.

On June 9, 1993, the Appellate Division of Superior Court decided an appeal known as *S.I., by way of G. and S.I. v. New Jersey Division of Developmental Disabilities*. 265 *N.J. Super.* 251 (App. Div. 1993). This appeal, in part, challenged the waiting list procedure and the assignment of S.I. to a waiting list category, rather than the immediate provision of the services requested by S.I. The Court found that even where the Legislature mandates a particular program, the mandate remains limited by the legislative appropriation process. The Court ordered the matter remanded to Office of Administrative Law for a new hearing. The Court went on to order that the Division's priority and placement standards must be adopted as rules, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15. The proposal that follows is intended to comply with the order of the Appellate Court. The rules address the waiting list procedures for individuals who are awaiting residential and/or day services. There are approximately 460 individuals waiting for placement into day programs as of January 1, 1994. The waiting list for residential placement reflects only those individuals waiting for placement into community based residential placements. The Division is not currently maintaining a waiting list for routine placements into its public institutions.

N.J.A.C. 10:48-4.1 describes the purpose of the rules. It also notes that the availability of services is limited to the Division's funding in a given year.

N.J.A.C. 10:48-4.2 indicates that the rules apply to adults waiting for residential and/or day placement in community based settings. The rules apply to children only when a child meets the criteria for the most urgent categories. In general, the Division seeks to maintain children with their families and provide for their residential placement of children only in unusual circumstances. Although some forms of day services may be provided to children, a child's primary day service needs are met through his or her educational entitlement.

N.J.A.C. 10:48-4.3 contains the definitions used in the rules.

N.J.A.C. 10:48-4.4 contains the criteria for the three categories of the waiting list.

N.J.A.C. 10:48-4.5 requires that individuals be advised of their waiting list category within 14 days of a determination or a change in status. It also requires that the waiting list category be reflected in the individual's Individual Habilitation Plan (IHP).

N.J.A.C. 10:48-4.6 describes the procedure for changing the waiting list category.

N.J.A.C. 10:48-4.7 indicates that steps to be followed by the Division when an individual on the waiting list is offered a service.

N.J.A.C. 10:48-4.8 contains the requirements for appealing a waiting list assignment.

Social Impact

Proposed N.J.A.C. 10:48-4 will have social impacts on the Division, persons who receive services, and their families. The rules will have little

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effect on providers of services, since the rules affect the decisions made between the Division, an individual served and his or her family which occur in most cases, prior to placement. There are approximately 4,000 individuals waiting for residential placement and 460 individuals waiting for day programs. The rules are expected to have a positive reaction within this group. The rules will clearly describe the categories of the waiting list, how an individual is assigned to a specific list category and how changes in the waiting list category may be made.

Waiting list assignments represent a significant factor in the provision of services to the eligible individual and their families. While the waiting list procedures have been available in the form of an internal policy statement, the rules ensure greater availability of the procedure to the general public. In addition, the current policy statement did not include information concerning how changes in assignments could be made.

Economic Impact

The most significant economic impact of the rules is on the Division. The rules establish that individuals may be placed on a waiting list while awaiting services. Residential services costs vary widely. In some instances, programs are highly specialized in order to deal with specific problems such as medical needs or behaviors which are hard to control.

In other instances, costs may be relatively low for individuals who require only room and board. The average cost of a residential placement in the community is $47,835. If the Division were to provide residential services to all the individuals presently on the waiting list, the cost is estimated to exceed $200 million. Similarly, the average cost of a day program is $10,325. It would cost the Division approximately $4.9 million to serve all the individuals presently waiting for day programs. Ultimately, the public of the State would bear these costs when the Legislature provided the necessary funding.

The rules are not intended to have direct economic impact on individuals served or his or her family. There may be an indirect economic impact in some instances since some families opt to place the eligible individual in a service privately while awaiting Division services.

Finally, the rules are not anticipated to have an economic impact on providers of services since an individual is placed with them only when the Division has the funds to permit such a placement.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules do not impose reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules apply only to individuals served and the Division, the rules will not have any adverse effect upon small businesses or private industry in general.

Full text of the proposed new rules follows:

SUBCHAPTER 4. ELIGIBILITY FOR SERVICES

10:48-4.1 Purpose

(a) The purpose of this subchapter is to establish criteria and procedures for allocating limited residential and day program resources based on the relative needs of the individuals waiting for community services. In accordance with the Developmentally Disabled Rights Act (N.J.S.A. 30:6B-1 et seq.), such services shall be designed to maximize the developmental potential of the individual in a manner least restrictive of personal liberty.

(b) The availability of such services shall be limited to the Division's funding in a given fiscal year. The basis of this subchapter is to establish a means to prioritize placement needs when there are insufficient funds to provide the most appropriate residential or day program. The rules represent an administrative process for the allocation of scarce resources among many individuals with similar needs and circumstances.

(c) The waiting list assignment shall indicate only the urgency of need for day program or residential placement. The assignment shall not reflect the specific type of service needed. The person's need for placement changes over the course of a person's life. The intent of the subchapter is not to establish specific services to be provided but to reflect only a general service need. Waiting list categories are general groupings based upon the level of urgency. No specific numbered order is contained in any category.

10:48-4.2 Scope

This subchapter applies to all adult individuals who are currently waiting for residential and day placement in community-based settings or who may request such services in the future. The rules shall apply to children only if the requirements for Category I or II as set forth in N.J.A.C. 10:48-4.4(b) and (c) are met.

10:48-4.3 Definitions

The words and terms in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

"Community based alternate living arrangement" means a community residence as defined in N.J.A.C. 10:44A or a community care home as defined in N.J.A.C. 10:44B.

"Department" means the Department of Human Services.

"Community Services" means that component of the Division which provides intake, referral and an array of community-based day and residential services.

"Division" means the Division of Developmental Disabilities.

"Individual Habilitation Plan (IHP)" means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It may identify a continuum of skill development that outline progressive steps and the anticipated outcomes of services. The IHP is a single plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan. The complexity of the IHP will vary according to the needs, capabilities and desires of the person. For an individual who has been determined by an Interdisciplinary Team to require active treatment, the IHP shall address all needs identified. For an individual who makes only specific service requests, the IHP shall be a service plan which addresses only those specific requests.

"Interdisciplinary Team (IDT)" means an individually constituted group responsible for the development of a single, integrated IHP. The team shall consist of the individual receiving services, the individual's parent or family member (if the adult desires that the parent or family member be present), legal guardian, those persons who work most directly with the individual served and professionals and representatives of service areas relevant to the identification of the individual's needs and the design and evaluation of programs to meet those needs.

"Placement Review Team (PRT)" means a team of professionals within Community Services, other than the IDT, which assesses relevant information in order to determine the most appropriate and least restrictive alternate living arrangement requested by the individual or his or her legal guardian. The PRT is an administrative function of the Division and is responsible to allocate scarce resources among many individuals with similar needs and circumstances. The PRT reviews changes in the waiting list category recommended by the intake team or determines the waiting list category when residential placement is requested by the legal guardian after admission to services. The PRT reviews the request to determine if the basis for the recommended change is appropriate. If the change is deemed to be appropriate, the PRT reviews the availability of an appropriate placement within the region, in other regions or within developmental centers. The PRT will prioritize the waiting list assignment of the individual in consideration of others already awaiting placement. The PRT will advise the IDT, through the case manager, of the results of their review.

"Waiting list" means a roster of eligible developmentally disabled individuals waiting for community based services who are not currently receiving residential services, awaiting residential or day services while in placement from another funding source, or currently in a community placement and awaiting transfer to another community placement.

10:48-4.4 Waiting list assignment

(a) An individual eligible for functional services, who has requested or been determined to be in need of a community residential or day program which is not yet available, shall be assigned to one of the categories in (b) through (e) below.

(b) Category I, Urgently in Need, shall be assigned if:

1. The individual poses a present risk of physical harm to self or others;

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2. The individual is seriously regressing; or

3. The individual is at serious risk because of the imminent loss of the caretaker or he or she is homeless, abused, or neglected.

(c) Category II, Can Benefit from Placement: Extended Waiting Will be Detrimental, shall be assigned if it appears likely that without services:

1. The individual will deteriorate to the point of becoming a danger to self or others; or

2. The individual will regress significantly.

(d) Category III, Can Benefit from Placement: Waiting is not Detrimental, shall be assigned when the individual can benefit from residential placement but none of the factors described in (b) or (c) above are present.

1. Individuals with a caregiver 65 years of age or older shall be assigned to this category unless the criteria for Categories I or II are met.

(e) Category IV, Residential Only, shall be assigned if:

1. The individual is an adult; and

2. The individual or his or her legal guardian has requested residential placement but it is not needed at this time.

(f) The individual or his or her legal guardian may request a revision of the category at any time.

10:48-4.5 Notification

(a) When an individual is assigned to a category or when a person is reviewed for a change in the category, the results of the review will be forwarded to the family within 14 days of the determination.

(b) The category shall be included in the cover sheet of the person's IHP.

(c) The category shall be reviewed no less than annually at the time of the IHP.

10:48-4.6 Procedure for adding to or changing the waiting list category

(a) The case manager shall discuss with the individual and his or her legal guardian, where appropriate, any changes in the circumstances of the individual.

(b) The case manager or his or her supervisor shall schedule a review with the PRT.

(c) At the scheduled time, the case manager or his or her supervisor shall make a presentation, verbal or written, regarding the individual and his or her particular situation. The case manager shall document and present prior interventions implemented to stabilize the individual in his or her current situation.

(d) A variety of options may be explored, depending upon the urgency of the situation.

1. The team may refer the individual for an alternate living arrangement immediately, if resources permit, in which case, the individual shall be assigned to urgency Category I.

2. The PRT may recommend a change in the urgency status even if no placement is immediately available.

3. Should the team decide that the individual is not appropriate for community placement or appropriate services are not available in the community, a recommendation for other services or placement may be made.

4. All recommendations made by an IDT regarding changes of an individual's waiting list status must be reviewed and approved by the PRT.

5. Individuals referred from out-of-region are reviewed by the PRT and prioritized for placement.

6. The chairperson of the PRT is responsible for notifying the individual and legal guardian, where appropriate, in writing regarding the Waiting List status.

10:48-4.7 Offers of services

(a) When an individual is found eligible for functional services in accordance with the provisions of N.J.A.C. 10:46, the most appropriate service shall be identified. The IDT shall evaluate the needs and abilities of the individual at the time that a specific service is recommended.

(b) If an eligible individual cannot be admitted to the most appropriate service, he or she shall be offered an alternate service.

(c) The availability of a service shall be subject to the limits of the Division's funding resources for that Fiscal Year.

(d) The proximity of the individual to interested family or friends shall not be limited to the person's assigned region. An effort shall be made to find a placement close to the individual's interested family or friends.

(e) All offers of placement shall be made by telephone and followed up in writing with a request that the Division be notified within 14 calendar days if the placement is accepted.

1. The individual served or her or his legal guardian shall be asked to give a written response to the offer.

2. If no response is received, Division staff shall contact the individual or his or her legal guardian, where appropriate, by telephone to elicit a response. That response shall be confirmed by the Division in writing.

3. If there is no response to the written offer and the individual or legal guardian cannot be reached by telephone, the offer shall be deemed to be declined. The Division staff shall write to the individual or legal guardian, confirming the Division's efforts to obtain a response and shall indicate that the offer is deemed to have been declined.

(f) If the individual is assigned to Category I and an offer of placement is made and refused, the individual shall be immediately reassigned to the appropriate category other than Category I.

(g) If the individual assigned to Category I or his or her legal guardian, where appropriate, has good and valid reasons for refusing the placement, the individual or his or her legal guardian, where appropriate, may appeal the assignment to another category.

10:48-4.8 Appeals

(a) If an individual or legal guardian disagrees with the categorization or the service offered, that decision may be appealed in accordance with N.J.A.C. 10:48-1.

(b) Upon the initial determination and each determination made thereafter, the individual or legal guardian shall be informed in writing that they have the right to appeal the categorization or the appropriateness of the services to be provided. With each notification, the individual or his or her legal guardian shall be provided with a description of the appeals procedure.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medicaid Only
New Eligibility Computation Amounts
Proposed Amendments: N.J.A.C. 10:71-4.8, 5.4, 5.5, 5.6 and 5.9

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-3; 30:4D-7, 7a, b and c; 42 CFR 435.210 and 435.1005; 20 CFR 416.1163 and 416.2025.

Agency Control Number: 94-P-1.

Proposal Number: PRN 1994-266.

Submit comments by June 1, 1994 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 10:71 increase the Medicaid Only eligibility computation amounts at N.J.A.C. 10:71-5.4(a)12, 5.5(g) and 5.7(e) and the income eligibility standards at N.J.A.C. 10:71-5.6(c)5. The amendments align Medicaid Only eligibility for the aged, blind, or disabled with that of the Supplemental Security Income (SSI) program. Section 1902(a) of the Social Security Act requires that Medicaid Only

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eligibility be determined using the same criteria as applies in the SSI program. The proposed revised income eligibility and computation amounts reflect the 2.6 percent Federal cost-of-living increase in the SSI payment levels effective January 1, 1994. The Medicaid "cap," the income standard applicable for persons in Title XIX nursing facilities, is set at 300 percent of the Federal SSI benefit (not including any State supplement amount) for an individual, the maximum level authorized by the Social Security Act. The amendments must be implemented effective January 1, 1994, to maintain compliance with Federal law.

Proposed amendments are being made at N.J.A.C. 10:71-4.8 to reflect a Federally required change in the figures used to determine how much of a couple's resources are protected for the community spouse when one member of the couple requires long term care. Using the new Federal figures, which are effective January 1, 1994, the community spouse's share of resources is the greater of $14,532 or one-half of the couple's countable resources, not to exceed $72,660.

Social Impact

The increase in the standard and income computation amounts used in the eligibility process theoretically expands the population of potentially eligible persons. However, based on past experiences with increases in the Medicaid "cap," little, if any, increase in the Medicaid caseload because of this amendment is anticipated.

The Medicaid "cap" income eligibility standard is used to determine eligibility for the Community Care Program for the Elderly and Disabled and other home and community-based waiver programs, as well as for persons in Title XIX long term care facilities. The increase in the "cap" standard will help preserve the eligibility of persons who received a 2.6 percent cost-of-living increase in their Social Security benefits January 1, 1994.

Economic Impact

Past experiences with similar increases in these income standards have demonstrated that there will be an insignificant economic impact on the public, the State, and county agencies administering the program. These increases affect only eligibility for Medicaid and do not result in receipt of cash assistance.

The Department is unable to estimate the fiscal impact of increasing the amount of resources that may be protected for the community spouse because it lacks information concerning the resources of persons who are in long term care facilities. The amendment will affect only those married persons when the couple's resources are less than $29,064 or in excess of $145,320. Some portion of the affected population will attain Medicaid eligibility one month earlier than they would have under the current rules. (It should be noted that Medicaid eligibility for long term care is limited to individuals with a gross monthly income of less than $1,338.)

Medicaid recipients in long term care facilities or nursing facilities (NFs), are required to contribute towards the cost of their care from their available income.

This proposal has no impact on Medicaid reimbursement to NFs because there is no change in the reimbursement methodology.

Regulatory Flexibility Statement

The proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The increase in these income standards affects only the eligibility of individuals for Medicaid. Because program eligibility is determined by the State and county governments, these rules impose no reporting, recordkeeping, or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act. Therefore, the Department concludes that no regulatory flexibility analysis is necessary.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:71-4.8 Institutional eligibility; resources of a couple

(a) In the determination of resource eligibility for an individual requiring long term care, the county welfare agency shall establish the combined countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989. This determination shall be made upon a request for a resource assessment in accordance with N.J.A.C. 10:71-4.9 or at the time of application for Medicaid benefits. The total countable resources of the couple shall include all resources owned by either member of the couple individually or together. The CWA shall establish a share of the resources to be attributed to the community spouse in accordance with this section. (No community spouse's share of resources may be established if the institutionalized individual's current continuous period of institutionalization began at any time before September 30, 1989.)

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989 and shall not exceed $[70,740] **72,660** unless authorized in **(a)**4 or 5 below. The community spouse's share of the couple's resources shall be the greater of:

i. $[14,148] **14,532**; or

ii. One half of the couple's combined countable resources.

2.-9. (No change.)

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or at a reduced value. Persons determined to be "living in the household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have unearned income in the amount of:

$[164.67] **168.67** for an individual

$[237.33] **243.00** for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

10:71-5.5 Deeming of income

(a)-(f) (No change.)

(g) A table for deeming computation amounts follows:

TABLE A
Deeming Computation Amounts

1. Living allowance for each ineligibile child $[218.00] **223.00**

2. Remaining income amount	Head of Household $[218.00] **223.00**	Receiving Support and Maintenance $[145.33] **148.33**
3. Spouse to Spouse Deeming—Eligibility Levels		
1. Residential Health Care Facility	$[1,149.36] **1,173.36**	
b. Eligible individual living alone with ineligible spouse	$[894.36] **917.36**	
c. Living alone or with others	$[683.25] **700.25**	
d. Living in the household of another	$[527.76] **539.09**	

4. Parental Allowance—Deeming to Child(ren) Remaining income is:	One Parent	Parent and Spouse of Parent
a. Earned only	$[868.00] **892.00**	$[1,304.00] **1,338.00**
b. Unearned only	$[434.00] **446.00**	$[651.00] **669.00**
c. Both earned and unearned	$[434.00] **446.00**	$[651.00] **669.00**

10:71-5.6 Income eligibility standards

(a)-(b) (No change.)

(c) Non-institutional living arrangements

1.-4. (No change.)

5. Table B follows:

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TABLE B

Variations in Living Arrangement	Medicaid Eligibility Income Standards Individual		Couple	
I. Residential Health Care Facility	$[584.05]	**596.05**	$[1,149.36]	**1,173.36**
II. Living Alone or with Others	$[465.25]	**477.25**	$[677.36]	**694.36**
III. Living alone with Ineligible Spouse	$[677.36]	**694.36**		
IV. Living in Household of Another	$[333.65]	**341.65**	$[527.76]	**539.09**
V. Title XIX Appoved Facility: Includes persons in acute general hospitals, nursing facilities, intermediate care facilities/ mental retardation and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.	$[1,302.00]	**1,338.00**†		

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "cap."

(d) (No change.)

10:71-5.9 Deeming from sponsor to alien

(a)-(d) (No change.)

(e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:

1. (No change.)

2. Subtract $[434.00] **446.00** for the sponsor, $[651.00] **669.00** for the sponsor if living with his or her spouse, $[866.00] **892.00** for the sponsor if his or her spouse is a co-sponsor.

3. Subtract $[217.00] **223.00** for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. (No change.)

(f) (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

General Assistance Program

Extension of Temporary Rental Assistance (TRA) Benefits

Proposed Amendment: N.J.A.C. 10:85-4.6

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:8-111(d).

Proposal Number: PRN 1994-252.

Submit comments by June 1, 1994 to:
Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 10:85-4.6, which deals with emergency assistance (EA), including temporary rental assistance (TRA), has been revised as a result of the Supreme Court decision, *L.T. v. Department of Human Services, Division of Family Development,* 134 *N.J.* 304 (1993), issued by the court on December 15, 1993. The decision indicated that homeless General Assistance (GA) clients cannot be terminated from TRA at 12 months without provision for further shelter assistance, provided such clients have cooperated in the implementation of effective EA Service Plans.

The proposed amendment at N.J.A.C. 10:85-4.6(c)5 provides that a written service plan must be developed that will consider the client's capabilities and limitations so that the client will be able to realistically work toward resolving the circumstances that contributed to the emergency situation.

Text added at N.J.A.C. 10:85-4.6(c)6iii(4)(A) states that unemployable clients should be assessed for potential eligibility for Supplemental Security Income (SSI) at the time TRA is initially authorized. Furthermore, MWD responsibility is established for assisting the client in applying for SSI where appropriate, and for monitoring the progress of the SSI application throughout the TRA period.

The proposed amendment at N.J.A.C. 10:85-4.6(c)6iii(5) includes job search as a program that the client may participate in as part of the individualized service plan.

Text added at N.J.A.C. 10:85-4.6(c)6iii(5)(A) states that the MWD shall take into consideration client limitations and capabilities, as well as job market limitations, when developing potential employment directed activities with the client that are to be included in the service plan.

The proposed amendment at N.J.A.C. 10:85-4.6(c)6iv clarifies that the MWD shall monitor the EA client's compliance with the provisions set forth in the service plan.

The proposed amendment at N.J.A.C. 10:85-4.6(e)2iii(5) establishes the requirement that continuing compliance with the provisions of the mutually developed service plan shall be a factor the MWD will consider when determining authorization of TRA benefits up to a period of one year.

Text added at N.J.A.C. 10:85-4.6(e)2iii(5)(A) reflects the Court's decision that MWDs shall not terminate TRA benefits at 12 months unless the MWD can demonstrate that an effective and individualized service plan was in place throughout the initial 12 month period, and that the client failed to cooperate with the requirements of that service plan.

Social Impact

The expansion of the service plan is expected to be viewed as a positive measure by both the MWD and the client. This expansion is designed to allow for the establishment of additional activity opportunities to assist clients in resolving their emergency situations and strive toward becoming self-sufficient.

The proposed amendment stipulating that the MWDs are to assess if unemployable clients are potentially eligible for SSI benefits is expected to be viewed as beneficial to both the client, as well as the MWD. The MWDs shall assist those potentially SSI eligible clients in applying for SSI and shall continually monitor the status of the SSI application throughout the TRA period. As a result of this monitoring, more clients may be found eligible for SSI. This should, in effect, decrease the GA rolls in general as well as EA/TRA rolls.

The proposed provision which stipulates that the MWD shall take into consideration a client's capabilities, as well as his or her limitations, will ensure that an effective individualized plan of action which the client can realistically complete will be put in place. Such a service plan will reflect the client being referred to the most appropriate training programs, housing programs, and so forth, which will provide the assistance needed by that client to help him or her obtain employment and/or unsubsidized housing.

The proposed amendment which establishes authorization of TRA benefits beyond 12 months provides a safety net for those TRA recipients who continue to cooperate with the ongoing, mutually developed service plan. This amendment is expected to reduce the number of clients who will lose their homes/apartments and be forced to stay in costly hotels/ motels or shelters or in the streets at the end of the 12 month period.

Economic Impact

It is anticipated that the extension of TRA benefits beyond the initial 12 month period will realize an increase in the funding needed to provide such assistance to an ever-growing population of homeless individuals. The bulk of the finanical burden will be at the State level since all non-administrative costs in the GA program are 100 percent State-funded.

The MWDs will be impacted administratively since the MWDs will have additional responsibilities which will include monitoring the goals set forth in the expanded service plan as well as maintaining the TRA cases beyond 12 months.

Current estimates indicate that there are 6,700 TRA cases State-wide, averaging a total monthly expenditure of $2.1 million. It is projected that with the extention of TRA benefits beyond the current 12 month period limitation, the increased expenditure for TRAs is expected to reach approximately $6.4 million annually.

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Regulatory Flexibility Statement

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the General Assistance program to a low-income population by a governmental agency, rather than a private business establishment.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:85-4.6 Emergency assistance

(a)-(b) (No change.)

(c) The goal of the GA/EA shelter program is to provide for the initial and continuing emergency shelter needs of otherwise eligible GA recipients. EA is designed to provide shelter and to coordinate support services, with client participation, at all levels of government and with other appropriate sectors of the human services delivery community. It is acknowledged that there is a shared responsibility among governmental/non-governmental entities at the municipal, county, and State levels. The MWD and client shall have a shared obligation to resolve the emergency situation and to secure a shelter arrangement which he or she will be able to ultimately maintain without EA. Upon contact with the EA eligible individual, the MWD shall have responsibility to:

1.-4. (No change.)

5. Explain that a written service plan shall be mutually developed, within five working days of the EA authorization date, to provide an individualized plan of action **that will be realistically** aimed at working toward securing permanent shelter and [also, where directly related to securing such shelter,] at resolving the circumstances that contribute to his or her emergency situation. Refusal, without good cause, to cooperate with conditions set forth in the service plan [that are directly related to the recipient's search for permanent housing] or with the initial development of the service plan shall render the client ineligible for continuing EA benefits, until such time as cooperation has been resumed; and

6. Arrange a face-to-face meeting with the client to prepare the service plan at a time and place convenient to both the client and the MWD.

i.-ii. (No change.)

iii. The service plan shall include, but is not limited to:

(1)-(3) (No change.)

(4) Referral to and/or application for other available benefit entitlements or services (for example, drug and alcohol rehabilitation program, Department of Community Affairs, Social Security Administration, Home Energy Assistance Program, Food Stamp Program, Community Mental Health Services, Section 8 Housing Certificates); [and]

(A) At time of initial authorization of EA, all clients who are classified as unemployable shall be assessed for potential SSI eligibility and immediately referred to the Social Security Administration to make application. The MWD shall take the necessary steps to assist the client in applying for SSI and shall subsequently monitor the status of such application throughout the period in which the client continues to receive EA benefits; and

(5) If, appropriate, involvement in **job search,** a training or rehabilitation program, such as the Job Training Partnership Act (JTPA) or vocational rehabilitation, likely to result in employment or the securing of a job leading to the maintenance of affordable permanent housing. It is noted that such involvement shall be coordinated with existing General Assistance Employability Program (GAEP) requirements.

(A) When developing potential employment directed activites with the client, the MWD shall take into consideration the limitations of the client. For example, if the client is not job ready, the MWD will have the responsibility to include a training activity relevant to the client's needs and based on his or her capabilities. If the client is determined to be job ready and a job search activity is agreed upon, it shall be the responsibility of the MWD to take into consideration local job market limitations when determining the number of contacts the client will be expected to complete on a monthly basis.

iv. The MWD shall monitor the EA client's compliance with **the provisions set forth in** the service plan, as well as document MWD support activities, at least once a month.

v. (No change.)

(d) (No change.)

(e) Rules concerning emergency shelter assistance are as follows:

1. (No change.)

2. Temporary rental assistance may be authorized by the MWD upon initial authorization of EA or at any other time during the receipt of EA. Temporary rental assistance benefits, as authorized in accordance with (e)2i and ii below, shall be expedited by the MWD to preclude the loss of an existing or potential housing arrangement.

i.-ii. (No change.)

iii. Issuance of temporary rental assistance is governed by the following:

(1)-(4) (No change.)

(5) The MWD shall authorize **initial** temporary rental assistance on a case by case basis up to a period of one year. Such authorization shall be based on a review of the individual's circumstances and [in keeping with] **his or her continued compliance with the provisions set forth in** the mutually developed service plan.

(A) The MWD shall authorize continuing temporary rental assistance benefits, without interruption, beyond the 12 month period when an effective service plan has been in place throughout the initial 12 month TRA period and the client has fully cooperated with the provisions set forth in that mutually developed service plan.

3.-5. (No change.)

(f)-(m) (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Community Release Programs

Transportation of Inmate; Contract Agency Rules, Regulations and Discipline; Urine monitoring; Disciplinary Transfer

Proposed Amendments: N.J.A.C. 10A:20-4.20, 4.21, 4.22 and 4.45

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and 30:4-9.12.

Proposal Number: PRN 1994-263.

Submit comments by June 1, 1994 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Residential Community Release Agreement Program provides the opportunity for certain adult inmates to be assigned to halfway houses or substance abuse programs which are under the jurisdiction of the New Jersey Department of Corrections. These residential community release programs are provided by agencies in the community in accordance with a contractual agreement between the agency and the New Jersey Department of Corrections. Inmate residents assigned to these programs are subject to contract agency rules and regulations and major disciplinary violations currently result in the immediate return of the inmate to the parent correctional facility. There may be occasions in which it is inappropriate to transfer the inmate to the parent correctional facility. Decisions regarding the degree of custody required for each inmate and the appropriate correctional facility assignment depends upon the type of violation, the inmate's previous history, the length of the inmate's sentence and the age of the inmate. Therefore, at N.J.A.C. 10A:20-4.20,

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4.21, 4.22 and 4.45, new language is being proposed which will allow discretion in transferring an inmate to any correctional facility within the New Jersey Department of Corrections in accordance with internal management practices and procedures established between Residential Community Release Programs and other correctional facilities. For clarification, the word "return" when used throughout N.J.A.C. 10A:20-4.21, and 4.45 has been changed to "transfer," and N.J.A.C. 10A:20-4.45(a) has had N.J.A.C. 10A:20-4.2 and 4.20(c) added as cross references. A new subsection (c) has also been added to N.J.A.C. 10A:20-4.45 which states that the Inter-Institutional Classification Committee (I.I.C.C.) shall, at the next regularly scheduled meeting, review disciplinary transfers of inmates from the Residential Community Release Agreement Programs to correctional facilities within the New Jersey Department of Corrections.

Social Impact

The intent of the proposed amendments is to give the Department of Corrections more discretion in order to arrange the proper placement of an inmate who violates the rules and regulations of the Residential Community Release Agreement Program. The ability to properly place an inmate in a correctional facility should help ensure the Department's function to provide maximum security confinement for offenders who have committed a major disciplinary violation(s), and help maintain discipline and the safe, secure and orderly operation of correctional facilities.

Economic Impact

The proposed amendments give the Department of Corrections more discretion in the placement of an inmate who is charged with violating the Residential Community Release Program and requires no additional financial resources to implement; therefore, funding is not necessary. The proposed amendments may lessen the need for additional intra-complex and inter-complex transfers and the costs associated with this transportation.

Regulatory Flexibility Statement

The small nonprofit agencies that provide community release programs and maintain residences for sentenced inmates are considered "small business" as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These proposed amendments establish inmate transfer policies within the Department of Corrections and because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on these small businesses, a regulatory flexibility analysis is not required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10A:20-4.20 Transportation of inmate

(a)-(b) (No change.)

(c) After an inmate has been assigned to, and is living at, a Residential Community Release Agreement Program, the inmate shall be transported to [regional institution and parent] **a** correctional facility in accordance with internal management practices and procedures established to provide transportation between Residential Community Release Agreement Programs and [regional institutions or parent] **other** correctional facilities.

10A:20-4.21 Contract agency rules, regulations and discipline

(a)-(c) (No change.)

(d) Major **disciplinary** [violations] **violation charges** shall result in **the** immediate [return] **transfer** of the inmate to [the parent] **a** correctional facility **within the New Jersey Department of Corrections.** Major disciplinary violations shall include, but are not limited to:

1.-8. (No change.)

(e) (No change.)

10A:20-4.22 Urine monitoring

(a)-(e) (No change.)

(f) When the urine analysis is positive, the contract agency is responsible for:

1. (No change.)

2. Making arrangements for the inmate's return to [the parent] **a** correctional facility **within the New Jersey Department of Corrections in accordance with N.J.A.C. 10A:20-4.2 and 4.20(c);** and

3. (No change.)

10A:20-4.45 Disciplinary [returns] **transfer**

(a) When an inmate violates a prohibited act(s) that is listed in N.J.A.C. 10A:20-4.21(d), the inmate shall be [returned] **transferred** to [the] **a Department of Corrections'** correctional facility in accordance with N.J.A.C. 10A:20-[4.20] **4.2 and 4.20(c).**

(b) (No change.)

(c) In accordance with N.J.A.C. 10A:9-6.5, the Inter-Institutional Classification Committee (I.I.C.C.) shall, at the next regularly scheduled meeting, review the disciplinary transfers of inmates from Residential Community Release Agreement Programs to correctional facilities within the New Jersey Department of Corrections.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF PUBLIC MOVERS AND WAREHOUSEMEN

Public Movers and Warehousemen

Proposed Readoption with Amendments: N.J.A.C. 13:44D

Authorized By: Board of Public Movers and Warehousemen, Thomas B. Quicksell, President.

Authority: N.J.S.A. 45:14D-1 et seq., specifically 45:14D-6.

Proposal Number: PRN 1994-268.

Submit written comments by June 1, 1994 to:
Diane Romano, Executive Director
Board of Public Movers and Warehousemen
P.O. Box 45018
Newark, NJ 07101

The agency proposal follows:

Summary

Pursuant to the provisions of Executive Order No. 66(1978), the rules at N.J.A.C. 13:44D will expire on August 7, 1994. As required by the Executive Order, the Board of Public Movers and Warehousemen has reviewed these rules and determined them to be necessary, reasonable and proper, as amended and supplemented, for the purpose for which they were originally promulgated. These rules establish professional standards for licensees and are intended to protect New Jersey consumers from unscrupulous behavior by public movers and warehousemen.

A summary of each section and the proposed amendments are as follows:

Throughout the chapter, all references to the Director of the Division of Consumer Affairs have been transformed into references to the Board of Public Movers and Warehousemen in accordance with the passage of P.L. 1993, c.365, which in granting the Board independent authority sheds its previous status as an advisory board to the Director of the Division of Consumer Affairs.

N.J.A.C. 13:44D-1.1 defines words and phrases deemed essential to establishing the operative intent of this chapter. One additional definition is proposed: "public mover." This addition clarifies for enforcement purposes the existing statutory definition of public mover to encompass anyone who holds him or herself out to be a public mover.

N.J.A.C. 13:44D-2.1 prevents licensees from engaging in the business of public moving and/or storage unless the licensee owns or leases pursuant to a long-term lease, at least one moving vehicle, has filed with the Board of Public Movers and Warehousemen the required fee and necessary information, and properly displays or otherwise retains the original license and support documentation.

N.J.A.C. 13:44D-2.2 provides for the standard process and timeframe within which a licensee shall notify the Board of Public Movers and Warehousemen of a change of address, business name or telephone number.

N.J.A.C. 13:44D-2.3 prohibits public movers and/or warehousemen from operating under a license unless there is on file in the Board's office information that designates the agent, provides the agent's address, and confirms that the agent is a resident of the State.

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N.J.A.C. 13:44D-2.4 addresses the fees to be paid by licensees for initial licenses, renewal licenses and copies of licenses.

N.J.A.C. 13:44D-2.5 is a new, proposed section that incorporates existing statutory advertising requirements. The new requirement is that all advertising by licensees must include the licensee's full licensed name to create sufficient awareness for the consumer as to the party with whom he or she has entered into a professional relationship.

N.J.A.C. 13:44D-3.1 covers the tariff or tariffs that each licensee must file, including the format and frequency with which the tariff or tariffs must be filed, and the rates, charges, classification ratings, and terms and conditions that must appear as part of such a filing. As part of the readoption process, three deletions are being proposed in this section. In subsection (a), the prohibition on joint filings will be lifted pursuant to the removal of a previous Federal Trade Commission (FTC) ruling that prohibited joint filings. In subsection (b), the wording has been adjusted to clarify the fact that the tariff can only be filed semiannually and that a mover who prefers to continue operating on the basis of his or her existing tariff need not file at all. In paragraph (b)3, the reference to permitting a tariff to be submitted in a permanently-bound style is to be deleted as an unnecessarily expensive and inconvenient option.

N.J.A.C. 13:44D-4.1 offers provisions covering the manner in which the bill of lading, explanatory brochure, estimated cost of services form, order for service form, warehouse receipt, and issuance of documents are to be handled by the licensee (see 25 N.J.R. 5449(a) for the proposed amendments to this and the subsequent section, which together are now in the adoption process).

N.J.A.C. 13:44D-4.2 details the legal liability of public movers and/or warehousemen and the requirements that licensees must meet in terms of securing, maintaining and filing their insurance status with the Board of Public Movers and Warehousemen. It might be noted that this section was recently proposed for amendment to state that the minimum liability of $.60 per pound per article is a limitation that shall be null and void and the public mover and/or warehousemen subject to full liability should the licensee fail to present the Order for Service or the explanatory brochure, or if the licensee is found to be responsible for gross negligence and/or gross incompetence (see 25 N.J.R. 5449(a).

N.J.A.C. 13:44D-4.3 provides for the manner in which estimates and the inspection of premises are to be handled, including a provision that does not allow a public mover and/or warehouseman to employ an estimator or broker who also represents another public mover and/or warehouseman.

N.J.A.C. 13:44D-4.4 prohibits public movers from subcontracting or assigning an obligation to provide moving services except where the shipper elects to permit a public mover to subcontract with another licensed carrier due to mitigating circumstances. It should be noted that in such situations the original public mover remains responsible for the services to be rendered.

N.J.A.C. 13:44D-4.5 addresses situations in which a public mover intends to use or employ the services of an owner/operator. When such situations arise, the public mover must advise the shipper in writing in advance of the definition of an owner/operator and the nature of the relationship between the public mover and the owner/operator, with the understanding that the public mover who uses or employs the services of an owner/operator remains ultimately responsible for the services to be rendered.

N.J.A.C. 13:44D-4.6 states that a public mover will be deemed to have engaged in occupational misconduct should he or she fail to practice in an ethical business fashion, ranging from intentional failure to book a moving vehicle of adequate size to tardiness, to failing to offer the shipper acceptable options. The amendment proposed for this section would clarify that the Board may, in a case-by-case basis, find a licensee to have engaged in occupational misconduct for reasons beyond those referred to above.

N.J.A.C. 13:44D-4.7 affirms that a public mover shall supply only such labor and equipment as is necessary to perform the moving services indicated on the original estimated cost of services form and that any changes from that form must be approved in writing in advance by the shipper and public mover.

N.J.A.C. 13:44D-4.8 provides for the manner in which the warehousing of the shipper's goods is to be handled, including the providing of the warehouse's address and advance notice should changes arise involving either the address of the warehouse to be used or the necessary insurance coverage. This section further addresses situations involving self-storage facilities, advance notice for increases in fees, and a shipper being provided with access to his or her possessions and goods upon 48 hours notice to the public mover and/or warehouseman. The proposed amendment regarding N.J.A.C. 13:44-4.8(e) is a consumer protection measure that will not allow a public mover and/or warehouseman to store the goods of a shipper engaged in an intra-state move in an out-of-State warehouse. The proposed amendment regarding N.J.A.C. 13:44D-4.8(f) will, pursuant to N.J.S.A. 45:14D-11, clarify that safe, proper and adequate service entails a warehouse that is an actual building, as opposed to a temporary structure that fails to meet state and local building and fire codes.

N.J.A.C. 13:44D-4.9 indicates that a public mover shall not collect from a shipper any tariff charges on a shipment that is either totally lost or destroyed, although the shipper will remain liable for any and all insurance premiums jointly agreed to by the shipper and public mover.

N.J.A.C. 13:44D-4.10 confirms that the public mover or warehouseman is liable for physical loss, destruction or damage to any articles of the shipper during transit or storage provided that certain circumstances do not apply, including damage caused either by the shipper's negligence or by "an act of God." This section further states that the burden of proof rests with the public mover or warehouseman in instances where circumstantial evidence is relevant, and that the public mover or warehouseman is not liable for any loss or damage that occurs after the property has been delivered to the shipper or the shipper's authorized agent.

N.J.A.C. 13:44D-4.11 establishes the manner in which claims procedures are to be handled, including the timeframe, documents, payment and liability aspects of the professional relationship between the shipper and public mover or warehouseman.

N.J.A.C. 13:44D-5.1 provides samples of forms and contracts used by licensees in transactions related to their providing contractual services.

The Board is contemplating additional proposed amendments and new rules that are not fully developed in time for the readoption of this chapter.

Social Impact

The proposed readoption and amendments to N.J.A.C. 13:44D will allow the Board of Public Movers and Warehousemen to continue to enforce and effect the beneficial consumer protection measures which resulted from the original promulgation of these rules. The rules will continue to regulate the professional conduct of public movers and warehousemen in New Jersey.

The public benefits from the existing rules in that they serve to safeguard the public from the rendering of inadequate or inappropriate services by public movers and/or warehousemen. The proposed amendments will further safeguard the public. The additional definition of "public mover" will do so by clarifying that public movers include those individuals who hold themselves out as such. The amendment on advertising will be beneficial to consumers because they will be provided with the licensee's full licensed name. The amendment on professional misconduct clarifies that the Board has the flexibility to reprimand licensees for specific instances of misconduct that arise on a case-by-case basis. The amendment regarding N.J.A.C. 13:44D-4.8(e) will protect New Jersey consumers by ensuring that the goods of a shipper engaged in an intra-state move will not be stored in an out-of-State warehouse, thereby enabling State inspectors to retain access to goods that will remain within the jurisdiction of the State. The amendment regarding N.J.A.C. 13:44D-4.8(f) will protect New Jersey consumers by clarifying that they are to be protected against having their goods stored in facilities of a ramshackle nature.

The effect of these proposed amendments on licensees of the Board is intended to be instructive and not unreasonably restrictive or punitive in nature. The definition of "public mover" merely clarifies that such individuals include any person who holds him or herself out as a public mover. The addition of a section on advertising incorporates existing statutory requirements and, in addition, requires that all advertising by licensees must include the licensee's full licensed name.

The amendments regarding tariffs are entirely beneficial to licensees, who will be able to save money by means of joint filings and who will know that they no longer need to file should they not wish to change the tariff that they presently have on file with the Board.

The amendments on occupational misconduct and warehousing clarify for enforcement purposes that the Board has the discretionary authority to find that a licensee has engaged in occupational misconduct on a case-by-case basis for reasons beyond those specifically cited by regulation, that a licensee shall not store the goods of a shipper engaged in an intra-state move in an out-of-State warehouse, and that a consumer's

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goods must be stored in an actual building that meets all State and local building and fire codes.

Economic Impact

The proposed definition of "public mover" in N.J.A.C. 13:44D should not have any economic impact on licensees. The creation of N.J.A.C. 13:44D-2.5 should, at most, involve a nominal increase in costs for licensees and then only to the extent that licensees may need to pay for additional advertisement space in order to include the necessary information detailing the licensee's full licensed name, telephone number and license number.

The amendments to N.J.A.C. 13:44D-3.1 will have a beneficial economic impact on licensees because they will be able to save on preparation costs by filing joint tariffs, because they are being advised that they need not pay the cost of filing a tariff when no rate changes are involved, and because the reference to the more expensive option of filing a tariff in permanently-bound style is being deleted.

The amendment to N.J.A.C. 13:44D-4.6 merely clarifies that licensees may be deemed to have engaged in occupational misconduct on grounds not expressly stated in the existing section.

The amendment regarding N.J.A.C. 13:44D-4.8(e) will have an economic impact on licensees engaged in an intra-state move who do not have or have not utilized New Jersey warehouse(s) because of their having gained a comparative cost advantage by utilizing warehouse(s) that are out-of-State. The Board estimates that approximately 20 licensees, who are presently involved in the practice of storing the goods of shippers engaged in an intra-state move in out-of-State warehouses, may not retain the comparative cost advantage cited above. The Board regards such an outcome as more than justified, however, by the consumer protection that this amendment affords.

The amendment regarding N.J.A.C. 13:44D-4.8(f) does not in and of itself impose extra costs on licensees, since it merely reflects the fact that licensees must be in compliance with state and local building and fire codes and that if they are not in compliance the Board shall necessarily be in a position to revoke unwarranted licenses. The Board estimates that approximately 200 licensees are currently storing consumers' goods in facilities that fail to meet the Board's codified policy standard, pursuant to N.J.S.A. 45:14D-11, of requiring licensees to utilize warehouses that constitute safe, proper and adequate service by virtue of their being actual buildings that meet all state and local building and fire codes. For these 200 licensees, the need to meet the existing codes cited above may involve significant additional costs in order to come into compliance.

Failure to readopt these regulations, including the proposed amendments, will result in a decrease in consumer confidence regarding the verifiable quality of the professional services being offered by public movers and/or warehousemen.

Certain existing rules to be readopted without amendment need to be addressed in this statement as follows.

N.J.A.C. 13:44D-2.4 details the fee schedule for licensees of this Board. The schedule has an economic impact on licensees and applicants for licensure by establishing fees that are the minimum necessary for the Board to be self-funding and thus in compliance with N.J.S.A. 45:1-3.2.

N.J.A.C. 13:44D-3.1 and 4.1 will have an economic impact on licensees who may in the filing of the tariff required in 3.1 or in preparation for presenting consumers with the information and forms required in 4.1 secure the assistance of professional services for the writing and/or printing of the requisite documents.

N.J.A.C. 13:44D-4.1 has an economic impact on licensees by making them liable for items at a rate of 60 cents ($.60) per article, and for establishing bodily injury liability and property damage liability thresholds. These thresholds have an economic impact on consumers by limiting the recognized extent to which licensees are liable for damages.

N.J.A.C. 13:44D-4.3 has an economic impact on licensees in that it requires them to conduct a physical inspection of the premises and goods to be moved and/or stored prior to providing a shipper with an estimate for moving and/or storage services. This physical inspection necessarily involves an investment of employee time and labor.

The economic impact of N.J.A.C. 13:44D-4.9 arises from its prohibiting any public mover from collecting any tariff charges from a shipper on a shipment that is either totally lost or destroyed. However, the shipper remains liable for any insurance premiums jointly agreed to with the public mover. N.J.A.C. 13:44D-4.10 has an economic impact on a public mover or warehouseman by confirming their liability for physical loss, damage or destruction of any articles of a shipper during transit or storage, with certain circumstances excepted. The claims procedures under N.J.A.C. 13:44D-4.11 impose certain administrative costs on participants, but also promote efficient claims resolution.

Regulatory Flexibility Analysis

The readoption of this chapter, complete with amendments and proposed new rule N.J.A.C. 13:44D-2.5, will affect all of the approximately 400 public movers currently licensed by the Board of Public Movers and Warehousemen. The Board estimates that a majority of these licensees are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The existing rules that have been proposed for readoption have been deemed by the Board of Public Movers and Warehousemen to the minimum necessary in order to ensure that the profession continues to provide consumers with service of the highest possible quality.

Some of the existing rules contain provisions that have been proposed to be readopted without change and that need to be addressed in this statement. N.J.A.C. 13:44D-2.2 requires reporting in that a licensee must notify the Board should there be a change of address, business name or business telephone number. N.J.A.C. 13:44D-3.1 requires reporting in that a licensee must file with the Board a tariff indicating changes in rates, charges, classification ratings, and terms and conditions. N.J.A.C. 13:44D-4.2 requires both reporting and recordkeeping in that licensees must secure, maintain and file with the Board a certificate of insurance form verifying insurance coverage related to motor vehicle equipment, cargo, storage facilities and property being held in storage.

The deletions being proposed regarding the filing of tariffs will effectively reduce the regulatory burden on licensees who will save on preparation costs by being able to file joint tariffs and who may now more readily understand that they need not file a tariff if an existing tariff on file with the Board adequately reflects the rates that they wish to charge. In filing their tariffs, licensees will also find that their costs of compliance are reduced should they have previously relied on the more expensive option of filing tariffs in a permanently-bound style.

The proposal to include a definition of "public mover" will not impose any additional recordkeeping, reporting, initial capital costs or other costs of compliance on licensees. A similar statement can be made regarding the other proposed additions to N.J.A.C. 13:44D, with the following exceptions: the amendment regarding N.J.A.C. 13:44D-4.8(f) may impose significant additional capital costs for those licensees who find it necessary to upgrade the facilities they lease or own in order to meet the Board's codified policy standard, pursuant to N.J.S.A. 45:14D-11, of requiring licensees to utilize warehouses that constitute safe, proper and adequate service by virtue of their being actual buildings that meet all state and local building and fire codes; the advertising requirements may involve other costs of compliance if an advertising licensee must pay for additional advertising space in order to print the licensee's full licensed name.

The Board believes that professional services may, at the licensee's discretion, be employed for the purposes of writing and/or printing the tariff required in N.J.A.C. 13:44D-3.1 and/or the information and forms required in N.J.A.C. 13:44D-4.1. The cost of these services will depend on individual negotiated rates but are in any event expected to be minimal.

Since the intent of this readoption, complete with amendments and new rule N.J.A.C. 13:44D-2.5, is to create uniformity in the profession, this readoption must be applied identically without differentiation as to size of practice.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:44D.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:44D-1.1 Words and phrases defined

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

. . .

"Public mover" means any person who engages in or holds him or herself out to the general public as engaging in the transportation of household goods, office goods or special commodities by motor vehicle for compensation in intrastate commerce between points in this State, including the moving of household goods, office goods or special commodities from one location to another at a single

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address, and any person who engages in the performance of accessorial services.

. . .

13:44D-2.1 License to engage in the business of public moving and/or storage

(a) No license to engage in the business of public moving and/or storage shall be issued or remain in effect unless the applicant owns or leases pursuant to a long-term lease at least one moving vehicle and unless there shall be on file with the [the Director of the Division of Consumer Affairs] **Board**:

1.-4. (No change.)

(b) The initial license shall be issued to a qualified applicant if it is found that the applicant is fit, willing and able to perform the service of a public mover and/or warehouseman, to conform to the provisions of the Public Movers and Warehousemen Licensing Act, N.J.S.A. 45:14D-1 et seq., and pays the required fee. Requests for the renewal of a license shall be on such forms as may be specified by the [Director] **Board** and accompanied by the required renewal fee.

(c) All licenses issued by the [Director] **Board** shall expire on September 30 of each year or such other date as may from time to time be designated.

(d) (No change.)

(e) A duly certified copy of the license issued by the [Director] **Board** shall be carried on each truck, tractor, trailer or semitrailer or combination thereof at all times when the vehicle is being used in the performance of moving and/or storage devices.

(f) A decal issued by the [Director] **Board** indicating that the public mover and/or warehouseman is licensed in this State shall be displayed on the driver's side door of each power unit registered and performing intrastate moving and/or storage services, including all vehicles used by an owner/operator on contract to a public mover.

13:44-2.2 Change of address, business name or telephone number

(a) A licensed public mover and/or warehouseman shall notify the [Director of the Division of Consumer Affairs] **Board** in writing of any change of address or business name from that currently registered with the [Director] **Board** and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of address or business name.

(b) A licensed public mover and/or warehouseman shall notify the [Director of the Division of Consumer Affairs] **Board** in writing of any change of business telephone number from that currently registered with the [Director] **Board**. Such notice shall be given not later than 30 days following the change of telephone number.

13:44D-2.3 Designation of agent

(a) No public mover and/or warehouseman shall operate under a license and until there has been filed with the [Director of the Division of Consumer Affairs] **Board**, on the specified form, a designation of agent, street address and municipality upon whom service of process, notices and/or orders may be made pursuant to N.J.S.A. 45:14D-1 et seq.

(b) (No change.)

(c) The [Director] **Board** shall be notified immediately upon change of designated agent.

13:44D-2.5 Advertising

(a) All advertising by licensees shall include the licensee's:

1. Full licensed name;

2. License number; and

3. New Jersey business address and phone number.

13:44D-3.1 Tariffs

(a) Every public mover and/or warehouseman shall file with the [Director of the Division of Consumer Affairs, through the State] Board [of Public Movers and Warehousemen,] a tariff or tariffs indicating the rates, charges, classification ratings, and terms and conditions of the public mover and/or warehouseman. [The tariff shall be independently prepared and filed and shall not be prepared or filed through a common or joint agent or entity unless otherwise permitted by law and found appropriate by the Director.] A copy of the tariff filed with the [Director] **Board** shall be kept open for public inspection in all offices and facilities of Board licensees where a request for moving and/or storage services may be made. The tariff shall be readily accessible to the public at all times during normal business hours and whenever requested by any person the tariff shall be produced for immediate inspection. No regulated services shall be rendered unless specifically provided for in the tariff.

(b) The tariff shall be filed with the [Director semiannually.] **Board no more often than on a semiannual basis, with** [The first filing must] **the first filing to** be received by the Board no later than April 1 and the second no later than October 1. Filings made promptly and accepted by the Board will become effective as of May 1 and November 1 respectively. **If a mover chooses not to change his or her tariff at any given filing period, the previously filed tariff shall remain in effect.** All tariffs shall conform to the following requirements:

1.-2. (No change.)

3. The tariff [may be permanently bound or] **shall be** of a loose-leaf style;

4.-7. (No change.)

8. No exception to these requirements shall be permitted without prior written approval of the [Director] **Board**.

(c) (No change.)

(d) Corrections in the filed tariff shall only be permitted during the period between the filing date and the effective date and shall be subject to the written approval of the [Director] **Board**.

(e)-(f) (No change.)

13:44D-4.6 Occupational misconduct

(a) A public mover shall be deemed to have engaged in occupational misconduct within the meaning of N.J.S.A. 45:14D-7(f) if said public mover **engages in conduct including, but not limited to, the following**:

1.-3. (No change).

(b) (No change.)

13:44D-4.8 Warehousing

(a)-(d) (No change.)

(e) A public mover and/or warehouseman shall not store the goods of a shipper engaged in an intra-state move in an out-of-State warehouse.

(f) A building, any part of which is being used for the storage of goods, shall meet all state and local building and fire codes.

(a)

DIVISION OF CONSUMER AFFAIRS
OFFICE OF WEIGHTS AND MEASURES
General Commodities; Weights and Measures
Proposed Readoption with Amendments: N.J.A.C. 13:47C

Authorized By: William Wolfe, State Superintendent, Division of Consumer Affairs, Office of Weights and Measures.

Authority: N.J.S.A. 51:1-61.

Proposal Number: PRN 1994-267.

Submit written comments by June 1, 1994 to:
William Wolfe, State Superintendent
Division of Consumer Affairs
Office of Weights and Measures
1261 Routes 1 & 9 South
Avenel, New Jersey 07001

The agency proposal follows:

Summary

Pursuant to the provisions of Executive Order No. 66(1978), the rules at N.J.A.C. 13:47C will expire on June 9, 1994. As required by the Executive Order, the Office of Weights and Measures has reviewed these rules and determined them to be necessary, reasonable and proper, as amended and supplemented, for the purpose for which they were originally promulgated. The Office of Weights and Measures has determined that the rules provide the regulatory control to protect both the consuming public and the merchant. The Office also believes that

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the rules continue to be necessary to maintain equity in the marketplace.

A summary of each section and the proposed amendments are as follows:

N.J.A.C. 13:47C-1.1 provides definitions for the words and phrases used in these rules.

N.J.A.C. 13:47C-2.1 provides for the sale of meat, poultry, and fish by net weight.

N.J.A.C. 13:47C-2.2 provides the standard for sectioned poultry.

N.J.A.C. 13:47C-2.3 provides rules for sale of dried or smoked fish.

N.J.A.C. 13:47C-2.4 provides rules for the sale of divided units of food.

N.J.A.C. 13:47C-2.5 provides rules for the sale of certain ready-to-eat food items. This rule is being amended to state the requirement that all articles of food, other than those specifically excepted in the regulation, are to be offered for sale or sold by net weight, measure or count. This rule is being amended to bring it into compliance with N.J.S.A. 51:1-17.

N.J.A.C. 13:47C-2.6 provides rules for the sale of fresh meat roasts.

N.J.A.C. 13:47C-2.7 provides rules for the methods of sale, packaging and labeling of primal cuts of meat. This rule is being amended to reflect the change in the citation of the regulation relating to the Marking Requirements. N.J.A.C. 13:47D-4 was repealed and replaced by new rules at N.J.A.C. 13:47K-4 by R.1990 d.468, effective September 17, 1990.

N.J.A.C. 13:47C-3.1 provides rules for the sale and delivery of firewood.

N.J.A.C. 13:47C-3.2 provides rules for the sale of holiday decorating materials.

N.J.A.C. 13:47C-3.3 provides rules for the sale by net weight of wiping materials. This section is being amended to delete N.J.A.C. 13:47C-3.3(b) because the penalty provisions and the statutory authority citation appear elsewhere in this chapter.

N.J.A.C. 13:47C-3.4 provides advertising rules for building materials and paneling. For the sake of expanding consumer protection, this section is being amended to require the advertisement to contain the size—in addition to the grade and species—of untreated building materials, the preservative used in treatment, the amount of preservative retention expressed as pound per cubic foot and maximum or worst exposure conditions to which the treated wood should be subjected.

N.J.A.C. 13:47C-3.5 provides penalties for non-compliance with these rules.

N.J.A.C. 13:47C-3.6 provides standards for treated lumber. This section is being amended to reflect the current address of American Wood Preservers Association and to distinctly require that all treated lumber sold, offered or advertised for sale to consumers as building materials must, in addition to complying with the grademarking requirements of N.J.S.A. 51:4-27, bear a treatment mark containing the specified information regarding the year of treatment, treater's trademark, the preservation used in treatment, the applicable AWPA standard or equivalent, the maximum or worst exposure conditions to which the treated wood should be subjected, and the treating company name and plant location. For the sake of expanding consumer protection, this specified information will now also require disclosure of the chemical retention capability of treated lumber. This section requires that treated lumber sold, offered or advertised for sale, exclusively for landscaping or gardening purposes, bear treatment tags containing the specified information.

N.J.A.C. 13:47C-4.1 to 4.5 are being deleted. These rules are no longer needed since the two New Jersey mills that were previously producing New Jersey Atlantic White Cedar have ceased to do so.

N.J.A.C. 13:47C-6 sets forth the security bond requirement for transient buyers of precious metals.

Social Impact

The proposed readoption and amendments to N.J.A.C. 13:47C will provide the buyers and sellers of general retail commodities such as food, firewood and building materials with uniform standards by which the commercial transactions are regulated. The social impact of these rules has been a positive one for both consumers and merchants in that consumers are protected from unscrupulous commercial dealings and practices and merchants are uniformly advised of their responsibilities in the market place. The rules provide the consumer necessary information to make selections of consumer comodities on the basis of value comparisons. The treated lumber rules provide necessary information to consumers in the selection of appropriate treated lumber. It has been, historically, a function of the government to stand as the third person between buyer and seller to insure an orderly climate for the exchange of goods. These rules help provide that climate for consumers and merchants. The public benefits from these rules in that the rules provide for a third party control of methods used in the selling and purchasing of commodities.

Economic Impact

There should be no additional cost to the regulatory agencies above that which they now bear in terms of their day-to-day operations, which include approximately 140 State, county and municipal Weights and Measures officers who now inspect and regulate these commodities. The proposed amendments will have an economic impact on those merchants who need to upgrade their operating procedures in order to comply with the following proposed standards: (1) ensure that all articles of food are offered for sale or sold by net weight, measure or count except as provided in N.J.A.C. 13:47C-2.5(a) through (d); (2) include information in advertisements for building materials that states the size of untreated building material, and the size, grade, species, the preservative used in treatment, the amount of preservative retention expressed as pound per cubic foot and maximum or worst exposure conditions to which the treated wood should be subjected; and (3) ensure that treated lumber sold, sold and delivered, offered or advertised for sale that is not for landscaping or gardening purposes shall bear legible treatment marks that contain the amount of retention of preservative in the treated lumber expressed as pound(s) per cubic foot.

The consuming public will continue to be protected in its multi-billion dollar purchase of foodstuffs, fuels, building materials and precious metals. The costs on the Office of Weights and Measures, which must oversee compliance with these rules, are not easily quantifiable. The benefits to the consuming public, however, in savings from the prevention of overcharges and the maintenance of a uniform system of buying and selling commodities far outweigh the burden of costs which these rules may impose.

The rest of the rules, which are being readopted, prescribe the method of sale for various types of food such as meat, poultry, fish, etc., based on the provisions of N.J.A.C. 51:1-17 and the Uniform Laws and Regulations, adopted through the sponsorship of the National Institute of Standards and Technology in the United States Department of Commerce. The businesses, who are engaged in the selling of aforementioned commodities, will have to purchase and use weighing devices to determine the accurate weight of the commodities so that the consumers are able to make a value-comparison. The costs of purchasing and using the scales cannot be readily quantified because the number and capacity of the scales will vary depending upon the demands of the consumers. However, any such costs are far exceeded by the benefits to the consumers in that an equitable standard is provided for the buyers and sellers of commodities.

Regulatory Flexibility Analysis

The proposed readoption and amendments of the rules impact regulatory officials and merchants in the marketplace setting and impose additional recordkeeping, reporting, initial capital costs or other costs of compliance on the small business community (as "small business" is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.) as follows: Those merchants who need to upgrade their operating procedures in order to ensure that all articles of food are offered for sale or sold by net weight, measure or count may experience some initial capital costs or other costs of compliance. Advertising costs will nominally increase to account for the additional space needed by those merchants whose advertisements for untreated building materials did not previously state the material's size, and the size, grade, species, the preservative used in treatment, the amount of preservative retention expressed as pound per cubic foot and maximum or worst exposure conditions to which the treated wood should be subjected. There will likewise be a nominal increase in the cost of compliance for those merchants who, in regard to the sale, delivery, offer or advertising of treated lumber, did not previously include the amount of retention of preservative in the treated lumber expressed as pound(s) per cubic foot among the information provided on legible treatment marks.

Some existing rules that have been proposed to be readopted without change also need to be addressed in this statement. N.J.A.C. 13:47C-2.7 requires that the delivery of primal cuts of meats shall be accompanied with an invoice containing certain information related to the transaction. Likewise, N.J.A.C. 13:47C-3.1(f) requires the seller of firewood to issue a serialized delivery ticket or invoice, containing certain information related to the delivery of firewood to the consumers. The delivery ticket or invoice relating to the delivery of firewood is required to be retained by the seller for one year for inspection by a Weights and Measures Officer. The costs of issuing said invoices or delivery tickets and retaining the same are minimal. N.J.A.C. 13:47C-3.4 requires that dealers advertis-

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ing building materials and paneling disclose not only the grade and species of building material, but that they also disclose the size of such building material. The category of building material has been clarified to mean untreated building material. Furthermore, N.J.A.C. 13:47C-3.4 requires dealers who advertise building materials and paneling to disclose the size, grade, species of the treated building material, the preservative used in treatment, the amount of preservative retention expressed as pound per cubic foot and maximum or worst exposure conditions to which the treated wood should be subjected. N.J.A.C. 13:47C-3.6 requires that all treated lumber sold, offered or advertised for sale to consumer as building materials must have a treatment mark indicating the chemical retention capability of the treated lumber sold, offered or advertised for sale to consumer as building materials must have a treatment mark relating to the treatment of the treated lumber. Likewise, it requires that lumber and lumber products, which have not been treated in compliance with the standard, bear treatment mark containing the specified information to alert the consumers of the fact. Compliance with any of the existing or proposed amended rules will not necessitate the employment of professional services.

As the recordkeeping requirements are the minimum necessary to monitor commercial transactions, no lesser requirement or exemptions are provided based upon the size of business.

The objectives of the existing and proposed amended rules in providing an equitable marketplace for consumers require uniform application of its requirements to small businesses without regard to size. Consequently, no lesser requirement or exemptions are provided based upon the size of business or frequency of transactions.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:47C.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:47C-2.5 Ready-to-eat food

(a) [The following may be sold] **All articles of food shall be offered for sale or sold** by net weight, measure or count, **except as provided in (a)1 through 4 below**:

1. Items sold for, or intended to be sold for, consumption on the premises of the seller;

2. Items sold as one of three or more different elements, excluding condiments, comprising a ready-to-eat meal sold as a unit, for consumption elsewhere than on the premises where sold;

3. Ready-to-eat chicken parts cooked on the premises but not packaged in advance of the sale; **and**

4. Sandwiches when offered or exposed for sale on the premises where packed or produced and not intended for sale.

13:47C-2.7 Primal cuts of meats

(a) The sale of gross cuts or gross weight portions of meat such as hind quarters beef, half round, ground beef, sirloin beef, whole beef, beef lamb, [for] **fore** quarter veal and hind quarter veal sold on a gross weight basis to freezer plans in home freezer units will be construed as meeting the requirements of this chapter, and the provisions of N.J.A.C. [13:47D-4] **13:47K-4** (Marking Requirements) implementing N.J.S.A. 51:1-29 will not apply except as specified.

(b)-(d) (No change.)

(e) Substitutions or specific cuts not a part of the gross or wholesale cut shall be construed to be pre-packed food and must comply with N.J.A.C. [13:47D-4] **13:47K-4** (Marking Requirements).

(f) (No change.)

13:47C-3.3 Wiping [Materials] **materials**

[(a)] All wiping materials shall be sold by net weight, and when put up in bales, cartons or other containers, the net quantity of the contents in terms of avoirdupois net weight shall be plainly and conspicuously marked on the outside of the package together with the name and address of the packer or distributor.

[(b) The penalty is not less than $25.00 according to N.J.S.A. 51:1-89.]

[Statutory Reference]
[See: N.J.S.A. 5:1-61]

13:47C-3.4 Advertising of building materials and paneling

(a) (No change.)

(b) No dealer, equipped or unequipped, shall offer, expose for sale or both offer and expose for sale, by the use of any advertising media or means, any building materials[,] to consumers in the State of New Jersey unless the **size,** grade and species of each such **untreated** building material **and the size, grade, species, the preservative used in treatment, the amount of preservative retention expressed as pound per cubic foot and maximum or worst exposure conditions to which the treated wood should be subjected** is clearly contained in said advertising. All prefix and/or suffix adjectives **about the grade and species of the building materials** shall be limited to a statement of both the grade and species in accordance with the applicable commercial standards of the United States Department of Commerce, the grading rules of approved grading rules writing agency or other industry standards as are accepted by the Superintendent.

(c) (No change.)

13:47C-3.6 Standard for treated lumber

(a) All preservatives commodities, analysis methods, miscellaneous standards, conversion factors and correction tables for treated lumber so contained in the "Book of Standards" published by the American Wood Preservers Association (AWPA), [7753 Georgetown Road, Bethesda, Maryland 20814] **P.O. Box 286, Woodstock, Maryland 21163**, together with all amendments and supplements thereto, are hereby adopted by reference as the legal requirements for treated lumber sold, sold and delivered, offered or advertised for sale to consumers as building materials in the State of New Jersey.

(b) Treated lumber sold, sold and delivered, offered or advertised for sale to consumers as building materials in the State of New Jersey [with a preservative retention of less than .4 of a pound per cubic foot (hereinafter referred to as pcf)]**, except for lumber which has been treated for "Above ground use only" or which has not been treated in compliance with the "Book of Standards," published by the American Wood Preservers Association, together with all amendments and supplements thereto, or equivalent standards, as are accepted by the State Superintendent of Weights and Measures**, shall in addition to being graded, measured and labeled in accordance with the requirements of N.J.S.A. [51:4-28] **51:4-27** bear legible treatment marks that contain the following minimum information:

1. The year of treatment;

2. The [treaters] **treater's** trademark, if any;

3. The preservative used in treatment;

4. The applicable AWPA or equivalent standard;

5. The maximum or worst exposure conditions to which the treated wood should be subjected[;]

6. Treating company name and plant location[.]**; and**

7. The amount of retention of preservative in the treated lumber expressed as pound(s) per cubic foot.

[(c) Due to industry practices and standards recognized by the Superintendent pursuant to N.J.S.A. 51:4-24, treated lumber with waterborne preservative retention in excess of .4 pcf or equivalent need only carry a treatment mark with the information required in (b)1 through 6 above.]

[(d)]**(c)** Hardwoods listed in the National Hardwood Lumber Association Rule Book which are treated [to either plus or minus .4 pcf] **in accordance with the provisions of (a) above** need only carry [a] treatment [mark as described in (b)1 through 6 above] **marks containing the information prescribed by (b) above.**

[(e)] Rough finished lumber treated to plus or minus .4 pcf, which are either hardwoods as described in (d) above or softwoods as set forth in National Bureau of Standards Product Standard 20-70, need only carry a treatment mark as described in (b)1 through 6 above.

(f) Treated timbers, treated to plus or minus .4 pcf including both hardwoods and softwoods as defined in (d) and (e) above, five inches (nominal size) in thickness or larger; surfaced four sides-S4S-or rough finished, 12 feet or less in length need not carry a grademark but must carry a treatment mark.]

[(g)]**(d)** Any treated lumber product [treated to a plus or minus .4 pcf] **which has been treated for "Above Ground use only" or which has not been treated in compliance with the "Book of Standards," published by the American Wood Preservers Association, together**

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with all amendments and supplements thereto, or equivalent standards, as are accepted by the State Superintendent of Weights and Measures, which is sold and delivered, offered or advertised for sale to consumers by use of any media exclusively for landscaping or gardening purposes [that for any reasons are not treated in complete accordance with the applicable AWPA standards for that treated lumber product need not be grademarked but must be labeled with the following minimum information:

1. The year of treatment;
2. The [treaters] **treater's** trademark, if any;
3. The preservative used in treatment;
4. The words "Non AWPA standard";
5. The words "Above ground use only"; **and**
6. The name and address of the treating company or plant.

[(h)]**(e)** The exemption listed above in (c) [through (g)] **and (d) above** from the grademarking requirements pertain only to those treated lumber products specifically enumerated within the subsections. All other treated lumber products, **and** building materials[,] as defined in N.J.S.A. 51:4-23, must fully comply with all provisions of law.

[(i)]**(f)** (No change in text.)

SUBCHAPTER 4. [INDUSTRY STANDARD NEW JERSEY ATLANTIC WHITE CEDAR] **(RESERVED)**

[13:47C-4.1 Scope

The provisions and requirements of this industry standard shall apply only to that species of tree, and the resultant lumber, wood and wood product materials derived from said tree, known commonly as Atlantic White Cedar (Chamalcyparis Thyoides) and shall apply only to those trees harvested within the geographical boundaries of the State of New Jersey.

13:47C-4.2 Trade name

The trade name of the lumber, wood and wood products resulting from the felling, trimming and working up of said trees shall be designated as "NEW JERSEY ATLANTIC WHITE CEDAR".

13:47C-4.3 Measure

New Jersey Atlantic White Cedar shall be marketed on the basis for board foot measure, linear length and width measure, in inches, any metric measure, or by the piece.

13:47C-4.4 Grade

There are no grades prescribed for New Jersey Atlantic White Cedar within the scope of this industry standard since it is the common industry practice for lumber, wood and wood product materials derived from Atlantic White Cedar to be marketed on a product use basis.

13:47C-4.5 Labeling

(a) All lumber, wood and wood product materials derived from New Jersey Atlantic White Cedar shall be labeled in accordance with the prescribed form, procedures and requirements set forth by the State Superintendent of Weights and Measures, of the State of New Jersey in this industry standard. It shall be the responsibility of all producing mills, saw mills or other manufacturers, as the State Superintendent shall designate, to label such lumber, wood and wood product materials with a label, the size and form of which is set forth below, by strapping, banding or otherwise securely affixing said label to each package unit, said package unit not to exceed 1,000 board foot measure.

(b) The official label for New Jersey White Cedar should contain the name, address and zip code of the producing mill, saw mill or other manufacture, the designation, "NEW JERSEY ATLANTIC WHITE CEDAR", in boldface print not less than ½ inch (1.75 cm) in height, and in readable type the following statement "Labeled in accordance with the industry standard for New Jersey Atlantic White Cedar as registered in the Office of the State Superintendent of Weights and Measures for the State of New Jersey"; No other statement or language shall appear on the label.

(c) It is the responsibility of each producing mill, saw mill or other manufacturers, to submit a sample label to the state Superintendent of Weights and Measures for the state of New Jersey prior to use for approval as to type, form and content of said label by the State Superintendent.]

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF ELECTRICAL ENGINEERING

Bureau of Electrical Engineering Rules

Proposed Readoption with Amendment: N.J.A.C. 16:26

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5 and 27:1A-6.

Proposal Number: PRN 1994-244.

Submit comments by June 1, 1994 to:
Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to readopt with amendment, N.J.A.C. 16:26, "Release of Traffic Signal Information," concerning the operations within the Bureau of Electrical Engineering. These rules are scheduled to expire on September 5, 1994.

The chapter has been reviewed by the staff of the Department's Bureau of Electrical Engineering in compliance with Executive Order No. 66(1978), and was found adequate, reasonable, understandable and necessary for the purpose for which it was promulgated.

The Department has found, however, that since the Manager, Bureau of Electrical Engineering is responsible for the function outlined in these rules, the chapter should be titled "Bureau of Electrical Engineering." Therefore, the Department proposes to amend the title of the chapter.

The proposed readoption with amendment continues the provisions of the basic guidelines concerning traffic signal information and the procedures to be followed by those requesting information concerning the operation or maintenance of traffic signals.

These rules have been very effective and beneficial not only to the Department, but to the users seeking traffic signal information. The fee for such information remains at $100.00 and there is no cost increase contemplated.

The chapter outlines the requirements for and authorizes the Manager, Bureau of Electrical Engineering to release information concerning traffic signal information and the procedure to be followed.

Social Impact

The proposed readoption with amendment provides a simple procedure for obtaining traffic signal information from the Department. This procedure has a positive social impact in that it allows for ease of public access to such information. The rule continues to prove to be necessary and vital to the Department's traffic signal information. If the chapter is not readopted, the Department and those affected by the provisions herein would be adversely affected.

Economic Impact

The proposed readoption with amendment will continue the economic impact incurred by individuals other than local government officials, wherein the fee for information is $100.00. The Department and local government will incur direct and indirect costs in obtaining information concerning the operation and maintenance of traffic signals. These costs are considered to be budgetary. Although the economic conditions of the past have changed, these changes have not necessitated any change in the rule.

Regulatory Flexibility Statement

The proposed readoption with amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as

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the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendment primarily affects individuals seeking traffic signal information and provides guidelines to be followed in obtaining traffic signal information by the counties and municipalities.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:26.

Full text of the proposed amendment follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

CHAPTER 26
BUREAU OF [MAINTENANCE] **ELECTRICAL** ENGINEERING

SUBCHAPTER 1. (No change in text.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route 34
Township of Aberdeen and Borough of Matawan, Monmouth County
Proposed Amendment: N.J.A.C. 16:28-1.18

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
Proposal Number: PRN 1994-260.

Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportaion
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.18 to establish revised "speed limit" zones along Route 34 in the Township of Aberdeen and Borough of Matawan, in Monmouth County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon request by resolution from the local government of Aberdeen Township to resurvey existing speed limits and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of revised "speed limit" zones along Route 34 were warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been changed.

Social Impact

The proposed amendment will establish lower "speed limit" zones along Route 34 in the Township of Aberdeen and Borough of Matawan, Monmouth County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:28-1.18 Route 34

(a) The rate of speed designated for the certain parts of State highway Route 34[,] described below shall be the maximum legal rate of speed:

1. For both directions of traffic in Monmouth County:

i.-v. (No change.)

vi. Aberdeen Township:

[(1) Fifty mph between Marlboro Township line and Van Brackle Road (mileposts 20.44 to 21.20); thence

(2) Zone 3: Forty mph between Van Brackle Road and the southerly Aberdeen Township-Matawan Borough line (mileposts 21.20 to 21.65); thence]

(1) 50 mph between the Marlboro Township-Aberdeen Township corporate line and a point 500 feet south of Randell Way (approximate milepost 20.44 to 20.47); thence

(2) Zone 3: 45 mph between a point 500 feet south of Randell Way and Van Brackle Road (approximate milepost 20.47 to 21.20); thence

vii. Aberdeen Township and Matawan Borough:

[(1) Forty mph between the southerly Aberdeen Township and Matawan Borough line and the northerly Aberdeen Township-Matawan Borough line (mileposts 21.65 to 22.25); thence]

(1) 40 mph between Van Brackle Road and the most northerly Aberdeen Township-Matawan Borough corporate line (approximate milepost 21.20 to 22.25); thence

viii. (No change.)

2. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route U.S. 9
Lower Township, Cape May County
Proposed Amendment: N.J.A.C. 16:28-1.41

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
Proposal Number: PRN 1994-245.

Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.41 to establish a revised form of notice of a school "speed limit" zone along Route U.S. 9 in Lower Township, Cape May County for the efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safety of children attending Lower Cape May Regional High School—Teitelman School (Bennetts Crossing).

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As part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a more visible form of notice of the school "speed limit" zone along Route U.S. 9 was warranted, to assure the safety of student pedestrians in the vicinity of the Lower Cape May Regional High School.

While the speed limit remains the same, the sign will be changed from a plain notice to a sign containing flashers which will operate when students are present.

Social Impact

The proposed amendment will establish a school "speed limit" zone along Route U.S. 9 in Lower Township, Cape May County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Flasher signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:28-1.41 Route U.S. 9

(a) The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Cape May County:

i. Lower Township:

[(1) Zone 1: 50 miles per hour between Route 109 and Cresse Lane except for 35 miles per hour when passing through the Lower Cape May Regional High School zone (mileposts 4.18 to 4.47), during recess when the presence of childen is clearly visible from the roadway or while the children are going to or leaving school, during opening or closing hours (mileposts 3.00 to 5.81); thence]

(1) Zone 1: 50 miles per hour between Route 109 and Cresse Lane except for 35 miles per hour when passing through the Lower Cape May Regional High School—Teitelman School (Bennetts Crossing) zone (mileposts 4.18 to 4.47), while 35 miles per hour "When Flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 3.00 to 5.81); thence

(2) (No change.)

ii.-iv. (No change.)

2. (No change.)

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERIING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route U.S. 130 including parts of the Route I-295, Route U.S. 30 and Route U.S. 206

Carneys Point Township and Borough of Penns Grove, Salem County

Proposed Amendment: N.J.A.C. 16:28-1.69

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1994-254.

Submit comments by June 1, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.69 to establish the revised "speed limit" zones along Route U.S. 130, including parts of Route I-295, Route U.S. 30 and Route U.S. 206 in Carneys Point Township, Borough of Penns Grove, Salem County, for the efficient flow of traffic, the enhancement of safety, the well-being of the populace, and for the safety of children attending the John J. Pershing and the Lafayette Public School.

Based upon request of the local government for channelization marking, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of revised "speed limit" zones along Routes U.S. 130, including parts of the Route I-295, Route U.S. 30 and Route U.S. 206 was warranted, in order to coordinate with the channelization.

Appropriate signs shall be erected in areas where the speed limit zones have been changed.

Social Impact

The proposed amendment will establish revised "speed limit" zones along Route U.S. 130, including parts of the Route I-295, Route U.S. 30 and Route U.S. 206 in Carneys Point Township and the Borough of Penns Grove, Salem County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect cost for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:28-1.69 Route U.S. 130 including parts of the Route I-295, Route U.S. 30 and Route U.S. 206

(a) The rate of speed designated for State highway Route U.S. 130, including parts of Route I-295, Route U.S. 30 and Route U.S. 206 described in this subsection are established and adopted as the maximum legal rate of speed for both directions of traffic:

1. Salem County:

i. (No change.)

ii. Carneys Point Township, Borough of Penns Grove:

(1) (No change.)

[(2) Zone 2: 50 mph from Plant Street to Hollywood Avenue: (milepost 0.6 to 2.2);

(3) Zone 3: 35 mph from Hollywood Avenue to Maple Avenue except 25 mph in the John J. Pershing and the Lafayette Public School zones, during recess or while children are going to or leaving school, during opening or closing hours: (milepost 2.2 to 3.0);]

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(2) Zone 2: 50 mph between Route N.J. 140 (Plant Street) and a point 960 feet south of Hollywood Avenue (approximate milepost 0.56 to 2.20);

(3) Zone 3: 35 mph between a point 960 feet south of Hollywood Avenue to Maple Avenue, except 25 mph when passing through the John J. Pershing and the Lafayette Public School zones during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate milepost 2.20 to 3.03);

(4)-(5) (No change.)

iii. (No change.)

2.-6. (No change.)

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 47

Middle Township, Cape May County

Proposed Amendment: N.J.A.C. 16:28-1.132

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1994-246.

Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28-1.132 to establish revised "speed limit" zones along Route N.J. 47 in Middle Township, Cape May County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon request of the local government by resolution to resurvey existing speed limits and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of revised "speed limit" zones along Route N.J. 47 were warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been changed.

Social Impact

The proposed amendment will establish lower "speed limit" zones along Route N.J. 47 in Middle Township, Cape May County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:28-1.132 Route 47

(a) The rate of speed designated for the certain part of State highway Route 47 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1. In Cape May County:

i.-ii. (No change.)

iii. Middle Township:

(1) (No change.)

(2) Zone 2: 40 mph between 700 feet south of the center of the northbound roadway of the Garden State Parkway overpass and [Route U.S. 9] **Fifth Street** (approximate mileposts 2.96 to [3.76] **3.36**); thence

(3) Zone 3: 35 mph between [Route US 9] **Fifth Street** and County Road 626 (Railroad Avenue) (approximate mileposts [3.76] **3.36** to 4.07); thence

(4)-(9) (No change.)

iv. (No change.)

2.-4. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Wyckoff Mills Road (Under State Jurisdiction)

Howell Township, Monmouth County

Proposed New Rule: N.J.A.C. 16:28-1.182

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1994-259.

Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes a new rule at N.J.A.C. 16:28-1.182 to establish "speed limits" along Wyckoff Mills Road (under State jurisdiction) in Howell Township, Monmouth County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon request of the local government to establish a reasonable speed limit on Wyckoff Mills Road and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a "speed limit" zone along Wyckoff Mills Road (under State jurisdiction) was warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been established.

Social Impact

The proposed new rule will establish a "speed limit" zone along Wyckoff Mills Road (under State jurisdiction) in Howell Township, Monmouth County, for the efficient flow of traffic, the enhancement

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of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:28-1.182 [(Reserved)] **Wyckoff Mills Road (under State jurisdiction Route U.S. 9 Ramp)**

(a) The rate of speed designated for Wyckoff Mills Road (under State jurisdiction) described in this subsection shall be established and adopted as the maximum legal rate of speed thereat for both directions of traffic:

1. In Monmouth County:

i. Howell Township:

(1) Zone 1: 40 mph between Route U.S. 9 and Strickland Road (approximately 1,500 feet).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Frontage Road (Under State Jurisdiction)

Union Township, Hunterdon County

Proposed New Rule: N.J.A.C. 16:28-1.183

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1994-255.

Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes a new rule at N.J.A.C. 16:28-1.183 that will establish "speed limit" zones along Frontage Road (under State jurisdiction) in Union Township, Hunterdon County, for the efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon request of the local government to establish a reasonable speed limit on Frontage Road and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "speed limit" zones along Frontage Road (under State jurisdiction) was warranted.

Appropriate signs shall be erected in areas where the speed limit zones have been established.

Social Impact

The proposed new rule will establish "speed limit" zones along Frontage Road (under State jurisdiction) in Union Township, Hunterdon County, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appriopriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rule follows:

16:28-1.183 Frontage Road (under State jurisdiction Route I-78 Connector)

(a) The rate of speed designated for Frontage Road (under State jurisdiction) described in this subsection is established and adopted as the maximum legal rate of speed for both directions of traffic:

1. Hunterdon County:

i. Union Township:

(1) Zone 1: 25 mph between Pattenburg Road and a point 725 feet east of Pattenburg Road.

(2) Zone 2: 35 mph between a point 500 feet west of Perryville Road and a point 750 feet east of Perryville Road.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 31

East Amwell Township, Hunterdon County

Proposed Amendment: N.J.A.C. 16:28A-1.22

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-256.

Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.22 to establish a no stopping or standing zone on Route N.J. 31 in East Amwell Township, Hunterdon County. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

The amendment is being proposed at the request of the local government of the Township of East Amwell by resolution to enhance traffic conditions, improve traffic flow, and as part of the Department's ongoing

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review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of no stopping or standing zone along Route N.J. 31 was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish no stopping or standing restrictions along Route N.J. 31 in East Amwell Township, Hunterdon County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for the installation of appropriate parking restrictions zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:28A-1.22 Route 31

(a) The certain parts of State highway Route 31 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-7. (No change.)

8. No stopping or standing in East Amwell Township, Hunterdon County:

i. Along both sides:

(1) Beginning at the northerly curb line of Lambertville-Hopewell Road (C.R. 518) and a point 1,200 feet northerly therefrom.

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route U.S. 40
Hamilton Township, Atlantic County
Proposed Amendment: N.J.A.C. 16:28A-1.28

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-265.

Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.28 to establish time limit parking and no stopping or standing zones on Route U.S. 40 in Hamilton Township, Atlantic County. The provisions of these amendments will improve the flow of traffic and enhance safety along the highway system.

These amendments are being proposed at the request of the local government of the Township of Hamilton by resolution for installation of left turn lanes and to limit parking, to improve traffic flow, and as part of the Department's ongoing review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of time limit parking and no stopping or standing zones along Route U.S. 40 were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendments will establish time limit and no stopping or standing restrictions zones along Route U.S. 40 in Hamilton Township, Atlantic County, to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The local government will bear the costs for the installation of appropriate parking restrictions zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:28A-1.28 Route U.S. 40

(a) The certain parts of State highway Route U.S. 40 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-4. (No change.)

5. No stopping or standing in Hamilton Township, Atlantic County:

i. (No change.)

ii. Along the northerly (westbound) side:

(1) (No change.)

(2) Beginning at the easterly curb line of Route N.J. 50 to a point 250 feet easterly therefrom.

6. Time limit parking in Hamilton Township, Atlantic County:

i. Along the northerly side:

(1) From the westerly curb line of Farragut Avenue to a point 250 feet east of the easterly curb line of Route N.J. 50.

Recodify existing 6.-8. as **7.-9.** (No change in text.)

(b) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Limited Access Prohibition
Route N.J. 55 Freeway
Proposed New Rule: N.J.A.C. 16:30-7.3

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-1, 27:1A-5, 27:1A-44, 39:4-197(b), 39:4-81 and 39:4-199.1

Proposal Number: PRN 1994-261.

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Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to establish a new rule at N.J.A.C. 16:30-7.3 concerning limiting certain classes of traffic (pedestrians, animals and non-motorized vehicles) along Route N.J. 55 Freeway. N.J.A.C. 16:30-7.3 is being proposed to effect limiting certain classes of traffic in Maurice River Township, Millville City and Vineland City in Cumberland County; Pittsgrove Township in Salem County; and Franklin Township, Clayton Borough, Elk Township, Glassboro Borough, Harrison Township, Mantua Township, Pitman Borough and Deptford Township in Gloucester County (approximate mileposts 20.0 to 60.85). The provisions of this new rule will improve the flow of traffic and enhance safety along the highway system.

This new rule is being proposed as part of the Department's ongoing review of current conditions and for the health, safety and welfare of pedestrians, bicyclists and the motoring public. A traffic investigation conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of the limited access restriction along Route N.J. 55 Freeway was warranted, since, without these restrictions, the safety of pedestrians, animals and non-motorized vehicles (such as bicycles) is at risk, due to the heavy vehicular traffic on the Route 55 Freeway. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed new rule will establish limited access prohibitions along Route N.J. 55 Freeway to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:30-7.3 [(Reserved)] **Route N.J. 55 Freeway**

(a) The use of the completed parts of Route N.J. 55 Freeway in both directions shall be limited to certain classes of traffic, beginning at milepost 20.00 in Maurice River Township to include the corporate limits of Millville City and Vineland City in Cumberland County, Pittsgrove Township in Salem County, Franklin Township, Clayton Borough, Elk Township, Glassboro Borough, Harrison Township, Mantua Township, Pitman Borough and Deptford Township in Gloucester County, ending at milepost 60.85. The use of the aforesaid sections of the Route N.J. 55 Freeway by the following classes of traffic is prohibited:

1. Pedestrians, except park areas, rest areas, walks and crossings specifically designated by the Commissioner for that purpose;

2. Animals, led, ridden or driven, except on leash where pedestrians are permitted; and

3. Non-motorized vehicles.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route N.J. 47
City of Vineland, Cumberland County
Proposed Amendment: N.J.A.C. 16:31-1.8

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6, 39:4-199.1 and 39:4-125.

Proposal Number: PRN 1994-257.

Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.8 concerning turning movements along Route N.J. 47 to effect a "no "U"-turn" in the City of Vineland, Cumberland County, and a recodification in compliance with the Department's rulemaking format.

The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the City of Vineland by a resolution requesting the "U-Turn" prohibition to improve traffic flow and to eliminate a possible traffic hazard. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of the turning movement restriction along Route N.J. 47 was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish turn restrictions along Route N.J. 47 in the City of Vineland, Cumberland County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

16:31-1.8 Route 47

(a) Turning movements of traffic on certain parts of State highway Route 47 described [herein below] **in this subsection** are regulated as follows:

[1. No left turns north on Route 47 to west on Bankbridge Road, Deptford Township.]

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1. No left turn:
i. In Deptford Township, Gloucester County:
(A) From north on Route 47 to west on Bankbridge Road.
2. No "U" turn:
i. In the City of Vineland, Cumberland County:
(A) From 925 feet south of College Drive to a point 1,065 feet south of College Drive.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route U.S. 46
Mount Olive Township, Morris County
Proposed Amendment: N.J.A.C. 16:31-1.3

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123, 39:4-183.6 and 39:4-199.1.
Proposal Number: PRN 1994-258.

Submit comments by June 1, 1994 to:
William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering
and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:31-1.3 to effect "no left turn" in Mount Olive Township, Morris County.

The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed at the request of the municipal government by resolution requesting a resurvey of the existing speed limits and as part of the Department's ongoing review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of the turning movement restriction along Route U.S. 46 was warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendment will establish a turn restriction along Route U.S. 46 in Mount Olive Township, Morris County, to improve traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposal follows (additions indicated in boldface **thus**):

16:31-1.3 Route 46
(a) Turning movements of traffic on the certain parts of State highway Route U.S. 46 described in this subsection are regulated as follows:
1. No left turns in Mount Olive Township, Morris County:
i.-iii. (No change.)
iv. West on Route U.S. 46 to south on Gold Mine Road.
2. (No change.)

TREASURY-GENERAL

(b)

STATE INVESTMENT COUNCIL
Common Pension Fund A
Distribution of Realized Appreciation
Proposed Amendment: N.J.A.C. 17:16-62.11

Authorized By: State Investment Council, Ronald M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.
Proposal Number: PRN 1994-247.

Submit comments by June 1, 1994 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment eliminates the mandatory review by the State Investment Council of capital gains distributions from the fund. The Pension Revaluation Law of 1992 (P.L. 1992, c.125) eliminated the need for such review, because all assets, whether distributed or not, were now included in the actuaries' determination of pension fund liabilities.

Social Impact

The proposed amendment will provide a slight streamlining of the procedures of the State Investment Council and the Division of Investment.

Economic Impact

The proposed amendment imposes no economic impact, as the need for the review was eliminated by statute.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendment has no effect on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulates only the Director of the Division of Investment and the State Investment Council.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

17:16-62.11 Distribution of realized appreciation
(a) [Each year subsequent,] **Subsequent** to the receipt of audited financial statements for the prior fiscal year, the State Investment Council [shall] **may** consider the realized appreciation in the common fund per unit. The Council may, in its sole discretion, choose any or all of the following options:
1.-3. (No change.)

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(a)

STATE INVESTMENT COUNCIL

Common Pension Fund B
Distribution of Realized Appreciation
Proposed Amendment: N.J.A.C. 17:16-63.11

Authorized By: State Investment Council, Ronald M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.
Proposal Number: PRN 1994-248.

Submit comments by June 1, 1994 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment eliminates the mandatory review by the State Investment Council of capital gains distributions from the fund. The Pension Revaluation Law of 1992 (P.L. 1992, c.125) eliminated the need for such review, because all assets, whether distributed or not, were now included in the actuaries' determination of pension fund liabilities.

Social Impact

The proposed amendment will provide a slight streamlining of the procedures of the State Investment Council and the Division of Investment.

Economic Impact

The proposed amendment imposes no economic impact, as the need for the review was eliminated by statute.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendment has no effect on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulates only the Director of the Division of Investment and the State Investment Council.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

17:16-63.11 Distribution of realized appreciation

(a) [Each year subsequent,] **Subsequent** to the receipt of audited financial statements for the proper fiscal year, the State Investment Council [shall] **may** consider the realized appreciation in the Common Fund per unit.

(b)-(c) (No change.)

(b)

STATE INVESTMENT COUNCIL

Common Pension Fund D
Distribution of Realized Appreciation
Proposed Amendment: N.J.A.C. 17:16-67.11

Authorized By: State Investment Council, Ronald M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.
Proposal Number: PRN 1994-249.

Submit comments by June 1, 1994 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment eliminates the mandatory review by the State Investment Council of capital gains distributions from the fund. The Pension Revaluation Law of 1992 (P.L. 1992, c.125) eliminated the need for such review, because all assets, whether distributed or not, were now included in the actuaries' determination of pension fund liabilities.

Social Impact

The proposed amendment will provide a slight streamlining of the procedures of the State Investment Council and the Division of Investment.

Economic Impact

The proposed amendment imposes no economic impact, as the need for the review was eliminated by statute.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendment has no effect on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulates only the Director of the Division of Investment and the State Investment Council.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

17:16-67.11 Distribution of realized appreciation

(a) [Each year subsequent,] **Subsequent** to the receipt of audited financial statements for the prior fiscal year, the State Investment Council [shall] **may** consider the realized appreciation in the Common Fund per unit. The Council may, in its sole discretion, choose any or all of the following options:

1.-3. (No change.)

HEALTH

(c)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for Licensure of Long-Term Care Facilities
Proposed Repeal and New Rule: N.J.A.C. 8:39

Authorized By: Len Fishman, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.
Proposal Number: PRN 1994-231.

A **public hearing** will be held regarding this proposal on Thursday, June 2, 1994 from 9:30 A.M. to 1:00 P.M. at:
Rutgers University Labor Education Center
Ryders Lane and Clifton Ave.
New Brunswick, New Jersey

Submit written comments by June 1, 1994 to:
Robert J. Fogg, J.D., M.P.A.
Director, Licensing, Certification and Standards
Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The chapter "Long Term Care Licensing Standards," N.J.A.C. 8:39, became effective on June 20, 1988. The standards were developed through a series of regulatory innovations by the Department's Licensure Reform Project. The licensure reform process involved the regulated community and health care professionals fully in the development of licensing standards in order to assure the validity of these standards of care. One mechanism used to obtain input from the nursing home community was a written opinion survey used to evaluate each proposed standard for its importance to resident care. After the survey results were tabulated and analyzed, a Nursing Home Advisory Group, consisting of selected industry and professional participants as well as Department personnel, reviewed the results and made further refinements of the standards.

Since the adoption of N.J.A.C. 8:39 in 1988, the Nursing Home Advisory Group (NHAG) has continued to meet periodically. New members have been selected to replace some of those who had served for several years, and membership has been broadened to include, for

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example, representatives from consumer groups and the Office of the Ombudsman. NHAG members evaluate both mandatory and advisory standards in terms of their contribution to resident care. On the basis of recommendations from the Nursing Home Advisory Group as well as review of the effectiveness of the standards by the Department, a number of amendments were believed to be necessary and some have already been adopted. Changes were made, for example, to the standards regarding restraints, pharmacy, and resident care. New rules regarding advance directives were added, in accordance with State and Federal laws. Rules regarding mandatory air conditioning were added, and rules specifying handling and disposal of regulated medical waste were changed to reflect current statutes. Some advisory standards were deleted, while others were made mandatory.

N.J.A.C. 8:39 was scheduled to expire on June 20, 1993, pursuant to the requirements of Executive Order No. 66(1978). A subcommittee of the NHAG was convened and met several times to recommend further changes to the standards, based on changes in statutes, new laws, new approaches to resident care, and further reconsideration of some advisory standards. Due to the Department's commitment to consider all of the recommendations of staff and the advisory committee, it was not possible to propose and adopt the revision of the rules prior to the scheduled expiration date of June 20, 1993. Therefore, the rules were readopted for a five-year period to avert their expiration and allow the completion of the review process, in order to ensure that the revised rules continue to be responsive to the needs of residents, consumers, families and providers of long-term care. The proposed new rules represent the final revision and include changes in nearly every subchapter. Where changes have been made, they are delineated in the description of subchapters which follows.

Subchapter 1 delineates the purpose, scope and definitions in the chapter. Proposed N.J.A.C. 8:39-1.2, Definitions, has been expanded from the current four definitions by the addition of 30 definitions which are intended to clarify the meaning of terms used throughout the chapter.

Subchapter 2 specifies the procedure for licensure, from the point of application, through surveys and temporary licensure, to full licensure. Subchapter 2 also includes provisions for actions against a licensee, surrender of license, and waivers from the requirements of the chapter. The procedures for the examination and evaluation of previous licensing track records by the Department prior to issuing or renewing a license are now delineated at proposed N.J.A.C. 8:39-2.2. Requirements for those facilities proposing to establish a distinct or designated special service, program, or unit to serve a specific population, including residents who are ventilator dependent or persons with dementia, are now stated at proposed N.J.A.C. 8:39-2.9. Facilities proposing to offer special long-term services must receive a determination as to whether a certificate of need is required and have prior approval from the Department before implementing such services. Facilities offering renal dialysis services must comply with conditions listed at proposed N.J.A.C. 8:39-2.10 and 2.11. Requirements for increasing a facility's total licensed beds is included at N.J.A.C. 2.12: an increase of up to 10 percent of the total capacity may be requested in accordance with specified procedures. Proposed N.J.A.C. 8:39-2.2(h) would permit facilities which are applying for a CN and have experienced a serious violation of the requirements of Federal regulations, or of any applicable state, to be exempt from denial through a voluntary program which would allow funds to accrue to the benefit of the residents of the facility if care is substandard in the new facility.

Subchapter 3 explains the use of mandatory rules and advisory standards. Methods for calculating and reporting compliance with advisory standards are now included at proposed N.J.A.C. 8:39-3.3.

Subchapter 4 contains a listing of the rights of residents of long-term care facilities. The subchapter has been revised, at proposed N.J.A.C. 8:39-4.1(a)12 and 13, to clarify residents' rights to refuse to transfer to another room in the facility if there is no documented medical reason for the transfer.

Subchapter 5 contains policies and procedures for admission and for access to care. Changes have been made at proposed N.J.A.C. 8:39-5.1. The facility must notify the Department of any intention to deny admission under the rules at N.J.A.C. 8:39-5.1(e). Previous advisory standards have been made mandatory at proposed N.J.A.C. 8:39-5.1(f) and (g) as follows: pre-admission interviews must be recorded and retained, and an admission waiting list is required. Proposed N.J.A.C. 8:39-5.2(a) states that the facility must comply with applicable Federal, State and local laws, rules and regulations.

Subchapter 6 contains advisory admission policies. Current advisory standards at N.J.A.C. 8:39-6.1(a), (b), (c), and (d) have been deleted, made mandatory, changed, or replaced. The requirements which are now mandatory have been placed at N.J.A.C. 8:39-5.1(f) and (g). New advisory standards address the incorporation of a system to periodically inform applicants and families of their status on the waiting list, as well as provision of a list of admissions policies and criteria to applicants. Facilities which make available at least 10 percent of their beds to indigent individuals may comply with new proposed N.J.A.C. 8:39-6.1(c).

Subchapter 7 contains requirements for resident activities, including organization, policies and procedures, staffing, types of service, and space and environment requirements. Proposed N.J.A.C. 8:39-7.2(a)2 has been expanded to require that the Department approved activities education program for the director of activities must consist of 90 hours of training incorporating specified elements. Proposed N.J.A.C. 8:39-7.4(d) has been changed to require that activities be scheduled during at least two evenings per week. A previous advisory standard has been made mandatory at proposed N.J.A.C. 8:39-7.4(g), and requires the input of residents, staff, and families in the development of activities programs.

Subchapter 8 contains the advisory standards for resident activities. Changes include the addition of new pet facilitated therapy guidelines, developed by the Veterinary Public Health Program of the New Jersey State Department of Health, now located at the proposed Appendix A.

Subchapter 9 contains administration standards, including organization, policies and procedures, staffing and advance directive requirements. The rule at proposed N.J.A.C. 8:39-9.1 is changed to require a full-time administrator in facilities with 100 or more beds and at least a half-time administrator in facilities with fewer than 100 beds. Rules concerning interest to be paid on funds deposited with a facility for residents' use or safekeeping and on resident's security deposits are listed at N.J.A.C. 8:39-9.2(c) and (d). Requirements for access to results of recent licensure and Federal surveys are stated at proposed N.J.A.C. 8:39-9.2(k). Facilities' responsibilities for ensuring that staff providing direct care to residents are in good health, concerned for residents' welfare, and have not been convicted of crimes adversely relating to their ability to provide resident care are specified at proposed N.J.A.C. 8:39-9.3(d). Policies to ensure that private duty nurses meet facility requirements for staff qualifications and are monitored are found at proposed N.J.A.C. 8:39-9.3(e), and requirements for written policies and procedures for personnel are at proposed N.J.A.C. 8:39-9.3(f). Policies and procedures for advance directives are listed at N.J.A.C. 8:39-9.5.

Subchapter 10 includes advisory administration procedures. Current professional certification from the American College of Health Care Administrators or possession of a master's degree in health care administration has been added as an advisory standard at proposed N.J.A.C. 8:39-10.2.

Subchapter 11 contains the requirements for resident assessments and care plans, including organization, policies and procedures, and discharge and transfer. The rule at proposed N.J.A.C. 8:39-11.1 has been amended to require the registered professional nurse to assess the nursing needs of each resident, coordinate the written interdisciplinary care plan, and ensure the timeliness of all services. Policies and procedures for resident assessment and care plans, including completion of the Minimum Data Set, are delineated at N.J.A.C. 8:39-11.2. A copy of the MDS is included as Appendix B.

Subchapter 12 contains advisory standards for resident assessment and care plans. The subchapter has been shortened, since many of the advisory standards for assessment have been made mandatory, following review and discussion by the NHAG and staff. The advisory standard at proposed N.J.A.C. 8:39-12.1(b) suggests that the facility schedule care planning meetings at times which are convenient for families.

Subchapter 13 contains communication requirements, including policies and procedures, services provided, and staffing. The rule at proposed N.J.A.C. 8:39-13.3 has been expanded to require staff to introduce and identify themselves to residents as necessary. At least one education training program must be held each year on emergency procedures and resident rights for all employees, and direct care staff must receive annual training in pharmacy. Staff members must receive training at least two times per year about the facility's infection control procedures, handwashing and personal hygiene. Orientation and annual training in the use of restraints is required. Administrative and resident care staff must be educated at least annually concerning their responsibilities under the State and Federal laws regarding advance directives and self determination.

Subchapter 14 contains advisory communication standards. Advisory standards concerning a facility newsletter and training regarding cultural and interpersonal concepts are now included.

Subchapter 15 contains requirements for dental services to residents.

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Subchapter 16 contains advisory standards for dental services. The current requirement for residents to receive annual examination for oral cancer and other oral diseases has been deleted.

Subchapter 17 contains requirements for dietary services, including organization, policies and procedures, staffing, and minimum resident services. The rule at proposed N.J.A.C. 8:39-17.1(a) has been changed to require the designation of a food service director who, if not a dietitian, functions with scheduled consultation from a dietitian. According to N.J.A.C. 8:39-17.2(j), meals shall be scheduled so that no more than 14 hours elapse between the evening meal and breakfast, unless a resident group agrees to a 16 hour span and a nourishing bedtime snack is served. Meal substitutions must now be planned in advance, in writing.

Subchapter 18 contains the advisory standards for dietary services. An advisory standard addressing a registered dietitian's participation in the interdisciplinary plan of care is included. Advisory standard N.J.A.C. 8:39-18.4 has been expanded to suggest that residents be offered a selective menu consisting of at least three main entrees at each meal. Proposed advisory standard N.J.A.C. 8:39-18.5 indicates that the facility provide cloth table covers and cloth napkins.

Subchapter 19 contains infection control and sanitation standards, and includes organization, policies and procedures, staff, space and equipment for water, sanitation and space management, staff education and supply requirements. Responsibilities of the infection control committee are now specified at proposed N.J.A.C. 8:39-19.1(a). Designation and duties of an infection control coordinator have been addressed at proposed N.J.A.C. 19.1(b). References to Centers for Disease Control publications have been updated at N.J.A.C. 8:39-19.4(a). A requirement to implement a policy for tuberculin screening of all residents has been added at proposed N.J.A.C. 8:39-19.4(g). Procedures for completion of an employee health history and examination are found at proposed N.J.A.C. 8:39-19.5, as are procedures for administering and acting upon the results of the required two-step Mantoux tuberculin skin test. These requirements have been amended in accordance with new information received from the Department's Tuberculosis Program as indicated above. A requirement to offer influenza immunization to employees, at no charge, has been added as proposed N.J.A.C. 8:39-19.5(f). Medical waste requirements have been updated.

Subchapter 20 contains the advisory standards for infection control and sanitation. A new advisory standard has been added at proposed N.J.A.C. 8:39-20.1(a) concerning the routine offering of Hepatitis B vaccine to all employees, without charge. Advisory staff qualifications for the infection control coordinator have been added at proposed N.J.A.C. 8:39-20.2.

Subchapter 21 contains the requirements for laundry services, including policies and procedures, staff, space and equipment, supply and quality assurance standards. Proposed N.J.A.C. 8:39-21.1(h) requires the facility to follow policies and procedures intended to protect staff from contamination from soiled laundry. Proposed N.J.A.C. 8:39-21.1(k) requires development of policies and procedures to ensure safe and sanitary handling and return of resident's clothing. A system to identify, locate and minimize loss of clothing is required by proposed N.J.A.C. 8:39-21.1(l). Housekeeping requirements have been relocated from this subchapter and are now contained in N.J.A.C. 8:39-31, Physical Environment.

Subchapter 22 is reserved for advisory standards for laundry.

Subchapter 23 contains medical service requirements, including organization and policies and procedures. Every facility must have a medical director who is a New Jersey licensed physician, as stated at proposed N.J.A.C. 8:39-23.1. Proposed N.J.A.C. 8:39-23.2(g) allows that the required 30 day visit to each resident may be delegated to a nurse practitioner or clinical nurse specialist, in accordance with applicable statutes and facility policies.

Subchapter 24 contains advisory medical service standards. Specialization in gerontology has been added to the advisory qualifications for medical director, at proposed N.J.A.C. 8:39-24.1. The new advisory standard at proposed N.J.A.C. 8:39-24.2(c) states that the facility should have a staff or consultant psychiatrist with admitting privileges to an inpatient psychiatric unit at a hospital.

Subchapter 25 contains requirements for policy and procedures, amount and availability, qualification and education and training standards for nurse staffing of a long-term care facility. Nurse staffing amounts delineated at proposed N.J.A.C. 8:39-25.2(b) now include the direct care hours of the director of nursing in the computation in those facilities with fewer than 100 beds; this is a change from the current 150 beds. Proposed N.J.A.C. 8:39-25.2(e) has also been changed and now requires a registered professional nurse to be on duty at all times in facilities with more than 100 licensed beds, rather than 150 beds as stated in the current rules. A requirement for 12 hours per year of inservice to be provided to each certified nurse aide has been added as proposed N.J.A.C. 8:39-25.4(b). This reflects current Federal requirements for nurse aides.

Subchapter 26 contains the advisory standards for nurse staffing. Proposed advisory N.J.A.C. 8:39-26.3 now states that a registered professional nurse is on duty at all times in facilities with fewer than 100 beds, two RNs are on duty at all times in facilities with 100 to 200 beds, and three RNs are on duty at all times in facilities with more than 300 beds. Proposed advisory N.J.A.C. 8:39-26.4(c) states that the facility employs a nurse practitioner certified in gerontology or psychiatric nursing on at least a half time basis. According to proposed N.J.A.C. 8:39-26.4(d), a nurse holds certification in gerontological or rehabilitation nursing or a related field of nursing. Proposed N.J.A.C. 8:39-26.4(e) states that the inservice nurse educator has completed an HIV/AIDS Train the Trainer program.

Subchapter 27 contains quality of care requirements, including policies and procedures for quality of care, the use of restraints, post-mortem care, staffing amounts and availability, personal care, general resident services, and standards regarding supplies and equipment. The proposed N.J.A.C. 8:39-27.1(a) states that each facility must provide, and ensure that each resident receives, all care and services needed to enable the resident to attain and maintain the highest practicable level of physical, emotional and social well-being, as determined by assessments and care plans. This requirement reflects current Federal requirements for long-term care. Proposed N.J.A.C. 8:39-27.2(c) requires an interdisciplinary committee to develop policies and procedures for the use of restraints, and supplies, as suggested in Appendix E.

Subchapter 28 contains the advisory standards for quality of care. According to advisory standards at N.J.A.C. 8:39-28.1(b) and (c), the facility should develop and provide non-restrictive equipment which fosters and supports a restraint-free environment and should maintain an on-going program of preventive treatment and referral, as needed, to mental health services. Advisory standards at N.J.A.C. 8:39-28.2(d) and (e) state that the facility should make donated clothing available and should provide a non-commercial washer and dryer for residents' use.

Subchapter 29 contains pharmacy requirements, including organization, policies and procedures for drug administration, reporting and control, staff, service, supply and equipment, and quality assurance standards. Interdisciplinary pharmacy and therapeutics committee meetings are required in all facilities, as specified in proposed N.J.A.C. 8:39-29.1. Procedures for self-administration of drugs are listed at proposed N.J.A.C. 8:39-29.2(d). Proposed N.J.A.C. 8:39-29.4(i) addresses a crediting mechanism or other system which allows for the reuse of medications. Procedures for utilization of drugs marked "sample," and for the release of medications to residents are delineated at proposed N.J.A.C. 8:39-29.4(l) and (m). Conditions which must be met if a resident wishes to obtain medications from a pharmacy which is not located in New Jersey are stated at N.J.A.C. 8:39-29.6(b).

Subchapter 30 contains the advisory pharmacy standards. According to the proposed advisory standard at N.J.A.C. 8:39-30.2, the consultant pharmacist should provide or arrange for, quarterly meetings, open to residents and families, to discuss medication issues. Proposed advisory standard N.J.A.C. 8:39-30.4 states that the consultant pharmacist should perform at least one Drug Utilization Evaluation study per year.

Subchapter 31 contains physical environment specifications for all facilities and requirements for supplies and equipment. Housekeeping policies and procedures are located at proposed N.J.A.C. 8:39-31.2, and the facility is required to maintain a safe, clean, orderly and homelike environment for residents. According to proposed N.J.A.C. 8:39-31.1(e), each facility must provide well-lighted parking areas and entrances, monitoring devices for all exit doors, a comfortable chair for each resident, and a light for each resident in a room.

Subchapter 32 contains advisory physical environment standards. The availability of a separate common room for quiet passive activities is addressed at proposed advisory standard N.J.A.C. 8:39-32.3(f), and proposed N.J.A.C. 8:39-32.3(g) indicates that the facility should provide at least one single-bedded room for isolation and/or special needs. According to advisory N.J.A.C. 8:39-32.4(c), the facility should have a policy to encourage and assist residents to utilize their personal furnishings in their rooms.

Subchapter 33 contains the quality assessment and assurance standards, including organization, staff education, and resident services.

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Proposed N.J.A.C. 8:39-33.1(a) specifies those individuals who are to be designated responsibility for the quality assurance program. Development of a program of quality assurance for the use of restraints, including quarterly collection and evaluation of data, is addressed at proposed N.J.A.C. 8:39-33.2(c) and (d).

Subchapter 34 contains the advisory standards for quality assessment and assurance. According to advisory standards at N.J.A.C. 8:39-34.1, the facility should develop an active, continuous quality improvement process, involving staff, residents and families, and should use a resident classification system, as described in subsection (b), in measuring resident outcomes.

Subchapter 35 contains the standards for medical records, including policies and procedures and staff education and training. Proposed N.J.A.C. 8:39-35(d)17 requires the medical record to be completed within 30 days of residents' discharge. Proposed N.J.A.C. 8:39-35.1(f) addresses authentication of signatures, if a computerized medical records system is used, and the procedures to be followed if computer-generated orders and/or a facsimile communications system are used. Proposed N.J.A.C. 8:39-35.1(g) specifies procedures which must be followed if a copy of the medical record is requested by a resident or authorized representative of the resident. Access to the medical record is addressed at N.J.A.C. 8:39-35.1(h). Timeframes for retention of medical records in accordance with law are specified at N.J.A.C. 8:39-35.(j).

Subchapter 36 contains the advisory standards for medical records. According to proposed N.J.A.C. 8:39-36.1(c), the full medical records for all discharged or deceased residents should be completed within 15 days. Proposed N.J.A.C. 8:39-36.3 lists advisory staff qualifications, which include certification and education requirements consistent with the standards of the American Medical Record Association.

Subchapter 37 contains requirements for rehabilitation services to residents, including policies and procedures, staff and equipment standards. Proposed N.J.A.C. 8:39-37.2 requires that speech-language pathologists and physical therapists be licensed. Occupational therapists must be certified or eligible for certification. Proposed N.J.A.C. 8:39-37.4 requires that space for the provision of rehabilitation services, as well as visual privacy and provisions for auditory privacy must be provided in the facility.

Subchapter 38 contains the advisory standards for resident rehabilitation. According to proposed N.J.A.C. 8:39-38.2, the occupational therapy program should provide individually designed adaptive equipment intended to enhance residents' independence.

Subchapter 39 contains standards for social work service in the facility, including policies and procedures, staff qualifications, services to residents, and space and environment requirements, consistent with recently-promulgated social work licensing standards at N.J.A.C. 13:44G.

Subchapter 40 contains the advisory standards for social work services in long-term care facilities, including staff qualifications staff amounts, resident social work services, space and equipment, and staff education.

Subchapter 41 contains physical plant requirements, and includes references to building and fire codes which must be complied with, as well as maintenance, fire, emergency and safety requirements. Proposed N.J.A.C. 8:39-41.1(f) requires facilities undertaking new construction to maintain a minimum ratio of one single-bedded room per 30 beds. Proposed N.J.A.C. 8:39-41.2 requires a system for reporting and correcting physical plant, safety and maintenance problems. The proposed rules state that all life-sustaining equipment is to be connected to an emergency power supply, and standby emergency generators are to be checked, tested, and serviced as specified. Requirements for smoking regulations have been revised and are listed at proposed N.J.A.C. 8:39-41.3(d). Proposed N.J.A.C. 8:39-41.3(f) through (o) lists requirements for a written comprehensive emergency plan which each facility must develop in coordination with the local office of emergency management.

Subchapter 42 contains advisory physical plant standards. According to proposed N.J.A.C. 8:39-42.1(a), rounds should be conducted at least monthly to determine maintenance problems and such problems should be reported to the administrator. Proposed N.J.A.C. 8:39-42.3(a) states that there should be a committee which meets quarterly and is responsible for physical plant safety and maintenance.

Proposed subchapter 43 contains standards for the nurse aide in long-term care facilities' competency evaluation program, including the following: fees, nurse aide employment and functions, procedures for approval of training programs, information concerning the curriculum, responsibilities of the administrator, qualifications and responsibilities of program instructors, student records and attendance, evaluation of the training program, information and application procedures for the competency examination, and waivers. The proposed subchapter also addresses nurse aide certificates, revocation of certificates, recertification, the nurse aide registry, hearings, equivalency of certificates received in other states, expiration of certification, and employment of a nurse aide.

Subchapter 44 contains requirements regarding respite care services, which are short-term stays in a facility. Such short-term stays can be helpful in maintaining a person in the community, in that relief can be provided to the major caregivers.

Proposed subchapter 45 describes the scope and purpose of Department approved Alzheimer's/dementia programs. Each program must provide individualized care based upon assessment of residents admitted to the program. The subchapter applies only to those long-term care facilities approved to operate a Department approved program, as defined at N.J.A.C. 8:39-2.9(f).

Subchapter 46 contains advisory standards for Alzheimer's/dementia programs. Advisory standards for policies and procedures, staffing, environmental modification, activity programming, nutrition and social services are included.

Social Impact

The current rules have had a beneficial social impact, particularly in the areas of quality assurance and communication with residents and their families. The proposed revision has been discussed with and carries the recommendation of, the Nursing Home Advisory Group, consisting of long term care providers as well as Departmental personnel and other interested persons. The proposed new rules will not have any adverse impact upon resident care or resident health and safety. The rules will continue to provide residents and their families with clear indicators of quality, which they can use to select a nursing home to suit their needs.

The proposed increase in RN hours, which will require that a registered nurse be on duty full-time in all facilities of more than 100 beds, rather than the current 150 beds, is expected to improve the quality of nursing services in such facilities. In addition, the need to refer residents to physicians or to transport them to hospital emergency rooms will be diminished by increasing nursing staff qualifications so as to better address emergencies on night and weekend shifts. The current standard of practice for LTC facilities of this size, based on Department evaluation of nurse staffing reports, is to provide RNs on a full-time basis. There were only a limited number of facilities which did not offer such coverage, and this occurred on only a limited number of shifts, during which LPN coverage was provided.

The revised new rules will further benefit facilities, residents, and families, since they have clarified current rules, are reflective of current standards of care, and incorporate current statutory requirements. Rules will be more enforceable. Residents and families will also benefit as a result of the deletion of those advisory standards which have not been found to result in improved quality of care, as well moving to mandatory those advisory standards which were reviewed and found to be necessary for good resident care.

Economic Impact

At the time when the current N.J.A.C. 8:39 was being developed, during 1986, a written opinion survey of nursing homes, including a survey of the cost component, was conducted to validate the standards. Administrators and other health care professionals were asked to evaluate the economic effect of complying with the standards involving changes or increases in staffing. Results of this survey were included in the initial publication of the current rules (see 20 N.J.R. 471, March 7, 1988). Respondents estimated increased costs would result from staff requirements proposed for activities, dietary, social work and nursing services. Due to the fiscal impact of the standards which were being proposed, the Department of Human Services advised the Department of Health that the State Medicaid program would be unable to support the staffing requirements at that time. Consequently, implementation of key nursing, social work, activities, and dietary staffing standards was to be delayed until July 1, 1989, unless the Commissioner of Health had determined through a written finding on the basis of research conducted or sponsored by the Department that these staffing amounts were infeasible or would not assure high quality care. The Commissioner implemented these increased staffing patterns in 1989 and long-term care facilities have been operating with the staffing levels included in this new Chapter.

The economic impact of N.J.A.C. 8:39 in 1988 was a direct result of higher staffing requirements. Unlike the rules which were proposed in 1988, the current proposal does not include staffing increases, with the exception of minimal changes in nursing and administration which are

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addressed below. The great bulk of costs of compliance with the proposed new rules is already borne by the nursing facilities and will not increase because most proposed requirements already exist in current regulations. Long-term care facilities are already providing services in accordance with the current rule, and additional expenditures will not be required as a result of most of the proposed new rules. The primary economic impact of the proposed new rules is the expected cost efficiency which will occur as a result of the updating of programs and services which the Department believes can be carried out by existing staff. Changes in the rules are, for the most part, performance based standards which reflect current professional practices and legislative requirements, and will result in improved quality of care with minimum increases in staffing levels.

Long-term care facilities are already providing services in accordance with Long Term Care Licensing Standards, N.J.A.C. 8:39. Additional expenditures will not be required as a result of most of the proposed new rules. The changes at N.J.A.C. 8:39-25.2(e) which require that a registered professional nurse be on duty full-time in all facilities of more than 100 beds, rather than the current 150 beds, may increase costs for some facilities, and will have an impact upon the Medicaid budget. The Department evaluated a random sample of nurse staffing reports submitted during 1991-1992. A total of 10 nursing facilities with between 101-150 beds were selected for review. Of these, the Department noted the following:

- Five of 10 facilities had full-time RN coverage on all shifts.
- Three of 10 facilities had RNs on all shifts except two weekend nights.
- Two of 10 facilities had RN coverage on all shifts except the night shift.

There were 93 facilities with licensed bed counts of more than 100 beds up to 150 beds, the current threshold. Applying the above sample results, a maximum of 47 facilities would be impacted statewide. Of these, 28 would be required to retain RNs on two shifts per week in lieu of LPNs (Group A). An additional 19 facilities would require RN coverage for seven shifts per week (Group B).

The Statewide average salary rates paid to RNs and LPNs during 1991 in LTC facilities were as follows:

RN $22.20
LPN $16.58
$5.62 differential

Group A 28 facilities × 104 shifts × 8 hours = 23,296 hours
Group B 19 facilities × 364 shifts × 8 hours = 55,328 hours
Total estimated cost impact = $441,866

Assuming that Medicaid reimburses 65 percent of resident days and nursing screens were directly affected, the estimated impact to the Medicaid budget would be $287,213.

As stated above in the Social Impact Statement, improved quality of nursing care as well as decreased need to refer residents to physicians or transport them to hospital emergency rooms will result from the increased RN staffing. This improved nursing care and decrease in transfer of residents will help to offset cost increases which may result from providing additional RN coverage.

In addition, there may be cost increases to some facilities as a result of the changed requirement for a full-time administrator, at proposed N.J.A.C. 8:39-9.1(d). Each facility with 100 or more beds will be required to have an administrator who serves full-time in an administrative capacity. This differs from the current requirement for a full- time administrator in facilities with more than 240 beds.

There will be no additional economic impact on the Department, as many of these rules are in existence now and facilities are presently being surveyed using these rules. There are more than 44,000 beds in the 355 long-term care facilities now licensed in New Jersey. Little economic impact is expected as a result of most of the new rules and amendments, since these generally reflect current practices and statutes, or serve to clarify current rules and render them more enforceable.

Failure to adopt the proposed N.J.A.C. 8:39, however, could have an adverse economic impact, since residents and families would not then benefit from the extensive review and consideration of each standard during the revision process which is intended to ensure greater validity and enforceablity of the rules and to affirm their proven contribution to greater quality of resident care.

Specific economic impacts are as follows:

Facilities which offer long-term care services will incur expenses associated with provision of high quality of care. Consumers will benefit from the ability to assess the quality of care by reviewing written standards of care as delineated at subchapter 1. N.J.A.C. 8:39-1.1 describes the scope and purpose of the rules and lists the components of quality care. This should be of assistance to consumers seeking the most cost effective care for family members. Definitions, at 1.2 should benefit providers and consumers by clarifying terms specific to the rules and preventing possible costly misunderstandings.

Licensing fees specified in subchapter 2 will result in costs to regulated entities. Assistance in preparation of waivers and documentation of reasons for request of waivers may also entail costs to facilities. Facilities which may result from failure of licensees to meet standards of care or safety requirements are listed at 2.8, and these may result in costs to facilities which violate requirements of the chapter. Those facilities which choose to offer special long-term services, as defined at 2.9, will incur expenses related to submission of a program description to the Department prior to receiving approval to initiate such services, as well as expenses associated with providing additional staffing as required. Expenses associated with the establishment of dialysis services can be determined through review of rules at 2.10 and 2.11. Add-a-bed procedures listed at 2.12 will result in costs to facilities which expand the number of licensed beds, as a result of planning, and constructing additional beds as well as preparing a facility track record of compliance with licensure rules for submission to the Department.

Licensees will have to meet the costs of preparing a written statement of resident rights, as required by subchapter 4. Residents will benefit from rights which protect their financial interests by requiring written statements of fees, changes in fee schedules, and accounts of all resident funds deposited with the facility or dispersed to benefit the resident. Economic benefits are also afforded to residents as a result of their rights to refuse to transfer to another room, to wear their own clothing, and to keep and use personal property. The facility must protect the financial interests of residents by taking precautions to ensure the protection of residents' personal property from loss, theft or misplacement.

Proposed N.J.A.C. 8:39-2.2(h) would have an economic impact on an applicant with multiple out-of-state facilities, one of which has state or Federal violations of a serious nature that would require denial of a CN application. Such a facility would be permitted under this section to voluntarily establish a trust fund, surety bond, or letter of credit as an alternative to such denial. These funds would accrue to the benefit of residents if quality of care is substandard in the new facility.

The Department anticipates significant cost savings will accrue as a result of N.J.A.C. 8:39-29.4(j), which requires facilities utilizing unit-of-use medication administration systems to establish a crediting system for return of unused pharmaceuticals. The rule discontinues the current requirement to destroy all unused medications within 30 days. When dispensed in single-use packages, (for example, "bingo cards"), the product is returnable and can be dispensed again by the retail pharmacy. Although no statewide dollar impact is available, literally thousands of dollars of medications are destroyed by many facilities monthly. Both private pay consumers and the State Medicaid program will benefit from this proposed rule.

Subchapter 3 addresses the use of advisory standards, which are voluntary in nature, and thus have no economic impact, in that they do not require that specific standard be met. There is no anticipated economic impact for any of the subchapters addressing advisory standards. Although, of course, any standards elected to be met by the regulated public would create an economic impact of some degree, based on the particular required standards being supplemented.

Facilities may experience some economic impact from subchapter 5, whereas the Department would have to be notified of any intended denial of admissions, and record keeping requirements are expanded to mandate specific information be retained on admission waiting lists.

Subchapter 7, addressing resident activities, has no new economic impact on providers from the rules adopted in 1988. At that time, facilities estimated in a fiscal impact survey that the activities staffing requirements represented an average of $77,916 per facility. The only changes in this estimate would result from the effect of inflation on costs since that time.

A limited economic impact may result from rules in subchapter 9, where a change is proposed from current rules in N.J.A.C. 8:39-9.1(a), where facilities of less than 100 beds must maintain at least a half-time licensed administrator. The Department believes from its survey activities that very few facilities, if any, are not in current compliance with the administration requirements, which include maintenance of records, of patient accounts and reporting, and assurance that the facility is supervised by a licensed administrator.

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The use of the Minimum Data Set for accomplishing the resident assessment required in Subchapter 11 has been mandated since October, 1990, and should, therefore have no additional economic impact on facilities. Costs for the registered professional nurse to assess the nursing needs of residents and to coordinate care planning should not change as facilities are currently required to provide these services and are complying with the requirement.

A limited economic impact is caused by rules in subchapter 13, where changes to N.J.A.C. 8:13-4(d) mandate inservice two times a year on handwashing and personal hygiene to be provided to all staff members. In addition, current rules also require inservice training concerning advance directives, restraint use, resident rights, infection control, and emergency procedures.

Mandatory dental care is described in subchapter 15, requiring routine and emergency dental care to be provided to residents. A positive economic impact is anticipated through deletion of recordkeeping requirements formerly required by N.J.A.C. 8:39-15.1.

The economic impact of subchapter 17, dietary services was estimated in 1988 to be an increase of approximately $21,641 per facility, as a result of increased staffing requirements. Any change in this estimate, as with activities requirements, would result from inflationary increases in costs since 1988, and cannot be determined for each facility at this time.

Requirements at subchapter 19, infection control and sanitation, may have a limited economic impact to facilities as a result of yearly influenza immunizations which must now be offered to employees at no charge. Although the procedures for the required Mantoux tuberculin skin tests for employees have been changed according to information received from the Department's Tuberculosis Program, there should be little change in the costs of testing.

Laundry requirements specified at subchapter 21 will result in some costs to facilities, which must now develop and implement policies and procedures to protect staff from contamination when handling soiled laundry and to ensure that residents' personal clothing is processed in a sanitary manner and returned to residents in good condition.

Facilities will have a limited financial impact as a result of the requirement for each facility to have a licensed physician as medical director. However, this cost should not change from the current requirement as a result of this proposal, since the rule has not changed from existing standards. Costs savings may accrue to facilities and residents as a result of new rules which permit the required 30 day physician's visit to each resident to be delegated to a nurse practitioner or clinical nurse specialist, as stated in subchapter 23, mandatory medical services.

Subchapter 27, mandatory quality of care, will result in cost savings in comparison to existing rules for facilities. Many of the prescriptive requirements for use of restraints have been deleted from the current rules and are now included in Appendix E as guidelines to be used, as needed, by facilites in developing policies and procedures appropriate to their individual needs. This change will result in economic benefits for the many facilities which have been able to minimize use of restraints.

Physical environment requirements contained in subchapter 31 will impose costs on facilities. Each facility must maintain safe, clean and orderly conditions and must provide well lighted parking areas, monitored exits and comfortable furniture for resident rooms. Since each licensee will implement requirements in a unique manner, exact costs cannot be determined.

Facilities may have a limited economic impact as a result of requirements contained in subchapter 33, Mandatory Quality Assessment and Assurance, which include costs of recordkeeping and general administration of the quality assurance program. While the majority of standards remain unchanged from the current rule, some additional record keeping requirements have been added to ensure the ongoing monitoring of resident falls resulting in injuries and of the overall effectiveness of the resident assessment systems.

Medical records rules, contained in subchapter 35, address the minimum recordkeeping standards for resident care. These have an economic impact, although the changes from current rules are minimal. It should be noted that the public would benefit from rules proposed at N.J.A.C. 8:39-35.2(h), which limits the charges to obtain a copy of a medical record to prevailing community rates for photocopying.

Rehabilitation services are mandated in subchapter 37, and will economically impact facilities whose residents require such services. Space must be made available directly in the facility or arranged for offsite, in which case transportation costs may also be incurred by a facility.

An economic impact to facilities is imposed by the requirements to provide social work service in subchapter 39. The impact of this rule was estimated at $48,467 per facility in 1988 by respondents to a survey of nursing home administrators. The new rules are substantively changed only to recognize that a social work licensure statute has been enacted in New Jersey. This may economically affect some nursing facilities in the State to the extent new social work staff must be retained who are licensed or certified to meet the new law, and that costs for such staff may be greater.

Facilities undergoing construction or renovation are impacted by subchapter 41, mandatory physical plant. The minimum construction standards are incorporated by reference from the Uniform Construction Code. Resident smoking in the facility is regulated by this subchapter, which should impact providers only to the extent specially-ventilated areas are created to meet the needs of residents who smoke.

Subchapter 43 sets the fees for charges that are assessed for nurse aide testing and certification. These charges may not be assessed to the individual nurse aid under Federal law (OBRA '87), and must be borne by the facility. These expenses are allowable costs for purposes of Medicaid reimbursement. The Department certifies approximately 5,000 individuals annually as nurse aides. The combined change for a clinical skills and written examination, including issuance of a photo identification card, is $70.00 per individual. Thus, the statewide financial impact is estimated at $350,000 annually for the testing process. Costs to provide the mandatory 90-hour training program vary considerably, but represent an impact beyond that identified for testing of nurse aides. Recertification of nurse aides, again in accordance with Federal requirements, is mandated every two years. The charge assessed for recertification is $16.50 per individual. It is estimated that of the 43,000 aides on the New Jersey Nurse Aid registry, about 15,000 will request such recertification annually.

Requirements regarding respite care services, in subchapter 44, and Alzheimer's/dementia programs in subchapters 45 and 46 are voluntary, but will impose costs for staffing, as well as environmental and other services, on those facilities who choose to offer such programs.

Regulatory Flexibility Analysis

Approximately half of New Jersey's 355 long-term care facilities may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules will not significantly change the recordkeeping and reporting requirements already placed upon small businesses by the current rules, N.J.A.C. 8:39. Required services must be documented when provided to the resident. Financial reports and statistical data are already being collected by facilities. Each facility must maintain records of the existence of an advance directive. Laws requiring the facilities to maintain records of the handling of regulated medical waste are already in place. There are new requirements, at proposed N.J.A.C. 8:39-5.1(f) and (g), for records of pre-admission application interview to be kept for one year, and for an admission waiting list to be kept. These changes are not expected to result in burdensome increases in recordkeeping for facilities. The rules have been designed to minimize the adverse economic impact on small businesses, while ensuring the provision of quality care to residents. The other requirements, as delineated in the Summary, will impose costs as delineated in the Economic Impact. Some professional assistance, for example, the services of a licensed architect, may be required depending upon the particular application. The Department of Health has determined that compliance with the proposed new rules is necessary for all facilities which provide long-term care services, in the interest of public health and safety, and that there should be no differentiation based on business size.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:39.

Full text of the proposed new rules follows:

CHAPTER 39
STANDARDS FOR LICENSURE OF LONG-TERM CARE FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

8:39-1.1 Scope and purpose

(a) This chapter contains rules and standards intended to assure the high quality of care delivered in long-term care facilities, commonly known as nursing homes, throughout New Jersey. Compo-

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nents of quality of care addressed by these rules and standards include access to care, continuity of care, comprehensiveness of care, coordination of services, humaneness of treatment, conservatism in intervention, safety of the environment, professionalism of caregivers, and participation in useful studies.

(b) These rules and standards apply to each licensed long-term care facility. They are intended for use in State surveys of the facilities and any ensuing enforcement actions. They are also designed to be useful to consumers and providers as a mechanism for privately assessing the quality of care provided in any long-term care facility.

8:39-1.2 Definitions

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

"Advance directive" means a written statement of a resident's instructions and directions for health care in the event of future decision making incapacity, in accordance with the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., P.L. 1991, c.201. An advance directive may include a proxy directive, an instruction directive, or both.

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

"Bed" or "licensed bed" means, with reference to a resident, the item of furniture assigned to no more than one resident for sleeping, resting, relaxing, or otherwise used for the resident's personal comfort or convenience, and with reference to a facility, one of the total number of beds for which each licensed long-term care facility is approved for resident care by the Commissioner of the New Jersey State Department of Health.

"Cleaning" means the removal by scrubbing and washing, as with hot water, soap or detergent, or vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

"Commissioner" means the New Jersey State Commissioner of Health.

"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.

"Conspicuously posted" means placed at a location within the facility accessible to and seen by residents and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1971, N.J.S.A. 24:21-1 et seq.

"Current" means up-to-date, extending to the present time.

"Department" means the New Jersey State Department of Health.

"Disinfection" means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and/or physical means, directly applied.

"Documented" means written, signed, and dated. If an identifier such as a master sign-in sheet is used, initials may be used for signing documentation, in accordance with applicable professional standards of practice.

"Drug administration" means a procedure in which a prescribed drug or biological is given to a resident by an authorized person in accordance with all laws and regulations governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the resident, seeing that the resident takes it (if oral), and recording the required information, including the method of administration.

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

"Epidemic" means the occurrence or outbreak in a facility of one or more cases of an illness in excess of normal expectancy for that illness, derived from a common or propagated source.

"Facility" means a facility or distinct part of a facility licensed by the New Jersey State Department of Health to provide health care under medical supervision and continuous nursing supervision for 24 or more consecutive hours to two or more residents who are not related to the members of the governing authority by marriage, blood, or adoption; who do not require the degree of care and treatment which a hospital provides; and who, because of their physical or mental condition, require continuous nursing care and services above the level of room and board.

"Federal Level A deficiency" means a failure to comply with one or more of the requirements indicated by those tag numbers in document 42 CFR Part 483 S483.5 which are followed by an "A" suffix.

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

"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.

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

"Licensed nursing personnel" (licensed nurse) means registered professional nurses or practical (vocational) nurses licensed by the New Jersey State Board of Nursing.

"Medication error" means the administration of the wrong medication or dose of medication, drug, diagnostic agent, chemical or treatment requiring use of such agents to the wrong resident, or at the wrong time, or the failure to administer such agents at the specified time, or in the manner prescribed or normally considered as accepted practice. Errors may be classified as "commissions," that is, medications incorrectly administered to the resident, such as unordered medication or medication in the wrong strength; and "omissions," that is, medications not administered at prescribed times.

"Monitor" means to observe, watch, or check.

"Reasonable hour" means any time between the hours of 8:00 A.M. and 8:00 P.M. daily.

"Resident" means a person who resides in the facility and is in need of 24-hour continuous nursing supervision.

"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. The complete procedure of self-administration includes removing an individual dose from a previously dispensed (in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39), labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.

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

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

"Supervision" means authoritative procedural guidance by a qualified person 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. "Direct supervision" means supervision on the premises within view of the supervisor.

"Unit-of-use" means a system in which drugs are delivered to the resident areas either in single unit packaging, bingo or punch cards, blister or strip packs, or other system where each drug is physically separate.

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SUBCHAPTER 2. LICENSURE PROCEDURE

8:39-2.1 Certificate of Need

(a) According to the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a Certificate of Need issued by the Commissioner, in accordance with N.J.A.C. 8:33. Religiously affiliated facilities exempt from Certificate of Need pursuant to P.L. 1993, c.205, shall follow licensing procedures identified in N.J.A.C. 8:39-2.2 below.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Review Services
Division of Health Planning, Financing and Information Services
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0367

(c) The facility 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 the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:39-2.2 Application for licensure

(a) Following acquisition of a Certificate of Need, or a determination that a Certificate of Need is not required, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department which include information regarding facility ownership, corporate officers and stockholders, and approval forms from local building, fire, health and zoning departments. Such forms may be obtained from:

Licensing, Certification and Standards
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

(b) The Department shall charge a nonrefundable fee of $500.00 plus $3.00 per bed for the filing of an application for licensure of a long-term care facility. The Department shall also charge a nonrefundable fee of $500.00 plus $3.00 per bed for the annual renewal of the license.

(c) If chronic dialysis services are provided in the long-term care facility, the Department shall charge an initial licensure application fee of $500.00 and an additional $150.00 annually for licensure of the service. (The initial application shall be accompanied by a $650.00 fee; thereafter, $150.00 will be added to the facility's annual licensure renewal fee.)

(d) Any person, organization, or corporation considering application for license to operate a facility shall make an appointment for a preliminary conference at the Department with the Licensing, Certification and Standards Program.

(e) The Department shall examine and evaluate the licensing track record of each applicant for the period beginning 12 months preceding submission of the application for licensure and extending to the date the Commissioner issues a final decision, for the purpose of determining the capacity of an applicant to operate a health care facility in a safe and effective manner in accordance with State and Federal requirements. A license may be denied where an applicant has not demonstrated such capacity, as evidenced by continuing or serious violations of State licensure standards or Federal certification standards or by existence of a criminal conviction or a plea of guilty to a charge of fraud, resident abuse or neglect, or crime of violence or moral turpitude. An applicant, for purposes of this rule, includes any person who was or is an owner or principal of a licensed health care facility, or who has managed, operated, or owned in whole or in part any health care facility.

(f) A application for licensure submitted by an applicant who was cited for state licensing or Federal certification deficiencies during the period identified in (e) above, which presented a serious risk to the life, safety, or quality of care of the facility's residents shall be denied. A serious risk to life, safety, or quality of care of residents includes, but is not limited to, deficiencies in state licensure or Federal certification requirements in the areas of nursing, resident rights, resident assessment or care plan, dietary services, infection control and sanitation, or pharmacy, resulting in:

1. An action by a state or Federal agency to curtail or temporarily suspend admissions to the facility;

2. Issuance of two or more Federal level A deficiencies in the areas identified above; or

3. Issuance of one or more Federal level A deficiencies in the same area on two or more consecutive visits.

(g) In evaluating track records in (e) or (f) above, the Department may consider any evidence of non-compliance with applicable licensure requirements provided by an official state licensing agency in any state other than New Jersey, or any official records from any agency of the State of New Jersey indicating the applicant's non-compliance with the agency's licensure or certification requirements in a facility the applicant owned, operated, or managed in whole or in part.

(h) An applicant who owns, operates, or manages in whole or in part three or more health care facilities licensed or certified to operate in any state outside of New Jersey may be exempt from mandatory CN denial provisions of N.J.A.C. 8:33H-l.14(d), or (e) and (f) above under the following conditions:

1. No more than one out-of-State facility has the violations enumerated in (f)1, 2, and 3 above. In no case shall the applicant's New Jersey facility have such violations;

2. The applicant posts a surety bond or establishes a trust account or irrevocable letter of credit in the favor of the Department in the amount of two percent of project costs or $200,000, whichever is greater, except that applicants whose project costs are less than $400,000 shall be permitted to post a bond or trust account equal to 50 percent of total project costs;

3. The bond or trust account shall be established through an entity approved by the Department and be written in a form that is approved by the Department;

4. The bond or trust fund shall have named as beneficiaries all residents of the nursing facility (upon the date of the finding of any violations of the type enumerated above) which is the subject of the Certificate of Need or licensing application;

5. The funds shall remain in the bond or trust fund for a period of 15 months from the date the Department approves initial occupancy and operation of the facility;

6. If none of the conditions enumerated in (f)1, 2 or 3 above are found during any survey occurring during the initial one year period, the funds and any accrued interest shall be returned to the applicant;

7. If during the one year period from initial approved occupancy, a violation of the type enumerated in (f)1, 2 or 3 above is found in the subject facility, then all funds in the surety bond, line of credit, or trust fund shall accrue in equal proportion to the benefit of those individuals who are residents of the facility on the last day of the survey conducted by the Department, leading to these violations, inclusive of residents temporarily admitted to another health care facility under a bed-hold arrangement;

8. The one year period in (a)7 above may be extended by the Department for an additional three months if a single level A violation is found in the areas identified in (d) during the initial 12 months of operation; and

9. Funds shall be credited to residents as follows:

i. If the resident is under private pay arrangements, the funds shall be credited towards the daily rate assessed by the facility;

ii. If the resident's care is being paid through Medicaid (Title XIX), the funds shall be credited to this program as an offset to anticipated revenue;

iii. If the resident has been discharged or is deceased since the time of the survey, funds shall be paid to the individual, to the executor of the estate, or to Medicare, Medicaid, or other public funding source, as applicable. Such payment or credit shall be made within 30 days of adjudication of the violations enumerated in (d)1, 2, and 3 above.

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(i) Any applicant denied a license to operate a facility shall have the right to a fair hearing in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

8:39-2.3 Newly constructed or expanded facilities

(a) The application for a license pursuant to N.J.A.C. 8:39-2.2 for the operation of a new facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction Service
Division of Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

(b) A final on-site inspection of the construction of the physical plant shall be made by representatives of the Health Care Facilities Construction Service and the Health Facilities Inspection Program, to verify that the building has been constructed in accordance with the final architectural plans approved by the Department, in accordance with N.J.A.C. 8:39-41.

(c) Any health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Service of the Department for review and approval prior to the initiation of any work.

8:39-2.4 Surveys and temporary license

(a) When the written application for licensure pursuant to N.J.A.C. 8:39-2.2 is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility meets the standards set forth in this chapter.

1. The Health Facilities Inspection Program of the Department shall notify the facility in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

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

1. An office conference for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who have been advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. 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

4. Survey(s) by representatives of the Department indicate that the facility meets the mandatory standards set forth in this chapter.

(c) No health care facility shall accept residents until the facility has written approval and/or a license issued by the Licensing, Certification and Standards Program of the Department.

(d) The facility shall accept no more than that number of residents for which it is approved and/or licensed.

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

(f) Upon compliance with N.J.A.C. 8:39-2.2(e), a temporary license shall be issued to the operator of a facility for a period of six months and shall be renewed as determined by the Department, based upon the achievement of a substantial degree of compliance with this chapter.

1. The temporary license shall be conspicuously posted in the facility.

2. The temporary license shall not be assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

8:39-2.5 Full license

(a) A full license shall be issued to the operator on expiration of the temporary license, if the surveys by the Department have determined that the health care facility is operated as required by the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules pursuant thereto.

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

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

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

(e) The license, unless sooner suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the licensure date, in accordance with the following:

1. The facility shall receive a request for renewal fee as provided in N.J.A.C. 8:39-2.2(b) 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; and

2. The license shall not be renewed if local regulations or any other requirements are not met which substantially affect the provision of services as required by this chapter.

8:39-2.6 Surrender of license

The facility shall obtain any required Certificate of Need and shall directly notify each resident, the resident's physician, and any guarantors of payment concerned 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 licensure. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven calendar days from voluntary surrender, order of revocation, expiration, or suspension of license, whichever is applicable.

8:39-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the standards in this chapter, waive sections of this chapter if, in his or her opinion, such waiver would not endanger the life, safety, or health of the resident or public.

(b) A facility seeking a waiver of the standards in this chapter shall apply in writing to the Director of the Licensing, Certification and Standards Program of the Department.

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

1. The nature of the waiver requested;

2. The specific standards for which a waiver is requested;

3. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon full compliance;

4. An alternative proposal which would ensure resident safety; and

5. Documentation to support the application for waiver.

(d) The Department reserves the right to request additional information before processing an application for waiver.

8:39-2.8 Action against licensee

(a) Violations of this subchapter may result in action by the New Jersey State Department of Health to impose a fine, cease admissions to a facility, remove residents from a facility, revoke a license, and/or impose other lawful remedies.

(b) 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. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(c) The Commissioner may order the immediate removal of residents from a facility whenever he or she determines imminent danger to any person's health or safety.

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(d) This section shall apply to all facilities.

(e) Any licensee made subject to action by the Department under terms of this section shall have the right to a fair hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

8:39-2.9 Special long-term care services

(a) A facility which proposes to establish a distinct or designated special service, program, or unit in which the facility will advertise or hold itself out as offering specialized care services, program(s), or unit(s) shall receive a determination from the Department, on a case-by-case basis as to whether a Certificate of Need is required prior to initiating any such services or programs in the facility.

(b) Following receipt of an approved Certificate of Need or written determination that no Certificate of Need is required, the facility shall submit a program description to the Division of Health Facilities Evaluation and Certification prior to implementing services, which includes the following information:

1. Specific population to be served (diagnoses or behavioral conditions, estimated census in program);

2. Specific services to be offered in addition to existing nursing facility program;

3. Staffing patterns, which shall include a registered professional nurse on duty at all times; and

4. Unit or area to be utilized within the facility and identification of any renovations to be completed.

(c) A specialized care service, unit or program means a distinct or designated area or unit of the facility, or a defined and identifiable program of services which serves the unique and special health and personal care needs of an identifiable group of residents within the facility. Special care programs existing on or before adoption of this chapter that are under a special provider contract with the Division of Medical Assistance and Health Services, Department of Human Services, or who have previously received Certificate of Need approval, or have been issued authorization as an Alzheimer's/dementia program under (f) below and N.J.A.C. 8:39-45, are exempt from the requirements of (a) and (b) above.

(d) The Department may impose operational standards derived from the plan submitted by the facility and from other adopted licensure rules appropriate to the specialized population, including Division of Medical Assistance and Health Services rules, as a condition on the issuance of a license. Such conditions are subject to the enforcement actions and procedures specified at N.J.A.C. 8:39-2.8.

(e) In the case of specialized care units proposing to treat ventilator dependent residents, the facility shall provide staffing for the nursing unit upon which the ventilator beds are located as follows:

1. At least one registered professional nurse shall be present on the unit 24 hours per day; and

2. At least one respiratory care practitioner who is currently licensed to practice by the New Jersey Board of Respiratory Care shall be present on the unit 24 hours per day.

(f) A Department approved Alzheimer's/dementia program means an organized plan of special services which may be provided to residents who are located either in a distinct physical unit or integrated throughout the existing facility. A facility proposing to establish an Alzheimer's/dementia program shall comply with the following program requirements:

1. No facility shall advertise or hold itself out as providing an Alzheimer's/dementia program unless it is recognized by the Department of Health as meeting at least 65 percent of all current advisory standards in N.J.A.C. 8:39-46.1 through 46.6, Advisory Alzheimer's/dementia programs; and

2. A facility seeking to establish an Alzheimer's/dementia unit or program shall obtain a determination of whether a Certificate of Need is required prior to establishment of or implementing the program, in accordance with N.J.A.C. 8:33H-1.7. An Alzheimer's/dementia program alone shall not constitute a new health care service within the meaning of N.J.A.C. 8:33-1.6 or 2.6 and shall not be eligible for increased reimbursement as a special care program funded through the Division of Medical Assistance.

(g) Any special care service, program or unit shall be identified on the facility's license.

8:39-2.10 Chronic hemodialysis services

(a) If the facility provides hemodialysis services to its own long-term care residents only, the following conditions shall be met:

1. The facility shall be authorized to provide the service by the Licensing Program of the Department of Health subsequent to the submission and review of the information contained in this subchapter. The application shall describe how the standards in (a)2 through 4 below will be met. The facility shall comply with ambulatory care requirements for a chronic dialysis provider, in accordance with N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved. Waivers from the nine station minimum requirement at N.J.A.C. 8:43A-24.2 will be considered on an individual basis;

2. A consultant nephrologist who is Board Certified or Board eligible shall be designated and available to provide medical direction for the hemodialysis service;

3. The facility shall identify the space where hemodialysis services will be provided;

i. Identified space shall be in compliance with the requirements at N.J.A.C. 8:43A-24, Licensure Standards for Ambulatory Care;

ii. If bedside hemodialysis services are offered, they shall be provided only in private rooms; and

4. Hemodialysis shall be listed as a "service" on the facility's license.

(b) If the facility or other separately licensed dialysis provider provides outpatient dialysis services on-site to persons who are not residents of the facility, the following conditions shall be met:

1. The facility shall file a licensing application in order to be authorized to provide the service. The facility shall comply with ambulatory care regulations for chronic dialysis services, in accordance with N.J.A.C. 8:43A, particularly N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved;

2. Outpatient records shall be kept separately from inpatient records; and

3. The hemodialysis program shall not utilize any space required by the long-term care program, such as passageways, corridors, or treatment room, and shall not require the commingling of hemodialysis patients with facility residents.

(c) Hemodialysis services may be provided to residents of the long-term care facility by separately licensed dialysis providers under the following circumstances:

1. The dialysis provider shall file a licensing application in order to be authorized to provide the service. The facility shall comply with ambulatory care requirements for chronic dialysis services, in accordance with N.J.A.C. 8:43A, particularly N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved;

2. The provider shall demonstrate the ability to serve nine patients Statewide within six months of licensing approval;

3. The provider shall have a New Jersey office;

4. The provider shall describe all staffing, and how staffing will be provided at multiple sites, if applicable;

5. A copy of the contract between the dialysis provider and the long-term care facility shall be included with the licensing application. The contract shall clearly state the roles and responsibilities of both the dialysis provider and the long-term care facility. Any change in dialysis provider shall require prior authorization and submission of a separate licensure application by the dialysis provider;

6. The Department shall charge a fee for licensure of the dialysis service as an Ambulatory Care Facility in accordance with N.J.A.C.8:43A-2.2(b). (Each site of service provision shall be considered a satellite);

7. Hemodialysis shall be listed as a "service" on the facility's license; and

8. Both the provider and the long-term care facility shall inform the Department in writing 30 days prior to any planned service interruption and shall include a plan for the continuing care of any dialysis patients.

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(d) Any long-term care facility which proposes to offer hemodialysis services through a separately licensed dialysis provider shall also comply with the following requirements:

1. The facility shall request written authorization from the Licensing Program to contract with a licensed outside provider prior to implementing the service and specify the provider. A copy of the contract between the dialysis provider and the long-term care facility shall be included with the licensing application. The contract shall clearly state the roles and responsibilities of both the dialysis provider and the long-term care facility. Any change in dialysis provider shall require prior authorization and submission of a separate licensure application by the new dialysis provider;

2. The facility shall identify the space in which the service will be provided, including documentation that the space meets the requirements of N.J.A.C. 8:43A-24. Any renovations or construction shall receive prior approval from the Department. Space required by the long-term care facility programs shall not be used; and

3. The Department shall charge a fee of $150.00, which shall accompany the information required at (d)1 and 2 above. Thereafter, $150.00 shall be added to the usual annual licensing fee and the license shall list chronic dialysis as a service provided under contract with a dialysis provider.

8:39-2.11 Peritoneal dialysis

(a) If a long-term care facility offers peritoneal renal dialysis services to its own residents only, the following conditions shall be met:

1. A licensing application shall not be required;

2. The facility shall forward to the Department an attestation that the information listed below is available at the facility for review. Following receipt of this attestation, authorization to provide the service may be granted:

i. Policies and procedures for service provision, which shall include the following:

(1) Staff qualifications and training;

(2) Admission criteria;

(3) Transfer agreement with a certified ESRD hospital facility;

(4) Quality assurance mechanisms and criteria;

(5) Infection prevention and control, including bag disposal;

(6) Emergency situations;

(7) Dietary requirements; and

(8) How and where any necessary laboratory work will be completed.

3. A consultant nephrologist shall be designated and available to provide medical direction for the service; and

4. Peritoneal dialysis shall be listed as a "service" on the facility's license.

(b) Separately licensed dialysis providers may offer peritoneal dialysis services in a long-term care facility under the following circumstances:

1. All requirements in (a) above shall be met;

2. The dialysis provider shall be licensed as specified at N.J.A.C. 8:39-2.10(c);

3. A copy of the contract agreement for service provision between the dialysis provider and the long-term care facility shall be reviewed and approved by the Licensing Program of the Department prior to the authorization of the long-term care facility to provide the service through a separately licensed agency. The agreement shall clearly state the roles and responsibilities of both parties; and

4. Both the long-term care facility and the dialysis agency shall notify the Department in writing 30 days prior to any planned service interruption and shall include a plan for the continuing care of any dialysis patients.

8:39-2.12 Add-a-bed

(a) Pursuant to N.J.S.A. 26:2H-7.2, a facility may request approval from the Department to increase total licensed beds by no more than 10 beds or 10 percent of its licensed bed capacity, whichever is less, without Certificate of Need approval. No more than one such request for approval shall be submitted every five years.

(b) The application shall be filed, with an application fee of $250.00, using application forms provided by the Licensing, Certification and Standards program, and shall include: name, address, ownership, and any other facilities owned, licensed capacity, any existing waivers, number of beds requested, proposed location of beds, any construction/renovation needed, a description of the project, number of single-bed rooms and square footage of dining/recreation area after increase, and additional staffing required.

(c) The Department shall deny an application for add-a-beds based on the facility track record, if any of the following criteria:

1. Within the last 12 months preceding the date of application, the applicant was cited for a violation of the licensing rules in this chapter or of Federal certification requirements for Medicaid or Medicare participation which presented a serious risk to the life, safety, or quality of care of the facility's residents. A serious risk to life, safety, or quality of care of residents includes, but is not limited to, deficiencies in State licensure or Federal certification requirements in the areas of nursing, resident rights, resident assessment and care plans, dietary services, infection control and sanitation, or pharmacy, resulting in:

i. An action by a State or Federal agency to curtail or temporarily suspend admissions to a facility; or

ii. Issuance of two or more Federal Level A deficiencies in the areas identified above; or

iii. Issuance of one or more Federal Level A deficiencies in the same area on two or more consecutive visits; or

2. The applicant fails to demonstrate that the facility has sufficient space to implement the new licensed bed capacity in a manner meeting Federal construction standards contained in the Guidelines for Construction and Equipment of Hospital and Medical Facilities (1992-1993), as published by the American Institute of Architects and approved by the U.S. Department of Health and Human Services. (Available from the American Institute of Architects Press, 1735 New York Ave., NW, Washington, D.C. 20006); or

3. The applicant fails to demonstrate that the facility has provided sufficient nurse staffing hours, in accordance with this chapter, to meet the needs of the current resident census; or

4. The addition of beds will result in a unit size in excess of 64 beds; or

5. The addition of beds will result in a violation of State licensure or Federal certification requirements.

SUBCHAPTER 3. COMPLIANCE WITH MANDATORY RULES AND ADVISORY STANDARDS

8:39-3.1 Mandatory rules

(a) Mandatory rules contain minimum and essential requirements of care provided by a facility.

(b) Failure to comply with any mandatory rules contained in this chapter shall constitute a deficiency for which the New Jersey State Department of Health may take any or all of the following measures or any other lawful remedy:

1. Action to impose a fine;

2. Cessation of all admissions;

3. Removal of residents from the facility when there is an imminent danger to any person's health or safety; and

4. Revocation of the license held by the facility's operator.

8:39-3.2 Advisory standards

(a) Advisory standards contain benchmarks of excellence or superior attainment in providing care of high quality.

(b) Facilities are strongly encouraged to use advisory standards in striving to provide the highest quality of care possible.

(c) Failure to comply with any or all advisory standards shall not constitute a deficiency or result directly or indirectly in any fine, cessation of admissions, removal of residents, or revocation of a license, imposed pursuant to action by the New Jersey State Department of Health.

(d) Compliance with advisory standards shall not be used as an indication of whether the facility is in compliance with mandatory rules or whether a facility should be made subject to a penalty or other action to protect residents.

8:39-3.3 Reporting compliance with advisory standards

(a) Compliance with advisory standards shall be calculated in accordance with the following:

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1. The Department shall verify that at least 90 percent of no more than 30 advisory standards randomly selected from the total number of advisory standards which the facility claims to have met are in fact met; and

2. If the compliance rate determined at (a)1 above is 90 percent or greater, then, for any advisory subchapter in which the facility has claimed to meet 65 percent or more of the standards in the subchapter, recognition for meeting the entire subchapter shall be given.

(b) Reports of individual facilities' compliance with advisory standards shall be available at the New Jersey State Department of Health, Office of Licensing and Inspection, for the inspection of the public, during normal business hours.

(c) If a facility applies for a Certificate of Need, compliance with six or more of the following advisory subchapters at the time of the most recent survey of the facility will be taken into consideration: access to care (N.J.A.C. 8:39-6), resident assessment and care plans (N.J.A.C. 8:39-12), pharmacy (N.J.A.C. 8:39-30), infection control and sanitation (N.J.A.C. 8:39-20), resident activities (N.J.A.C. 8:39-8), dietary services (N.J.A.C. 8:39-18), medical services (N.J.A.C. 8:39-24), nurse staffing (N.J.A.C. 8:39-26), physical environment (N.J.A.C. 8:39-32), and quality assessment and assurance (N.J.A.C. 8:39-34).

(d) If a facility can demonstrate that it has a system in place to meet the requirement, even though it is not applicable at the time of the survey, the surveyors may deem that, in their judgment, the standard is met.

SUBCHAPTER 4. MANDATORY RESIDENT RIGHTS

8:39-4.1 Resident rights

(a) Each resident shall be entitled to the following rights:

1. To retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan;

2. To have a physician explain to the resident, in language that the resident understands, his or her complete medical condition, the recommended treatment, and the expected results of the treatment. If this information would be detrimental to the resident's health, the explanation must be provided to his or her next of kin or guardian and documented in the resident's medical record;

3. To participate, to the fullest extent that the resident is able, in planning his or her own medical treatment and care;

4. To refuse medication and treatment after the resident has been informed, in language that the resident understands, of the possible consequences of this decision. The resident may also 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;

5. To be free from physical and mental abuse;

6. To be free from chemical and physical restraints, unless they are authorized by a physician 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 nursing home staff, or with the use of excessive drug dosages;

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

8. To receive a written statement describing the services provided by the nursing home and the related charges. This statement must also include the nursing home's policies for payment of fees, deposits, and refunds. The resident shall receive this statement prior to or at the time of admission, and afterward whenever there are any changes;

9. 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 must 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;

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

11. To live in safe, decent, and clean conditions in a nursing home that does not admit more residents than it can safely accommodate while providing adequate nursing care;

12. To be treated with courtesy, consideration, and respect for the resident's dignity and individuality;

13. To refuse a transfer to another room within the facility unless there is a clinical reason for the transfer which has been documented by a physician's order or nursing assessment, and to receive prior notification of any proposed change in room or roommate;

14. To wear his or her own clothes, unless this would be unsafe or impractical. All clothes provided by the nursing home must fit in a way that is not demeaning to the resident;

15. 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 nursing home shall take precautions to ensure that the resident's personal possessions are secure from theft, loss, and misplacement;

16. To have physical privacy. The resident shall be allowed, for example, to maintain the privacy of his or her body during medical treatment and personal hygiene activities, such as bathing and using the toilet, unless the resident needs assistance for his or her own safety;

17. To have reasonable opportunities for private and intimate physical and social interaction with other people, including arrangements for privacy when the resident's spouse visits. If the resident and his or her spouse are both residents of the same nursing home, they shall be given the opportunity to share a room, unless this is medically inadvisable, as documented in their records by a physician;

18. To confidential treatment of information about the resident. Information in the resident's records shall not be released to anyone outside the nursing home 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;

19. 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;

20. To have access to a telephone without anyone deliberately listening to the conversation, and, if technically feasible, to have a private telephone in his or her living quarters at the resident's own expense;

21. To stay out of bed as long as the resident desires and to be awakened for routine daily care no more than two hours before breakfast is served, unless a physician recommends otherwise and specifies the reasons in the resident's medical record;

22. To receive assistance in awakening, getting dressed, and participating in the facility's activities, unless a physician specifies reasons in the resident's medical record;

23. To meet with any visitors of the resident's choice between 8:00 A.M. and 8:00 P.M. daily. If the resident is critically ill, he or she may receive visits at any time from next of kin or a guardian, unless a physician documents that this would be harmful to the resident's health;

24. To take part in nursing home 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;

25. To leave the nursing home during the day with the approval of a physician and with the resident's whereabouts noted on a sign-out record. Arrangements may also be made with the nursing home for an absence overnight or longer;

26. To refuse to perform services for the nursing home;

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27. 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;

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

29. 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;

30. To discharge himself or herself from the nursing home by presenting a release signed by the resident. If the resident is an adjudicated mental incompetent, the release must be signed by his or her next of kin or guardian;

31. To be transferred or discharged only for one or more of the following reasons, with the reason for the transfer or discharge recorded in the resident's medical record:

i. In an emergency, with notification of the resident's physician and next of kin or guardian;

ii. For medical reasons or to protect the resident's welfare or the welfare of others;

iii. To comply with clearly expressed and documented resident choice, or in conformance with the New Jersey Advance Directives for Health Care Act, as specified in N.J.A.C. 8:39-9.5(d); or

iv. For nonpayment of fees, in situations not prohibited by law.

32. To receive written notice at least 30 days in advance when the nursing home requests the resident's transfer or discharge, except in an emergency. Written notice shall also be provided to the resident's next of kin or guardian 30 days in advance;

33. To be given a written statement of all resident rights as well as any additional regulations established by the nursing home involving resident rights and responsibilities. The nursing home shall require each resident or his or her guardian to sign a copy of this document. In addition, a copy shall be posted in a conspicuous, public place in the nursing home. Copies shall also be given to the resident's next of kin and distributed to staff members. The nursing home is responsible for developing and implementing policies to protect resident rights;

34. To retain and exercise all the constitutional, civil, and legal rights to which the resident is entitled by law. The nursing home shall encourage and help each resident to exercise these rights; and

35. To voice complaints without being threatened or punished. Each resident is entitled to complain and present his or her grievances to the nursing home administrator and staff, to government agencies, and to anyone else without fear of interference, discharge, or reprisal. The nursing home is required to provide each resident and his or her next of kin or guardian with the names, addresses, and telephone numbers of the government agencies to which a resident can complain and ask questions, including the New Jersey State Department of Health and the Office of the Ombudsman for the Institutionalized Elderly. These names, addresses, and telephone numbers shall also be posted in a conspicuous place near every public telephone and on all public bulletin boards in the nursing home.

(b) Each resident, resident's next of kin, and resident's guardian shall be informed of the resident rights enumerated in this subchapter, and each shall be explained to him or her. None of these rights shall be abridged or violated by the facility or any of its staff.

SUBCHAPTER 5. MANDATORY ACCESS TO CARE

8:39-5.1 Mandatory admission policies and procedures

(a) The facility shall make available to indigent individuals at least five percent of its beds or, if the facility is licensed for 100 or more beds, at least 10 percent of its beds. For purposes of this section, an individual is "indigent" if he or she is an applicant for admission or a current resident of the facility, and if he or she would otherwise meet the eligibility requirements of Medicaid reimbursement or county or municipal financial assistance for nursing home care.

(b) The facility shall not deny a resident immediate readmission to the facility at the conclusion of a period of temporary discharge, if payment or reimbursement for the resident's care includes a period of temporary discharge. For purposes of this rule, a period of temporary discharge begins with a transfer to a hospital or other health facility and lasts 10 or fewer days.

(c) The facility, if it is a Medicaid provider whose Medicaid occupancy level is less than the Statewide occupancy level, shall comply with N.J.S.A. 10:5-12.2 by not denying admission to a qualified Medicaid applicant when a bed becomes available.

(d) Whenever the facility denies admission to an applicant for admission, the facility, within 14 days of the denial, shall provide written notice to the applicant or person applying on the applicant's behalf of the denial and the reason for denial.

(e) The facility shall not deny admission to any applicant for admission ("applicant for admission" means an individual who has made a formal application) based on diagnosis or health care needs if the applicant's health care needs can be reasonably accommodated and are commensurate with the services provided by a licensed long-term care facility as specified in this chapter unless:

1. The facility currently treats a high proportion of residents whose documented health problems clearly require more intensive nursing care than is ordinarily provided to most long-term care residents as measured by objective factors such as the acuity conditions enumerated at N.J.A.C. 8:39-25.2(b)2; and

2. The facility could provide health care to the applicant at an acceptable level of quality of care only by reducing the quality of care that is currently provided to other residents.

(f) The facility shall notify the Department of any intention to deny admission pursuant to (e) above to individuals who have been formally referred to the facility or have made written application for admission.

(g) A record of each completed application, including the disposition and stated reason if admission is denied, shall be kept for one year.

(h) An admission waiting list of individuals who have completed applications shall exist and shall be implemented. The facility shall have policies and procedures addressing admission priorities and retention on the waiting list, including, at a minimum, the following:

1. Dates of application; and

2. Source of payment.

8:39-5.2 Mandatory policies and procedures for access to care

(a) The facility shall comply with applicable Federal, State, and local laws, rules, and regulations.

(b) There shall be no discrimination against any resident or group of residents based on method of payment.

(c) The facility shall meet all currently applicable conditions attached to any Certificate of Need that has been granted to it.

(d) If a facility 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 is not capable of providing proper care to the resident, then an evaluation should be performed in accordance with Guidelines for Inappropriate Behavior and Resident to Resident Abuse, in Appendix B.

SUBCHAPTER 6. ADVISORY ACCESS TO CARE

8:39-6.1 Advisory admission policies and procedures

(a) The waiting list of the facility incorporates a system to contact applicants or families at least quarterly, or according to an alternate schedule approved by the Department, to advise them concerning the status of the application and to inquire of the applicant's interest in remaining on the waiting list.

(b) Before admission, the resident's physician, the facility's social worker, the facility's admissions officer (if different from the social worker), and a registered professional nurse discuss the appropriateness of the placement.

(c) The facility makes available to indigent individuals at least 10 percent of its beds or, if the facility is licensed for 100 or more beds, at least 15 percent of its beds. For purposes of this subsection, an individual is "indigent" if he or she is an applicant for admission

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or a current resident of the facility, and if he or she would otherwise meet the eligibility requirements of Medicaid reimbursement or county or municipal financial assistance for nursing home care.

(d) The facility provides a copy of admissions policies and criteria to all applicants for admission.

SUBCHAPTER 7. MANDATORY RESIDENT ACTIVITIES

8:39-7.1 Mandatory administrative organization for resident activities

The director of resident activities shall supervise all other resident activities staff and coordinate all resident activity programs.

8:39-7.2 Mandatory staff qualifications for resident activities

(a) The facility shall have a director of resident activities who holds at least one of the following three qualifications:

1. A baccalaureate degree from an accredited college or university with a major area of concentration in recreation, creative arts therapy, therapeutic recreation, art, art education, psychology, sociology, or occupational therapy; or

2. A high school diploma and three years of experience in resident activities in a health care facility and satisfactory completion of an activities education program approved by the New Jersey State Department of Health, after a review of the specific curriculum, consisting of 90 hours of training, and incorporating the following elements:

i. Overview of the activity profession;

ii. Human development: the late adult years;

iii. Standards of practice: practitioner behavior;

iv. Activity care planning for quality of life; and

v. Methods of service delivery in the activity profession; or

3. Served as director of resident activities on June 20, 1988, and has continuously served as activities director since that time.

(b) Currently employed activities directors who have completed an activities education course which was previously approved by the Department will not be required to complete the course described at (a)2 above.

8:39-7.3 Mandatory staffing amounts and availability for activities

At least 45 minutes of resident activities staff time per resident per week shall be devoted to resident activities. (This is an average. It is equal to one full-time equivalent staff member for every 53 residents.)

8:39-7.4 Mandatory resident activities services

(a) Resident activities staff shall arrange a diversity of programs to maintain residents' sense of usefulness and self-respect. Included shall be activities in each of the following categories:

1. Social (for example, parties, club meetings, picnics, and other special events);

2. Physical (for example, exercise, sports, dancing, and swimming);

3. Creative (for example, crafts, poetry, drama, music therapy, art therapy, and gardening);

4. Educational and cultural (for example, discussion groups, guest speaker programs, concerts and other forms of live entertainment, and international meals);

5. Spiritual, such as religious services;

6. Awareness, including cognitive and sensory individual and group stimulation for confused and disoriented residents; and

7. Community-integrating (for example, visits by community volunteers, visits by nursery school classes, exchange visits with other health care facilities, participation in senior citizen organization meetings or support group sessions, and participation in adopt-a-grandparent programs).

(b) If the facility requires an exception from any of the categories of activities listed at (a)1 through 7 above, reasons for the exception, such as impracticability or lack of appropriateness or interest on the part of residents, shall be documented in the request, which shall be in accordance with N.J.A.C. 8:39-2.7.

(c) Resident activity programs shall take place in individual, small group, and large group settings.

(d) Resident activities shall be scheduled for seven days each week, and during at least two evenings per week. Religious services shall be considered resident activities for purposes of complying with this requirement.

(e) Residents may participate in the activities program regardless of their financial status, with the exception of special events for which there is a charge for all residents.

(f) At least weekly, a listing of all scheduled activities shall be posted in a conspicuous place in the facility.

(g) Resident activities programs shall be developed and modified on the basis of input from residents, as well as staff, family, and others.

8:39-7.5 Mandatory space and environment for resident activities

Each facility shall have an activities room that is equipped with arts and crafts supplies, games, and reading materials.

SUBCHAPTER 8. ADVISORY RESIDENT ACTIVITIES

8:39-8.1 Advisory policies and procedures for resident activities

There is a formal, continuous mechanism for activity planning, implementation and evaluation.

8:39-8.2 Advisory staff qualifications for resident activities

The director of resident activities possesses a baccalaureate degree from an accredited college or university with a major area of concentration in therapeutic recreation or creative arts therapy or holds current certification from the National Certification Council for Activity Professionals (National Certification Council for Activity Professionals, 520 Stewart, Park Ridge, Illinois 60068) or the National Council of Therapeutic Recreation Certification (National Council for Therapeutic Recreation, P.O. Box 16126, Alexandria, Virginia 22302).

8:39-8.3 Advisory staffing amounts and availability for resident activities

(a) At least 55 minutes of resident activities staff time per resident per week is devoted to resident activities. (This is an average. It is equal to one full-time equivalent staff member for every 44 residents.)

(b) The facility maintains an active volunteer program that includes scheduled visits to the facility on at least a weekly basis.

8:39-8.4 Advisory resident services for resident activities

(a) Resident activity programs are conducted during at least four evenings per week.

(b) Field trips are accessible for all residents who choose to participate, unless their participation would not be clinically feasible.

(c) Regularly scheduled outdoor recreation is provided.

(d) There is a pet therapy program for interested residents, with safeguards to prevent interference in the lives of other residents, and the program complies with policies and procedures developed by the facility (See Appendix A for example).

(e) The facility has an organized program for visits to residents by school or pre-school children throughout the year.

SUBCHAPTER 9. MANDATORY ADMINISTRATION

8:39-9.1 Mandatory administrative organization and responsibilities

(a) The facility shall inform the New Jersey State Department of Health of the ownership and management of the facility and its location, and proof of ownership shall be available at the facility.

1. In the case of group or corporate management of a facility, the facility shall specify:

i. Name and address of the firm or corporation; and

ii. Names and addresses of all directors of the firm or corporation.

2. Any proposed change in ownership shall conform with N.J.A.C. 8:33.

(b) The facility shall not be owned or operated by any person convicted of a crime relating adversely to the person's capability of owning or operating the facility.

(c) In a facility with more than 240 beds, in addition to the licensed administrator, there shall be a full-time administrative supervisor who is assigned the evening shift and reports directly to the licensed administrator.

(d) The administrator shall serve full-time in an administrative capacity within the facility in facilities with 100 or more beds. In

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facilities with fewer than 100 beds, a licensed administrator shall serve at least half-time within the facility. The administrator shall be administratively responsible for all aspects of the facility.

(e) A licensed administrator shall only be responsible for one facility, except that an administrator may be responsible for two facilities if such facilities are within a 20-mile radius and if the total number of beds for which both facilities are licensed is no more than 120.

8:39-9.2 Mandatory policies and procedures for administration

(a) The facility shall maintain a written record of all financial arrangements with the resident, next of kin, and/or guardian. Copies of the record shall be accessible to the resident or guardian during normal business hours or by prior arrangement.

(b) The facility shall provide the resident with 30 days prior written notice of charges, expenses, or other financial liabilities that are in addition to the agreed per diem rate. The resident's prior written approval for additional charges shall not be required in the event of a health emergency that requires the resident to receive immediate special services or supplies.

(c) Funds deposited with a facility for a particular resident's use and safekeeping shall be held in an account which is separate from any of the facility's operating accounts.

1. Funds in excess of $50.00 shall be deposited in an interest bearing account(s) and all interest earned on resident's funds shall be credited to that account.

2. If a resident's personal funds do not exceed $50.00, they shall be maintained in a separate interest bearing account, a non-interest bearing account, or a petty cash fund.

3. The facility shall assure the security of all personal funds of residents deposited with the facility, through purchase of a surety bond or an alternative which provides protection equivalent to a surety bond.

(d) Effective July 6, 1993, 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 accumulate on such funds or property after the effective date.

1. The facility shall hold such funds or property in trust for the resident and they shall remain the property of the resident. 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.

2. 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.

3. 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.

(e) The administrator shall provide to the owner and/or governing body of the facility a copy of the licensing survey report and any additional survey-related data sent by the New Jersey State Department of Health to the administrator of the facility.

(f) The following documents shall be submitted to the New Jersey State Department of Health:

1. An annual financial report or a Medicaid cost report; and

2. Statistical data, such as resident census and facility characteristics, in a format provided by the Department.

(g) The facility shall notify the New Jersey State Department of Health immediately by telephone (609) 588-7725, or (609) 392-2020 after office hours, followed within 72 hours by written confirmation, of any of the following:

1. Interruption for three or more hours of physical plant services and/or other services essential to the health and safety of residents;

2. Termination of employment of the administrator or the director of nursing, and the name and qualifications of the proposed replacement;

3. All alleged or suspected crimes which endanger the life or safety of residents or employees, which are also reportable to the police department, and which result in an immediate on-site investigation by the police.

i. In addition, the State Office of the Ombudsman for the Institutionalized Elderly shall be immediately notified of any suspected resident abuse, neglect, or exploitation of residents aged 60 or older, pursuant to P.L. 1983 c.43, N.J.S.A. 52:27G-7.1, and the Department of Health shall be immediately notified for residents under the age of 60; and

4. All fires, disasters, deaths, and imminent dangers to a resident's life or health resulting from accidents or incidents in the facility.

(h) The facility shall investigate every reported case of misappropriated property.

(i) When a vacancy exists in the position of administrator for 24 to 48 hours, the facility shall arrange for licensed administrative supervision on a consultant basis, which shall continue until a new licensed administrator shall be appointed, which shall be within 90 days of the appointment of the consultant.

(j) The facility shall make all policy and procedure manuals available to residents, families, and guardians during normal business hours or by prior arrangement.

(k) Results of the most recent licensure survey and Federal Standard Certification conducted by the New Jersey State Department of Health shall be available for inspection by any resident or visitor, in a readily accessible place, at all times. A notice announcing the availability of those results and all other surveys conducted in the past 12 months shall be conspicuously posted in diverse readily accessible areas of the facility.

(l) A facility shall notify the Department of Health, Division of Health Facilities Evaluation and the Division of Medical Assistance and Health Services, Department of Human Services, if it is a participating Medicaid provider, immediately in writing at such time as it becomes financially insolvent and upon the filing of a voluntary or involuntary petition for bankruptcy under Title 11 of the United States Code. Insolvency means that the sum of the facility's debts is greater than the value of all of its assets, that the facility defaults on the primary debt on the property, or that in any month the current ratio falls below 1.0, or that the average payment period ratio for current liabilities exceeds 150 days. Facilities which are in the first 12 months of operation from the date of initial licensure are exempt from reporting a condition of insolvency to the Department. All notification of insolvency or a bankruptcy filing, when received by the Department of Health or the Department of Human Services, shall be kept confidential from the public and any other organization unless express authorization to do so has been provided by the facility.

(m) No resident shall be discharged between 5:00 P.M. and 8:00 A.M., except in an emergency or with the consent of the resident and family or responsible person.

(n) Policies for transfer shall include method of transportation, a transfer form that is consistent with "Hospital and Nursing Home Patient Transfer Form and Plan of Care" in Appendix B, incorporated herein by reference, copies of relevant medical records, including assessments (MDS; PASSAR) and advance directives if applicable, to accompany or follow the resident, procedures for security of the resident and his or her personal effects, and timeliness of transfer.

(o) A current table of organization shall be maintained for the entire facility, and each service shall maintain a current table of organization and a current set of job descriptions.

8:39-9.3 Mandatory staff qualifications

(a) The facility shall be directed by an individual who holds a current New Jersey license as a nursing home administrator.

(b) A nursing home administrator whose license is either suspended or revoked, pursuant to N.J.S.A. 25:2H-27 and 26:2H-28 (P.L. 1968, c.356) shall not be appointed or retained in the facility in any administrative, managerial, supervisory, or similar position.

(c) All personnel who require licensure, certification or authorization in order to provide resident care shall be licensed, certified or authorized under applicable laws and regulations of the State of New Jersey. The licenses, certifications or authorizations shall be verified by the facility.

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(d) The facility shall make reasonable efforts, including an inquiry on the employment application, reference checks, and/or criminal background checks where indicated or necessary, to ensure that staff providing direct care to residents in the facility:

1. Are in good physical and mental health, emotionally stable, of good moral character, are concerned for the safety and well-being of residents; and

2. Have not 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.

(e) The facility shall ensure that all private duty nursing staff and contract personnel are monitored and those who do not meet the requirements at (d)1 and 2 above or facility policies and procedures are not permitted to perform services in the facility.

(f) There shall be written policies and procedures for personnel that are reviewed annually, revised as needed, and implemented. They shall include at least:

1. A written job description for each category of personnel in the facility and distribution of a copy to each newly hired employee;

2. Personnel policies in compliance with Federal and state requirements;

3. A system to ensure that written, job-relevant criteria are used in making evaluation, hiring, and promotion decisions;

4. A system to ensure that employees meet ongoing requirements for credentials; and

5. Written criteria for personnel actions that require disciplinary action.

(g) The facility shall develop and implement a grievance procedure for all staff. The procedure shall include, at least, a system for receiving grievances, a specified response time, assurance that grievances are referred appropriately for review, development of resolutions, and follow-up action.

(h) Personnel records shall be confidential and accessible only to authorized personnel.

(i) Each staff member shall wear clean clothes and shall use good personal hygiene. 8:39-9.4 Staffing amounts and availability The administrator or an alternate designated by the administrator shall be on the premises at all times to direct operations.

8:39-9.5 Mandatory policies and procedures for advance directives

(a) The facility shall develop and implement procedures to ensure that there is a routine inquiry made of each adult resident, upon admission to the facility and at other appropriate times, concerning the existence and location of an advance directive. If the resident is incapable of responding to this inquiry, the facility shall have procedures to request the information from the resident's family or in the absence of a family member, another individual with personal knowledge of the resident. The procedures must assure that the resident or family's response to this inquiry is documented in the medical record. Such procedures shall also define the role of facility admissions, nursing, social service and other staff as well as the responsibilities of the attending physician.

(b) The facility shall develop and implement procedures to promptly request and take reasonable steps to obtain a copy of currently executed advance directives from all residents. These shall be entered when received into the medical record of the resident.

(c) A resident shall be transferred to another health care facility only for a valid medical reason, in order to comply with other applicable laws or Department rules, to comply with clearly expressed and documented resident choice, or in conformance with the New Jersey Advance Directives for Health Care Act in the instance of private, religiously affiliated health care institutions who establish policies defining circumstances in which it will decline to participate in the implementation of advance directives. Such institutions shall provide notice to residents or their families or health care representatives prior to or upon admission of their policies. A timely and respectful transfer of the individual to another institution which will implement the resident's advance directive shall be effected. The facility's inability to care for the resident shall be considered a valid medical reason. The sending facility shall receive approval from a physician and the receiving health care facility before transferring the resident.

(d) The facility shall, in consultation with the attending physician, take all reasonable steps to effect the appropriate, respectful and timely transfer of residents with advance directives to the care of an alternative health care professional in those instances where a health care professional declines as a matter of professional conscience to participate in withholding or withdrawing life-sustaining treatment. In those instances where the health care professional is the resident's physician, the facility shall take reasonable steps, in cooperation with the physician, to effect the transfer of the resident to another physician's care in a responsible and timely manner. Such transfer shall assure that the resident's advance directive is implemented in accordance with their wishes within the facility, except in cases governed by (c) above.

(e) The facility shall have procedures to provide each adult resident upon admission, and where the resident is unable to respond, to the family or other representative of the resident, with a written statement of their rights under New Jersey law to make decisions concerning the right to refuse medical care and the right to formulate an advance directive. Such statement shall be issued by the Commissioner. Appropriate written information and materials on advance directives and the institution's written policies and procedures concerning implementation of such rights shall also be provided. Such written information shall also be made available in any language which is spoken as a primary language, by more than 10 percent of the population served by the facility.

(f) The facility shall develop and implement procedures for referral of residents requesting assistance in executing an advance directive or additional information to either staff or community resource persons that can promptly advise and/or assist the resident.

(g) The facility shall develop and implement policies to address application of the facility's procedures for advance directives to residents who experience an urgent life-threatening situation.

(h) The facility shall develop and implement policies and procedures for the declaration of death of residents, in instances where applicable, in accordance with N.J.S.A. 26:6-1 et seq. and the New Jersey Declaration of Death Act, N.J.S.A. 26:6A-1 et seq. (P.L. 1991, c.90). Such policies shall also be in conformance with rules promulgated by the New Jersey Board of Medical Examiners which address declaration of death based on neurological criteria (N.J.A.C. 13:35-6A), including the qualifications of physicians authorized to declare death based on neurological criteria and the acceptable medical criteria, tests, and procedures which may be used. The policies and procedures shall also accommodate a resident's religious beliefs with respect to declaration of death.

(i) The facility shall establish procedures for considering disputes among the resident, health care representative and the attending physician concerning the resident's decision-making capacity or the appropriate interpretation and application of the terms of an advance directive to the resident's course of treatment. The procedures may include consultation with an institutional ethics committee, a regional ethics committee or another type of affiliated ethics committee, or with any individual or individuals who are qualified by their background and/or experience to offer clinical and ethical judgements.

(j) The facility shall establish a process for residents, families, and staff to discuss and address questions and concerns relating to advance directives and decisions to accept or refuse medical treatment.

(k) The facility shall provide periodic community education programs, individually or in coordination with other area facilities or organizations, that provide information to consumers regarding advance directives and their rights under New Jersey law to execute advance directives.

SUBCHAPTER 10. ADVISORY ADMINSTRATION

8:39-10.1 Advisory policies and procedures for administration

(a) The administrator monitors trends in staff turnover.

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(b) Each of at least five service directors participates in facility planning through preparation of annual budgets and annual reports, and participates in annual budget conferences among all service directors and the administrators.

8:39-10.2 Advisory staff qualifications

The administrator holds current professional certification from the American College of Health Care Administrators, or possesses a master's degree in health care administration or a related field.

8:39-10.3 Advisory staff education and training

(a) Personnel who provide direct resident care are offered an opportunity to attend at least one education program each year and receive fee reimbursement or compensatory time off. Records of continuing education programs attended are maintained.

(b) The facility conducts a tuition aid program directed toward the career development and upward mobility of staff, including both professional and ancillary personnel.

(c) The facility is a teaching nursing home, that is, the site of an internship, externship, or residency training program for health professionals, as part of the curriculum of an accredited or State-approved school or training program. The facility has sought input from the residents and/or the resident council concerning teaching programs.

(d) The facility maintains a library of textbooks and/or recent periodicals on long-term care, geriatric care, nursing, and other disciplines that is accessible to staff.

SUBCHAPTER 11. MANDATORY RESIDENT ASSESSMENT AND CARE PLANS

8:39-11.1 Mandatory completion of resident assessment and coordination of care plans

A registered professional nurse (RN) shall assess the nursing needs of each resident, coordinate the written interdisciplinary care plan, and ensure the timeliness of all services.

8:39-11.2 Mandatory policies and procedures for resident assessment and care plans

(a) A physician shall provide orders for each resident's care beginning on the day of admission.

(b) Each physician order shall be executed by the nursing, dietary, social work, activities, rehabilitation or pharmacy service, as appropriate. If a physician's order is not executed, the record shall contain an explanation, and the physician shall be notified within 24 hours or as specified by the physician.

(c) Each resident shall be examined by a physician within five days before, or 48 hours after, admission.

(d) An initial assessment and care plan shall be developed on the day of admission and include at least personal hygiene, immediate dietary needs, medications, and ambulation.

(e) A comprehensive assessment shall be completed for each resident within 14 days of admission, utilizing the Standardized Resident Assessment Instrument (Minimum Data Set) (see Appendix C, incorporated herein by reference) as specified by the Department, or on an equivalent assessment instrument which has been developed by the facility. The complete assessment and care plan shall be based on oral or written communication and assessments provided by nursing, dietary, resident activities, and social work staff; and when ordered by the physician, assessments shall also be provided by other health professionals. The care plan shall include measurable objectives with interventions based on the resident's care needs and means of achieving each goal.

(f) The complete care plan shall be established and implementation shall begin within 21 days, and shall include, if appropriate, rehabilitative/restorative measures, preventive intervention, and training and teaching of self-care.

(g) If a resident is discharged to a hospital and returns to the facility within 30 days of discharge, reassessment shall be conducted in those areas where the resident's needs have changed substantially. A complete reassessment shall be performed if the resident was discharged for more than 30 days.

(h) There shall be a scheduled comprehensive reassessment in each service involved in the initial assessment, plus other areas which the physician or interdisciplinary team indicates are necessary. Reassessments shall be performed according to time frames established in the previous care plan.

(i) A reassessment shall be performed in response to all substantial changes in the resident's condition, such as fractures, onset of debilitating chronic diseases, loss of a loved one, or recovery from depression.

(j) The facility shall have a written transfer agreement with one or more hospitals for emergency care and inpatient and outpatient services.

8:39-11.3 Mandatory resident services for discharge and transfer

(a) Discharge plans, for those residents considered to be likely candidates for discharge into the community or a less intensive care setting, shall be developed by the interdisciplinary team prior to discharge and shall reflect communication with the resident and the resident's family.

(b) The facility shall arrange for transfer of residents to other health care facilities, and to health care services provided outside the long-term care facility, in accordance with the physician's orders.

SUBCHAPTER 12. ADVISORY RESIDENT ASSESSMENT AND CARE PLANS

8:39-12.1 Advisory policies and procedures for resident assessment and care plan

(a) The resident care plan is developed at a meeting held by an interdisciplinary team that includes professional and/or ancillary staff from each service providing care to the resident.

(b) The facility makes care planning meetings available at mutually agreeable times, including evenings and weekends, for the convenience of families and significant others.

8:39-12.2 Advisory resident services for off-site services

The facility provides and/or arranges for someone to accompany each resident to scheduled visits to off-site health care services.

SUBCHAPTER 13. MANDATORY COMMUNICATION

8:39-13.1 Mandatory communication policies and procedures

(a) Each service shall maintain a current manual of policies and procedures for providing services.

(b) The administrative staff shall retain a written current manual of policies and procedures for the facility as a whole and for each individual service.

(c) The facility shall notify any family promptly of an emergency affecting the health or safety of a resident.

(d) The facility shall notify the attending physician promptly of substantial changes in the resident's medical condition.

8:39-13.2 Mandatory resident communication services

(a) Residents and their families shall be given the opportunity to participate in the development and implementation of the care plan, and their involvement shall be documented in the resident's medical record.

(b) Before or on the day of admission, residents and families shall be informed in writing about services provided by the facility, charges imposed for services at the facility, the availability of financial assistance, the rights and responsibilities of residents and families, and the role of each service on the health care team; and they shall be given a tour of resident care units in the facility.

(c) When a resident or family group exists, the facility shall listen to the views and act upon or respond to the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

8:39-13.3 Mandatory staff communication qualifications

(a) Staff shall always communicate with residents and families in a respectful way, and shall introduce and identify themselves to residents as required and necessary.

(b) The facility shall ensure that all staff including staff members not fluent in English are able to communicate effectively with residents and families.

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8:39-13.4 Mandatory staff education and training for communication

(a) Each service shall conduct an orientation program for new employees of that service unless the orientation program is conducted by the administrator or a qualified designee.

1. For purposes of complying with this requirement,"new employees" shall be defined to include all permanent and temporary resident care personnel, nurses retained through an outside agency, and persons providing services by contract.

2. The orientation program shall begin on the first day of employment.

3. The orientation program for all staff shall include orientation to the facility and the service in which the individual will be employed, at least a partial tour of the facility, a review of policies and procedures, identification of individuals to be contacted under specified circumstances, and procedures to be followed in case of emergency.

(b) Each service shall provide education or training for all employees in the service at least four times per year and in response to resident care problems, implementation of new procedures, technological developments, changes in regulatory standards, and staff member suggestions.

(c) At least one education training program each year shall be held for all employees on each of the following topics:

1. Procedures to follow in case of emergency;

2. Resident rights; and

3. Pharmacy (for all direct care staff).

(d) All staff members shall receive training at least two times per year about the facility's infection control procedures, including handwashing and personal hygiene requirements.

(e) All nursing and professional staff of the facility shall receive orientation and annual training in the use of restraints, including at least:

1. Policies and procedures in accordance with N.J.A.C. 8:39-27.2;

2. Emergency and non-emergency procedures;

3. Practice in the application of restraints and alternative methods of intervention; and

4. Interventions by licensed and non-licensed nursing personnel.

(f) At least one education or training program each year shall be held for all administrative and resident care staff regarding the rights and responsibilities of staff under the New Jersey Advance Directives for Health Care Act (P.L. 1991, c.201) and the Federal Patient Self Determination Act (P.L. 101-508), and internal facility policies and procedures to implement these laws.

(g) The facility shall maintain attendance lists for all education or training programs conducted in, or sponsored by, the facility.

SUBCHAPTER 14. ADVISORY COMMUNICATION

8:39-14.1 Advisory resident services

(a) The facility has one or more wellness programs open to the public, such as programs to reduce or prevent smoking, alcohol and drug abuse, elder abuse, obesity, or hypertension.

(b) Periodic meetings are open to all staff, residents, and families to discuss any problems, encourage the resident to reach his or her potential, examine the goals and expectations of different individuals, describe how questions and complaints can be presented, and review the concept of interdisciplinary care.

(c) Provision is made for residents to retain membership, join, and/or participate in community activities. These should include organizations, community projects, holiday observances, or charitable events.

(d) A facility newsletter is provided to residents and families at least quarterly.

(e) Each staff member wears an easily readable name tag.

8:39-14.2 Advisory staff education and training for communication

(a) Periodic meetings are held with each service to discuss ways to improve care of all residents.

(b) Education and training of staff includes an accredited program in cardiopulmonary resuscitation (CPR) which offers staff an opportunity to be recertified on an annual basis.

(c) Each service establishes and implements education or training programs for members of other services on diverse topics.

(d) Education or training sessions are offered which address new concepts and directions in cultural and interpersonal concepts.

SUBCHAPTER 15. MANDATORY DENTAL SERVICES

8:39-15.1 Mandatory resident dental services

(a) The facility shall provide or arrange emergency dental care to relieve pain and infection.

(b) The facility shall assist interested residents in making arrangements to receive dental examinations, routine prophylaxis, and care.

(c) The facility shall ensure that arrangements are made to transport residents for routine and emergency dental care.

(d) All resident dentures shall be labeled.

SUBCHAPTER 16. ADVISORY DENTAL SERVICES

8:39-16.1 Advisory resident dental services

(a) The facility provides in-house dental services, including treatment and prophylactic care.

(b) The facility follows established protocols for providing all residents with regularly scheduled routine prophylactic dental services and treatments when indicated, delivered by a dentist or a dental hygienist, except for residents whose medical records contain an explanation of why such services would not benefit the resident.

SUBCHAPTER 17. MANDATORY DIETARY SERVICES

8:39-17.1 Mandatory structural organization for dietary services

(a) The facility shall designate a food service director who, if not a dietitian, functions with scheduled consultation from a dietitian. The food service director shall be responsible for the direction, provision, and quality of dietary services.

(b) Menus shall be planned and scheduled by the food service director or the dietitian, and shall be approved by the dietitian at least 14 days in advance.

(c) The dietitian shall perform the dietary assessment and reassessment, which shall include examination of and communication with the resident if the resident's condition permits.

(d) Services that are provided by a food service company shall be covered by a written contract.

8:39-17.2 Mandatory policies and procedures for dietary services

(a) The facility shall make available a current dietary manual which shall have been approved by the dietitian and the medical director. The facility shall serve diets which are consistent with the dietary manual.

(b) The facility shall post current menus with portion sizes in the food preparation area. The facility shall keep menus for 30 days with any changes accurately recorded.

(c) The facility shall designate responsibility for observation and documentation of meals refused or missed by a resident and of any resident who requires assistance with meals.

(d) A dietitian shall adhere to an established system of nutritional assessment, which shall include examination of and communication with the resident if the resident's condition permits.

(e) The facility shall routinely provide nondisposable dishes and cutlery at all meals except for special meal activities or individual resident needs.

(f) Meals shall be scheduled in such a way that no more than 14 hours elapse between a substantial evening meal and breakfast the next morning and that the first meal shall not be served before 7:00 A.M. unless requested by the resident.

1. Up to 16 hours may elapse between a substantial evening meal and breakfast the following day if the following conditions are met:

i. A resident group agrees to this meal span; and

ii. A nourishing bedtime snack is served.

(g) All food service facilities shall operate with safe food handling practices in accordance with Chapter XII of the New Jersey Sanitary Code, N.J.A.C. 8:24.

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8:39-17.3 Mandatory staff qualifications for dietary services

(a) 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.

(b) There shall be a full-time food service director or manager who has met the requirements of a dietitian, or has graduated from a New Jersey State-approved course in food service management or its equivalent.

8:39-17.4 Mandatory staffing amounts and availability for dietary services

(a) The dietitian shall spend an average of 15 minutes per resident each month providing dietary services in the facility. (This is an average. It is equal to one full-time equivalent dietitian for every 693 residents.)

(b) Dietary service personnel shall be present for a period of at least 12 hours each day.

8:39-17.5 Mandatory resident dietary services

(a) Each resident shall receive a diet which:

1. Corresponds to the physician's order, the dietitian's instructions, and resident's food preferences,

2. Is served in the proper consistency and at the proper temperature; and

3. Provides nutrients and calories based upon current recommended dietary allowances of the National Academy of Sciences, adjusted for the resident's age, sex, weight, physical activity, physiological function, and therapeutic needs.

(b) The facility shall provide between-meal and bedtime nourishment, and beverages shall be available at all times for each resident unless contraindicated by a physician, as documented in the resident's medical record.

(c) The facility shall offer substitute foods and beverages to all residents who refuse the food served at meal times. Such substitutes shall be of equivalent nutritional value and planned in advance in writing.

(d) No resident shall have to wait for assistance in eating for more than 15 minutes following delivery of a tray to the resident.

(e) 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.

SUBCHAPTER 18. ADVISORY DIETARY SERVICES

8:39-18.1 Advisory structural organization for dietary services

A registered dietitian performs the resident dietary assessment and participates in the interdisciplinary plan of care.

8:39-18.2 Advisory staff qualifications for dietary services

The director of dietary services or the dietitian is registered by the Commission on Dietetic Registration of the American Dietetic Association (R.D.).

8:39-18.3 Advisory staffing amounts and availability for dietary services

The dietitian spends an average of 20 minutes per resident each month providing dietary services in the facility. (This is an average. It is equal to one full-time equivalent dietitian for every 520 residents.)

8:39-18.4 Advisory resident dietary services

(a) There are dietary observances for national and/or religious holidays.

(b) Fresh fruits and vegetables are served in season on a daily basis.

(c) The facility utilizes a dining room/area, other than day rooms, for residents with special needs.

(d) Residents have access to a refrigerator or snack bar.

(e) Residents are offered a selective menu consisting of at least three main entrees at each meal.

(f) A menu committee composed of residents participates in meal planning.

(g) The facility sponsors a guest meal program.

8:39-18.5 Supplies and equipment

The facility provides cloth table covers and cloth napkins at least once a day.

SUBCHAPTER 19. MANDATORY INFECTION CONTROL AND SANITATION

(a) The facility shall have an infection prevention and control program conducted by an infection control committee which shall include representatives from at least administrative, nursing, medical, dietary, housekeeping or environmental services, and pharmacy staffs. The infection control committee shall review all infection control policies and procedures, periodically review infection control surveillance data, and formulate recommendations to the administrator regarding infection control activities.

(b) Responsibility for the infection prevention and control program shall be assigned to an employee who is designated as the infection control coordinator, with education, training, completed course work, or experience in infection control or epidemiology; or services shall be provided by contract. If the services are provided by contract, the facility shall designate an on-site employee to implement, coordinate, and ensure compliance with infection control policies and procedures.

8:39-19.2 Mandatory employee health policies and procedures for infection control and sanitation

(a) 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.

(b) If a communicable disease prevents the employee from working, a physician's statement approving the employee's return shall be required. Prior to the employee's return to work, the physician's statement shall be reviewed by the administrator or the administrator's designee. If the employee has been absent for no longer than three days, the employee's return to work may be approved by the nursing director or the infection control committee, following assessment by the nurse.

(c) 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.

8:39-19.3 Mandatory waste removal policies and procedures

(a) Regulated medical waste shall be collected, stored, handled, and disposed of in accordance with applicable Federal laws and regulations, and the facility shall comply with the provisions of N.J.S.A. 13:1F-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules promulgated pursuant to the aforementioned Act.

(b) The infection control committee shall develop and implement written policies and procedures for collection, storage, handling, and disposal of all solid waste that is not regulated medical waste.

(c) All solid waste that is not regulated medical waste shall be disposed of in a sanitary landfill or other manner approved by the Department of Environmental Protection and Energy. Disposal shall be as frequent as necessary to avoid creating a nuisance.

8:39-19.4 Mandatory general policies and procedures for infection control and sanitation

(a) The facility shall develop, implement, comply with, and review, at least annually, written policies and procedures regarding infection prevention and control which are consistent with the most up-to-date Centers for Disease Control and Prevention publications, including, but not limited to, the following:

1. Guidelines for Handwashing and Hospital Environmental Control;

2. Guidelines for Isolation Precautions in Hospitals;

3. Prevention and Control of Tuberculosis in Facilities Providing Long-term Care to the Elderly;

4. Prevention of Nosocomial Pneumonia;

5. Prevention of Catheter Associated Urinary Tract Infections; and

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6. Prevention of Intravascular Infections.

NOTE: Centers for Disease Control and Prevention publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161
or
Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

(b) The facility shall comply with applicable current Occupational Safety and Health Administration (OSHA) requirements.

(c) The infection control coordinator shall provide continuous collection and analysis of data, including determination of nosocomial infections, epidemics, clusters of infections, infections due to unusual pathogens, and any occurrence of nosocomial infection that exceeds the usual baseline levels.

(d) The infection control coordinator shall make recommendations for corrective actions based on surveillance and data analysis.

(e) The facility shall have a system for investigating, evaluating, and reporting the occurrence of all reportable infections and diseases as specified in Chapter II of the State Sanitary Code (N.J.A.C. 8:57-1.1 through 1.12).

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

(g) The facility shall implement a policy for tuberculin screening of all residents which begins prior to admission and concludes within 30 days following admission.

(h) If used, all reusable respiratory therapy equipment and instruments that touch mucous membranes shall be disinfected or sterilized in accordance with the Centers for Disease Control and Prevention publication "Guidelines for Handwashing and Hospital Environmental Control," incorporated herein by reference.

(i) Disinfection procedures for items that come in contact with bed pans, sinks, and toilets shall conform with established protocols for cleaning and disinfection, in accordance with the Centers for Disease Control publication "Guidelines for Handwashing and Hospital Environmental Control," incorporated herein by reference. All resident care items shall be cleaned, disinfected, or sterilized, according to the use of the item.

(j) 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. Handwashing practices shall be monitored at least monthly by the infection control coordinator.

(k) Personnel shall wash their hands with soap and warm water for between 10 and 30 seconds or use other effective hand sanitation techniques immediately prior to contact with residents.

8:39-19.5 Mandatory staff qualifications; health history and examinations

(a) The facility shall require all new employees to complete a health history and to receive an examination performed by a physician within two weeks prior to the first day of employment or upon employment. If the new employee receives a nursing assessment upon employment, the physician's examination may be deferred for up to 30 days from the first day of employment. The facility shall establish criteria for determining the completeness of physical examinations for employees.

(b) Each new employee, including members of the medical staff employed by the facility, 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 if active tuberculosis is suspected or diagnosed shall be excluded from work until the physician provides written approval to return.

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

(d) The facility shall assure that all current employees who have not received the Mantoux test upon employment, except those exempted by (b) above, shall receive a test within three months of the effective date of this rule. The facility shall act on the results of tests of current employees in the same manner as prescribed in (b) above.

(e) The facility shall report at least annually the results of all tuberculin testing of personnel, on forms provided by the Department of Health, Division of Epidemiology, Tuberculosis Program.

(f) Yearly influenza immunization shall be offered to employees at no charge.

8:39-19.6 Mandatory space and environment for water supply

(a) The water supply used for drinking or culinary purposes shall be adequate in quantity, of a safe 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. and 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 and Energy, Bureau of Potable Water, CN 209, Trenton, New Jersey 08625.

(b) There shall be no cross connections between city and well water supplies. When the facility uses well water for potable water every day, a double check valve shall be permitted if the facility has approval for such use from the water company and the New Jersey State Department of Environmental Protection and Energy.

(c) Equipment requiring water drainage, such as ice machines and water fountains, shall be properly drained to a sanitary connection.

(d) Hot (95 to 110 degrees Fahrenheit) and cold running water shall be provided. Hot water in resident areas shall not exceed 110 degrees Fahrenheit.

8:39-19.7 Mandatory space and environment for sanitation and waste management

(a) Solid waste shall be stored in clean, solidly constructed containers with tight-fitting lids for the storage of solid wastes.

(b) Storage areas for solid waste containers shall be kept clean. Waste shall be collected from all storage areas regularly to prevent nuisances such as odors, flies, or rodents.

(c) Solid wastes not incinerated shall be disposed of in a sanitary landfill approved by the New Jersey Department of Environmental Protection and Energy with sufficient frequency to avoid creating a nuisance.

(d) There shall be no back siphonage conditions present.

(e) All food service facilities shall be maintained in conformance with Chapter XII of the New Jersey State Sanitary Code, N.J.A.C. 8:24.

(f) If the facility has an incinerator, it shall operate with the necessary permits from the New Jersey Department of Environmental Protection and Energy and shall not create a nuisance to the facility or the community.

(g) Solid waste which is not regulated medical waste shall be stored within the containers provided for it outside the facility or in a separate room that is maintained in a clean and sanitary condition. Waste shall be collected from the storage room regularly to prevent nuisances such as odors, flies, or rodents, and so that the waste shall not overflow or accumulate beyond the capacity of the storage containers.

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(h) Garbage compactors shall be located on an impervious pad that is graded to a drain. The drain shall be connected to the sanitary sewage disposal system.

(i) Plastic bags shall be used for solid waste removal from resident care units and supporting departments. Bags shall be of sufficient strength to safely contain waste from point of origin to point of disposal and shall be effectively closed prior to disposal.

8:39-19.8 Mandatory supplies and equipment for infection control and sanitation

(a) The sewage disposal system shall be maintained in good repair and operated in compliance with state and local laws, ordinances, and regulations.

(b) Water piping carrying non-potable water shall be clearly labeled.

(c) Commercial sterile supplies shall be used in accordance with manufacturers' recommendations, and before expiration dates, and packages shall be inspected to ensure integrity.

(d) Bed pan washers shall be in good working order and properly maintained.

(e) Toilet tissue and proper waste receptacles shall be provided.

(f) Suitable hand cleanser and sanitary towels or approved hand-drying machines shall be provided.

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

SUBCHAPTER 20. ADVISORY INFECTION CONTROL AND SANITATION

8:39-20.1 Advisory policies and procedures for infection control

(a) The facility routinely offers Hepatitis B vaccine to all employees, regardless of risk status or duties, without charge.

(c) Employees undergo periodic or annual health screening.

(d) The facility maintains records documenting contagious diseases contracted by employees during employment.

8:20.2 Advisory staff qualifications

(a) The infection control coordinator is certified in Infection Control (CIC) by the National Board of Infection Control, P.O. Box 14661, Lenexa, KS 66286-4661.

(b) The infection control coordinator is an active member of the National Association for Practitioners in Infection Control (APIC), 505 E. Hawley, Mundelein, Il 60060.

(c) The infection control coordinator has completed an APIC Basic Training Course or has received at least 25 hours of training in infection control, and receives an additional six hours of training annually.

8:39-20.3 Advisory staff education and training for infection control

At least four education or training programs on infection control are held every year so that all staff members are fully informed about infection control requirements that apply to them.

SUBCHAPTER 21. MANDATORY LAUNDRY SERVICES

8:39-21.1 Mandatory laundry policies and procedures

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

(b) All soiled laundry from resident rooms and other service units 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.

(c) Soiled laundry contaminated with blood and/or body fluids shall be collected in an effectively closed leakproof bag of sufficient strength to safely contain such laundry from point of origin to point of processing.

(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.

(f) An established protocol, reviewed by the infection control committee, shall be followed to reduce the number of bacteria in the fabrics.

(g) Equipment surfaces that come into contact with laundry shall be sanitized.

(h) The facility shall develop and implement policies and procedures, reviewed by the infection control committee, to protect staff from contamination when handling soiled laundry.

(i) Sour testing to ensure neutralization of alkaline residues from built detergents shall be conducted, and fabric pH shall be maintained at 7.0 or below after souring.

(j) The facility shall develop and implement policies and procedures to ensure that residents' personal clothing is collected, processed and returned to the resident in a sanitary manner and in good condition.

(k) The facility shall have a system to identify each resident's clothing and a procedure to locate and/or minimize loss of clothing.

8:39-21.2 Mandatory space and environment for laundry facilities

If the facility has an on-premises laundry, 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.

8:39-21.4 Mandatory supplies and equipment for laundry

(a) The facility shall have a supply of linen appropriate to the resident's needs that is clean, in good repair, and is at least three times the number of residents.

(b) The facility shall have a supply of blankets that is at least two times the number of residents.

8:39-21.5 Mandatory quality assurance for laundry

All facilities, including those which contract with a commercial laundry service, shall evaluate the service as part of the quality assurance program.

SUBCHAPTER 22. ADVISORY LAUNDRY SERVICES (RESERVED)

SUBCHAPTER 23. MANDATORY MEDICAL SERVICES

8:39-23.1 Mandatory structural organization for medical services

(a) Each facility shall have a medical director who is currently licensed to practice medicine by the New Jersey State Board of Medical Examiners.

1. The medical director shall coordinate medical care and direct the administrative aspects of medical care in the facility.

2. The medical director shall approve all medical care policies and procedures. These policies and procedures shall be followed.

3. The medical director shall participate in the facility's quality assurance program through meetings, interviews, and/or preparation or review of reports.

4. The medical director shall be an active participant on the facility's infection control committee, pharmacy and therapeutics committee, and a committee that is responsible for developing policies and procedures for resident care.

8:39-23.2 Mandatory resident care policies

(a) The medical director shall ensure that for each resident there is a designated primary and an alternate physician who can be contacted when necessary.

(b) Each physician order shall be properly entered into the resident's medical record.

(c) Each resident's attending physician shall review the resident's medical record on a scheduled basis to ensure that care plans and medical orders are properly followed.

(d) The facility shall maintain a list of consultant physicians who are available for referrals made by the attending physician and shall make arrangements for referrals to psychological services.

(e) The medical director shall review all incident reports.

(f) The medical director, or physicians designated by the medical director, shall respond quickly and effectively to medical emergencies which are not handled by another attending physician, including in-patient admissions.

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(g) A physician shall visit each resident at least every 30 days unless the medical record contains an explicit justification for not doing so. Following the initial visit, alternate 30 day visits may be delegated to a nurse practitioner or clinical nurse specialist, certified in accordance with The Nurse Practitioner/Clinical Nurse Specialist Certification Act (P.L. 1991, c.377), and as regulated by the New Jersey State Board of Nursing statutes (N.J.S.A. 45:11-23 et seq.) and regulations (N.J.A.C. 13:37), and in accordance with facility policies.

SUBCHAPTER 24. ADVISORY MEDICAL SERVICES

8:39-24.1 Advisory medical staff qualifications

The medical director is board-certified in a primary care specialty, such as family medicine, gerontology, or general internal medicine.

8:39-24.2 Advisory resident medical services

(a) The facility arranges for physician visits in the facility on a scheduled appointment basis in an office provided for that purpose.

(b) The facility has a staff or consultant psychiatrist with admitting privileges to the inpatient psychiatric unit at a hospital.

SUBCHAPTER 25. MANDATORY NURSE STAFFING

8:39-25.1 Mandatory policies and procedures for nurse staffing

(a) There shall be a full-time director of nursing or nursing administrator who is a registered professional nurse licensed in the State of New Jersey, who has at least two years of supervisory experience in providing care to long- term care residents, and who supervises all nursing personnel.

(b) During a temporary absence of the director of nursing, there shall be a registered professional nurse on duty who shall be designated in writing as an alternate to the director of nursing. The alternate shall be temporarily responsible for supervising all nursing personnel.

8:39-25.2 Mandatory nurse staffing amounts and availability

(a) The facility shall provide nursing services and licensed nursing and ancillary personnel at all times.

(b) Registered professional nurses, licensed practical nurses, and nurse aides shall spend the following amounts of time on professional duties (the hours of the director of nursing are not included in this computation, except for the direct care hours of the director of nursing in facilities providing more than the minimum hours required at N.J.A.C. 8:39-25.1(a) above):

1. Total number of residents multiplied by 2.5 hours/day; plus

2. Total number of residents receiving each service listed below, multiplied by the corresponding number of hours per day:

Tracheostomy	1.25 hours/day
Use of respirator	1.25 hours/day
Head trauma stimulation/ advanced neuromuscular/ orthopedic care	1.50 hours/day
Intravenous therapy	1.50 hours/day
Wound care	0.75 hour/day
Oxygen therapy	0.75 hour/day
Nasogastric tube feedings and/or gastrostomy	1.00 hour/day

(c) In facilities with 150 licensed beds or more, there shall be an assistant director of nursing who is a registered professional nurse.

(d) There shall be visual observation by a member of the resident care staff of each resident at least once per hour. These observations need not be documented.

(e) A registered professional nurse shall be on duty at all times in facilities with more than 100 licensed beds.

(f) At least 20 percent of the hours of care required by (b) above shall be provided by individuals who are either registered professional nurses or licensed practical nurses.

(g) The nurse aide component of the facility's total hourly nurse staffing requirement, as specified in (b) above, shall be met by nurse aides who have completed a nurse aide training course approved by the New Jersey State Department of Health and have passed the New Jersey Aide Certification Examination, in accordance with N.J.A.C. 8:39-43.

8:39-25.3 Mandatory nursing staff qualifications

(a) There shall be at least one registered professional nurse on duty in the facility during all day shifts. (During a temporary absence, not to exceed 72 hours, the registered professional nurse may be on duty during the evening or night shift).

(b) There shall be at least one registered professional nurse on duty or on call during all evening and night shifts.

8:39-25.4 Mandatory nursing staff education and training

(a) A program shall be established and implemented for individualized orientation of nurse aides, including resident care problem simulations, training and demonstrations in basic nursing skills, and an internship of two to five days, depending on experience.

(b) Each nurse aide shall receive, at a minimum, 12 hours of regular in-service education per year, based on the outcome of performance reviews of every nurse aide which are completed at least once every 12 months.

SUBCHAPTER 26. ADVISORY NURSE STAFFING

8:39-26.1 Advisory structural organization for nurse staffing

Facilities with more than 200 licensed beds employ at least one full-time equivalent staff educator; facilities with between 100 and 200 licensed beds employ at least a half-time staff educator; or facilities with fewer than 100 licensed beds employ a staff educator at least one-fifth time.

8:39-26.2 Advisory policies and procedures for nurse staffing

(a) The facility establishes and implements a system for assigning nursing personnel on the basis of a classification system involving resident acuity.

(b) The facility uses a primary system in which nurse aides are assigned on a regular basis to specific residents to provide continuity of care.

8:39-26.3 Advisory nurse staffing amounts and availability

(a) A registered professional nurse is on duty at all times in facilities with fewer than 100 licensed beds, two registered professional nurses are on duty at all times in facilities with 100 to 200 licensed beds, and three registered nurses are on duty at all times in facilities with more than 300 beds.

(b) The facility provides direct nursing services pursuant to N.J.A.C. 8:39-25.2(b) of this chapter which are increased by at least ten percent.

(c) At least 50 minutes per resident per day of resident care is provided by licensed nurses, that is, registered professional nurses and licensed practical nurses. (This is an average. It is equal to one full-time equivalent nurse for every ten residents.)

(d) All nurse aides working in the facility have completed a training and orientation program to all services of at least two weeks full-time duration within the facility prior to their permanent assignment in the facility.

(e) Each resident care unit in the facility meets the nurse staffing requirements mandated in N.J.A.C. 8:39-25.2(b).

8:39-26.4 Advisory qualifications for nurse staffing

(a) The director of nursing has a baccalaureate or master's degree in nursing or a health related field.

(b) A nurse practitioner or gerontologist nurse practitioner is available on staff or under contract with the facility to perform assessments and to provide consultation to other staff members.

(c) The facility employs a certified nurse practitioner as a clinical nurse specialist certified in gerontology or psychiatric nursing on at least a half time basis.

(d) A nurse who holds certification in gerontological nursing, rehabilitation nursing, or a related field of nursing from the American Nurses Credentialing Center of the American Nurses Association, is available on staff or under contract with the facility.

(e) The nurse educator who provides inservice training to nursing staff has completed the HIV/AIDS Train the Trainer program offered by the New Jersey Department of Health, Division on AIDS

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and the New Jersey State Nurses Association (320 West State Street, Trenton, N.J. 08618).

SUBCHAPTER 27. MANDATORY QUALITY OF CARE

8:39-27.1 Mandatory policies and procedures and practices for quality of care

(a) The facility shall provide and ensure that each resident receives all care and services needed to enable the resident to attain and maintain the highest practicable level of physical, emotional and social well-being, in accordance with individual assessments and care plans.

(b) All resident care policies shall be written and developed by a resident care committee, shall be available to physicians, staff, residents, their relatives or guardians, and the public, and shall be implemented in accordance with acceptable professional standards of practice.

(c) Residents under 18 years of age shall only be admitted to the facility if the admission has been approved by the New Jersey State Department of Health, in accordance with N.J.A.C. 8:39-43.

(d) Residents shall be weighed accurately every month. Whenever there is a gain or loss of five or more pounds, a note shall be entered into the medical record stating whether the care plan should be modified. If the resident cannot be weighed, alternate measures shall be used to monitor weight change.

(e) Nonambulatory residents shall be repositioned at least once every two hours.

(f) The facility shall take preventive measures against the development of pressure sores, including assessing the resident's skin daily and minimizing friction and pressure against clothing and bed linens. When present, pressure sores shall be identified, documented, and treated.

(g) The facility shall conduct a bladder and bowel retraining program for selected residents on a 24-hour basis with results documented.

(h) Precautions shall be taken to prevent complications resulting from the use of nasogastric or gastrostomy tube feedings.

8:39-27.2 Mandatory policies and procedure for the use of restraints

(a) The standards in this section shall apply to the use of restraints in all resident care areas. Restraints are defined as devices, materials, or equipment that are attached or adjacent to a person and that prevent free bodily movement to a position of choice, with the exception of devices used for protective supports.

(b) The facility shall have an interdisciplinary committee, or an equivalent process, which has responsibility for the use of restraints in the facility.

(c) The interdisciplinary committee or equivalent shall develop, review at least annually, revise as needed, and ensure implementation of written policies and procedures for the use of restraints. Guidance for such policies and procedures is provided in Appendix E.

(d) Psychopharmacological agents shall be administered only upon written physician's orders as part of the resident's treatment plan and shall not be used as a method of restraint, discipline, or for the convenience of staff.

(e) Policies and procedures for the application of restraints in an emergency shall be developed. Guidance for such policies and procedures is provided in Appendix E.

(f) In non-emergency cases, a resident shall be restrained only after the attending physician or another designated physician has executed an order for restraint as part of the resident's plan of care.

(g) The facility shall continuously attempt to remediate the resident's condition to eliminate or lessen the need for restraints through ongoing nursing or interdisciplinary assessment and intervention as required.

(h) The facility shall have written policies and procedures to ensure that appropriate nursing interventions while a resident is restrained are performed by nursing personnel. Guidance for such policies and procedures is provided in Appendix E.

(i) The facility shall have written policies and procedures for interventions by nursing personnel for residents in restraints for overnight sleeping. Guidance for such policies and procedures is provided in Appendix E.

8:39-27.3 Mandatory post-mortem policies and procedures

(a) Deceased residents shall be removed in a timely fashion from rooms where other residents are staying.

(b) Deceased residents shall receive post-mortem care, including cleaning and shrouding in conformance with each resident's religious practices. Prostheses shall accompany the body out of the facility.

(c) The next of kin or guardian shall be notified at the time of a resident's death. The deceased shall not be removed from the facility until pronounced dead with the death documented in the resident's medical record.

(d) The body of a deceased resident who, at the time of death, had a communicable disease, as defined in N.J.A.C. 8:57-1.2, shall be tagged accordingly before being released from the facility.

(e) Transportation of the deceased within and from the facility shall be conducted in a dignified manner.

(f) Personal effects and financial accounts of deceased residents shall be safeguarded.

8:39-27.4 Mandatory staffing amounts and availability for resident care

For each meal, the facility shall assign staff on the basis of resident needs to help residents who require assistance with eating.

8:39-27.5 Mandatory resident services for personal care

(a) Effective and safe measures shall be taken to ensure that residents do not harbor parasitic insects.

(b) Effective and safe measures shall be taken to ensure that residents are not malodorous.

(c) Any dehydrated resident shall be accurately evaluated and effectively treated.

(d) Oral hygiene care of the resident shall be performed by staff or the resident on a daily basis.

(e) The resident's hair and nails shall be groomed.

(f) Each resident shall be kept clean and dry.

(g) Each resident shall receive at least one bath (tub or shower) per week unless contraindicated.

(h) Each resident's bed shall be made daily. Clean linen shall be provided for each resident at least once a week or whenever linens are soiled or wet.

(i) Each resident shall have access to fresh drinking water or juice at all times, unless contraindicated.

(j) Non-bedfast residents shall be provided with the means for leaving and returning to their beds and rooms each morning and afternoon.

(k) Residents shall be assisted in performing either passive or active range-of-motion exercises every day, unless their level of physical activity makes this unnecessary.

(l) Toileting needs of all residents shall be met.

(m) Measures to prevent contractures shall be used, and contractures shall be identified, documented, and managed by rehabilitative nursing and physical therapy.

(n) Indwelling catheters shall not be used for the convenience of staff.

8:39-27.6 Mandatory general resident services

(a) Residents shall be afforded the opportunity to eat in a group setting unless contraindicated with the reasons noted in the resident's medical record. The need for feeding assistance shall not constitute an acceptable contraindication.

(b) Residents shall be afforded an opportunity to go outdoors on a regular basis.

(c) Clothing, including undergarments and footwear, shall be clean, comfortable, and personally assigned to each resident, and shall reflect personal preference and safety.

(d) Residents shall be encouraged and helped to select the clothing they will wear each day.

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8:39-27.7 Mandatory supplies and equipment for resident care

(a) Prostheses, including eyeglasses, dentures, and hearing aids, shall be functional and individualized, and shall be kept available to the resident, unless the resident specifically rejects their use.

(b) Adaptive devices and equipment shall be functional and individualized, and shall be kept available to the resident unless the resident specifically rejects their use.

(c) All drinking water containers shall be washed daily and sanitized weekly. Containers that cannot be sanitized shall be discarded.

(d) The facility shall maintain at least one bag-valve-mask resuscitator.

(e) Bath thermometers or other temperature controls shall be used to monitor the temperatures of each bath or shower.

SUBCHAPTER 28. ADVISORY QUALITY OF CARE

8:39-28.1 Advisory policies and procedures for resident care

(a) The facility conducts scheduled interdisciplinary staff discussions, and discussions with residents and families, about the right of residents to die with dignity.

(b) The facility develops and provides individualized non-restrictive equipment meeting individual needs which fosters and supports a restraint-free environment for all residents.

(c) The facility maintains an on-going and on-site program of preventative treatment and referral to mental health services which includes prevention, treatment, and referral directed by a qualified mental health professional.

8:39-28.2 Advisory resident care services

(a) There are education programs provided on at least a quarterly basis, open and accessible to residents, families, and significant others addressing the following issues:

1. The enhancement and maintenance of physical and mental well-being;
2. The prevention of deterioration;
3. The teaching of self-care; and
4. Death, dying and bereavement.

(b) There are education and training programs provided on at least a quarterly basis, open and accessible to families and significant others, which teach skills and help in the provision of support services that enable residents to leave the facility for visits and vacations.

(c) The facility promotes residents' sense of personal control in acquiring clothing, for example, through the establishment of a clothing concession in the facility, the arrangement of shopping excursions, and/or the use of catalogue shopping by residents.

(d) Donated clothing is made available so that residents can select desired items.

(e) The facility provides a non-commercial washer and dryer for residents who wish to launder their own personal items.

SUBCHAPTER 29. MANDATORY PHARMACY

8:39-29.1 Mandatory pharmacy organization

(a) A New Jersey licensed pharmacist shall serve as director of pharmaceutical services or as consultant pharmacist.

(b) The facility shall have an interdisciplinary pharmacy and therapeutics committee, appointed by and reporting to the administrator and consisting of at least the administrator, a representative of the nursing staff, and the director of pharmaceutical services or the consultant pharmacist, with oversight as needed by the medical director. The committee shall hold meetings as needed and records, including the dates of meetings, attendance, activities, findings, and recommendations shall be maintained.

(c) The facility shall appoint a consultant pharmacist who is not also the director of pharmaceutical services or pharmacist provider and does not have an affiliation with either the director of pharmaceutical services or the pharmacist provider.

(d) If the facility keeps emergency injectable or oral controlled substances, a current Drug Enforcement Administration registration and Controlled Dangerous Substance registration for that location shall be available. (See N.J.S.A. 24:21-10 for registration requirements; registration application procedures are specified at N.J.A.C. 8:65-1.4.)

8:39-29.2 Mandatory drug administration policies and procedures

(a) The pharmacy and therapeutics committee shall establish and enforce procedures for documenting drug administrations in accordance with law.

(b) Medications shall be released to residents at discharge only upon written authorization of the prescriber.

(c) The facility shall have a system to accurately identify recipients before any drug is administered.

(d) Self-administration of drugs shall be permitted only as specified by the recommendations of the pharmacy and therapeutics committee or the interdisciplinary team. Self-administration procedures shall include, at a minimum, the following:

1. The written order of the prescriber;
2. Storage of medications in the resident's room, based on resident assessments;
3. Specifications for labeling, including directions for use;
4. Methods for documentation in the medical record, based on resident assessment;
5. Training of residents in self-administration by the nursing staff or the consultant pharmacist; and
6. Policies for individual assessment of residents' ability to self-administer medications.

(e) Medications shall be accurately administered by properly authorized individuals to the right resident in the right amount through the right route at the right time.

8:39-29.3 Mandatory pharmacy reporting policies and procedures

(a) The consultant pharmacist shall conduct a drug regimen review and enter appropriate comments into the medical record of every resident receiving medication, at least monthly, on a pharmacist consultation sheet or another portion of the medical record in accordance with N.J.A.C. 13:39.

(b) The consultant pharmacist shall report any irregularities to the attending physician and to the director of nurses and these reports shall be acted upon.

(c) Drug product defects and adverse drug reactions shall be reported in accordance with the ASHP-USP-FDA (American Society of Hospital Pharmacists, United States Pharmacopoeia, Food and Drug Administration) Drug Product Defect Reporting System and the USP Adverse Drug Reaction Reporting System.

(d) Drug allergies shall be documented in the resident's medical record and on its outside front cover and communicated to the provider pharmacy if a provider pharmacy is used.

(e) Drugs that are not specifically limited as to duration or use or number of doses shall be controlled by automatic stop orders. The resident's attending physician shall be notified of the automatic stop order prior to the last dose so that he or she may decide whether to continue use of the drug.

(f) If medication is withheld, the reason for withholding the medication shall be documented in the resident's medical record.

(g) Medication errors and adverse drug reactions shall be reported immediately to the director of nursing or the alternate to the director of nursing, and a description of the error or adverse drug reaction shall be entered into the medical record before the end of the employee shift. If the resident has erroneously received medication, the resident's physician shall be notified immediately. If a medication error originated in the pharmacy, the pharmacy shall be notified immediately.

8:39-29.4 Mandatory pharmacy control policies and procedures

(a) The label of each resident's individual medication container shall be permanently affixed and contain the following information:

1. The resident's full name;
2. The physician's name;
3. The prescription number;
4. The name and strength of drug;
5. The quantity dispensed;
6. The lot number;
7. The date of issue;
8. The expiration date;

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9. The manufacturer's name if generic; and
10. Cautionary and/or accessory labels.

i. If a generic substitute is used, the drug shall be labeled according to the Drug Utilization Review Council Formulary, N.J.S.A. 24:6E-1 et seq. and N.J.A.C. 8:71.

ii. Required information appearing on individually packaged drugs or within an alternate medication delivery system need not be repeated on the label.

(b) If a unit dose distribution system is used ("unit dose drug distribution" means a system in which drugs are delivered to the resident areas in single unit packaging), the following requirements shall be met:

1. Each resident shall have his or her own medication tray labeled with the resident's name and location in the facility;
2. Each medication shall be individually wrapped and labeled with the generic and trade names and strength of the drug, lot number or reference code, expiration date, dose, and manufacturer's name, and shall be ready for administration to the resident;
3. Cautionary instructions shall appear on the resident's record of medication, and the system shall include provisions for noting additional information, including, but not limited to, special times or routes of administration and storage conditions;
4. Delivery and exchange of resident medication trays shall occur promptly, and at least one exchange of resident medication trays shall occur at least every 24 to 72 hours; and
5. The number of doses for each resident shall be sufficient for a maximum of 48 hours.

(c) If the facility uses and contracts with a provider pharmacy, both over-the-counter and prescription medications may be kept as stock. A limited amount of prescription medications may be kept as stock for the administration of stat (emergency) doses, lost doses, or doses not sent by the provider pharmacy. These medications shall be approved by the pharmacy and therapeutics committee, monitored for accountability, and labeled to include drug name, drug strength, manufacturer's name, lot number, expiration date, recommended dosage for over-the-counter medications, and applicable cautionary and/or accessory labels.

(d) The director of pharmaceutical services or consultant pharmacist shall:

1. Make monthly inspections of all areas in the facility where medications are dispensed, administered, or stored;
2. Periodically, as determined by the quality assurance program, observe a medication pass and review the crediting system; and
3. Document any problems and propose solutions to these problems.

(e) The contents of emergency kits shall have been approved by the pharmacy and therapeutics committee. Emergency kits shall be stored at each nursing unit, checked after each use, and checked at least monthly by the director of pharmaceutical services or the consultant pharmacist. Emergency kits shall not be accessible to residents but shall be accessible to staff in a timely manner.

(f) All medications repackaged by the pharmacy shall be labeled with an expiration date, name and strength of drug, lot number, date of issue, manufacturer's name if generic, and cautionary and/or accessory labels, in accordance with United States Pharmacopoeia (U.S.P.) requirements.

(g) The pharmacy and therapeutics committee shall establish and enforce procedures for removal of discontinued, unused, expired, recalled, deteriorated, and unlabeled drugs and intravenous solutions and for removal of containers of medications with worn, illegible, damaged, incomplete, or missing labels.

(h) All medications shall be stored in accordance with manufacturers' and United States Pharmacopoeia (U.S.P.) requirements and all medications shall be kept in locked storage areas.

(i) The pharmacist consultant or director of pharmaceutical services and either a registered professional nurse or a licensed practical nurse shall witness all drug destruction in the facility.

(j) Where allowable by law, the facility shall generate a crediting mechanism for medications dispensed in a unit- of-use drug distribution system, or other system which allows for the re-use of medications. The crediting system shall be monitored by the provider pharmacist and a facility representative. (The operative date of these requirements shall be deferred until 12 months after the adoption of these rules.)

(k) The pharmacy and therapeutics committee shall establish and enforce procedures for the inventory of controlled substances in accordance with law.

(l) The facility shall implement written methods and procedures for obtaining prescribed prescription medications and biologicals from a pharmacy licensed by the New Jersey State Board of Pharmacy. The telephone number of the pharmacy and procedures for obtaining drugs shall be posted at each nursing unit.

(m) If the facility utilizes drugs marked "sample," the pharmacy and therapeutics committee shall develop a mechanism for the control and limitation of these drugs, in accordance with N.J.A.C. 13:35-6.6.

(n) Whenever medications are released to residents, they shall be released only upon the authorization of the prescriber and shall be relabeled and/or repackaged by the pharmacy or pharmacist with directions for use, and in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39. Documentation of released medications shall be entered into the resident's medical record.

8:39-29.5 Mandatory pharmacy staff qualifications

If the facility maintains a pharmacy in-house, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the New Jersey State Department of Health.

8:39-29.6 Mandatory resident pharmacy services

(a) The facility shall provide pharmaceutical services, either directly or by contract with a provider pharmacy, 24 hours a day, seven days a week.

(b) If a resident obtains medications from a pharmacy which is not the facility provider pharmacy, the following conditions shall be met:

1. The pharmacy provider shall comply with all labeling requirements specified at N.J.A.C. 8:39-29.4(a); and
2. The facility shall establish a plan for obtaining the resident's drugs on an emergency basis.

(c) A resident may obtain medications from a pharmacy that is not the facility provider pharmacy unless:

1. The resident is expressly informed during the admission process and within the admission agreement that this service is not permitted in the facility, or
2. For existing residents, the facility submits documentation to the Department, prior to denying the request, demonstrating a significant risk to the health and safety of residents as a result of this practice.

8:39-29.7 Mandatory pharmacy supplies and equipment

(a) Medication containers and carts shall be handled properly to prevent damage, injury, and harm.

(b) Needles and syringes shall be stored, used, and disposed of in accordance with New Jersey State law, and a record shall be maintained of the purchase, storage, and disposal of needles and syringes.

(c) Controlled substances shall be stored, and records shall be maintained, in accordance with the Controlled Dangerous Substances Acts and all other Federal and State laws and regulations concerning procurement, storage, dispensation, administration, and disposition. Controlled substances shall be stored separately from all other substances except in a unit dose drug distribution system.

(d) Pharmaceutical reference materials and other information sources about drugs, including investigational drugs, if used, shall be approved by the pharmacy and therapeutics committee and shall be current.

8:39-29.8 Mandatory pharmacy quality assurance

The pharmacy and therapeutics committee shall review medication errors and adverse drug reactions.

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SUBCHAPTER 30. ADVISORY PHARMACY

8:39-30.1 Advisory pharmacy staff qualifications

The consultant pharmacist or director of pharmaceutical services holds current certification by the Joint Board of Certification of Consultant Pharmacists.

8:39-30.2 Advisory pharmacy staffing amounts and availability

The consultant pharmacist provides or arranges for quarterly meetings open to residents, families, and interested others to discuss medication issues.

8:39-30.3 Advisory pharmacy resident services

The consultant pharmacist or director of pharmacy services reviews the records of all newly admitted residents within 14 days of admission.

8:39-30.4 Advisory pharmacy quality assurance

The consultant pharmacist performs at least one Drug Utilization Evaluation (DUE) study per year, as part of a continuous quality improvement program.

SUBCHAPTER 31. MANDATORY PHYSICAL ENVIRONMENT

8:39-31.1 Mandatory space and environment; all facilities

(a) All exit doors to the facility shall be kept externally locked from 8:00 P.M. until 6:30 A.M.

(b) All residents shall have, in their rooms:

1. A bed and a mattress of the correct size to fit the bed;
2. A bed table with drawer;
3. A separate closet area and shelves for personal needs;
4. A privacy curtain around the bed excepting private rooms;
5. An unobstructed doorway;
6. Window coverings that are properly mounted and maintained;
7. Night lights; and
8. Call bells immediately accessible to the resident in bed or an individual at bedside.

(c) Glare from windows and reflections on floors and tables in the multi-purpose or dining room shall be controlled.

(d) All supplies and equipment in the facility shall be of such quality as not to break or tear easily.

(e) Each facility shall provide:

1. Well-lighted parking areas and entrances;
2. Sounding devices or visual monitoring for all exit doors;
3. A comfortable chair for each resident in his or her room for use by the resident or resident's visitors;
4. An individual light for each resident in a room; and
5. A written policy for a procedure to refrigerate biologicals according to manufacturer's guidelines in case of emergency.

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

1. The premises shall be kept in such condition as to prevent the breeding, harborage, or feeding of vermin.
2. All openings to the outer air shall be effectively protected against the entrance of insects.

8:39-31.2 Mandatory housekeeping policies and procedures

(a) The facility shall provide and maintain a safe, clean, orderly and homelike environment for residents.

(b) The facility shall have a written schedule that determines the frequency of cleaning and maintaining all equipment, structures, areas, and systems.

(c) Mattresses, mattress pads and coverings, pillows, bedsprings, and other furnishings shall be properly maintained and kept clean and replaced as needed. They shall be thoroughly cleaned and disinfected on a regular schedule and whenever a new resident is using them.

(d) Scatter rugs shall be not permitted and floors shall be coated with slip-resistant floor finish.

(e) Carpeting shall be kept clean and odor free and shall not be frayed, worn, torn, or buckled.

(f) If pets are allowed in the facility, the facility shall provide safeguards to prevent interference in the lives of residents, and the facility should comply with guidelines for pets in health care facilities issued by the Veterinary Public Health Program of the New Jersey State Department of Health (See Appendix A).

(g) All equipment and environmental surfaces shall be clean to sight and touch.

8:39-31.3 Mandatory supplies and equipment

(a) All residents shall have, in their rooms:

1. Sheets, blankets, a pillow, and additional pillow if required or desired;
2. Supplies for oral needs, including a denture cup, if needed, and a clean toothbrush; and
3. A basin, comb, soap dish, and bedpan and/or urinal unless clearly unnecessary, stored at bedside.

(b) All resident rooms shall have a waste receptacle.

(c) A walker or a tripod cane shall be available to each resident who requires mechanical assistance to walk.

(d) A wheelchair shall be available to each resident who is not fully ambulatory.

(e) All equipment in the facility shall be in working order and shall be in good repair.

(f) All supplies and equipment in the facility shall be:

1. Up-to-date;
2. Free of hazards;
3. In conformance with applicable Federal standards;
4. Properly stored and maintained in accordance with manufacturers' instructions; and
5. Readily available when needed.

(g) Buildings and grounds shall be maintained in a clean and safe condition.

(h) There shall be a list of all cleaning and disinfecting agents used in the facility. The facility's list of all cleaning and disinfecting agents used shall be maintained with an accompanying list of corresponding antidotes.

(i) All cleaning and disinfecting agents shall be correctly labeled as to the product and its use, including agents that have been repackaged from a bulk source.

(j) Housekeeping and cleaning supplies shall be selected, measured, and used correctly and in accordance with manufacturers' instructions.

(k) When not in use, cleaning and disinfecting agents shall be stored separate from other supplies and shall be inaccessible to residents.

(l) All toilets and bathrooms shall be kept clean to sight and touch, in good repair, and free of odors that reflect poor housekeeping practices.

8:39-31.4 Mandatory staff qualifications for housekeeping

Facilities that contract with a housekeeping service shall use quality assurance measures to ensure that the housekeeping requirements of this chapter are met.

SUBCHAPTER 32. ADVISORY PHYSICAL ENVIRONMENT

8:39-32.1 Advisory smoking policies and procedures

There is a smoke-free policy in the facility, which is in accordance with N.J.A.C. 8:39-41.3(e)4.

8:39-32.2 Advisory physical environment for resident services

Areas and furnishings are color coded and/or accented for purposes of identification, function, ease of use, and/or safety.

8:39-32.3 Advisory space and environment for all facilities

(a) All resident rooms have aesthetically attractive wall hangings.

(b) The multi-purpose or dining room receives sunlight.

(c) The facility has attractive grounds, conducive to all residents' use, including shaded seating, gardens, and trees.

(d) Sound-absorbing materials are used throughout the facility (for example, rough texture, pile, acoustic tile, soft drapery).

(e) A multi-purpose room other than the dining room is available for group activities.

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(f) A separate common room of at least 120 square feet is available on each unit for quiet passive activity such as visiting, reading and listening to music.

(g) The facility provides at least one single-bedded room in each nursing unit for isolation and/or special needs residents.

(h) There are plants and flowers (live or artificial) throughout the facility.

(i) A discrete and protected area of the facility is dedicated to free ambulation by confused and disoriented residents.

8:39-32.4 Advisory supplies and equipment

(a) All residents' rooms have handwashing facilities.

(b) All residents have in their rooms:

1. Attractive window treatments;
2. A bedspread; and
3. A lap robe.

(c) The facility establishes and implements a policy encouraging and assisting residents to utilize their own personal furnishings in their room.

SUBCHAPTER 33. MANDATORY QUALITY ASSESSMENT AND ASSURANCE

8:39-33.1 Mandatory quality assurance structural organization

(a) Quality assurance procedures shall be developed and implemented through a written plan which specifies time frames.

(b) Responsibility for the quality assurance program shall be assumed by designated individuals, who shall include the director of nursing services, a physician, and at least three other staff members, and who shall report directly to the administrator.

(c) Summary findings of the quality assurance program shall be submitted in writing to the administrator and the administrator shall take action which includes staff education or training on the basis of the program's findings.

(d) The quality assurance program shall review at least inventory control, maintenance inspections and reports, procedures for reporting incidents and hazards, and procedures for emergency response to incidents and hazards.

(e) Quality assurance findings shall be presented to the administrator with recommendations for corrective actions to address problems.

8:39-33.2 Mandatory quality assurance policies and procedures

(a) The quality assurance program shall identify problems in the care and services provided to the residents and shall include the audit of medical records.

(b) The quality assurance program shall monitor the performance of each service.

(c) The interdisciplinary committee or equivalent shall develop a program of quality assurance for the use of restraints that is integrated into the facility quality assurance program and includes regularly collecting and analyzing data to help identify problems and their extent, and recommending, implementing and monitoring corrective actions where needed.

(d) The quality assurance program for the use of restraints shall include the collection and evaluation of data at least quarterly. This data shall include at least the following:

1. All emergency restraint applications;
2. Indicators of the frequency of the use of restraints in the facility;
3. Evaluation of all cases in which there is:

i. A failure to obtain or receive a physician's order;

ii. A failure to follow and monitor procedures in accordance with N.J.A.C. 8:39-27.1(f) through (i); or

iii. A negative clinical outcome; and

4. Indicators of the frequency of the use of psychopharmacological agents.

(e) The quality assurance program shall monitor trends in the following:

1. The prevalence of pressure sores and skin breakdowns;
2. Psychoactive drug use;
3. Transfers to hospitals;
4. Medication errors;
5. Catheterization rates and catheterization care;
6. Weight loss and fluid intake;
7. Infection rates in all residents;
8. Resident depression;
9. Restoration of function following specific types of events, such as hip fractures;
10. Use of restraints;
11. Resident falls resulting in injury; and
12. Other possible indicators of level of quality care not listed in this subchapter.

(f) The quality assurance program shall develop and implement a system to measure the effectiveness of the reassessment process with respect to: frequency, comprehensiveness, accuracy, implementation, and interdisciplinary approach.

8:39-33.3 Mandatory quality assurance resident services

The quality assurance program shall include the gathering of resident care information from residents and visitors.

8:39-33.4 Mandatory quality assurance staff education and training

The quality assurance program shall evaluate staff education programs.

SUBCHAPTER 34. ADVISORY QUALITY ASSESSMENT AND ASSURANCE

8:39-34.1 Advisory quality assessment and assurance policies and procedures

(a) The facility develops and maintains an active, continuous quality improvement process which involves staff, residents, families and/or the community in improving the quality of services provided by the facility.

(b) The quality assurance program uses a resident classification system, such as acuities or specified diagnostic classifications, as an indicator in measuring resident outcomes.

(c) The quality assurance program includes periodic surveys of families to ascertain their satisfaction, suggestions, knowledge of resident's health conditions and treatments, and/or knowledge of facility policies and staff members' roles.

(d) There is a system to receive input on resident safety issues.

SUBCHAPTER 35. MANDATORY MEDICAL RECORDS

8:39-35.1 Mandatory organization for medical records

At least 14 days before a facility plans to cease operations, it shall notify the New Jersey State Department of Health in writing of the location and method of retrieval of medical records.

8:39-35.2 Mandatory policies and procedures for medical records

(a) Each active medical record shall be kept at the nurses' station for the resident's unit.

(b) The facility shall maintain for staff use a current list of standard professional abbreviations commonly used in the facility's medical records.

(c) Medical records shall be organized with a uniform format across all records.

(d) A medical record shall be initiated for each resident upon admission. The current medical record shall be readily available and shall include at least the following information, when such information becomes available:

1. Legible identifying data, such as resident's name, date of birth, sex, address, and next of kin, and person to notify in an emergency;
2. The name, address, and telephone number of the resident's physician, an alternate physician, and dentist;
3. Complete transfer information from the sending facility, including results of diagnostic, laboratory, and other medical and surgical procedures, and a copy of the resident's advance directive, if available, or notice that the resident has informed the sending facility of the existence of an advance directive;
4. A history and results of a physical examination, including weight, performed by the physician on admission, in accordance with N.J.A.C. 8:39-11.2(b) and results of the most recent examination;
5. An assessment and plan of care made by each discipline involved in the resident's care;

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6. Clinical notes for the past three months incorporating written, signed and dated notations by each member of the health care team who provided services to the resident, including a description of signs and symptoms, treatments and/or drugs given, the resident's reaction, and any changes in physical or emotional condition entered into the record when the service was provided;

7. All physician's orders for the last three months;

8. Telephone orders, each of which shall be countersigned by a physician within seven days, except for orders for non- prescription drugs or treatments, which shall be signed at the physician's next visit to the resident;

9. Records of all medications and other treatments which have been provided during the last three months;

10. Consultation reports for the last six months;

11. Records of all laboratory, radiologic, and other diagnostic tests for the last six months;

12. Records of all admissions, discharges, and transfers to and from the facility that occurred in the last three months;

13. Signed consent and release forms;

14. Documentation of the existence, or nonexistence, of an advance directive and the facility's inquiry of the resident concerning this;

15. A discharge plan for those residents identified by the facility as likely candidates for discharge into the community or a less intensive care setting; and

16. A discharge note written on the day of discharge for residents discharged to the community, a less intensive care setting, another nursing home or hospital, which includes at least the diagnosis, prognosis, and psychosocial and physical condition of the resident.

(e) The medical record shall be completed within 30 days of discharge.

(f) If part of a care plan is not implemented, the record shall explain why.

(g) All entries in the resident's medical record shall be written legibly in ink, dated, and signed by the recording person or, if a computerized medical records system is used, authenticated.

1. If an identifier such as a master sign-in sheet is used, initials may be used for signing documentation, in accordance with applicable professional standards of practice.

2. If computer-generated orders with an electronic signature are used, the facility shall develop a procedure to assure the confidentiality of each electronic signature and to prohibit the improper or unauthorized use of computer-generated signatures.

3. If a facsimile communications system (FAX) is used, entries into the medical record shall be in accordance with the following procedures:

i. The physician shall sign the original order, history and/or examination at an off-site location;

ii. The original shall be FAXed to the long-term care facility for inclusion into the medical record;

iii. The physician shall submit the original for inclusion into the medical record within 72 hours; and

iv. The FAXed copy shall be replaced by the original. If the facsimile reports are produced by a plain-paper facsimile process which produces a permanent copy, the plain-paper report may be included as a part of the medical record, as an alternate to replacement of the copy by the original report.

(h) If a resident or the resident's legally authorized representative requests, orally or in writing, a copy of his or her medical record, a legible photocopy of the record shall be furnished at a fee based on actual costs, which shall not exceed prevailing community rates for photocopying. ("Legally authorized representative" means spouse, immediate next of kin, legal guardian, resident's attorney, or third party insuror where permitted by law.) A copy of the medical record from an individual admission shall be provided to the resident or the resident's legally authorized representative within two working days of request.

1. The facility shall establish a policy assuring access to copies of medical records for residents who do not have the ability to pay; and

2. The facility shall establish a fee policy providing an incentive for use of abstracts or summaries of medical records. The resident or his or her authorized representative, however, has a right to receive a full or certified copy of the medical record.

(i) Access to the medical record shall be limited only to the extent necessary to protect the resident. A verbal explanation for any denial of access shall be given to the resident or legal guardian by the physician and there shall be documentation of this in the medical record. In the event that direct access to a copy by the resident is medically contraindicated (as documented by a physician in the resident's medical record), the medical record shall be made available to a legally authorized representative of the resident or the resident's physician.

(j) The resident shall have the right to attach a brief comment or statement to his or her medical record after completion of the medical record.

(k) The record shall be protected against loss, destruction, or unauthorized use. Medical records shall be retained for a period of 10 years following the most recent discharge of the resident, or until the resident reaches the age of 23 years, whichever is the longer period of time, a summary sheet shall be retained for a period of 20 years, and X-ray films or reproductions thereof shall be retained for a period of five years, in accordance with N.J.S.A. 26:8-5.

SUBCHAPTER 36. ADVISORY MEDICAL RECORDS

8:39-36.1 Advisory policies and procedures for medical records

(a) The name by which the resident wishes to be called is entered on the cover or first page of the medical record.

(b) There is a comprehensive discharge summary with statistical and narrative information from each service completed for each resident.

(c) The full medical records for all discharged or deceased residents are completed within 15 days.

(d) Telephone orders are countersigned by a physician within 48 hours except for orders for non-prescription drugs or treatments, which are countersigned within seven days.

8:39-36.2 Advisory staff education and training for medical records

The facility requires that staff use only standard professional abbreviations in medical records and maintains a current list of such abbreviations.

8:39-36.3 Advisory staff qualifications for medical records

(a) The facility utilizes the services of a medical record practitioner or consultant who is:

1. Certified or eligible for certification as a registered record administrator (RRA) or an accredited record technician (ART) by the American Medical Record Association (American Medical Record Association, 875 North Michigan Avenue, Suite 1850, John Hancock Center, Chicago, Illinois 60611); or

2. A graduate of a program in medical record science accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the Council on Education of the American Medical Record Association (American Medical Record Association, 875 North Michigan Avenue, Suite 1850, John Hancock Center, Chicago, Illinois 60611).

SUBCHAPTER 37. MANDATORY REHABILITATION

8:39-37.1 Mandatory policies and procedures for rehabilitation

(a) Physician orders for speech therapy, physical therapy, occupational therapy, and audiology services shall include specific modalities and the frequency of treatment, and shall be entered into the resident's medical record.

(b) Physician orders for medically appropriate speech therapy, physical therapy, and audiology services shall be properly followed, and the results of these services shall be entered into the resident's medical record.

8:39-37.2 Mandatory rehabilitation staff qualifications

(a) Speech-language pathology and audiology services shall be provided by one or more speech-language pathologists who hold a current New Jersey license issued by the Audiology and Speech-

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Language Pathology Advisory Committee, Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

(b) Physical therapy shall be provided by or under the direction of one or more physical therapists licensed by the New Jersey State Board of Physical Therapy Examiners.

(c) Occupational therapy shall be provided by or under the direction of an occupational therapist who is certified or eligible for certification as an occupational therapist, registered (OTR) by the American Occupational Therapy Association (American Occupational Therapy Association, 6000 Executive Boulevard, Rockville, Maryland 20852).

8:39-37.3 Mandatory rehabilitation staffing amounts and availability

Speech-language pathology evaluation, physical therapy evaluation, occupational therapy evaluation, and audiology evaluation shall take place within 72 hours of the original physician order, excluding weekends.

8:39-37.4 Mandatory rehabilitation supplies and equipment

(a) Space for rehabilitation therapy shall be provided in the facility. If space is unavailable, arrangements shall be made for transportation or transfer of residents who require rehabilitation therapy services.

(b) Visual privacy and provisions for auditory privacy shall be provided for residents during evaluation and rehabilitation treatment, when clinically indicated.

(c) If the facility provides physical therapy on-site, physical therapy equipment available to the residents shall include at least parallel bars, stairs, mats, and padded tables.

SUBCHAPTER 38. ADVISORY REHABILITATION

8:39-38.1 Advisory rehabilitation staff qualifications

Speech-language pathology and audiology services are provided by individuals who hold a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

8:39-38.2 Advisory rehabilitation space and environment

The facility has an examination and treatment room for rehabilitation therapy.

8:39-38.3 Advisory rehabilitation supplies and equipment

(a) In addition to parallel bars and stairs, physical therapy equipment available to residents includes a whirlpool for hydrotherapy and ultrasound.

(b) The occupational therapy program provides individually designed adaptive equipment as needed to enhance residents' independence.

SUBCHAPTER 39. MANDATORY SOCIAL WORK

8:39-39.1 Mandatory social work policies and procedures

A social worker shall develop and implement specific criteria to identify residents who are likely candidates for discharge into the community or a less intensive care setting and to coordinate discharge planning.

8:39-39.2 Mandatory social work staff qualifications

Social work services shall be provided by one or more social workers who are certified or licensed by the New Jersey State Board of Social Work Examiners, in accordance with the Social Worker's Licensing Act of 1991 (N.J.S.A. 45:15BB-1 et seq.) and all amendments thereto and with the rules of the New Jersey Board of Social Work Examiners, N.J.A.C. 13:44G.

8:39-39.3 Mandatory social work amounts and availability

(a) The facility shall provide an average of at least 20 minutes of social work services per week for each resident. (This is an average. It is equal to one full-time equivalent social worker for every 120 residents.)

(b) A social worker shall assist staff in coping with the personal needs and demands of particular residents.

8:39-39.4 Mandatory resident social work services

(a) A social worker shall interview the resident and family within 14 days before or after admission to the facility to identify any social work needs or problems, and to take a social history that includes family, education, and occupational background, adjustment and level of functioning, interests, support systems, and observations.

(b) A social worker shall provide counseling for residents and families.

(c) A social worker shall facilitate communication between staff and non-English speaking residents.

(d) A social worker shall offer information and help to each resident and family on obtaining financial assistance and on the meaning of administrative forms and releases to be signed by the resident or family.

(e) A social worker shall coordinate the facility's outreach services to the families of residents.

(f) A social worker shall coordinate discharge services for residents.

(g) A social worker shall perform advocacy services on behalf of the residents to ensure that concrete needs are met, such as clothing, laundry, and the resident's personal needs allowance if one is maintained.

(h) A social worker shall help residents and families identify and gain access to community services, using resource materials and a knowledge of the residents' needs and abilities.

(i) The facility shall provide clinical social work services to residents as needed and to families if related to issues that directly affect the resident.

8:39-39.5 Mandatory space and environment for social work

The facility shall provide visual and auditory privacy for resident or family social service interviews, and for confidential telephone calls by social workers.

SUBCHAPTER 40. ADVISORY SOCIAL WORK

8:39-40.1 Advisory staff qualifications for social work

A social worker has a master's degree in social work from an accredited university or education program. He or she should provide consultant services at least eight hours per month, or be on the facility's staff.

8:39-40.2 Advisory staff amounts and availability for social work

(a) A social worker is available to the facility on evenings and weekends at scheduled times or by previously arranged appointments for interaction with residents and families, and is available seven days a week in cases of emergency or serious need.

(b) A social worker assists staff with problems and issues related to aging and illness.

(c) A social worker orients nurse aides to the social needs of new residents before the resident's arrival in the facility.

8:39-40.3 Advisory resident social work services

(a) A social worker meets with the resident on the day of admission.

(b) A social worker conducts support groups for families.

(c) A social worker conducts group counseling sessions for residents and families.

(d) A social worker participates in pre-admission planning with residents and families prior to their admission to the nursing home.

(e) The social worker encourages and monitors a regular visiting pattern by families and provides outreach services to families where the visiting pattern has changed.

8:39-40.4 Advisory space and environment for social work

Social workers are be provided with a private office equipped with a telephone or, in facilities with 60 or fewer licensed beds, with access to a private office equipped with a telephone.

8:39-40.5 Advisory social work staff education and training

The facility encourages the social worker to participate in community agency associations and other professional organizations.

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SUBCHAPTER 41. MANDATORY PHYSICAL PLANT

8:39-41.1 Mandatory construction standards

(a) New construction, alterations and additions of Long Term Care Facilities shall comply with the Uniform Construction Code (N.J.A.C. 5:23) as adopted by the New Jersey Department of Community Affairs.

(b) Fire safety maintenance and retrofit of Long Term Care Facilities shall comply with the Uniform Fire Safety Code (N.J.A.C. 5:18) as adopted by the New Jersey Department of Community Affairs.

(c) Required annual maintenance inspections by the Department of Health shall be conducted in accordance with the 1985 edition of the National Fire Protection Associations Life Safety Code (published February 7, 1985, by ANSI/NFPA); however, this code shall not be enforced to exceed the requirements of the Uniform Construction Code referenced in (a) above. (Copies of the Life Safety Code may be obtained from the National Fire Protection Association, Battery March Park, Quincy, MA 02200).

(d) The New Jersey Uniform Construction Code may be obtained from the Construction Code Element of the Department of Community Affairs, CN 805, Trenton, New Jersey 08625-0805.

(e) The New Jersey Uniform Fire Safety Code may be obtained from the Fire Safety Element of the Department of Community Affairs, CN 809, Trenton, New Jersey 08625-0809.

(f) Facilities undertaking new construction, renovations representing more than 25 percent of facility value, or additions of beds shall maintain a minimum ratio of one single-bedded room per 30 beds.

8:39-41.2 Mandatory general maintenance

(a) Personnel engaged in general maintenance activities shall receive orientation upon employment and, at least once a year, education or training in principles of asepsis, cross-infection control, and safe practices.

(b) There shall be a system for reporting physical plant, safety, and maintenance problems to a designated staff member and documentation of the correction of such problems.

(c) A current, written preventive maintenance program shall be implemented. Records of inspections and repairs shall be maintained for at least one year.

(d) Written instructions for operating and maintaining equipment shall be systematically retained and followed.

(e) The facility shall be kept in good repair and maintained without harm or jeopardy to residents.

(f) There shall be a maintenance contract on elevators that includes routine maintenance inspections.

(g) All life-sustaining equipment shall be plugged into outlets connected to an emergency power supply.

(h) The standby emergency power generator shall be checked weekly, tested under load monthly, and serviced in accordance with generally accepted engineering practices.

(i) Temperature and humidity shall be in accordance with requirements specified in the 1992-1993 Guidelines for Construction and Equipment for Hospital and Medical Facilities issued by the U.S. Department of Health and Human Services, Health Resources Administration that apply, depending on the time the building was constructed.

(j) There shall be a comprehensive, current, written preventive maintenance program for the electrical system that is documented and followed.

8:39-41.3 Mandatory fire and emergency preparedness

(a) Employees shall be trained in procedures to be followed in a emergency operations plan and instructed in the use of fire fighting equipment and resident evacuation of the buildings as part of their initial orientation and at least annually thereafter.

(b) Fire drills shall be conducted a total of 12 times per year, with at least one drill on each shift and one drill on a weekend. At least one drill shall be conducted in conjunction with the local fire department. An actual alarm shall be considered a drill if it is documented.

(c) Fire regulations and procedures shall be posted in each unit and/or department. A written evacuation diagram that includes evacuation procedures and locations of fire exits, alarm boxes, and fire extinguishers shall be posted conspicuously on a wall in each resident care unit and/or department throughout the facility.

(d) There shall be a procedure for investigating and reporting fires. All fires shall be reported to the New Jersey State Department of Health immediately by phone and followed up in writing within 72 hours. In addition, a written report of the investigation by the fire department containing all pertinent information shall be forwarded to the Department of Health as soon as it becomes available.

(e) Smoking regulations shall be developed, implemented, and enforced in accordance with N.J.S.A. 26:3D-1 et seq. and 26:3D-7 et seq.

1. Residents shall not be permitted to smoke in their rooms and in other secluded areas.

2. Restricted smoking areas shall be designated and rules governing such smoking promulgated and rigidly enforced. Nonflammable ashtrays in sufficient numbers shall be provided in permitted smoking areas. In any area where smoking is permitted, there shall be adequate outside ventilation.

3. A facility may continue to enforce a smoke-free policy in effect on the implementation date of these rules and shall set forth this policy in its admission agreement.

4. At the facility's option, it may institute a smoke-free policy after the implementation date of these rules. Any prospective smoke-free policy shall be set forth in the facility's admission agreement and shall only apply to residents entering the facility on or after the policy's effective date. The facility shall protect the rights of residents who smoke by providing a designated area with adequate outside ventilation for controlled smoking. If inside, the designated smoking room shall be adequately ventilated to prevent recirculation of smoke to other areas of the facility. If outside, the designated area shall provide reasonable protection from inclement weather.

(f) The facility shall have a written comprehensive emergency operations plan developed in coordination with the local office of emergency management. This plan shall:

1. Identify potential hazards that could necessitate an evacuation, including natural disasters, national disasters, industrial and nuclear accidents, and labor work stoppage;

2. Identify the facility and an alternative facility to which residents would be relocated, and include signed, current agreements with the facilities;

3. Identify the number, type and source of vehicles available to the facility for relocation and include signed current agreements with transportation providers. Specially configured vehicles shall be included;

4. Include a mechanism for identifying the number of residents, staff, and family members who would require relocation and procedures for evacuation of non-ambulatory residents from the facility;

5. List the supplies, equipment, records, and medications that would be transported as part of an evacuation, and identify by title the individuals who would be responsible;

6. Identify essential personnel who would be required to remain on duty during the period of relocation;

7. Identify by title the persons who will be responsible for the following:

i. Activating the emergency operations plan, issuing evacuation orders, and notification of State and municipal authorities;

ii. Alerting and notification of staff and residents;

iii. Facility shutdown and restart;

iv. In place sheltering of residents and continuity of medical care; and

v. Emergency services such as security and firefighting; and

8. Describe procedures for how each item in (f)7 above will be accomplished.

(g) There shall be a written plan for receiving residents who are being relocated from another facility due to a disaster. This plan shall include at least an estimate of the number and type of residents the facility would accommodate and how staffing would be handled at different occupancy levels.

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(h) Copies of the emergency operations plan shall be sent to municipal and county emergency management officials for their review.

(i) The administrator shall serve as, or appoint, a disaster planner for the facility.

1. The disaster planner shall meet with county and municipal emergency management coordinators at least once each year to review and update the written comprehensive evacuation plan; or if county or municipal officials are unavailable for this purpose, the facility shall notify the State Office of Emergency Management.

2. While developing the facility's evacuation plan, the disaster planner shall coordinate with the facility or facilities designated to receive relocated residents.

(j) Any staff member who is designated as the acting administrator shall be knowledgeable about and authorized to implement the facility's plans in the event of an emergency.

(k) All staff shall be oriented to the facility's current plans for receiving and evacuating residents in the event of a disaster, including their individual duties.

(l) The facility shall ensure that residents receive nursing care throughout the period of evacuation and return to the original facility.

(m) The facility shall ensure that evacuated residents who are not discharged are returned to the facility after the emergency is over.

(n) The facility shall maintain at least a three-day supply of food and have access to an alternative supply of water in case of an emergency.

(o) The facility shall conduct at least one evacuation drill each year, either simulated or using selected residents. State, county, and municipal emergency management officials shall be invited to attend the drill at least 10 working days in advance.

(p) The facility shall establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is 82 degrees Fahrenheit or higher for a continuous period of four hours or longer.

1. These procedures shall include the immediate notification of the Department of Health.

2. In implementing a heat emergency action plan, a facility shall not prevent a resident from having a room temperature in his or her resident room in excess of 82 degrees Fahrenheit if the resident and the resident's roommate, if applicable, so desire, and if the resident's physician approves.

3. A heat emergency plan need not be implemented if the resident care areas are not affected by an indoor temperature in excess of 82 degrees Fahrenheit.

4. The heat emergency action plan shall include a comprehensive series of measures to be taken to protect residents from the effects of excessively high temperatures.

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

8:39-41.4 Mandatory safety requirements

(a) An outlet that is connected to an emergency power supply shall be available wherever life-sustaining equipment is in operation.

(b) All draperies, curtains, and waste baskets shall be maintained flame retardant.

(c) All decorations shall be flame retardant. Open flames used for decoration or religious ceremonies shall not be left unsupervised.

(d) Cooking equipment shall be properly installed and maintained.

(e) Kerosene heaters and staff and resident-owned heating devices shall not be permitted.

(f) Extension cords shall not be permitted unless they are provided by the maintenance or engineering department of the facility, inspected regularly, and inventoried by the maintenance and engineering department. Extension cords shall be for temporary use only in resident care areas.

SUBCHAPTER 42. ADVISORY PHYSICAL PLANT

8:39-42.1 Advisory general maintenance

(a) Inspections or rounds are conducted at least monthly by a designated person or committee on all units and areas for maintenance problems. Results of these rounds are reported to the administrator.

(b) Maintenance services are under the supervision of an employee with at least one of the following:

1. Five years of experience in maintaining a physical plant;

2. A baccalaureate degree in engineering from an accredited college or university and two years of experience in maintaining a physical plant; or

3. Professional licensure in New Jersey as an engineer with one year of experience in maintaining a physical plant.

8:39-42.2 Advisory fire and emergency preparedness

(a) The facility conducts at least two evacuation drills each year, either simulated or using selected residents, at least one of which is conducted on a weekend or during an evening or night work shift. Results of the drills are be summarized in a written report, which is shared with the county and municipal emergency management coordinators.

(b) A municipal, county, or State emergency management official conducts an education or training program in the facility on disaster planning and emergency preparedness at least once a year.

(c) Fire drills are conducted annually on each weekend shift.

8:39-42.3 Advisory safety

(a) There is a committee responsible for physical plant and resident safety and maintenance, which includes, at a minimum, representatives from administration, nursing, and maintenance services and meets at least quarterly.

(b) Regularly scheduled training meetings are held for residents and families, addressing safety issues in the facility.

SUBCHAPTER 43. NURSE AIDE IN LONG-TERM CARE FACILITIES COMPETENCY TRAINING AND EVALUATION PROGRAM

8:39-43.1 Fees

(a) The following fees shall be charged to the applicant long-term care facility, for each person for whom training and evaluation is sought, by the Department or its subcontract agency for the following, in accordance with N.J.S.A. 26:2H-12.

1. Clinical skills and written examination:	$70.00
2. Clinical skills and oral examination:	$80.00
3. Clinical skills examination only:	$15.00
4. Written examination only:	$55.00
5. Oral examination only:	$65.00
6. Duplicate or equivalency certificate:	$15.00
7. Recertification certificate:	$16.50
8. Two-year approval of training program:	$75.00

(b) No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program may be charged for any portion of the program, identified in (a) above, including any fees for textbooks or other required course materials. The nurse aide may be charged only for the duplicate or equivalency certificates in (a)6 above if requested by the nurse aide as an individual.

(c) If a nurse aide who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a licensed long-term care facility not later than 12 months after completing a nurse aide training and competency evaluation program, the facility shall provide for the reimbursement of reasonable costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide. Such costs include, but are not limited to, fees for textbooks or other required course materials.

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(d) No nurse aide shall be required, as a condition of employment, to pay the cost of the training program in the event of voluntary or involuntary termination of employment.

(e) All fees listed in (a) above are non-refundable.

8:39-43.2 Nurse aide employment

(a) An individual who meets the following criteria shall be considered by the Department to be competent to work as a nurse aide in a licensed long-term care facility in New Jersey:

1. Has a currently valid nurse aide in long-term care facilities certificate and is registered in good standing on the New Jersey Nurse Aide Registry; or

2. Has been employed for less than four months and is currently enrolled in a State-approved nurse aide in long-term care facilities training course and scheduled to complete the competency evaluation program (skills and written/oral examination) within four months of employment.

8:39-43.3 Nurse aide functions

The nurse aide shall function under the supervision and direction of a licensed nurse and perform tasks which are delegated in accordance with the provisions of N.J.A.C. 13:37-6.2, Delegation of selected nursing tasks.

8:39-43.4 Approval of nurse aide in long-term care facilities training program

(a) An approved training course for nurse aides shall consist of 90 hours of training. This shall include 45 hours of classroom instruction and 45 hours of clinical experience in a New Jersey licensed long-term care facility.

(b) The New Jersey competency evaluation shall consist of both a skills examination and a written/oral examination.

(c) For each nurse aide, an approved training course and the skills competency evaluation shall be scheduled so as to be completed within four months of the starting date of employment.

(d) A training course approved by the Department shall be conducted by an educational institution approved by the Department and the New Jersey State Department of Education subsequent to a review of each curriculum, or shall be conducted by a licensed long-term care facility. All training courses shall use the approved curriculum in order to be approved by the Department of Health. Educational institutions shall develop a written statement of the program's purpose, philosophy, and objectives and shall develop admission, tuition, and course completion policies which shall be available to students in written form.

(e) No resident care unit shall serve as the site of clinical instruction for more than one training course at a time.

(f) The training course for nurse aides shall not be used as a substitute for staff orientation or staff education programs.

(g) Classroom and clinical instruction shall be given concurrently; the clinical instruction for a particular task or procedure must be given within one week of the classroom instruction for that task or procedure.

(h) For training course approval, the following documents shall be submitted to the Certification Unit of the Department with a check for the fee specified at N.J.A.C. 8:39-43.1, made payable to the New Jersey State Department of Health, 90 days prior to the proposed starting date of the training course:

1. Application for approval on the form provided by the Department;

2. Resume(s) of the nursing instructor(s)/evaluator(s) if they have not previously been approved by the Department;

3. A schedule for the training course, including specific dates locations and times of classroom and clinical sessions; and

4. Documentation of availability of classroom and clinical facilities adequate to meet program needs, as indicated in each curriculum submitted.

(i) Written approval of the Department is required prior to enrollment of students and the commencement of the training program. Such approval shall be granted for a 24-month period.

(j) The Department may request submission of additional information or require the redesign and/or revision of the program materials. Redesign or revision of the program application does not ensure that approval will be granted.

(k) Any changes in a training course, such as changes in location, dates, times or instructor(s), shall be reported to the Certification Unit of the Department by the licensed nursing home administrator or administrator of the educational institution at least 30 working days prior to the planned change. No change may be implemented without the written approval of the Department.

(l) The Department may conduct unannounced site visits of a proposed program or an ongoing program.

(m) The Department may deny, suspend, or withdraw approval if it determines that a nurse aide training and/or skills competency evaluation program fails to meet the rules in this subchapter.

(n) The Department may deny, suspend, or revoke approval of a nurse aide training and/or skills competency evaluation program if the licensed long-term care facility has been the subject of an enforcement action in accordance with N.J.S.A. 26:2H-14 et seq. resulting in curtailment of admissions or in assessment of a civil money penalty of not less than $5,000.

(o) If the Department proposes to deny, suspend, or revoke approval of a nurse aide training and/or skills competency evaluation program, except where mandated by Federal requirements noted at (p) below, the facility or educational institution may, within 30 days, 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. Revocation of program approval shall not affect currently enrolled students, who shall be permitted to complete the program and clinical skills examination unless the Department determines that continuation of the program would jeopardize the health or safety of residents.

(p) Approval of a nurse aide training and/or skills competency evaluation program offered by or in a Medicare or Medicaid participating facility may be denied in accordance with 42 CFR 483.151(b).

(q) If a facility or educational institution plans to voluntarily terminate a nurse aide training and/or skills competency evaluation program, the facility or educational institution shall:

1. Provide the Department with a written statement of the rationale and plan for the intended closing;

2. Continue the program until the class schedule established for currently enrolled students has been completed; and

3. Notify the Department in writing of the closing date of the program at least 90 days prior to that date.

(r) If a nurse aide training and/or skills competency evaluation program is terminated due to denial or withdrawal of approval by the Department, the facility or educational institution shall:

1. Terminate the program after assisting in the transfer of students to other approved nurse aide training and/or skills competency evaluation programs;

2. Submit to the Department a list of the students who have transferred to another approved program, including the dates on which the students were transferred; and

3. Notify the Department that the requirements for closing have been fulfilled and give notice of final closing.

8:39-43.5 The New Jersey Curriculum for Ancillary Nursing Personnel in Long-Term Care Facilities

(a) The New Jersey Curriculum for Ancillary Nursing Personnel in Long-Term Care Facilities shall be the approved curriculum for a 90-hour training program. The entire content of the curriculum shall be taught. The course shall address nursing team member skills, basic skills, personal care skills, basic restorative skills, care of the cognitively impaired, mental health and psychosocial skills, resident rights, and communication skills and shall include the following modules:

1. Module I. The Nurse Aide in the Long-Term Care Facility	4 hours
2. Module II. Environmental Needs of the Patient	18 hours
3. Module III. Psycho-Social Needs of the Patient	20 hours
4. Module IV. Physical Needs of the Patient	48 hours

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(b) The Department shall issue a curriculum incorporating the specific elements of each module.

(c) A copy of the New Jersey Curriculum for Ancillary Nursing Personnel in Long-Term Care Facilities and the form needed to apply for approval of the training course may be obtained by contacting the following office:

Nurse Aide Program
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

8:39-43.6 Responsibilities of administrator

(a) The licensed nursing home administrator or administrator of the educational institution conducting the training program shall be responsible for implementation of the training program in accordance with the rules in this subchapter. This responsibility shall include, but not be limited to, ensuring the following:

1. The curriculum is implemented in accordance with the New Jersey Curriculum for Ancillary Nursing Personnel in Long-Term Care Facilities and with the rules in this subchapter;

2. Resident care provided by the student does not exceed the tasks and procedures which the student has satisfactorily demonstrated, as documented by the registered professional nurse on the Task and Procedure form. (The Task and Procedure form may be found in the New Jersey Curriculum for Ancillary Nursing Personnel in Long-Term Care Facilities); and

3. Job descriptions are established indicating the responsibilities of each nurse instructor/evaluator.

8:39-43.7 Nurse aide training program instructors

(a) Each nurse instructor/evaluator shall:

1. Be currently licensed in New Jersey as a registered professional nurse;

2. Possess at least three years of full-time or full-time equivalent experience in a health care facility;

3. Possess at least one year of full-time or full-time equivalent experience as a registered professional nurse in a licensed long-term care facility within the five years immediately preceeding submission of the instructor/evaluator resume to the Certification Unit of the Department for approval; and

4. Have successfully completed, if the individual is an evaluator, an evaluator's workshop course approved by the Department.

(b) The nurse instructor shall not be the director of nursing.

(c) The student to instructor ratio for classroom instruction shall not exceed a ratio of 20 students to one instructor.

(d) The student to instructor ratio for clinical instruction shall not exceed a ratio of 10 students to one instructor.

(e) Each student shall be under the supervision of the registered professional nurse instructor at all times when providing resident care as part of the student's clinical experience in the facility. The registered professional nurse instructor shall be responsible for evaluating the student's classroom and clinical performance.

(f) The resume of each nurse instructor/evaluator currently teaching the training course shall be available in the facility or educational institution.

(g) The nurse instructor shall be responsible for, but not limited to, the following:

1. Developing a lesson plan for each lesson in the curriculum;

2. Developing and implementing criteria, related to curricular objectives, for evaluating the classroom and clinical performance of students; and

3. Developing and implementing criteria to determine whether or not a student has satisfactorily completed a training course.

(h) The facility or educational institution conducting a training program shall maintain on file a copy of the lesson plans for the course. Each lesson plan shall state, at a minimum, the following:

1. The behavioral objective(s) of the lesson;

2. The content of the lesson;

3. A description of clinical activities for each lesson, consistent with the objectives in the curriculum;

4. The hours of instruction;

5. Method(s) of presentation and teacher strategies; and

6. Method(s) for evaluation of students with respect to their classroom and clinical performance in the facility.

8:39-43.8 Student records and attendance

(a) Each facility or educational institution which conducts a training program shall establish a student record for each student. The student record shall include, at a minimum, the following:

1. The beginning and ending dates of the training course;

2. An attendance record;

3. A signed Task and Procedure Form; and

4. The instructor's evaluation of the student's classroom performance and clinical performance in the facility.

(b) The facility shall retain the records specified at (a)1, 2 and 4 above for at least four years.

(c) The facility or educational institution conducting a training program shall ensure that a student who is absent receives a reasonable and timely opportunity to obtain the classroom and/or clinical instruction missed, as documented in the student's record.

(d) If a nurse aide training and/or skills competency evaluation program is terminated but the facility or educational institution continues to operate, the facility or educational institution shall assume responsibility for the records of students and graduates. The Department shall be advised of the arrangements made to safeguard the records.

(e) If a nurse aide training and/or skills competency evaluation program is terminated and the facility or educational institution ceases to operate, the records of students and graduates shall be transferred to an agency acceptable to the Department.

8:39-43.9 Training program evaluation

(a) The facility or educational institution conducting a training program shall develop, implement, and document a process for evaluating the effectiveness of the training program. The evaluation process shall include, at a minimum, the following:

1. Assignment of responsibility for the evaluation process;

2. An annual written evaluation report, including findings, conclusions, and recommendations;

3. A written evaluation by the facility or educational institution of instructor(s)/evaluator(s) performance;

4. Written evaluations, by students, of the training program; and

5. Statistical data, which shall be maintained on file in the facility or educational institution. The statistical data shall include, at a minimum, the following for each course:

i. Beginning and ending dates;

ii. Number of students enrolled;

iii. Number and percentage of students who satisfactorily completed the course;

iv. Number and percentage of students who failed the course;

v. Number and percentage of students who passed the New Jersey Nurse Aide Competency Evaluation Program, including written/oral and skills; and

vi. Number and percentage of students who failed the New Jersey Nurse Aide Competency Evaluation Program, including written/oral and skills.

(b) The facility or training program shall retain all evaluation reports for at least three years and shall submit a report to the Department upon request.

8:39-43.10 Competency examination

(a) The Department shall establish the passing scores for the clinical skills and written/oral examinations. A candidate shall pass both the skills and the written/oral examinations prior to certification.

1. Upon satisfactory completion of the approved 90-hour training program, an applicant for nurse aide certification shall register for the next scheduled administration of the clinical skills competency examination. A person who fails to pass the skills competency examination may retake the examination. If the person fails the third attempt to pass the examination, he or she shall take another training course approved in accordance with N.J.A.C. 8:39-43.4 before proceeding to take the Department's skills competency examination again.

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2. The clinical skills competency examination shall be administered to the applicant by a State-approved evaluator other than the applicant's training program instructor.

3. Upon passing the clinical skills competency examination, an applicant for nurse aide certification becomes eligible to take the written/oral examination. A person who fails to pass the written/oral examination may retake the examination. If the person fails the third attempt to pass the examination, he or she shall take another training course approved in accordance with N.J.A.C. 8:39-43.4 before proceeding to take the Department's written/oral examination again.

(b) The applicant shall pass the Department's nurse aide competency evaluation program in order to be listed on the New Jersey Nurse Aide Registry. The competency evaluation score reports shall be reported to the applicant as "pass/fail." (Pass or fail results of the Department's skills and written/oral competency examinations shall be forwarded to the examinee's home and to the nurse aide training programs.)

8:39-43.11 Application to take the competency examination and for certification as a nurse aide in long-term care facilities

(a) An applicant to take the competency examination and for certification as a nurse aide in long-term care facilities shall submit the following to the Department or its designated agent:

1. Evidence of satisfactory completion of a nurse aide in long-term care facilities training program approved by the Department, unless the need is waived in accordance with N.J.A.C. 8:39-43.12; and

2. Evidence in such form as the Department may prescribe that the applicant is of good moral character, including at least the following:

i. Attestation that the applicant is not a habitual user of controlled substances; and

ii. Attestation that the applicant has never been convicted of, or pleaded guilty to, any crime or disorderly persons offense of the types set forth in Title 2C of the New Jersey Statutes.

8:39-43.12 Waiver of requirement to complete training program

(a) The following persons may take the Department's written/oral competency examination without first completing a nurse aide training course and clinical skills evaluation approved in accordance with N.J.A.C. 8:39-43:

1. Student or graduate nurses who submit evidence of successful completion of a course in the fundamentals of nursing. Student or graduate nurses shall be currently employed by a long-term care facility;

2. Persons who submit evidence of the successful completion of a course in the fundamentals of nursing within the 12 months immediately preceding application to take the written/oral competency examination;

3. Persons certified as a nurse aide in long-term care in another state by a state governmental agency and listed on that state's nurse aide registry, who do not meet the requirements for equivalency specified at N.J.A.C. 8:39-43.18; and

4. Persons who have had training and experience as a nurse aide in a military service, equivalent to that of a nurse aide.

8:39-43.13 Certificates

(a) Nurse aide certificates shall be valid for a period of two years from the date of issuance.

(b) Nurse aide in long-term care facilities certificates issued by the Department or its designated agent shall be forwarded to the individual certified nurse aides.

(c) A certificate shall not be retained by a long-term care facility as a condition of employment of a nurse aide.

(d) Nurse aide certificates are not transferable by sale, gift, duplication, or other means and shall not be forged or altered.

8:39-43.14 Revocation of a certificate

(a) A certificate issued to a nurse aide in accordance with these rules shall be revoked in the following cases:

1. Conviction for resident abuse or neglect or misappropriation of resident property;

2. Conviction or guilty plea as specified at N.J.A.C. 8:39-43.11(a)2ii; 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.

(b) If the Department proposes to suspend, revoke, or deny certification of a nurse aide in a long-term care facility, 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.

8:39-43.15 Recertification

(a) The nurse aide shall file an application for recertification. The Department shall require the renewal and updating of a nurse aide listing on the registry at least once every two years on a schedule established by the Department.

(b) In order to be recertified, an individual shall have been employed for at least seven hours in a long-term care facility within the past 24 months from the date of expiration as specified on the nurse aide certificate and shall not have been convicted of, or pleaded guilty to, a criminal charge resulting from resident abuse and/or neglect, misappropriation or theft of a resident's property, or other crime or offense as specified at N.J.A.C. 8:39-43.11(a)2ii.

(c) The facility shall maintain records sufficient to verify the previous employment of nurse aides who are not currently working but who were employed by the facility in accordance with the time limitation specified at (b) above for recertification. The licensed nursing home administrator shall verify such employment by signing the individual's recertification application upon request.

8:39-43.16 Nurse aide registry

(a) The Department shall establish and maintain a nurse aide registry. The nurse aide registry shall include, but not be limited to, the following information for each individual who has successfully completed an approved nurse aide training program and competency evaluation program and is employed in a long-term care facility:

1. The individual's full name;

2. The individual's home address;

3. The listing number assigned to the individual by the state when he or she successfully completes the competency evaluation program;

4. The individual's date of birth;

5. The individual's most recent employer, the date of hire, and the date of termination, if applicable, by that employer;

6. The date the individual passed the competency evaluation program;

7. The date the listing expires;

8. The name and address of the approved nurse aide training program;

9. Any convictions in a court of law and/or findings of resident abuse, resident neglect, or misappropriation of resident property, resulting from a state or local governmental agency investigation, in which the individual has been afforded notice and a right to a hearing in accordance with N.J.A.C. 8:39-43.17. All such reports shall remain in the registry permanently; and

10. Any statement by the nurse aide disputing the allegations underlying the convictions or findings in (a)9 above, in a format prescribed by the Department.

(b) The information at (a)1, 6, 9 and 10 above shall be available to the public.

8:39-43.17 Hearings for resident abuse, resident neglect, or misappropriation of property

(a) Upon receipt of a finding that a nurse aide 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 nurse aide registry.

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

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(c) The notice in (b) above shall be transmitted to the individual in such a way as to provide an opportunity of at least 30 days prior to the entry to request a hearing. If a hearing is requested, it shall be conducted by the Office of Administrative Law or by a Departmental hearing officer in accordance with 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.

(d) 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 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 property of a resident. The individual shall have a right to enter a statement to be included in the registry contesting such findings.

8:39-43.18 Equivalency for nurse aides registered in other states

(a) A nurse aide certificate received in another state or territory of the United States may be entered on the registry, provided that the following conditions are satisfied:

1. The Department receives documentation from the state's or U.S. territory's registry that such nurse aide has completed a training and competency evaluation program at least equal to that required in New Jersey; and

2. The nurse aide has not been convicted of any crimes and has no documented findings of abuse, neglect, or misappropriation of resident's property on the registry.

8:39-43.19 Expiration of certification

(a) If an individual fails to become recertified in accordance with N.J.A.C. 8:39-43.15, the name of the person shall be removed from the New Jersey nurse aide registry.

(b) In order for an individual to be reentered onto the New Jersey nurse aide registry, the individual shall successfully complete a training course approved in accordance with N.J.A.C. 8:39-43.4 and shall pass the New Jersey competency evaluation. If the individual became initially certified within the five years immediately preceding reapplication, and can demonstrate that he or she has been employed as a nurse aide in a long-term care facility for at least seven hours during the 24 consecutive months immediately preceding application for recertification, the individual shall be recertified upon passing the New Jersey competency evaluation, and completion of a training course shall not be required.

8:39-43.20 Employment of a nurse aide

(a) No licensed long-term care facility shall employ a person as a nurse aide without making inquiry to the New Jersey nurse aide registry and to any other state nurse aide registry in which the facility has a good faith belief the nurse aide is registered.

(b) Registry confirmation of a nurse aide certification shall not be sufficient to satisfy the requirement for reference checks identified at N.J.A.C. 8:39-9.3(d).

(c) The facility shall verify that the individual seeking employment as a nurse aide possesses a valid nurse aide in long-term care facilities certificate or shall ensure that the individual becomes certified within four months of employment.

SUBCHAPTER 44. RESPITE CARE SERVICES

8:39-44.1 Scope and purpose

(a) Long-term care facilities are authorized by law 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 a long-term care facility for a period of time specified in advance.

(c) The standards in this subchapter apply only to those long-term care facilities that operate a respite care program.

8:39-44.2 Mandatory policies and procedures

(a) The long-term care 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 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 and an alternate physician for consultation or emergency services.

(c) The facility shall choose whether to follow the resident care plan provided by the attending physician or to establish a plan in accordance with N.J.A.C. 8:39-11. The facility is exempt from compliance with N.J.A.C. 8:39-11, if it chooses to follow the care plan provided by the resident's attending physician.

(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, social, and resident activity plan provided by the caregiver(s) or to establish a plan in accordance with N.J.A.C. 8:39-7, 17 and 39. The facility is exempt from compliance with N.J.A.C. 8:39-7, 17 and 39, if it chooses to follow the plan provided by the caregiver(s).

(f) The pharmacy and therapeutics committee 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 standards contained in N.J.A.C. 8:39, except those exemptions cited in this rule, and in the following: N.J.A.C. 8:39-4.1(a)31, 4.1(b), 5.1(a)-(e), 11.3(a), 15.1(b), subchapter 29, 35.2(d)3 to 16, and 37.3.

8:39-44.3 Advisory staffing

A long-term care facility should assign specific staff members to an individual respite care resident to provide continuity of care during the resident's stay in the facility.

SUBCHAPTER 45. ALZHEIMER'S/DEMENTIA PROGRAMS—MANDATORY STANDARDS

8:39-45.1 Scope and purpose

Long-term care facilities may establish Department approved programs to meet the needs of residents with Alzheimer's disease or other dementias. In addition to meeting all mandatory requirements specified in subchapters 1 through 43 of the long-term care licensing standards, N.J.A.C. 8:39 and the rules in this subchapter, the program 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. The standards in this subchapter shall apply only to those long-term care facilities that operate a Department approved Alzheimer's/dementia program, as defined at N.J.A.C. 8:39-2.9(f).

SUBCHAPTER 46. ALZHEIMER'S/DEMENTIA PROGRAMS—ADVISORY STANDARDS

8:39-46.1 Advisory Alzheimer's/dementia program policies and procedures

(a) The long-term care facility has written policies and procedurese for the Alzheimer's/dementia program that are retained

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by the administrative staff and available to all staff and to members of the public, including those participating in the program.

(b) The facility has 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 an interdisciplinary assessment of the resident's cognitive and functional status.

8:39-46.2 Advisory staffing

(a) Staffing levels are sufficient to provide care and programming, based upon resident census in the program and an interdisciplinary assessment of the cognitive and functional status of residents in the program.

(b) The facility has established criteria for the determination of each staff member's abilities and qualifications to provide care to residents in the program.

(c) The facility provides an initial and ongoing educational, training and support program for each staff member which includes at least the causes and progression of dementias, the care and management of residents with dementias, and communication with dementia residents.

(d) Each Alzheimer's/dementia program has a full-time employee, with specialized training and/or experience in the care of residents with dementia, who has been designated as coordinator/director and whose duties include responsibility for the operation of the program.

(e) A consultant gerontologist is available to residents and to the program, as needed, to address the medical needs of the resident. "Consultant gerontologist" means a physician, psychiatrist, or geriatric nurse practitioner who has specialized training and/or experience in the care of residents with dementia.

8:39-46.3 Advisory environmental modification

(a) The program includes appropriate facility modifications to ensure a safe environment which allows each Alzheimer's/dementia resident to function with maximum independence and success.

(b) The facility has developed safety policies and procedures and a security monitoring system which are specific to the program, based upon the physical location of the program as well as the individual needs of the Alzheimer's/dementia residents.

(c) The facility provides indoor and outdoor arrangements which allow residents freedom to ambulate in a controlled setting.

(d) Doors are marked with items familiar to the individual resident which enhance the resident's ability to recognize his or her room, and bathrooms are specially marked and easily accessible.

8:39-46.4 Advisory activity programming

(a) The Alzheimer's/dementia program provides a daily schedule of special activities, seven days a week and at least two evenings per week, designed to maintain residents' dignity and personal identity, enhance socialization and success, and to accommodate the various cognitive and functional abilities of each resident.

8:39-46.5 Advisory nutrition

(a) The Alzheimer's/dementia program provides nutritional intervention as needed, based upon assessment of the eating behaviors and abilities of each resident. Interventions may include, but are not limited to, the following:

1. Verbal and non-verbal eating cues;
2. Modified cups, spoons, or other assistive devices; and
3. Simplified choices of foods or utensils.

(b) The Alzheimer's/dementia program provides a small dining room, separate room, or designated dining area furnished to meet the needs of the residents, with staff members or trained volunteers to assist.

8:39-46.6 Advisory social services

(a) The facility provides individual and group counseling to residents if appropriate, utilizing techniques designed to reach the dementia resident and to maintain the resident's maximum level of functioning.

(b) Families are encouraged and provided with opportunities to participate in planning and providing resident care.

(c) The facility provides individual and group counseling, support and education groups for families, and information and referral on bioethical and legal issues related to dementia, including competence, guardianship, conservatorship and advance directives.

(d) Family members are referred to community Alzheimer's Disease Support Groups or other family counseling agencies, as required.

(e) Discharge care plans, including preparation for discharge from the unit, are discussed with the legal next of kin, and, if possible, with the resident at the time of admission to the program.

APPENDIX A

GUIDELINES AND CONSIDERATIONS FOR PET FACILITATED THERAPY IN NEW JERSEY INSTITUTIONS

I. All Pets

A. Companion pets should not pose a threat or nuisance to the patients, staff, or visitors because of size, odor, sound, disposition, or behavioral characteristics. Aggressive or unprovoked threatening behavior should mandate the pet's immediate removal.

B. Animals which may be approved include: dogs, cats, birds (except carnivorous), fish, hamsters, gerbils, guinea pigs, and domestic rabbits. Wild animals such as turtles and other reptiles, ferrets, and carnivorous birds should not be permitted in the program.

C. In order to participate, dogs or cats should be either altered or determined not to be in estrus ("heat").

D. Sanitary constraints:

1. Pets should be prohibited from the following areas:
   a. food preparation, storage, and serving areas, with the exception of participating resident's bedroom;
   b. areas used for the cleaning or storage of human food utensils and dishes;
   c. vehicles used for the transportation of prepared food;
   d. nursing stations, drug preparation areas, sterile and clean supply rooms;
   e. linen storage areas; and
   f. areas where soiled or contaminated materials are stored.
2. Food handlers should not be involved in the cleanup of animal waste.
3. The administrator is responsible for acceptable pet husbandry practices and may delegate specific duties to any other staff members except food handlers. The areas of responsibility include: feeding and watering, food cleanup/cage cleaning, exercising, and grooming.
4. Spilling or scattering of food and water should not lessen the standard of housekeeping or contribute to an increase in vermin or objectionable odor.
5. Dogs and cats must be effectively housebroken and provisions made for suitably disposing of their body wastes.
6. Animal waste should be disposed of in a manner which prevents the material from becoming a community health or nuisance problem and in accordance with applicable sanitation rules and ordinances. Accepted methods include disposal in sealed plastic bags (utilizing municipally approved trash removal systems) or via the sewage system for feces.
7. Proper and frequent handwashing shall be a consideration of all persons handling animals.

E. Animals found to be infested with external parasites (ticks, fleas, or lice) or which show signs of illness (for example, vomiting or diarrhea) should be immediately removed from the premises and taken to the facility's veterinarian.

F. The parent or guardian of a child bitten by a dog, cat, or other animal, when no physician attends such child, shall, within 12 hours after first having knowledge that the child was so bitten, report to the person designated by law or by the local board, under authority of law, to receive reports of reportable communicable diseases in the municipality in which the child so bitten may be the name, age, sex, color, and precise location of the child (*N.J.R.S.* 26:4-80).

If an adult is bitten by a dog, cat, or other animal and no physician attends him, the adult, or, if he is incapacitated, the person caring for him, shall report to the person designated by law or by the local board of health to receive reports of com-

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municable diseases in the municipality in which the adult so bitten may be the name, age, sex, color, and the precise location of the adult. The report shall be made within 12 hours after the adult was so bitten, or if he is incapacitated, the report shall be made within 12 hours after the person caring for him shall first have knowledge that the adult was so bitten (*N.J.S.A.* 26:4-81).

G. The local health department must be promptly notified by telephone of any pet which dies on the premises.
   1. If the deceased is a bird, the body should be immediately taken to the facility's veterinarian. If the veterinarian is not available, the deceased bird should be securely wrapped in impermeable wrapping material and frozen until veterinary consultation is available. Payment for a laboratory examination should be the responsibility of the institution, or the pet's owner.
   2. If the deceased is another type of animal, the body should not be disposed until it is determined by the local department of health that rabies testing is not necessary.

H. The rights of residents who do not wish to participate in the pet program must be considered first. Patients not wishing to be exposed to animals should have available a pet free area within the participating facility.

II. Visiting Pets

A. Visiting pets are defined as any animal brought into the facility on a periodic basis for pet therapy purposes. The owner should accompany the animal and be responsible for its behavior and activities while it is visiting at the facility.

B. Visiting dogs should:
   1. be restricted to the areas designated by the facility administrator;
   2. maintain current vaccination against canine diseases of distemper, hepatitis, leptospirosis, parainfluenza, parvovirus, coronavirus, bordetella (kennel cough), and rabies. Proof of vaccination shall be included on a health certificate which is signed by a licensed veterinarian and kept on file at the facility;
   3. be determined not to be in estrus ("heat") at the time of the visit;
   4. be licensed and wear an identification tag on the collar, choker chain, or harness, stating the dog's name, the owner's name, address, and telephone number; and
   5. be housebroken if more than four months of age. Younger dogs may be admitted subject to the approval of the administrator.

C. Visiting cats should:
   1. Maintain current vaccination against feline pneumonitis, panleukopenia, rhinothracheitis, calcivirus, chlamydia, and rabies. Proof of vaccination should be included on a health certificate which is signed by a licensed veterinarian and kept on file at the facility.
   2. Determined not be in estrus ("heat") at the time of the visit.

D. Visiting hamsters, gerbils, guinea pigs, domestic rabbits, laboratory mice, or rats:
   1. The owner should be liable and responsible for the animal's activities and behavior.

E. No visiting birds should be allowed to participate in the program.

III. Residential Pets:

A. Residential pets are defined as any animal which resides at a facility in excess of four hours during any calendar day and is owned by a staff member, patient, the facility, or a facility approved party. The financial responsibility for the residential animal's maintenance is the animal owner's responsibility.

B. All documentation of compliance will be maintained by the facility administrator in a file for review and inspection. The official health records should include the rabies vaccination certificate and a current health certificate.

C. Residential animals should have a confinement area separate from the patients where they can be restricted when indicated. An area should be available for each participating unit and should be approved by the administrator.

D. A licensed veterinarian should be designated as the facility's veterinarian and should be responsible for establishing and maintaining a disease control program for residential pets.

E. Specific Species:
   1. Residential dogs should:
      a. Maintain current vaccination against canine diseases of distemper, hepatitis, leptospirosis, parainfluenza, parvovirus and rabies. In addition, the animal's file should include a currently valid Rabies Vaccination Certificate, NASPHV #51. A three year type rabies vaccine should be utilized.
      b. Have an annual heartworm test commencing at one year of age and should be maintained on heartworm preventive medication.
      c. Have a fecal examination for internal parasites twice yearly. Test results should be negative before the dog's initial visit to the facility.
      d. Follow the recommended procedures of the facility's veterinarian for controlling external parasites.
      e. Be neutered.
      f. Be licensed with the municipality and wear an identification tag on the collar, choker chain, or harness, stating the dog's name, the owner's name, address, and telephone number.
      g. Have a health certificate completed by a licensed veterinarian within one week before the animal's initial visit to the facility. The certificate should be updated annually thereafter.
      h. Be immediately removed from the premises and taken to the facility's veterinarian if infested with internal or external parasites, vomit, or have diarrhea, or show signs of a behavioral change or infectious disease. Medical records of the veterinarian's diagnosis and treatment should be maintained in the animal's file. The animal should not have patient contact until authorized by the facility's veterinarian.
      i. Be housebroken if more than four months of age. Younger dogs may be admitted subject to the requirements of the administrator.
      j. Be fed in accordance with the interval and quantity recommended by the facility's veterinarian. Feeding and watering bowls should be washed daily and stored separately from dishes and utensils used for human consumption.
      k. Be provided fresh water daily and have 24-hour access to the water dish.
      l. Be provided a suitable bedding area. Bedding should be cleaned or changed as needed. Dirty bedding should be processed or disposed of as necessary.
      m. Be permitted outside the facility only if under the supervision of a staff member, a responsible person or within a fenced area.
      n. Be regularly groomed and receive a bath whenever indicated.
   2. Residential birds:
      a. Should be treated by a licensed veterinarian with an approved chlortetracycline treatment regimen prior to being housed at the institution to ensure the absence of psittacosis. The period of treatment varies between 30 to 45 days and is species-dependent. A signed statement from the veterinarian indicating such treatment should be kept in the bird's file.
      b. That die, or are suspected of having psittacosis, should be immediately taken to the facility's veterinarian. In the event the bird dies and the veterinarian is not available, the bird's body should be securely wrapped in impermeable wrapping material and frozen until veterinary consultation is available.
      c. Residential hamsters, gerbils, guinea pigs, domestic rabbits, laboratory mice or rats should be examined yearly by a licensed veterinarian for health status. A health certificate should be completed for each animal or group of animals. Any animal which becomes sick or dies should be promptly taken to the facility's veterinarian.

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APPENDIX B

GUIDELINE FOR THE MANAGEMENT OF INAPPROPRIATE BEHAVIOR AND RESIDENT TO RESIDENT ABUSE

I. The initial resident assessment should include a psycho-social behavior component with interventions, if appropriate, in the care plan. Reassessment should be done at least quarterly, or at any time when a resident's pattern of behavior changes. Resident response to interventions should be recorded in the medical record.

II. Inappropriate behavior and/or actions should trigger an immediate reassessment with adjusted interventions; notification of the physician and/or the designated resident representative. Resident response should be recorded in the medical record. The facility's actions/interventions in response to behavior changes should also be part of the plan of care and should be appropriately recorded. Prompt reassessment of behavioral changes will in most cases avert the continued progression of inappropriate behavior.

III. Inappropriate behavior and/or actions involving other residents should be identified in the records of all involved residents including assessments, interventions and responses. Notifications of physician and/or designated resident representatives should also be recorded in medical records of all involved residents.

IV. Incidents of inappropriate behavior or actions of abuse between residents should result in the following actions, as applicable:
- A. Immediate assessments of involved residents.
- B. Notification of attending physicians.
- C. Interventions and responses of residents.
- D. Notification of residents' designated representatives.
- E. Protection of involved residents' civil and constitutional rights.
- F. Determination by administrator of facility's ability to assure safety and security of all patients.
- G. Implementation of emergency or short-term precautions to assure safety while working toward resolution.
- H. Notification of police if necessary.

V. In the event that it is determined that a resident must be removed from the facility, the transfer should be initiated in accordance with the provisions of this chapter.

VI. Transfer from the facility should be based on the appropriate evaluation and transfer order of the attending physician, facility medical director and/or consultant psychiatrist.

VII. In the event of an immediate emergency situation only:
1. Have patient removed to emergency room of local hospital for medical and/or psychiatric evaluation and consultation by a physician. Return of patient to the long term care facility should be based on the physician's written notation of the appropriateness of returning the resident to the long term care setting. The administrator is responsible for the decision to accept or deny the return of the resident according to N.J.A.C. 8:39.
2. A police complaint should be filed against the abuser and have the individual removed. The complaint can be filed by the facility or the abused party.
3. Notify all agencies (i.e., Medicaid if applicable, Ombudsman for the Institutionalized Elderly, if applicable (over 60) and the Department of Health.)

VIII. In the event all guidelines have been followed and resolution has not taken place, assistance should be requested from the Health Department.

IX. Facility policies and procedures to address inappropriate resident behavior, including resident to resident abuse, should include all of the above outlined actions.

X. To determine resident's emotional adjustment to the nursing facility, including his/her general attitude, adaptation to surroundings, and change in relationship patterns, the following areas should be evaluated:

1. Sense of Initiative/Involvement

Intent: To assess degree to which the resident is involved in the life of the nursing home and takes initiative in activities.

Process: Selected responses should be confirmed by the resident's behavior (either verbal or nonverbal) over the past seven days. The primary source of information is the resident. Secondarily, staff members who have regular contact with the resident should be consulted (e.g., nursing assistants, activities personnel, social work staff, or therapists if the person receives active rehabilitation). Also, consider how resident's cultural standards affect the level of initiative or involvement.

Definition: At ease interacting with others—Consider how resident behaves during time you are together, as well as reports of how resident behaves with other residents, staff, and visitors. Does resident try to shield himself/herself from being with others? Does he/she spend most time alone? How does he/she behave when visited?

At ease doing planned or structured activities—Consider how resident responds to such activities. Does he/she feel comfortable with the structure or restricted by it? *[Note: The item on the MDS form was inadvertently referred to as "structural" activities.]*

At ease with self-initiated activities—These include leisure activities (e.g., reading, watching TV, talking with friends), and work activities (e.g., folding personal laundry, organizing belongings). Does resident spend most of his/her time alone, or does resident always look for someone to find something for him/her to do?

Establishes his/her own goals—Consider statements resident makes like, "I hope I am able to walk again," or "I would like to get up early and visit the beauty parlor." Goals can be as traditional as wanting to learn how to walk again following a hip replacement, or wanting to live to say goodbye to a loved one. Some things may not be stated verbally, as when resident is observed to have a personal way of living at the facility (e.g., organizing own activities or setting own pace).

Involvement in life of the facility—Consider whether resident partakes of facility events, socializes with peers, discusses activities.

Resident accepts invitations into most group activities—Is resident willing to try group activities even if later, deciding the activity is not suitable and leaving? Does resident regularly refuse to attend group programs?

2. Unsettled Relationships

Intent: To indicate the quality and nature of the resident's interpersonal contacts (i.e., how resident interacts with staff members, family, and other residents).

Process: During routine nursing care activities, observe how the resident interacts with staff members and with other residents. Do you see signs of conflict? Talk with direct-care staff (e.g., nursing assistants, dietary aides who assist in the dining room, social work staff, or activities aides) and ask for their observations of behavior that indicate either conflicted or harmonious interpersonal relationships. Consider the possibility that the staff members describing these relationships may be biased.

Definition: Covert/open conflict with and/or repeated criticism of staff—Resident chronically complains about some staff members to other staff members; resident verbally criticizes staff members in therapeutic group situations, causing disruption within the group; or resident constantly disagrees with routines of daily living. [Note: Checking this item does not

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require any assumption about why the problem exists or how it could be remedied.]

Unhappiness with roommate—Includes frequent requests for roommate changes, grumbling about roommate spending too long in the bathroom, or complaints about roommate rummaging in another's belongings.

Unhappiness with residents other than roommate—Includes chronic complaints about the behaviors of others, poor quality of interaction with other residents, lack of peers for socialization. This refers to conflict or disagreement outside of the range of normal criticisms or requests (i.e., beyond a reasonable level).

Openly expresses conflict/anger with family or close friends—Includes expressions of feelings of abandonment, ungratefulness, lack of understanding, or hostility regarding relationships with family/friends.

Absence of personal contact with family/friends—Absence of visitors or telephone calls from significant others in the last seven days.

Recent loss of close family member/friend—Includes relocation of family member/friend to a more distant location, even temporarily (e.g., for the winter months); incapacitation or death of a significant other; a significant relationship that recently ceased.

3. Past Roles

Intent: To indicate recognition or acceptance of feelings regarding role or status now that the person is in the nursing home.

Definition: Strong identification with past roles and life status—This may be indicated, for example, when resident enjoys telling stories about own past; or takes pride in past accomplishments or family life; or prefers to be connected with prior lifestyle (e.g., celebrating family events, carrying on life-long traditions).

Expresses sadness/anger/empty feelings over lost roles/status—Resident express feelings such as "I'm not the man I used to be" or "I wish I had been a better mother to my children" or "It's no use; I'm not capable of doing the things I always liked to do." Resident cries when reminiscing about past accomplishments. Be careful not to take the reaction out of context. *For the response to apply, the resident should repeat these concerns or initiate these topics.*

Process: Discuss past life with resident. Use environmental cues to prompt discussions (e.g., family photos, grandchildren's letters or artwork). This information may emerge from discussions around other MDS topics (e.g., Customary Routine, Activity Pursuits, ADLs). Direct-care staff may also have useful insights relevant to these items.

XI. To determine resident's mood and behavior patterns, the following elements should be considered:

1. Sad or Anxious Mood

Intent: To identify the presence of behaviors that may be interpreted as physical or verbal expressions of sadness or anxiety.

Definition: A distressed mood characterized by explicit verbal or gestural expressions of feeling depressed or anxious (or a synonym such as feeling sad, miserable, blue, hopeless, empty, or tearful). This may be a disorder of mood which is usually, but not always, accompanied by a painful mood of such magnitude that it calls for relief because it is severely, or unnecessarily, distressing or threatening to physical health and life, or interferes with functional performance and adaptation. These symptoms may be preceded by anger or withdrawal.

Process: *Determine if resident expressed signs of a sad or anxious mood over the past 30 days.* Draw on your own interactions with the resident. Pay particular attention to statements of direct-care staff, social workers, and licensed personnel who may have evaluated the resident in this area. Does the resident cry or look dejected (unhappy) when no one is talking with him/her? When you talk with the resident, does he/she sound hopeless, fearful, sad, anxious? Does the resident report feelings of worthlessness, guilt? Does the resident appear withdrawn, apathetic, without emotion?

If you are unsure, seek confirming information from others who regularly come in contact with the resident (e.g., activities professionals, social workers, or family members).

2. Mood Persistence

Intent: To identify a persistent sad/anxious mood that has existed on each day *over the last seven days* and was not easily altered by attempts to "cheer up" the resident.

Process: Normally, these moods apply to one or more of the indicators mentioned above of sad/anxious mood.

3. Problem Behavior

Intent: *To identify the presence of problem behaviors in the last seven days* that cause disruption to facility residents or staff members, including those that are potentially harmful to the resident or disruptive in the environment, even though staff and residents appear to have adjusted to them (e.g., "Mrs. R's calling out isn't much different than others on the unit; there are many noisy residents.)

Definition: Wandering—Movement with no identified rational purpose; resident appears oblivious to needs or safety. *This behavior must be differentiated from purposeful movement—e.g., a hungry person moving about the unit in search of food; pacing.*

Report on the most disruptive resident behavior across all three shifts. Code "1" if the described behavior occurred less than daily and "2" if the behavior occurred daily or more frequently.

4. Resident Resists Care

Intent: Identify problem behaviors related to delivering care/treatment to the resident. These behaviors are not necessarily positive or negative; they provide observational data. They may prompt further investigation of causes in the care-planning process (e.g., fear of pain, fear of falling, poor comprehension, anger, poor relationships, eagerness to participate in care decisions, past experience with medication errors and unacceptable care, desire to modify care being provided).

Process: Consult medical record and primary staff caregiver. How does the resident respond to staff members' attempts to deliver care to him/her? Signs of resistance may be verbal and/or physical (e.g., verbally refusing care, pushing caregiver away, scratching).

5. Behavior Management Program

Intent: Determine if a behavior-management program is in place wherein staff members identified causal factors and developed a plan of action based on that understanding. There must be evidence of structure and continuity of care in the program (e.g., written documentation). This category does NOT include behavioral management by physical restraints or psychoactive drugs, if these are the only interventions used.

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Process: Consult medical record (including current care plan); consult primary caregiver.

Examples

- Mrs. S has been observed on numerous occasions to hit, shove, and curse the woman seated next to her at each meal. After observing the pattern of Mrs. S's behavior for several days, staff noticed that her tablemate was in the habit of moving toward Mrs. S to take food from her tray. As a result of their observations, the primary nurse made a change in seating arrangements. [Note: Although staff might have increased the amount of food provided at meals, the real issue was the taking of food; Mrs. S would not want to share with others, no matter how much food she was given.] Mrs. S does not tend to ask staff for help when she is annoyed; she takes direct and aggressive action on her own. Now that staff understand this behavior, they are aware of the need to be vigilant. Code "1" for Yes.
- Provisions were made for safely monitored wandering for Mr. V (including use of "secure bands" that activate an alarm if he wanders away from a designated area). Mr. V does not really disturb others (he does not go into others' rooms). Without this "band," however, staff lost track of him and he was in danger of harming himself if he got off the unit (a busy street is very near his unit). Code "1" for Yes.

6. Change in Mood

Intent: Determine whether the resident's mood changed in the *past 90 days,* i.e., onset of recent mood problem or changes in a longstanding problem. Changes may have been expressed verbally or demonstrated physically; they include increased/decreased number of signs/symptoms, or increase/decrease in the frequency, intensity, or persistence of sad or anxious mood.

Examples

- Mrs. D has a long history of depression. Two months ago she had an adverse reaction to a psychoactive drug. She expressed fears that she was going out of her mind and was observed to be quite agitated. Her attention span diminished and she stopped attending group activities because she was disruptive. After the medication was discontinued, these feelings and behaviors improved. She is better than she was, but still has feelings of sadness. Code "1" for "Improved." Mrs. D is now better than her worst status in the 90-day period, but she has not fully recovered. [Note: If the mood problem was no longer present due to the continued efficacy of the treatment program, the correct code would also be "1" (Improved).]
- Mrs. Y has bipolar disease. Historically, she has responded well to lithium and her mood state has been stable for almost a year. About 2 months ago, she became extremely sad and withdrawn, expressed the wish that she were dead, and stopped eating. She was transferred to a psychiatric hospital. For the last 30 days (following readmission), Mrs. Y has improved and her appetite is restored. Code "1" for Improved.

7. Change in Problem Behavior

Intent: Determine if problem behaviors or resistance to care increased/decreased in number, frequency, or intensity in the *past 90 days*—i.e., onset of recent behavior problems or changes in a more longstanding problem.

Changes can occur in many different areas, including (but not limited to) wandering, verbal or physical abuse, socially inappropriate behavior, or resistance to care. Changes can be exhibited as increases/decreases in the number of signs/symptoms and/or change in the frequency or intensity of the behavior(s).

Process: Review nursing notes, medical records, and consult with primary staff caregiver.

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WHITE COPY to accompany patient.
YELLOW COPY FOR institution's file.

APPENDIX C

HOSPITAL AND NURSING HOME
PATIENT TRANSFER FORM AND PLAN OF CARE

This form has been adopted by the Boards of Trustees of the N.J. Hospital Association and N.J. Assn. of Health Care Facilities

USE REVERSE SIDE IF NECESSARY (PROVIDE COPY)

Name _____ Last _____ First _____ Middle _____

Address _____

Social Security No. _____ S M W D

M/Care # _____ M/Caid # _____

Other Insurance _____

Birth Date _____ Sex _____ Religion _____

Relative or Sponsor _____ Relationship

Address _____

Home Phone _____ Business Phone _____

STATUS: ☐ Private ☐ Medicare ☐ Medicaid ☐ Undetermined ☐ Short Term ☐ Long Term ☐ Undetermined

TRANSFERRED FROM: _____

Date Admitted _____ Date Discharged _____

TRANSFERRED TO: _____

Date Admitted _____

Physician in Charge at Time of Transfer _____ M.D.

Address _____

Phone No. _____

Will this physician care for patient after transfer? _____

DISCHARGE DIAGNOSIS _____

Other Diagnosis _____ Infections: _____ Resolved ☐

Surgery Date _____ Surgery Type _____

VITAL SIGNS T _____ P _____ R _____ BP _____ HT _____ WT _____ Allergies _____

DIET, DRUGS AND OTHER THERAPY At Time of Discharge (include time of last medication dose or treatment)

SOCIAL INFORMATION (include reason for transfer)

Has patient made any advance directives (living will/durable power of attorney)? ☐ Yes ☐ No Copy attached ☐ Yes ☐ No
Does patient have DNR orders? ☐ Yes ☐ No Copy attached ☐ Yes ☐ No

PLAN OF CARE AT TIME OF DISCHARGE

BEHAVIOR	ASSISTIVE DEVICES	IMPAIRMENTS	CATHETERS/TUBES/ DRAINS	DATE LAST CHANGED	FUNCTIONAL STATUS
☐ Alert	☐ Dentures U P	☐ Speech	☐ Foley	_____	☐ Ambulation (independent or w/assist.)
☐ Forgetful	☐ Glasses	☐ Vision	☐ N/G	_____	☐ Bed to Chair
☐ Confused	☐ Hearing Aid	☐ Hearing	☐ Gastric	_____	☐ Bedfast
☐ Wanders	☐ Prosthesis	☐ Sensation	☐ Other _____	_____	☐ Restraint and type _____
☐ Combative	☐ Pacemaker	ELIMINATION			☐ Physical Therapy (describe modality)
☐ Noisy	☐ Other _____	☐ Continent	Date Last Enema/BM		_____
☐ Comatose (Semi)		☐ Incontinent (Bladder/Bowel)	_____		_____

SPECIAL CARE & EQUIPMENT

Decubiti/Wound _____

Other _____

FACILITY CONTACT PERSON _____ TEL. NO. _____

I CERTIFY this patient requires the following level of care: ☐ SNF ☐ NF ☐ RHCF

PHYSICIAN _____ (Signature required) DATE _____

NOTE: ATTACH LAB, X-RAY AND OTHER SIGNIFICANT REPORTS

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APPENDIX D

MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)
BACKGROUND INFORMATION/INTAKE AT ADMISSION

I. IDENTIFICATION INFORMATION

1.	RESIDENT NAME	(First) (Middle Initial) (Last)
2.	DATE OF CURRENT ADMISSION	Month — Day — Year
3.	MEDICARE NO. (SOC. SEC. or Comparable No. if no Medicare No.)	
4.	FACILITY PROVIDER NO.	Federal No.
5.	GENDER	1. Male 2. Female
6.	RACE/ ETHNICITY	1. American Indian/Alaska Native 2. Asian/Pacific Islander 3. Black, not of Hispanic origin 4. Hispanic 5. White, not of Hispanic origin
7.	BIRTHDATE	Month — Day — Year
8.	LIFETIME OCCUPATION	
9.	PRIMARY LANGUAGE	Resident's primary language is a language other than English 0. No 1. Yes _____ (Specify)
10.	RESIDENTIAL HISTORY PAST 5 YEARS	*(Check all settings resident lived in during 5 years prior to admission)* Prior stay at this nursing home Other nursing home/residential facility MH/psychiatric setting MR/DD setting *NONE OF ABOVE*
11.	MENTAL HEALTH HISTORY	Does resident's RECORD indicate any history of mental retardation, mental illness, or any other mental health problem? 0. No 1. Yes
12.	CONDITIONS RELATED TO MR/DD STATUS	*(Check all conditions that are related to MR/DD status, that were manifested before age 22, and are likely to continue indefinitely)* Not applicable—no MR/DD (Skip to Item 13) MR/DD with Organic Condition Cerebral palsy Down's syndrome Autism Epilepsy Other organic condition related to MR/DD MR/DD with no organic condition Unknown
13.	MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
14.	ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
15.	LIVED ALONE	0. No 1. Yes 2. In other facility
16.	ADMISSION INFORMATION AMENDED	*(Check all that apply)* Accurate information unavailable earlier Observation revealed additional information Resident unstable at admission

II. BACKGROUND INFORMATION AT RETURN/READMISSION

1.	DATE OF CURRENT READMISSION	Month — Day — Year
2.	MARITAL STATUS	1. Never Married 2. Married 3. Widowed 4. Separated 5. Divorced
3.	ADMITTED FROM	1. Private home or apt. 2. Nursing home 3. Acute care hospital 4. Other
4.	LIVED ALONE	0. No 1. Yes 2. In other facility
5.	ADMISSION INFORMATION AMENDED	*(Check all that apply)* Accurate information unavailable earlier Observation revealed additional information Resident unstable at admission

III. CUSTOMARY ROUTINE (ONLY AT FIRST ADMISSION)

1.	CUSTOMARY ROUTINE (Year prior to first admission to a nursing home)	*(Check all that apply. If all information UNKNOWN, check last box only.)*
		CYCLE OF DAILY EVENTS
		Stays up late at night (e.g., after 9 pm)
		Naps regularly during day (at least 1 hour)
		Goes out 1+ days a week
		Stays busy with hobbies, reading, or fixed daily routine
		Spends most time alone or watching TV
		Moves independently indoors (with appliances, if used)
		NONE OF ABOVE
		EATING PATTERNS
		Distinct food preferences
		Eats between meals all or most days
		Use of alcoholic beverage(s) at least weekly
		NONE OF ABOVE
		ADL PATTERNS
		In bedclothes much of day
		Waxens to toilet all or most nights
		Has irregular bowel movement pattern
		Prefers showers for bathing
		NONE OF ABOVE
		INVOLVEMENT PATTERNS
		Daily contact with relatives/close friends
		Usually attends church, temple, synagogue (etc.)
		Finds strength in faith
		Daily animal companion/presence
		Involved in group activities
		NONE OF ABOVE
		UNKNOWN—Resident/family unable to provide information

END

Signature of RN Assessment Coordinator: _____

Signatures of Others Who Completed Part of the Assessment

_____ _____ _____

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MINIMUM DATA SET FOR NURSING HOME RESIDENT ASSESSMENT AND CARE SCREENING (MDS)
(Status in last 7 days, unless other time frame indicated)

SECTION A. IDENTIFICATION AND BACKGROUND INFORMATION

1.	ASSESSMENT DATE	Month — Day — Year
2.	RESIDENT NAME	(First) (Middle Initial) (Last)
3.	SOCIAL SECURITY NO.	
4.	MEDICAID NO. (If applicable)	
5.	MEDICAL RECORD NO.	
6.	REASON FOR ASSESSMENT	1. Initial admission assess. 2. Hosp/Medicare reassess. 3. Readmission assessment 4. Annual assessment 5. Significant change in status 6. Other (e.g., UR)
7.	CURRENT PAYMENT SOURCE(S) FOR N.H. STAY	*(Billing Office to indicate; check all that apply)* Medicaid a. Medicare b. CHAMPUS c. VA d. Self pay/Private insurance e. Other f.
8.	RESPONSIBILITY/ LEGAL GUARDIAN	*(Check all that apply)* Legal guardian a. Other legal oversight b. Durable power attrny/ health care proxy c. Family member responsible d. Resident responsible e. *NONE OF ABOVE* f.
9.	ADVANCED DIRECTIVES	*(For those items with supporting documentation in the medical record, check all that apply)* Living will a. Do not resuscitate b. Do not hospitalize c. Organ donation d. Autopsy request e. Feeding restrictions f. Medication restrictions g. Other treatment restrictions h. *NONE OF ABOVE* i.
10.	DISCHARGE PLANNED WITHIN 3 MOS.	*(Does not include discharge due to death)* 0. No 1. Yes 2. Unknown/uncertain
11.	PARTICIPATE IN ASSESSMENT	a. Resident 0. No 1. Yes b. Family 0. No 1. Yes 2. No family
12.	SIGNATURES	Signature of RN Assessment Coordinator _____ Signatures of Others Who Completed Part of the Assessment: _____ _____ _____ _____ _____ _____

SECTION B. COGNITIVE PATTERNS

1.	COMATOSE	*(Persistent vegetative state/no discernible consciousness)* 0. No 1. Yes *(Skip to SECTION E)*
2.	MEMORY	*(Recall of what was learned or known)* a. Short-term memory OK—seems/appears to recall after 5 minutes 0. Memory OK 1. Memory problem b. Long-term memory OK—seems/appears to recall long past 0. Memory OK 1. Memory problem
3.	MEMORY/ RECALL ABILITY	*(Check all that resident normally able to recall during last 7 days)* Current season a. Location of own room b. Staff names/faces c. That he/she is in a nursing home d. *NONE OF ABOVE* are recalled e.
4.	COGNITIVE SKILLS FOR DAILY DECISION-MAKING	*(Made decisions regarding tasks of daily life)* 0. Independent—decisions consistent/reasonable 1. Modified independence—some difficulty in new situations only 2. Moderately impaired—decisions poor; cues/supervision required 3. Severely impaired—never/rarely made decisions
5.	INDICATORS OF DELIRIUM—PERIODIC DISORDERED THINKING/ AWARENESS	*(Check if condition over last 7 days appears different from usual functioning)* Less alert, easily distracted a. Changing awareness of environment b. Episodes of incoherent speech c. Periods of motor restlessness or lethargy d. Cognitive ability varies over course of day e. *NONE OF ABOVE* f.
6.	CHANGE IN COGNITIVE STATUS	Change in resident's cognitive status, skills, or abilities in last 90 days 0. No change 1. Improved 2. Deteriorated

SECTION C. COMMUNICATION/HEARING PATTERNS

1.	HEARING	*(With hearing appliance, if used)* 0. Hears adequately—normal talk, TV, phone 1. Minimal difficulty when not in quiet setting 2. Hears in special situations only—speaker has to adjust tonal quality and speak distinctly 3. Highly impaired/absence of useful hearing
2.	COMMUNICATION DEVICES/ TECHNIQUES	*(Check all that apply during last 7 days)* Hearing aid, present and used a. Hearing aid, present and not used b. Other receptive comm. techniques used (e.g., lip read) c. *NONE OF ABOVE* d.
3.	MODES OF EXPRESSION	*(Check all used by resident to make needs known)* Speech a. Writing messages to express or clarify needs b. Signs/gestures/sounds c. Communication board d. Other e. *NONE OF ABOVE* f.
4.	MAKING SELF UNDERSTOOD	*(Express information content—however able)* 0. Understood 1. Usually Understood—difficulty finding words or finishing thoughts 2. Sometimes Understood—ability is limited to making concrete requests 3. Rarely/Never Understood
5.	ABILITY TO UNDERSTAND OTHERS	*(Understanding verbal information content—however able)* 0. Understands 1. Usually Understands—may miss some part/intent of message 2. Sometimes Understands—responds adequately to simple, direct communication 3. Rarely/Never Understands
6.	CHANGE IN COMMUNICATION/ HEARING	Resident's ability to express, understand or hear information has changed over last 90 days 0. No change 1. Improved 2. Deteriorated

SECTION D. VISION PATTERNS

1.	VISION	*(Ability to see in adequate light and with glasses if used)* 0. Adequate—sees fine detail, including regular print in newspapers/books 1. Impaired—sees large print, but not regular print in newspapers/books 2. Highly impaired—limited vision; not able to see newspaper headlines; appears to follow objects with eyes 3. Severely impaired—no vision or appears to see only light, colors, or shapes
2.	VISUAL LIMITATIONS/ DIFFICULTIES	Side vision problems—decreased peripheral vision (e.g., leaves food on one side of tray, difficulty traveling, bumps into people and objects, misjudges placement of chair when seating self) a. Experiences any of following: sees halos or rings around lights; b. sees flashes of light; sees "curtains" over eyes c. *NONE OF ABOVE*
3.	VISUAL APPLIANCES	Glasses; contact lenses, lens implant, magnifying glass 0. No 1. Yes

■ Code the appropriate response ☐ = Check all the responses that apply

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SECTION E. PHYSICAL FUNCTIONING AND STRUCTURAL PROBLEMS

1. ADL SELF-PERFORMANCE—*(Code for resident's PERFORMANCE OVER ALL SHIFTS during last 7 days—Not including setup)*
   - 0. *INDEPENDENT* — No help or oversight — OR — Help/oversight provided only 1 or 2 times during last 7 days
   - 1. *SUPERVISION* — Oversight, encouragement or cueing provided 3+ times during last 7 days — OR — Supervision plus physical assistance provided only 1 or 2 times during last 7 days
   - 2. *LIMITED ASSISTANCE* — Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times — OR — More help provided only 1 or 2 times during last 7 days
   - 3. *EXTENSIVE ASSISTANCE* — While resident performed part of activity, over last 7-day period, help of following type(s) provided 3 or more times:
     - — Weight-bearing support
     - — Full staff performance during part (but not all) of last 7 days
   - 4. *TOTAL DEPENDENCE* — Full staff performance of activity during entire 7 days

2. ADL SUPPORT PROVIDED — *(Code for MOST SUPPORT PROVIDED OVER ALL SHIFTS during last 7 days; code regardless of resident's self-performance classification)*
   - 0. No setup or physical help from staff
   - 1. Setup help only
   - 2. One-person physical assist
   - 3. Two+ persons physical assist

			(1) SELF-PERF.	(2) SUPPORT
a.	BED MOBILITY	How resident moves to and from lying position, turns side to side, and positions body while in bed		
b.	TRANSFER	How resident moves between surfaces—to/from: bed, chair, wheelchair, standing position (EXCLUDE to/from bath/toilet)		
c.	LOCO-MOTION	How resident moves between locations in his/her room and adjacent corridor on same floor. If in wheelchair, self-sufficiency once in chair		
d.	DRESSING	How resident puts on, fastens, and takes off all items of street clothing, including donning/removing prosthesis		
e.	EATING	How resident eats and drinks (regardless of skill)		
f.	TOILET USE	How resident uses the toilet room (or commode, bedpan, urinal); transfer on/off toilet, cleanses, changes pad, manages ostomy or catheter, adjusts clothes		
g.	PERSONAL HYGIENE	How resident maintains personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands, and perineum (EXCLUDE baths and showers)		
3.	BATHING	How resident takes full-body bath/shower, sponge bath, and transfers in/out of tub/shower (EXCLUDE washing of back and hair. *Code for most dependent in self-performance and support.* Bathing Self-Performance codes appear below)	a.	b.

   - 0. Independent—No help provided
   - 1. Supervision—Oversight help only
   - 2. Physical help limited to transfer only
   - 3. Physical help in part of bathing activity
   - 4. Total dependence

4. BODY CONTROL PROBLEMS — *(Check all that apply during last 7 days)*

Balance—partial or total loss of ability to balance self while standing	a.	Hand—lack of dexterity (e.g., problem using toothbrush or adjusting hearing aid)	g.
Bedfast all or most of the time	b.	Leg—partial or total loss of voluntary movement	h.
Contracture to arms, legs, shoulders, or hands	c.	Leg—unsteady gait	i.
Hemiplegia/hemiparesis	d.	Trunk—partial or total loss of ability to position, balance, or turn body	j.
Quadriplegia	e.	Amputation	k.
Arm—partial or total loss of voluntary movement	f.	*NONE OF ABOVE*	l.

5. MOBILITY APPLIANCES/DEVICES — *(Check all that apply during last 7 days)*

Cane/walker	a.	Other person wheeled	d.
Brace/prosthesis	b.	Lifted (manually/mechanically)	e.
Wheeled self	c.	*NONE OF ABOVE*	f.

6. TASK SEGMENTATION — Resident requires that some or all of ADL activities be broken into a series of subtasks so that resident can perform them
   - 0. No 1. Yes

7. ADL FUNCTIONAL REHABILITATION POTENTIAL

Resident believes he/she capable of increased independence in at least some ADLs	a.
Direct care staff believe resident capable of increased independence in at least some ADLs	b.
Resident able to perform tasks/activity but is very slow	c.
Major difference in ADL Self-Performance or ADL Support in mornings and evenings (at least a one category change in Self-Performance or Support in any ADL)	d.
NONE OF ABOVE	e.

8. CHANGE IN ADL FUNCTION — Change in ADL self-performance in last 90 days
   - 0. No change 1. Improved 2. Deteriorated

SECTION F. CONTINENCE IN LAST 14 DAYS

1. CONTINENCE SELF-CONTROL CATEGORIES *(Code for resident performance over all shifts)*
   - 0. CONTINENT — Complete control
   - 1. USUALLY CONTINENT — BLADDER, incontinent episodes once a week or less; BOWEL, less than weekly
   - 2. OCCASIONALLY INCONTINENT — BLADDER, 2+ times a week but not daily; BOWEL, once a week
   - 3. FREQUENTLY INCONTINENT — BLADDER, tended to be incontinent daily, but some control present (e.g., on day shift); BOWEL, 2-3 times a week
   - 4. INCONTINENT — Had inadequate control. BLADDER, multiple daily episodes; BOWEL, all (or almost all) of the time

a.	BOWEL CONTINENCE	Control of bowel movement, with appliance or bowel continence programs, if employed
b.	BLADDER CONTINENCE	Control of urinary bladder function (if dribbles, volume insufficient to soak through underpants), with appliances (e.g., foley) or continence programs, if employed

2. INCONTINENCE RELATED TESTING — *(Skip if resident's bladder continence code equals 0 or 1 AND no catheter is used)*

Resident has been tested for a urinary tract infection	a.
Resident has been checked for presence of a fecal impaction, or there is adequate bowel elimination	b.
NONE OF ABOVE	c.

3. APPLIANCES AND PROGRAMS

Any scheduled toileting plan	a.	Pads/briefs used	f.
External (condom) catheter	b.	Enemas/irrigation	g.
Indwelling catheter	c.	Ostomy	h.
Intermittent catheter	d.	*NONE OF ABOVE*	i.
Did not use toilet room/commode/urinal	e.		

4. CHANGE IN URINARY CONTINENCE — Change in urinary continence/appliances and programs in last 90 days
   - 0. No change 1. Improved 2. Deteriorated

SECTION G. PSYCHOSOCIAL WELL-BEING

1. SENSE OF INITIATIVE/INVOLVEMENT

At ease interacting with others	a.
At ease doing planned or structural activities	b.
At ease doing self-initiated activities	c.
Establishes own goals	d.
Pursues involvement in life of facility (e.g., makes/keeps friends; involved in group activities; responds positively to new activities; assists at religious services)	e.
Accepts invitations into most group activities	f.
NONE OF ABOVE	g.

2. UNSETTLED RELATIONSHIPS

Covert/open conflict with and/or repeated criticism of staff	a.
Unhappy with roommate	b.
Unhappy with residents other than roommate	c.
Openly expresses conflict/anger with family or friends	d.
Absence of personal contact with family/friends	e.
Recent loss of close family member/friend	f.
NONE OF ABOVE	g.

3. PAST ROLES

Strong identification with past roles and life status	a.
Expresses sadness/anger/empty feeling over lost roles/status	b.
NONE OF ABOVE	c.

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SECTION H. MOOD AND BEHAVIOR PATTERNS

1.	SAD OR ANXIOUS MOOD	*(Check all that apply during last 30 days)*	
		VERBAL EXPRESSIONS of DISTRESS by resident (sadness, sense that nothing matters, hopelessness, worthlessness, unrealistic fears, vocal expressions of anxiety or grief)	a.
		DEMONSTRATED (OBSERVABLE) SIGNS of mental DISTRESS	
		— Tearfulness, emotional groaning, sighing, breathlessness	b.
		— Motor agitation such as pacing, hand-wringing or picking	c.
		— Failure to eat or take medications, withdrawal from self-care or leisure activities	d.
		— Pervasive concern with health	e.
		— Recurrent thoughts of death—e.g., believes he/she about to die, have a heart attack	f.
		— Suicidal thoughts/actions	g.
		NONE OF ABOVE	h.
2.	MOOD PERSISTENCE	Sad or anxious mood intrudes on daily life over last 7 days — not easily altered, doesn't "cheer up" 0. No 1. Yes	
3.	PROBLEM BEHAVIOR	*(Code for behavior in last 7 days)* 0. Behavior not exhibited in last 7 days 1. Behavior of this type occurred less than daily 2. Behavior of this type occurred daily or more frequently	
		WANDERING (moved with no rational purpose, seemingly oblivious to needs or safety)	a.
		VERBALLY ABUSIVE (others were threatened, screamed at, cursed at)	b.
		PHYSICALLY ABUSIVE (others were hit, shoved, scratched, sexually abused)	c.
		SOCIALLY INAPPROPRIATE/DISRUPTIVE BEHAVIOR (made disrupting sounds, noisy, screams, self-abusive acts, sexual behavior or disrobing in public, smeared/threw food/feces, hoarding, rummaged through others' belongings)	d.
4.	RESIDENT RESISTS CARE	*(Check all types of resistance that occurred in the last 7 days)*	
		Resisted taking medications/injection	a.
		Resisted ADL assistance	b.
		NONE OF ABOVE	c.
5.	BEHAVIOR MANAGEMENT PROGRAM	Behavior problem has been addressed by clinically developed behavior management program. (Note: Do not include programs that involve only physical restraints or psychotropic medications in this category) 0. No behavior problem 1. Yes, addressed 2. No, not addressed	
6.	CHANGE IN MOOD	Change in mood in last 90 days 0. No change 1. Improved 2. Deteriorated	
7.	CHANGE IN PROBLEM BEHAVIOR	Change in problem behavioral signs in last 90 days 0. No change 1. Improved 2. Deteriorated	

SECTION I. ACTIVITY PURSUIT PATTERNS

1.	TIME AWAKE	*(Check appropriate time periods over last 7 days)* Resident awake all or most of time (i.e., naps no more than one hour per time period) in the:			
		Morning	a.	Evening	c.
		Afternoon	b.	*NONE OF ABOVE*	d.
2.	AVERAGE TIME INVOLVED IN ACTIVITIES	0. Most—more than 2/3 of time 1. Some—1/3 to 2/3 of time		2. Little—less than 1/3 of time 3. None	
3.	PREFERRED ACTIVITY SETTINGS	*(Check all settings in which activities are preferred)*			
		Own room	a.	Outside facility	d.
		Day/activity room	b.	*NONE OF ABOVE*	e.
		Inside NH/off unit	c.		
4.	GENERAL ACTIVITY PREFERENCES (adapted to resident's current abilities)	*(Check all PREFERENCES whether or not activity is currently available to resident)*			
		Cards/other games	a.	Spiritual/religious activities	f.
		Crafts/arts	b.	Trips/shopping	g.
		Exercise/sports	c.	Walking/wheeling outdoors	h.
		Music	d.	Watch TV	i.
		Reading/write	e.	*NONE OF ABOVE*	j.
5.	PREFERS MORE OR DIFFERENT ACTIVITIES	Resident expresses/indicates preference for other activities/choices 0. No 1. Yes			

SECTION J. DISEASE DIAGNOSES

Check only those diseases present that have a relationship to current ADL status, cognitive status, behavior status, medical treatments, or risk of death. (Do not list old/inactive diagnoses.)

1.	DISEASES	*(If none apply, CHECK the NONE OF ABOVE box)*			
		HEART/CIRCULATION		PSYCHIATRIC/MOOD	
		Arteriosclerotic heart disease (ASHD)	a.	Anxiety disorder	o.
		Cardiac dys/rhythmias	b.	Depression	q.
		Congestive heart failure	c.	Manic depressive (bipolar disease)	r.
		Hypertension	d.	SENSORY	
		Hypotension	e.	Cataracts	s.
		Peripheral vascular disease	f.	Glaucoma	t.
		Other cardiovascular disease	g.	OTHER	
		NEUROLOGICAL		Allergies	u.
		Alzheimer's	h.	Anemia	v.
		Dementia other than Alzheimer's	i.	Arthritis	w.
		Aphasia	j.	Cancer	x.
		Cerebrovascular accident (stroke)	k.	Diabetes mellitus	y.
		Multiple sclerosis	l.	Explicit terminal prognosis	z.
		Parkinson's disease	m.	Hypothyroidism	aa.
		PULMONARY		Osteoporosis	bb.
		Emphysema/Asthma/COPD	n.	Seizure disorder	cc.
		Pneumonia	o.	Septicemia	dd.
				Urinary tract infection—in last 30 days	ee.
				NONE OF ABOVE	ff.
2.	OTHER CURRENT DIAGNOSES AND ICD-9 CODES	a. _____			
		b. _____			
		c. _____			
		d. _____			
		e. _____			
		f. _____			

SECTION K. HEALTH CONDITIONS

1.	PROBLEM CONDITIONS	*(Check all problems that are present in last 7 days unless other time frame indicated)*			
		Constipation	a.	Pain—resident complains or shows evidence of pain daily or almost daily	j.
		Diarrhea	b.	Recurrent lung aspirations in last 90 days	k.
		Dizziness/vertigo	c.	Shortness of breath	l.
		Edema	d.	Syncope (fainting)	m.
		Fecal impaction	e.	Vomiting	n.
		Fever	f.	*NONE OF ABOVE*	o.
		Hallucinations delusions	g.		
		Internal bleeding	h.		
		Joint pain	i.		
2.	ACCIDENTS	Fell in past 30 days	a.	Hip fracture in last 180 days	c.
		Fell in past 31-180 days	b.	*NONE OF ABOVE*	d.

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3.	STABILITY OF CONDITIONS	Conditions/diseases make resident's cognitive, ADL, or behavior status unstable—fluctuating, precarious, or deteriorating	a.
		Resident experiencing an acute episode or a flare-up of a recurrent/chronic problem	b.
		NONE OF ABOVE	c.

SECTION L. ORAL/NUTRITIONAL STATUS

1.	ORAL PROBLEMS	Chewing problem	a.
		Swallowing problem	b.
		Mouth pain	c.
		NONE OF ABOVE	d.
2.	HEIGHT AND WEIGHT	*Record height (a.) in inches and weight (b.) in pounds. Weight based on most recent status in last 30 days; measure weight consistently in accord with standard facility practice—e.g., in a.m. after voiding, before meal, with shoes off, and in nightclothes.* HT (in.) a. WT (lb.) b.	
		c. Weight loss (i.e., 5%+ in last 30 days; or 10% in last 180 days) 0. No 1. Yes	c.
3.	NUTRITIONAL PROBLEMS	Complains about the taste of many foods a. Insufficient fluid; dehydrated b. Did NOT consume all/almost all liquids provided during last 3 days c. Regular complaint of hunger d. Leaves 25%+ food uneaten at most meals e. *NONE OF ABOVE* f.	
4.	NUTRITIONAL APPROACHES	Parenteral/IV a. Feeding tube b. Mechanically altered diet c. Syringe (oral feeding) d. Therapeutic diet e. Dietary supplement between meals f. Plate guard, stabilized built-up utensil, etc. g. *NONE OF ABOVE* h.	

SECTION M. ORAL/DENTAL STATUS

1.	ORAL STATUS AND DISEASE PREVENTION	Debris (soft, easily movable substances) present in mouth prior to going to bed at night	a.
		Has dentures and/or removable bridge	b.
		Some/all natural teeth lost—does not have or does not use dentures (or partial plates)	c.
		Broken, loose, or carious teeth	d.
		Inflamed gums (gingiva); swollen or bleeding gums; oral abscesses, ulcers or rashes	e.
		Daily cleaning of teeth/dentures	f.
		NONE OF ABOVE	g.

SECTION N. SKIN CONDITION

1.	STASIS ULCER	(open lesion caused by poor venous circulation to lower extremities) 0. No 1. Yes	
2.	PRESSURE ULCERS	*(Code for highest stage of pressure ulcer)* 0. No pressure ulcers 1. Stage 1 A persistent area of skin redness (without a break in the skin) that does not disappear when pressure is relieved 2. Stage 2 A partial thickness loss of skin layers that presents clinically as an abrasion, blister, or shallow crater 3. Stage 3 A full thickness of skin is lost, exposing the subcutaneous tissues—presents as a deep crater with or without undermining adjacent tissue 4. Stage 4 A full thickness of skin and subcutaneous tissue is lost, exposing muscle and/or bone	
3.	HISTORY OF RESOLVED/ CURED PRESSURE ULCERS	Resident has had a pressure ulcer that was resolved/cured in last 90 days 0. No 1. Yes	
4.	SKIN PROBLEMS/ CARE	Open lesions other than stasis or pressure ulcers (e.g., cuts)	a.
		Skin desensitized to pain, pressure, discomfort	b.
		Protective/preventive skin care	c.
		Turning/repositioning program	d.
		Pressure relieving beds, bed/chair pads (e.g., egg crate pads)	e.
		Wound care/treatment (e.g., pressure ulcer care, surgical wound)	f.
		Other skin care/treatment	g.
		NONE OF ABOVE	h.

SECTION O. MEDICATION USE

1.	NUMBER OF MEDICATIONS	*(Record the number of different medications used in the last 7 days; enter "0" if none used)*	
2.	NEW MEDICATIONS	Resident has received new medications during the last 90 days 0. No 1. Yes	
3.	INJECTIONS	*(Record the number of days injections of any type received during the last 7 days)*	
4.	DAYS RECEIVED THE FOLLOWING MEDICATION	*(Record the number of days during last 7 days; enter "0" if not used; enter "1" if long-acting meds. used less than weekly)* Antipsychotics Antianxiety/hypnotics Antidepressants	a. b. c.
5.	PREVIOUS MEDICATION RESULTS	*(SKIP this question if resident currently receiving antipsychotics, antidepressants, or antianxiety/hypnotics—otherwise code correct response for last 90 days)* Resident has previously received psychoactive medications for a mood or behavior problem, and these medications were effective (without undue adverse consequences) 0. No, drugs not used 1. Drugs were effective 2. Drugs were not effective 3. Drug effectiveness unknown	

SECTION P. SPECIAL TREATMENT AND PROCEDURES

1.	SPECIAL TREATMENTS AND PROCEDURES	SPECIAL CARE—*Check treatments received during the last 14 days* Chemotherapy a. Radiation b. Dialysis c. Suctioning d. Trach. care e. IV meds f. Transfusions g. O_2 h. Other _____ i. *NONE OF ABOVE* j.	
		THERAPIES—*Record the number of days each of the following therapies was administered (for at least 10 minutes during a day) in the last 7 days:* Speech—language pathology and audiology services Occupational therapy Physical therapy Psychological therapy (any licensed professional) Respiratory therapy	
2.	ABNORMAL LAB VALUES	Has the resident had any abnormal lab values during the last 90-days? 0. No 1. Yes 2. No tests performed	
3.	DEVICES AND RESTRAINTS	*Use the following codes for last 7 days:* 0. Not used 1. Used less than daily 2. Used daily	
		Bed rails	a.
		Trunk restraint	b.
		Limb restraint	c.
		Chair prevents rising	d.

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SECTION Q: RESIDENT CLASSIFICATION

1. Payment Source
   - Private [ ]
   - Medicare [ ]
   - Medicaid [ ]
   - Other _____

2. Requires Basic Nursing Services (See N.J.A.C. 10:63-2A.1(f).) [ ]

3. Requires Additional Nursing Services (See N.J.A.C. 10:63-2A.1(f)4.) as below: [ ]

   i. Tracheostomy [a]

   ii. Use of Respirator [b]

   iii. Head Trauma Stimulation/ advanced neuromuscular/ orthopedic care [c]

   iv. Intravenous Therapy [d]

   v. Wound Care [e]

   vi. Oxygen Therapy [f]

   vii. Nasogastric tube feeding and/or Gastrostomy [g]

_____ _____ _____
Signature of RN Coordinator License Number Date

Signatures of Others Who Completed Part of the Assessment:

_____ _____
Name Title

_____ _____
Name Title

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Resident's Name:	Medical Record No.:

Signature of RN Assessment Coordinator: _____

RESIDENT ASSESSMENT PROTOCOL SUMMARY

1. For each RAP area triggered, show whether you are proceeding with a care plan intervention.
2. Document problems, complications, and risk factors; the need for referral to appropriate health professionals; and the reasons for deciding to proceed or not to proceed to care planning. Documentation may appear anywhere the facility routinely keeps such information, such as problem sheets or nurses' progress notes.
3. Show location of this information.

RAP Problem Area	Care Planning Decision		Location of Information
	Proceed	Not Proceed	
DELIRIUM	☐	☐	
COGNITIVE LOSS/DEMENTIA	☐	☐	
VISUAL FUNCTION	☐	☐	
COMMUNICATION	☐	☐	
ADL FUNCTIONAL/ REHABILITATION POTENTIAL	☐	☐	
URINARY INCONTINENCE AND INDWELLING CATHETER	☐	☐	
PSYCHOSOCIAL WELL-BEING	☐	☐	
MOOD STATE	☐	☐	
BEHAVIOR PROBLEM	☐	☐	
ACTIVITIES	☐	☐	
FALLS	☐	☐	
NUTRITIONAL STATUS	☐	☐	
FEEDING TUBES	☐	☐	
DEHYDRATION/FLUID MAINTENANCE	☐	☐	
DENTAL CARE	☐	☐	
PRESSURE ULCERS	☐	☐	
PSYCHOTROPIC DRUG USE	☐	☐	
PHYSICAL RESTRAINTS	☐	☐	

August 15, 1990

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RESIDENT ASSESSMENT PROTOCOL TRIGGER LEGEND

LEGEND:
● Automatic Trigger—Go directly to RAP Instructions
▲ Potential Trigger—Go to RAP Instructions for more detailed trigger definitions

Instructions: Match MDS Item codes with trigger codes below. Proceed to RAP Instructions as indicated by symbol. Circle all RAPs that are "triggered," based on your review.

MDS Item	Code	Delirium	Cognitive Loss/Dementia	Visual Function	Communication	ADL Functional/Rehabilitation Potential	Urinary Incontinence and Indwelling Catheter	Psychosocial Well Being	Mood State	Behavior Problem	Activities	Falls	Nutritional Status	Feeding Tubes	Dehydration/Fluid Maintenance	Dental Care	Pressure Ulcers	Psychotropic Drug Use	Physical Restraints
B2 a or b	1		▲																
B3 a,b,c,d	fewer than 3 ✓		▲																
B4	0,1,2				▲														
	1,2,3		▲																
B5 a,b,c,d,e	any ✓	●																	
B6	2	●													▲				
C4	2,3				▲														
C5	1,2,3		▲																
	2,3				▲	▲													
C6	2	●																	
D1	1,2,3			●															
D2 a	✓			●															
E1 a,b,c,d,e,l	3,4					▲													
E3 a	3,4					▲													
E4 a,b,d,e,h,j	any ✓										▲								
E7 a,b	any ✓					▲													
E8	2														▲				
F1 b	2,3,4						▲												
F3 b,c,d,f	any ✓						▲												
G2 a,b,c,d	any ✓							●											
G3 b	✓							●											
H1 a,b,c,d,e,f,g	any ✓								●										
H1 d	✓														▲				
H2	1								●										
H3 a,b,c or d	1,2									●									
H6	2	▲																	
H7	2	●																	
I2	0,2,3										▲								
I5	1										●								
J1 ee	✓														▲				
J2	260, 261, 262												●						
	263, 263.0, 263.1												●						
	263.2, 263.8, 263.9												●						
	276.5														▲				
	291.0, 292.81	●																	
	293.0, 293.1	●																	
K1 b,c,f,h,n	any ✓														▲				
K2 a,b	any ✓											●							
L1 c	✓															●			
L2 c	1												●		▲				
L3 a,d,e	any ✓												●						
L3 b	✓														●				
L3 c,e	✓														▲				
L4 a,b	any ✓														▲				
L4 a,c,d,e	any ✓												●						
L4 b	✓													●					
M1 a,c,d,e	any ✓															●			
M1 f	not ✓															●			
N2	1,2,3,4												●				●		
N4 c,d,e,f,g	none ✓																▲		
O4 a,b,c	1-7									▲		▲						▲	
[illegible]	[illegible]									▲									●

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APPENDIX E

GUIDELINES FOR THE USE OF RESTRAINTS

A. Written policies and procedures for use of restraints should address at least the following:
   1. Protocol for the use of alternatives to restraints, such as staff or environmental interventions, structured activities, or behavior management. Alternatives should be utilized whenever possible to avoid the use of restraints;
   2. Protocol for the use and documentation of a progressive range of restraining procedures from the least restrictive to the most restrictive;
   3. A delineation of indications for use, which should be limited to:
      i. Prevention of imminent harm to the resident or other persons when other means of control are not effective or appropriate; or
      ii. Prevention of serious disruption of treatment or significant damage to the physical environment;
   4. Contraindications for use, which should include, at least, clinical contraindications, convenience of staff, or discipline of the resident;
   5. Identification of restraints which may be used in the facility, which should be limited to methods and mechanical devices that are specifically manufactured for the purpose of physical restraint. Locked restraints, double restraints on the same body part, four-point restraints, and confinement in a locked or barricaded room should not be permitted;
   6. Protocol for informing the resident and obtaining consent when clinically feasible, and documenting the consent in the resident's record;
   7. Protocol for notifying the family or guardian, obtaining consent if the resident is unable to give consent, and documenting the consent in the resident's record;
   8. Protocol for removal of restraints when goals have been accomplished.

B. Procedures for the application of restraints in an emergency should include at least the following:
   1. Licensed nursing staff only should initiate the use of emergency restraints;
   2. The application of restraints should begin with the least restrictive alternative that is clinically feasible;
   3. Emergency restraints should be used only when the safety of the resident or others is endangered, or there is imminent risk that the resident will cause substantial damage to the physical environment;
   4. The facility should notify the attending physician or another designated physician and request an order within two hours;
   5. The facility should obtain a physician's order within eight hours;
   6. Licensed nursing personnel should evaluate and document the physical and mental condition of the resident in emergency restraints at least every two hours;
   7. There should be an assessment of the resident by a registered professional nurse within 24 hours; and
   8. Continuation of emergency restraints should occur only upon physician orders, which should be renewed every 24 hours to a maximum of seven days.

C. The facility should continuously attempt to remediate the resident's condition to eliminate or lessen the need for restraints. If the use of restraints is needed beyond one week, at least the following should be done:
   1. The need for the continued use of restraints should be implemented only as part of the physician's medical care plan; and
   2. Every resident in restraints should be assessed by a registered professional nurse at least every 48 hours for the continued use of restraints; and
   3. After remediation attempts, there should be an interdisciplinary review of the record of any resident whose assessment indicates the need for continued use of restraints. This review should occur within thirty days of the initiation of the use of restraints.

D. Continuation of the use of restraints beyond 30 days should occur only upon written approval of the committee or its equivalent, and should include at least the following actions:
   1. The registered professional nurse should assess the need for continued restraints at least weekly; and
   2. An interdisciplinary review should be conducted at least every 30 days to approve the continued use of restraints.

E. The facility should have written policies and procedures to ensure that interventions while a resident is restrained, except as indicated in F below, are performed by nursing personnel in accordance with nursing scope of practice as set forth by the New Jersey Board of Nursing. The policies and procedures should include at least the following:
   1. Periodic visual observation, which should be performed with the following frequency:
      i. Continuously, if clinically indicated by the resident's condition; or
      ii. At least every 15 minutes while the resident's condition is unstable; and thereafter at least every one to two hours, based upon an assessment of the resident's condition.
   2. Release of restraints at least once every two hours in order to:
      i. Assess circulation;
      ii. Perform skin care;
      iii. Provide an opportunity for exercise or perform range of motion procedures for a minimum of five minutes per restrained limb and repositioning; and
      iv. Assess the need for toileting and assist with toileting or incontinence care.
   3. Ensuring adequate fluid intake;
   4. Ensuring adequate nutrition through meals at regular intervals, snacks, and assistance with feeding if needed;
   5. Assistance with bathing as required at least daily; and
   6. Ambulation at least once every two hours, if clinically feasible.

F. The facility should have written policies and procedures for interventions by nursing personnel for residents in restraints for overnight sleeping. These policies and procedures should include at least the following and should be implemented in accordance with nursing scope of practice, as set forth by the New Jersey Board of Nursing;
   1. Visual observation based on resident's condition, occurring at least every one to two hours;
   2. Administration of fluids as required;
   3. Toileting as required;
   4. Release of restraints at least once every two hours for repositioning and skin care, if clinically indicated; and
   5. Prohibition of any method of restraint which places the resident at clinical risk for circulatory obstruction.

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry Kozek, Secretary.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1994-269.

A **public hearing** concerning these proposed amendments will be held on Monday, May 23, 1994, at 2:00 P.M. at the following address:

Room 804, Eighth Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by June 1, 1994, to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, NJ 08625-0360
609-292-4029

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

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For example, the proposed cefadroxil 500 mg and 1000 mg capsules could be used as a less expensive substitute for Duricef, a branded prescription medicine. Similary, the proposed levobunolol HCl 0.25% and 0.5% ophthalmic solution, could be substituted for the more costly branded product, Betagan.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be subsituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on these proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by this proposal because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., specifically, over 1,500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

Alprazolam tabs 0.25mg, 0.5mg, 1mg, 2mg	Zenith
Baclofen tabs 10, 20mg	Royce
Bellergal-S tablets substitute	Lini
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Merck
Cefaclor capsules 250mg, 500mg	Lederle
Cefaclor susp 125mg/5ml, 187mg/5ml	Lederle
Cefaclor susp 250mg/5ml, 375mg/5ml	Lederle
Cefadroxil capsules 500mg	Zenith
Cefadroxil tablets 1000mg	Zenith
Cimetadine 300mg/2ml injection	Dupont Pharma
Cimetadine 300mg/5ml oral solution	Dupont Pharma
Cimetadine tabs 200mg, 300mg, 400mg, 800mg	Dupont Pharma
Clobetasol propionate 0.05% cream	Copley
Clobetasol propionate 0.05% ointment	Copley
Demulen 1/35, 1/50 tablets substitute	Watson
Diltiazem CD caps 60mg, 90mg, 120mg	Blue Ridge
Diltiazem tabs 30mg, 60mg, 90mg, 120mg	Mutual
Dipivefrin HCl ophth soln 0.1%	Pacific Pharma
Glipizide tablets 5mg, 10mg	Dupont Pharma
Guanabenz acetate tablets 4mg, 8mg	Watson
Guanabenz acetate tabs 4mg, 8mg	Zenith
Hydroxyzine HCl 10mg, 25mg, 50mg tabs	Royce
Hyoscyamine sulfate ER tabs 0.375mg	Contract
Indapamide tabs 2.5mg	Zenith
Isoniazid 100mg, 300mg tabs	Barr
Levobunolol HCl 0.25%, 0.5% ophth soln	Bausch & Lomb
Levobunolol HCl ophth soln 0.5%	Pacific Pharma
Materna vitamin tabs substitute	Anabolic
Metoprolol tartrate tabs 50mg, 100mg	Bristol
Metoprolol tartrate tabs 50mg, 100mg	Copley
Naproxen sodium tabs 275mg, 550mg	Purepac
Nordette tabs substitute	Syntex
Oxycodone/APAP tablets	Dupont Merck
Oxycodone/ASA tablets	Dupont Merck
Pindolol tabs 5mg, 10mg	Novopharm
Piroxicam caps 10mg, 20mg	Novopharm
Piroxicam caps 10mg, 20mg	Zenith
Prednisone oral soln 5mg/5ml	Roxane
Prenate 90 vitamin tabs substitute	Lini
Rynatan tablets substitute	Amide
Sodium fluoride tablets 0.5mg, 1mg	Amide
Sucralfate tablets 1mg	Blue Ridge
Sulfadiazine tabs 500mg	Eon
Terfenadine tabs 60mg	Blue Ridge
Terfenadine/pseudoephrine tabs 60/120	Blue Ridge
Verapamil ER tabs 180mg, 240mg	BASF/Knoll
Verapamil ER tabs 180mg	Baker Norton
Yohimbine tabs 5.4mg	Royce

(a)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
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New Jersey Department of Health
Room 501, CN 360
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609-292-4029

The agency proposal follows:

Summary

The List of Interchangeable Drug Products is a generic formulary, or list of acceptable generic drugs and their manufacturers which pharmacists must use in place of brand-name prescription medicines, passing on the resultant savings to consumers.

The Drug Utilization Review Council is mandated by law to ascertain whether every manufacturer included in the List of Interchangeable Drug Products meets all Federal and State standards, specifically to include compliance with the U.S. Food and Drug Administration's (FDA's) Current Good Manufacturing Practices (CGMP) regulations.

At a previous meeting, the Drug Utilization Review Council agreed that the appropriate products of those manufacturers who do not meet Current Good Manufacturing Practices should be proposed for deletion from the List of Interchangeable Drug Products.

Social Impact

There would be no social impact of the proposed deletions on prescribers, pharmacies or patients, because in all instances other generic manufacturers who continue to meet the FDA's CGMPs will remain on

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the List of Interchangeable Drug Products. There is no evidence nor allegations that the failure of these manufacturers to meet CGMPs has resulted in products being marketed that would be detrimental to the public's health. The main impact of these proposed amendments would fall on the non-compliant manufacturers.

Economic Impact

A negative economic impact would primarily affect the involved manufacturers, who would lose sales in New Jersey (of a magnitude not determinable) because their products would no longer be acceptable as legal substitutes for brand-name medications. To the extent that some of the medications from the involved manufacturers cannot be returned to suppliers for credit, a secondary impact would also be felt by certain pharmacies that stocked medications by these companies.

Regulatory Flexibility Analysis

The proposed amendments, which delete specific medications, impose no recordkeeping or recording requirements; however, the amendments do impose compliance requirements on pharmacies and those licensed to prescribe medications, in that they may no longer consider deleted medications as generic alternatives when prescribing or when dispensing prescriptions. Some members of the regulated group are small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. However, the Department does not consider it appropriate to make any differential requirement for small businesses, due to an overriding concern for public health and safety, which requires consistency in the application of standards.

Full text of the proposed amendments follows:

The following products are proposed for **deletion** from the List of Interchangeable Drug Products (**Agency Note:** The following products are grouped by manufacturer, in alphabetical order):

Choline magnesium salicylate	Tablet 500mg Able
Choline magnesium salicylate	Tablet 750mg Able
Choline magnesium salicylate	Tablet 1g Able
Chlorazepate dipotassium	Tablet 3.75mg Able
Chlorazepate dipotassium	Tablet 7.5mg Able
Chlorazepate dipotassium	Tablet 15mg Able
Hydrocortison acetate	Suppository 25mg Able
Phenazopyridine HCl	Tablet 100mg Able
Phenazopyridine HCl	Tablet 200mg Able
Salsalate	Tablet 750mg Able
Salsalate	Tablet 500mg Able
Trimethobenzamide HCl	Suppository 200mg Able
Trimethobenzamide HCl	Suppository 100mg Able
Antipyrine 54mg, benzocaine 14mg	Solution Per ml Ambix
Hydrocortisone	Cream 2.5% Ambix
Hydrocortisone	Cream 1% Ambix
Hydrocortisone	Ointment 1% Ambix
Albuterol sulfate	Tablet 2mg Biocraft
Albuterol sulfate	Tablet 4mg Biocraft
Amiloride HCl, hydrochlorothiazide	Tablet 5/50mg Biocraft
Amitriptyline	Tablet 25mg Biocraft
Amitriptyline	Tablet 50mg Biocraft
Amitriptyline	Tablet 75mg Biocraft
Amitriptyline	Tablet 100mg Biocraft
Amitriptyline	Tablet 10mg Biocraft
Amoxicillin as the trihydrate	Tablet, chewable 250mg Biocraft
Amoxicillin as the trihydrate	Capsule 500mg Biocraft
Amoxicillin as the trihydrate	Suspension 250mg/5ml Biocraft
Amoxicillin as the trihydrate	Capsule 250mg Biocraft
Amoxicillin as the trihydrate	Suspension 125mg/5ml Biocraft
Ampicillin/ampicillin trihydrate	For suspension 250mg/5ml Biocraft
Ampicillin/ampicillin trihydrate	Capsule 250mg Biocraft
Ampicillin/ampicillin trihydrate	For suspension 125mg/5ml Biocraft
Ampicillin/ampicillin trihydrate	Capsule 500mg Biocraft
Baclofen	Tablet 20mg Biocraft
Baclofen	Tablet 10mg Biocraft
Cephalexin	Tablet 250mg Biocraft
Cephalexin	Suspension 125mg/5ml Biocraft
Cephalexin	Suspension 250mg/5ml Biocraft
Cephalexin	Tablet 500mg Biocraft
Cephalexin	Capsule 500mg Biocraft
Cephalexin	Capsule 250mg Biocraft
Cephradine	For solution 250mg/5ml Biocraft
Cephradine	Capsule 500mg Biocraft
Cephradine	Capsule 250mg Biocraft
Cephradine	For solution 125mg/5ml Biocraft
Cinoxacin	Capsule 250mg Biocraft
Cinoxacin	Capsule 500mg Biocraft
Cloxacillin sodium monohydrate	Capsule 250mg Biocraft
Cloxacillin sodium monohydrate	Capsule 500mg Biocraft
Cloxacillin sodium monohydrate	Syrup 125mg/5ml Biocraft
Dicloxacillin sodium monohydrate	Capsule 500mg Biocraft
Dicloxacillin sodium monohydrate	Capsule 250mg Biocraft
Disopyramide phosphate	Capsule 100mg Biocraft
Disopyramide phosphate	Capsule 150mg Biocraft
Hydrocortisone	Cream 1% Biocraft
Imipramine HCl	Tablet 50mg Biocraft
Imipramine HCl	Tablet 10mg Biocraft
Imipramine HCl	Tablet 25mg Biocraft
Ketoprofen	Capsule 75mg Biocraft
Ketoprofen	Capsule 50mg Biocraft
Ketoprofen	Capsule 25mg Biocraft
Metaproterenol	Tablet 10mg Biocraft
Metaproterenol	Syrup 10mg/5ml Biocraft
Metaproterenol	Tablet 20mg Biocraft
Metoclopramide	Tablet 10mg Biocraft
Metoclopramide	Syrup 5mg/5ml Biocraft
Minocycline HCl	Capsule 50mg Biocraft
Minocycline HCl	Capsule 100mg Biocraft
Nystatin	Suspension 100,000U/ml Biocraft
Penicillin G potassium	Tablet 200,000U Biocraft
Penicillin G potassium	Tablet 400,000U Biocraft
Penicillin VK	Tablet 250mg Biocraft
Penicillin VK	For solution 125mg/5ml Biocraft
Penicillin VK	Tablet 500mg Biocraft
Penicillin VK	For solution 250mg/5ml Biocraft
Sulfamethoxazole/trimethoprim	Suspension 200/40mg per 5ml Biocraft
Sulfamethoxazole/trimethoprim	Tablet 800mg/160mg Biocraft
Sulfamethoxazole/trimethoprim	Tablet 400mg/80mg Biocraft
Trimethoprim	Tablet 200mg Biocraft
Trimethoprim	Tablet 100mg Biocraft
Trimethobenzamide HCl	Suppository 200mg Biopharm
Trimethobenzamide HCl	Suppository 100mg Biopharm
Cyproheptadine HCl	Tablet 4mg Camall
Hydrochlorothiazide	Tablet 25mg Camall
Hydrochlorothiazide	Tablet 50mg Camall
Meclizine HCl	Tabet 12.5mg Camall
Meclizine HCl	Tabet 25mg Camall
Amantadine HCl	Capsule 100mg Chase
Clofibrate	Capsule 500mg Chase
Nifedipine	Capsule 20mg Chase
Nifedipine	Capsule 10mg Chase
Valproic acid	Capsule 250mg Chase
Acetaminophen, butalbital, caffeine	Tablet 325/50/40mg Halsey
Acetaminophen, codeine (#2)	Tablet 300/15mg Halsey
Acetaminophen, codeine (#3)	Tablet 300/30mg Halsey
Acetaminophen, codeine (#4)	Tablet 300/60mg Halsey
Aspirin, codeine	Tablet (#4) 60mg Halsey
Aspirin, codeine	Tablet (#2) 15mg Halsey
Aspirin, codeine	Tablet (#3) 30mg Halsey
Belladonna alkaloids, phenobarbital	Elixir Halsey
Belladonna alkaloids, phenobarbital	Tablet Halsey

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Butabarbital sodium	Tablet 30mg Halsey
Butabarbital sodium	Tablet 15mg Halsey
Chlordiazepoxide HCl	Capsule 10mg Halsey
Chlordiazepoxide HCl	Capsule 25mg Halsey
Chlordiazepoxide HCl	Capsule 5mg Halsey
Chlorpropamide	Tablet 250mg Halsey
Chlorpropamide	Tablet 100mg Halsey
Codeine phosphate 10mg, guaifenesin 100mg	Liquid Per 5ml Halsey
Cyproheptadine HCl	Tablet 4mg Halsey
Cyproheptadine HCl	Syrup 2mg/5ml Halsey
Digoxin	Tablet 0.125mg Halsey
Digoxin	Tablet 0.25mg Halsey
Diphenhydramine HCl	Capsule 50mg Halsey
Diphenhydramine HCl	Elixir 12.5mg/5ml Halsey
Diphenoxylate HCl, atropine sulfate	Tablet 2.5/0.025mg Halsey
Doxycycline hyclate	Capsule 100mg Halsey
Doxycycline hyclate	Capsule 50mg Halsey
Ephedrine sulfate 6.25mg, hydroxyzine HCL 2.5mg, theophylline 32.5mg	Liquid Per 5ml Halsey
Guaifenesin 100mg, codeine phosphate 10mg, pseudoephedrine HCl 30mg	Liquid Per 5ml Halsey
Homatropine MBr 1.5mg, hydrocodone bitartrate 5mg	Syrup Per 5ml Halsey
Hydrochlorothiazide	Tablet 50mg Halsey
Hydrochlorothiazide	Tablet 25mg Halsey
Hydrocodone bitartrate 2.5mg, phenylpropanolamine HCl 12.5mg	Syrup Per 5ml Halsey
Hydrocodone bitartrate 5mg, acetaminophen 500mg	Tablet Per tablet Halsey
Hydrocodone bitartrate 5mg, phenylpropanolamine HCl 25mg	Syrup Per 5ml Halsey
Hydromorphone HCl	Tablet 2mg Halsey
Hydromorphone HCl	Tablet 3mg Halsey
Hydromorphone HCl	Tablet 4mg Halsey
Hydromorphone HCl	Tablet 1mg Halsey
Indomethacin	Capsule 25mg Halsey
Indomethacin	Capsule 50mg Halsey
Lorazepam	Tablet 1mg Halsey
Lorazepam	Tablet 0.5mg Halsey
Lorazepam	Tablet 2mg Halsey
Meperidine	Tablet 50mg Halsey
Meperidine	Tablet 100mg Halsey
Meprobamate	Tablet 400mg Halsey
Methyldopa	Tablet 250mg Halsey
Methyldopa	Tablet 125mg Halsey
Methyldopa	Tablet 500mg Halsey
Metoclopramide	Tablet 10mg Halsey
Oxycodone HCl 5mg, acetaminophen 500mg	Capsule Per capsule Halsey
Oxycodone HCl, acetaminophen	Tablet 5/325mg Halsey
Phenylpropanolamine HCl 20mg, phenylephrine HCl 5mg, guaifenesin 100mg	Liquid Per 5ml Halsey
Potassium chloride	Liquid 10% (20mEq/15ml) Halsey
Promethazine HCl	Syrup 6.25mg/5ml Halsey
Promethazine HCl 6.25mg, codeine phosphate 10mg	Syrup Per 5ml Halsey
Promethazine HCl 6.25mg, dextromethorphan HBr 15mg	Syrup Per 5ml Halsey
Promethazine HCl 6.25mg, phenylephrine HCl 5mg	Syrup Per 5ml Halsey
Promethazine HCl 6.25mg, phenylephrine HCl 5mg, codeine phosphate 10mg	Syrup Per 5ml Halsey
Tetracycline HCl	Capsule 500mg Halsey
Theophylline	Elixir 80mg/15ml Halsey
Theophylline 150mg, guaifenesin 90mg	Liquid Per 15ml Halsey
Sulfasalazine	Tablet 0.5g Lederle
Carbinoxamine maleate 2mg, dextromethorphan HBr 4mg, pseudoephedrine HCl 25mg	Oral drops Per ml
Carbinoxamine maleate 4mg, pseudoephedrine HCl 60mg	Syrup Per 5ml
Carbinoxamine maleate 4mg, dextromethorphan HBr 15mg, pseudoephedrine HCl 60 mg	Syrup Per 5ml
Chlorpheniramine 8mg, phenylephrine 25mg, pyrilamine 25mg (each as the tannate)	Tablet Per tablet
Guaifenesin 200mg, hydrocodone bitartrate 5mg, pseudoephedrine HCl 60mg	Syrup Per 5ml
Hydrocodone bitartrate 5mg, acetaminophen 500mg	Tablet Per tablet
Hydrocodone bitartrate 5mg, pseudoephedrine HCl 60mg	Syrup Per 5ml
Ibuprofen	Tablet 600mg
Ibuprofen	Tablet 800mg
Ibuprofen	Tablet 400mg
Naldecon Pediatric substitute	Drops Per ml
Naldecon Pediatric substitute	Syrup Per 5ml
Naldecon substitute	Syrup Per 5ml
Phenylpropanolamine HCl 20mg, phenylephrine HCl 5mg, guaifenesin 100mg	Liquid Per 5ml
Potassium chloride	Liquid 10% (20mEq/15ml)
Potassium chloride	Liquid 20% (20mEq/15ml)
Potassium gluconate	Elixir 10% (20mEq/15ml)
Potassium gluconate 15mEq, potassium citrate 5mEq	Solution 20mEq K/15ml
Pseudophedrine HCl 30mg, codeine phosphate 10mg, guaifenesin 100mg	Syrup Per 5ml
Pseudophedrine HCl 60mg, codeine phosphate 20mg, guaifenesin 200mg	Syrup Per 5ml
Quinine sulfate	Tablet 260mg
Acetaminophen, dichloralphenazone, isometh eptene mucate	Capsule 325/100/65 mg Nutripharm
Chlordiazepoxide HCl	Capsule 10mg Richlyn
Hydralazine HCl	Tablet 10mg Richlyn
Hydrochlorothiazide	Tablet 100mg Richlyn
Meprobamate	Tablet 200mg Richlyn
Meprobamate	Tablet 400mg Richlyn
Methocarbamol	Tablet 750mg Richlyn
Methocarbamol	Tablet 500mg Richlyn
Ergoloid mesylates	Tablet, SL 1mg Sandoz
Albuterol sulfate	Tablet 4mg Sidmak
Albuterol sulfate	Tablet 2mg Sidmak
Amitriptyline	Tablet 75mg Sidmak
Amitriptyline	Tablet 25mg Sidmak
Amitriptyline	Tablet 50mg Sidmak
Amitriptyline	Tablet 10mg Sidmak
Amitriptyline	Tablet 150mg Sidmak
Amitriptyline	Tablet 100mg Sidmak
Benztropine mesylate	Tablet 0.5mg Sidmak
Benztropine mesylate	Tablet 1mg Sidmak
Benztropine mesylate	Tablet 2mg Sidmak
Bethanechol CL	Tablet 5mg Sidmak
Bethanechol CL	Tablet 10mg Sidmak
Bethanechol CL	Tablet 50mg Sidmak
Bethanechol CL	Tablet 25mg Sidmak
Chlorpropamide	Tablet 250mg Sidmak
Chlorpropamide	Tablet 100mg Sidmak
Choline magnesium salicylate	Tablet 750mg Sidmak
Choline magnesium salicylate	Tablet 1g Sidmak
Choline magnesium salicylate	Tablet 500mg Sidmak
Cyproheptadine HCl	Tablet 4mg Sidmak
Desipramine HCl	Tablet 50mg Sidmak
Desipramine HCl	Tablet 25mg Sidmak
Desipramine HCl	Tablet 75mg Sidmak
Dipyridamole	Tablet 50mg Sidmak
Dipyridamole	Tablet 25mg Sidmak
Dipyridamole	Tablet 75mg Sidmak
Doxycycline hyclate	Capsule 100mg Sidmak
Griseofulvin ultramicrosize	Tablet 330mg Sidmak
Griseofulvin ultramicrosize	Tablet 165mg Sidmak
Hydralazine HCl	Tablet 25mg Sidmak
Hydralazine HCl	Tablet 100mg Sidmak
Hydralazine HCl	Tablet 50mg Sidmak
Hydralazine HCl	Tablet 10mg Sidmak
Hydroxyzine HCl	Tablet 10mg Sidmak
Hydroxyzine HCl	Tablet 50mg Sidmak
Hydroxyzine HCl	Tablet 25mg Sidmak
Ibuprofen	Tablet 600mg Sidmak
Ibuprofen	Tablet 400mg Sidmak
Ibuprofen	Tablet 800mg Sidmak
Indomethacin	Capsule 25mg Sidmak
Indomethacin	Capsule 50mg Sidmak
Meclizine HCl	Tablet 25mg Sidmak
Meclizine HCl	Tablet 12.5mg Sidmak
Methyldopa	Tablet 125mg Sidmak
Methyldopa	Tablet 500mg Sidmak
Methyldopa	Tablet 250mg Sidmak

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Metronidazole	Tablet 500mg Sidmak
Metronidazole	Tablet 250mg Sidmak
Nystatin	Tablet, vaginal, 100,000U Sidmak
Oxybutynin CL	Tablet 5mg Sidmak
Procainamide modified release	Tablet, SR 250mg Sidmak
Procainamide modified release	Tablet, SR 500mg Sidmak
Propranolol HCl	Tablet 80mg Sidmak
Propranolol HCl	Tablet 20mg Sidmak
Propranolol HCl	Tablet 40mg Sidmak
Propranolol HCl	Tablet 60mg Sidmak
Propranolol HCl	Tablet 90mg Sidmak
Propranolol HCl	Tablet 10mg Sidmak
Propranolol HCl, hydrochlorothiazide	Tablet 40/25mg Sidmak
Propranolol HCl, hydrochlorothiazide	Tablet 80/25mg Sidmak
Salsalate	Tablet 750mg Sidmak
Salsalate	Tablet 500mg Sidmak
Sulfamethoxazole/trimethoprim	Tablet 800mg/160mg Sidmak
Sulfamethoxazole/trimethoprim	Tablet 400mg/80mg Sidmak
Theophylline	Tablet 300mg Sidmak
Theophylline	Tablet 450mg Sidmak
Theophylline	Tablet 200mg Sidmak
Theophylline	Tablet 100mg Sidmak
Trazodone HCl	Tablet 50mg Sidmak
Trazodone HCl	Tablet 100mg Sidmak
Trazodone HCl	Tablet 150mg Sidmak
Verapamil HCl	Tablet 120mg Sidmak
Verapamil HCl	Tablet 80mg Sidmak

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NOTES

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RULE ADOPTIONS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Charter Conversions

Adopted Amendments: N.J.A.C. 3:1-2.25 and 2.26; 3:6-8.2 and 8.3.

Adopted New Rules: N.J.A.C. 3:6-17.

Proposed: February 18, 1994 at 26 N.J.R. 286(a).
Adopted: March 28, 1994 by Elizabeth Randall, Commissioner, Department of Banking.
Filed: April 4, 1994 as R.1994 d.208, **without change.**
Authority: N.J.S.A. 17:16M-9 and 17:9A-17.1 Note.
Effective Date: May 2, 1994.
Expiration Dates: January 4, 1996, N.J.A.C. 3:1;
March 1, 1996, N.J.A.C. 3:6.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

3:1-2.25 Fees, banks and savings banks
(a) A bank or savings bank shall pay to the Commissioner for use of the State the following fees:
1.-9. (No change.)
10. For filing an application for conversion:
i.-ii. (No change.)
iii. From a savings bank to a bank..... $10,000
iv. From a bank to a savings bank..... $10,000
v. From a bank to a savings bank to an association in a simultaneous application..... $10,000
11.-22. (No change.)
(b) (No change.)

3:1-2.26 Fees; State associations
(a) Every State association shall pay to the Commissioner the following fees:
1.-3. (No change.)
4. Application for a conversion:
i.-ii. (No change.)
iii. From an association to a savings bank to a bank in a simultaneous application..... $10,000
5.-21. (No change.)
(b) (No change.)

3:6-8.2 Authorization for conversion
(a) Any mutual savings bank may apply to the Commissioner to convert itself to a mutual association by organizing and transferring its assets and liabilities to a newly-chartered mutual association, and any capital stock savings bank may apply to the Commissioner to convert itself to a capital stock association by organizing and transferring its assets and liabilities to a newly-chartered capital stock association, and any capital stock savings bank may apply to the Commissioner to convert itself to a bank by organizing and transferring its assets and liabilities to a newly-chartered bank.
(b) (No change.)
(c) After the board of directors has adopted a resolution, a meeting of the members or stockholders shall be held upon not less than 10 days' written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the members or shareholders shall vote on whether the savings bank shall convert to an association or bank, as the case may be. An affirmative vote of at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

3:6-8.3 Application for conversion
(a) An application for a conversion from a savings bank to an association or bank shall contain the following:
1.-2. (No change.)
3. A certificate of incorporation for the new association or bank;
4.-6. (No change.)
7. Financial projections for the converted association or bank for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year. This financial information shall include projections of all relevant regulatory capital requirements as well as appropriate income ratios;
8. A business plan for three years;
8. and 9. recodified as 9. and 10. (No change in text.)
(b) The Department may, in its discretion, waive any of the application requirements of (a) above based on the following:
1. The financial condition of the institution;
2. Whether the institution was recently chartered;
3. Whether the public would be served by considering the application in an expeditious manner;
4. Whether the conversion is one step in an integrated application; and
5. Any other factor which may reflect on the need for a review of all of the materials required in (a) above.

SUBCHAPTER 17. CONVERSIONS OF BANKS

3:6-17.1 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.
"Bank" shall have the meaning ascribed to it in N.J.S.A. 17:19A-1.
"Capital stock savings bank" shall have the meaning ascribed to it in N.J.S.A. 17:9A-8.1.

3:6-17.2 Authorization for conversion
(a) Any bank may apply to the Commissioner to convert itself to a capital stock savings bank by organizing and transferring its assets and liabilities to a newly-chartered capital stock savings bank.
(b) Before applying to the Commissioner for a conversion pursuant to (a) above, the bank shall obtain a resolution of the bank's board of directors indicating that the conversion is advisable and in the best interests of the shareholders.
(c) After the board of directors has adopted a resolution, a meeting of the members or stockholders shall be held upon not less than 10 days' written notice. The notice shall contain a statement of the time, place and purpose for which such meeting is called. At this meeting, the members or shareholders shall vote on whether the bank shall convert to a capital stock savings bank. An affirmative vote of at least two-thirds of the members present, or shares eligible to be voted which are represented at the meeting, either in person or by proxy, may approve the conversion.

3:6-17.3 Application for conversion
(a) An application for a conversion from a bank to a capital stock savings bank shall contain the following:
1. A certified copy of the resolution of the board of directors authorizing the conversion;
2. A certified copy of the resolution adopted by the stockholders or members relating to the plan of conversion, containing the following information:
i. The total number of votes eligible to be cast;
ii. The total number of votes represented in person or by proxy at the special meeting;
iii. The total number of votes cast in favor and against each matter;
iv. The percentage of votes cast in favor and against each matter.
3. A certificate of incorporation for the new capital stock savings bank.

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4. Biographical information for each of the incorporators and/or directors on forms approved by the Commissioner;
5. A completed form from the New Jersey State Police requesting criminal history record information for each director and/or incorporator, along with a cashier's check, certified check or money order for the applicable amount, payable to the State Police, stapled to the front of each form;
6. A copy of the bank's most recent quarterly financial report;
7. Financial projections for the converted capital stock savings bank for the next three years. Projections shall include a consolidated average balance sheet and a profit and loss statement at the end of each year. This financial information should include projections of all relevant regulatory capital requirements as well as appropriate income ratios;
8. A business plan for the capital stock savings bank for three years;
9. Copies of all applications for Federal regulatory approval and all approvals required in connection with the conversion, or, if no application or approval is required, a statement or opinion of counsel to that effect; and
10. The application fee for the conversion.
(b) The Department may, in its discretion, waive any of the application requirements of this rule based on the following:
1. The financial condition of the institution;
2. Whether the institution was recently chartered;
3. Whether the public would be served by considering the application in an expeditious manner;
4. Whether the conversion is one step in an integrated application; and
5. Any other factor which may reflect on the need for a review of all of the materials required in (a) above.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Rule Invalidation
Alternative Claim Procedures for Fire Retardant Treated (FRT) Plywood Failures
Definition of Major Structural Defect
N.J.A.C. 5:25A-1.3

Take notice that the decision of the Supreme Court of New Jersey, Appellate Division, in *In the Matter of the Appeal of the Adoption of N.J.A.C. 5:25A-1.1, et seq., by the New Jersey Department of Community Affairs, Division of Housing and Development,* 266 *N.J. Super.* 625 (App. Div. 1993) affected the validity of the definition of "major structural defect" at N.J.A.C. 5:25A-1.3.

Please contact the Department of Community Affairs for further information.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

HEALTH

(b)

OFFICE OF HEALTH POLICY AND RESEARCH

Notice of Rule Invalidation
State Health Plan Rules
N.J.A.C. 8:100

Take notice that the decision of the Supreme Court of New Jersey in *In the Matter of the Adoption of Regulations Governing the State Health Plan, N.J.A.C. 8:100, et seq.,* —— *N.J.* ——, Dkt. No. A-29-93 (February 28, 1994), affected the validity of the State Health Plan rules at N.J.A.C. 8:100.

Please contact the Department of Health for further information.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

HUMAN SERVICES

(c)

DIVISION ON MENTAL HEALTH AND HOSPITALS

Psychiatric Community Residences for Youth
Adopted New Rules: N.J.A.C. 10:37B

Proposed: June 7, 1993 at 25 N.J.R. 2197(a).
Adopted: April 11, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: April 11, 1994 as R.1994 d.227, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 30:11B-4.
Effective Date: May 2, 1994.
Expiration Date: May 2, 1999.

Summary of Public Comments and Agency Responses:

The Department received public comments from the Department of the Public Advocate. The comments and the Department's responses are provided below.

COMMENT: The Public Advocate commented that N.J.A.C. 10:37B-2.1(b) requires that a provider agency have prior experience with the Division as a condition of licensure and that all appropriate providers should be allowed to bid for licenses in New Jersey, even those without any history of contracting with the Division.

RESPONSE: N.J.A.C. 10:37B-2.1(b)2 does not require provider agencies to have prior experience with the Division as a condition of licensure and any provider agency may seek a service contract or funding from the Division. This provision was only intended to communicate that the Division will only license provider agencies which receive a service contract or funding from the Division.

COMMENT: The Public Advocate commented in opposition to any waiver provision that does not include an opportunity for comment by service consumers, their families and advocates as well as the general public prior to the approval or denial of the waiver request. In addition, the Public Advocate stated that permanent facility waivers should be subject to a public review procedure and once adopted made known to prospective clients.

RESPONSE: As stated in N.J.A.C. 10:37B-2.5, the Department would not waive a rule if so doing would place the safety or well being of any client at risk, unnecessarily compromise the quality of services provided or violate any relevant statutory, regulatory or contract provisions. Compliance with some rules, however, depends on adequate funding or other temporary external circumstances. Waivers would not be intended to be permanent. Also, residential services are not redesignated on a regular basis and prior opportunity for comment on such waiver requests is simply not feasible.

COMMENT: The Public Advocate commented that the list of rights of youth articulated at N.J.A.C. 10:37B-3.3 should be expanded to include those contained in N.J.S.A. 9:6B-1 et seq. and N.J.S.A. 30:4-24.1 and 24.2 as well as the right to see their parents or guardian on a daily basis unless prohibited by court order. Additionally, the rights should be prominently posted **and** given to the child and family on arrival and when requested to insure a full understanding.

RESPONSE: N.J.S.A. 9:6B-1 et seq. applies to children **placed** by the various components of the Department of Human Services. The Division of Mental Health and Hospitals does not place any youth into these residences and so the legislation cited above is not applicable in this section. Most of the residents of these programs are receiving these services pursuant to their own and/or their family's consent. Some residents may be placed into these residences pursuant to the authority of the Division of Youth and Family Services and in such cases the provisions of N.J.S.A. 9:6B-1 et seq. apply. A sentence clarifying this distinction has been added to the text at N.J.A.C. 10:37B-3.3(a)7.

The rights articulated at N.J.S.A. 30:4-24.1 and 24.2 have been adapted for State funded community mental health services and codified at

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N.J.A.C. 10:37-4.5 and that section continues to apply to residents of these programs.

Parental or guardian visits to residents of these programs should only be limited by court order or clinical judgment, when appropriate. Unless court ordered otherwise, parents or guardians should be allowed to visit the residents unless clinical circumstances indicate otherwise. The Department believes that such judgments cannot satisfactorily be reduced to regulatory prescriptions and should be left to collective judgments of the clinical staff of the residential provider. Occasionally, such visits may not be clinically appropriate.

Finally, the posting and giving of rights to residents is already governed by rules at N.J.A.C. 10:37-4.5(k) which already places on provider agencies the responsibility to prominently post the rights, provide copies to residents and generally make them aware of their rights and privileges.

COMMENT: The Public Advocate commented that the number of admissions to these residences is not so great that the materials referenced in N.J.A.C. 10:37B-3.4(a)2, 3, 7, 8, 9, 10 and 11 should not be given to each patient prior to or shortly after admission and updated as appropriate.

RESPONSE: The Department has reviewed the materials referenced in the comment and concluded that providing and explaining them to parents within five working days of the youth's admission is reasonable and adequate. The rule is more interested in requiring a meaningful rather than a casual transmission of information and, hence, requires explanation in addition to provision of the information. Since explanation takes time and the youth may have more pressing clinical needs at the time of admission, the Department believes the five working day requirement is an appropriate timeframe.

COMMENT: The Public Advocate commented that any search and seizure policy of the provider agency as referenced at N.J.A.C. 10:37B-4.5(d) should be in compliance with Federal and State law and the rules should remind the providers of this requirement.

RESPONSE: The Department agrees and has added a sentence at N.J.A.C. 10:37B-4.5(d) to this effect.

COMMENT: The Public Advocate commented that N.J.S.A. 30:4-24.1 applied to children in psychiatric facilities since 1965 and required that children shall have the right to participate in planning for their own treatment to the extent that their condition permits and that similar language should be used in these rules at N.J.A.C. 10:37B-4.6.

RESPONSE: The Department does not agree that N.J.S.A. 30:4-24.1 applies to these residences but the Department does agree that residents should participate in their own treatment planning to the extent that their condition permits. Accordingly, language to this effect has been added to the text at N.J.A.C. 10:37B-4.6.

COMMENT: The Public Advocate commented that the behavior management program manual referenced at N.J.A.C. 10:37B-4.7(h)1 should be given "to staff, youths, families and other caretakers" rather than "available" to them as proposed.

RESPONSE: The Department agrees and has changed the text accordingly at N.J.A.C. 10:37B-4.7(h)1.

COMMENT: The Public Advocate commented that the term "acting out" at N.J.A.C. 10:37B-4.9(a)5i should be changed to more appropriate terms assaultive, destructive or disruptive instead.

RESPONSE: The Department agrees and has changed the language to "reduction of physically or verbally assaultive behavior or behavior destructive to property, self or others."

COMMENT: The Public Advocate opposed the use of a padded behavior management quiet room as referenced at N.J.A.C. 10:37B-4.13(a)7 and added, alternatively, that such rooms should minimally also include the protections an adult is entitled to under N.J.S.A. 30:4-27.11d.

RESPONSE: The Department disagrees and believes the padding requirement and other safeguards contained in N.J.A.C. 10:37B-4.13 are adequate and that quiet rooms, when administered properly, can be a useful therapeutic modality. Additionally, the Department believes the safeguards cited at N.J.S.A. 30:4-27.11d were developed for inpatient hospital restraint and seclusion rooms which are both philosophically and in practice different than these residential quiet rooms, which are unlocked at all times.

COMMENT: The Public Advocate urged the inclusion of subchapters on the facility construction, hearings, appeals and complaints, quality assurance and admission and discharge policies as contained in the Division's proposed rules on "Community Residences for Mentally Ill Adults," published at 25 N.J.R. 2672(a).

RESPONSE: The Department believes that the differences in the needs of youth and adults and in the service delivery system to youth and adults justify the difference in content between the two proposals and that this proposal adequately protects youth receiving these services. Residential services to youth are significantly more short term in nature than comparable services to adults. Unlike adult services, potential homelessness would never be an issue for youth discharged from these residential services.

Summary of Agency-Initiated Changes:

Based upon internal agency review of the proposal, several additional clarifications, minor additions and technical changes have been made upon adoption as detailed below. The definition of the term "behavior management practice" has been modified to reflect the original intent better, by clarifying use of a time out quiet room, therapeutic holding technique or point system as part of a comprehensive treatment plan. The definition of youth has been grammatically improved. At N.J.A.C. 10:37B-3.4(a)6, DYFS has been deleted as an agency to report alleged violations of any provisions of this chapter to since the Division of Mental Health and Hospitals will now assume primary authority over such matters. At N.J.A.C. 10:37B-3.4(a)10, the DYFS Institutional Abuse Investigation Units Toll Free telephone number has been substituted as the more appropriate number for reporting child abuse allegations Mondays through Fridays between 9 AM and 5 PM. N.J.A.C. 10:37B-4.5(b) has been clarified to indicate that the referenced consent shall be obtained from either a youth's parent or legal guardian. At N.J.A.C. 10:37B-4.6(e)7, the word "current" has been eliminated since at N.J.A.C. 10:37B-5.2(a) a medical examination is required within 72 hours of the youth's admission, unless the youth had received such a medical examination within 30 calendar days prior to his or her admission. At N.J.A.C. 10:37B-6.2(a)1, a paragraph has been added to clarify the intent that arranging for the provision of transportation for school-age youth to and from their identified education program must be ensured by the PA.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 37B
PSYCHIATRIC COMMUNITY RESIDENCES FOR YOUTH

SUBCHAPTER 1. GENERAL PROVISIONS

10:37B-1.1 Scope and purpose

(a) The rules in this chapter apply to all licensed psychiatric community residences for youth funded by or under contract with the Division.

(b) The purpose of the rules in this chapter is to:

1. Enable licensure and regulation of specialized residences for mentally ill youth;

2. Promote the goal of the residences to provide appropriate mental health services to youth at risk of hospitalization or recently discharged from inpatient care but not ready to return home or reside in a less intensive facility; and

3. Promote high quality and effective delivery of funded residential services for youth.

10:37B-1.2 Definitions

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

"Behavior management practice" means the use of a time out quiet room *[or]**,* therapeutic holding technique ***or*** point system as part of a comprehensive treatment plan to help the youth develop self-control, to reduce maladaptive behavior or to protect the youth and others from harm.

"Behavior management quiet room" means a room used exclusively for the purpose of keeping the youth apart from all social interaction in order to protect the youth or other persons from the youth's assaultive or destructive behavior.

"CCIS" means the regional Children's Crisis Intervention Service unit established to serve, for a period not exceeding 28 days, youth from the ages of five through 17 who have:

1. Received an initial screening by a designated mental health emergency screening service;

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2. A primary psychiatric diagnosis; and

3. An impaired level of personal and social functioning to the extent that inpatient psychiatric crisis intervention and treatment services are necessary.

"Comprehensive treatment plan" means the formulation of goals, objectives and interventions for services based on an assessment which includes treatment, recommendations, and which may include: psychological, medical, developmental, family, educational, social, cultural, environmental, recreational and vocational components.

"Consent" means that a parent having legal responsibility for educational decision making or the adult pupil (that is, a person age 18 through 21 who is not under legal guardianship) has been fully informed of all information relevant to the activity for which the consent is sought, in his or her native language or other mode of communication, understands and agrees in writing to the implementation of this activity, and understands that granting of consent is voluntary and may be revoked at any time.

"Counseling for families" means the use of therapeutic methodologies which enable families to resolve problems or temporary stress of situations which they have encountered.

"Daily living skills" means the activities which enable a youth to perform functions for everyday living, such as basic housekeeping, grooming, dressing, maintaining schedules, social and recreational activities.

"Department" means the New Jersey Department of Human Services.

"Division" means Division of Mental Health and Hospitals within the New Jersey Department of Human Services.

"DYFS" means Division of Youth and Family Services within the New Jersey Department of Human Services.

"Educationally handicapped pupil" means a pupil who has been determined to be eligible for special education and or related services according to N.J.A.C. 6:28-3.5. Classification categories for educationally handicapped pupils include: auditorily handicapped, autistic, chronically ill, communication handicapped, emotionally disturbed, mentally retarded, multiple handicapped, neurologically impaired, perceptually impaired, preschool handicapped, orthopedically handicapped, socially maladjusted, and visually handicapped.

"Group counseling" means the use of group processes and supports to develop in individuals the capacity to overcome specific personal problems or problem conditions.

"Individualized education program" means a written plan developed at a meeting according to N.J.A.C. 6:28-3.6 which sets forth goals and objectives and describes an integrated sequential program of individually designed educational activities and related services necessary to achieve the stated goals and objectives.

"Parent" means a birth or adoptive parent, legal guardian, or any other person having responsibility for, or custody of, a youth.

"Provider agency" (PA) means a public or private organization which has a mental health contract with the Division and has been licensed by the Division to provide residential services.

"Psychiatric community residence for youth" (residence) means a community residential facility, licensed by the Division in accordance with this chapter, which provides food, shelter, and personal guidance on a 24-hour basis under such supervision as required to not more than 15 mentally ill youth who require assistance. These residences are funded by or contracted with the Division for youth who have received or may be at risk of inpatient care in an inpatient facility and who may benefit from psychiatric treatment within a community residence setting so as to avert more intensive treatment or to facilitate their return home or placement in a longer term residential facility. Residences do not admit any person residing in the State psychiatric hospital for adolescents or the State correctional facilities who has been found not guilty of a crime by reason of insanity or unfit to be tried on a criminal charge. Residences are not considered a health care facility, within the meaning of the "Health Care Facilities Planning Act," P.L. 1971 c.136 (N.J.S.A. 26:2H-1 et seq.) and include, but are not limited to, group homes, supervised apartment living arrangements, family care homes and hostels.

"Referral" means, for educational purposes, making a written request that a child study team meet to determine the need for evaluation according to N.J.A.C. 6:28-3.3.

"School-age pupil" means a person age three through 21 who is or was enrolled in a public school.

"Seriously emotionally disturbed youth", 18 years of age or younger, exhibiting one of the following characteristics:

1. Behavioral, emotional, or social impairment that disrupts the child's or adolescent's academic and developmental progress and may also impact upon family and interpersonal relationships and has impaired functioning that has continued for at least one year, or

2. Has an impairment of short duration and high severity.

"State facility education program" means a program contracted with the Department and funded by the Department's Office of Education for the provision of education services.

"Therapeutic holding technique" means holding a youth so that he or she cannot move all or part of his or her body. This technique does not involve the use of any mechanical devices, such as hand or foot cuffs to restrict the movement of the youth.

"Time out" means removing a youth to an area or room in the residence where there is limited stimulation. This removal should be a therapeutic intervention and a time for the youth to reflect on his or her behavior in order to gain control so he or she can return to the other youth.

"Youth" means ***a*** person*[s]* who *[are]* ***is*** 18 years of age and under.

SUBCHAPTER 2. LICENSING

10:37B-2.1 Initial licensing process

(a) All inquiries related to licensure of psychiatric community residences for youth shall be made to:

New Jersey Division of Mental Health and Hospitals
CN 727
Trenton, NJ 08625-0727

(b) To become a licensed provider agency (PA), an agency must:

1. Demonstrate intent and capability to operate a community residence within the provisions of this chapter; and

2. Be a mental health services provider with a service contract with, or funding from, the Division. Such a service contract shall include provisions for the operation of community residences.

(c) The PA shall comply with this chapter.

(d) The PA shall apply for licensure to the Division. Applications shall indicate the type or types of community residences intended, the specific geographical location in which residences would be located, and the number of residents to be served. Such application shall be made to the Division at the address in (a) above. There shall be no fee charged to the PA regarding licensing or application for licensing.

10:37B-2.2 Licensing of psychiatric community residences for youth programs

(a) The Division shall inspect any proposed psychiatric community residence for youth site, utilizing the physical and fire safety standards pursuant to N.J.A.C. 10:128-4.1 and 10:128-4.4 through 4.6, and shall review all program operations or descriptions for compliance with the provisions of this chapter.

(b) The Division shall notify the PA in writing of any violations.

(c) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(d) A license shall be issued once intent to comply with all program requirements is demonstrated, inspections are satisfactory, and there is reasonable assurance that the residence shall be operated in the manner required by this subchapter.

(e) The license shall be issued by the Department through the Division.

(f) The license shall be limited to a specifically identified facility, issued for a period of one year and shall indicate the maximum number of persons to be served within that facility.

(g) The license shall be available during normal business hours on the agency's premises for review by the Division or any interested members of the public.

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10:37B-2.3 Provisional license

(a) A provisional license may be issued by the Department to a prospective PA which expresses interest in operating a community residence, indicates in writing an intent to comply with the guidelines contained in this chapter and applies to the Division for such provisional licensing. The application shall indicate the type or types of community residences desired, the specific geographical areas in which residences would be located, and the number of residents to be served.

(b) The Division shall review the application of the prospective PA, assess the fiscal, programmatic, and administrative capabilities of the PA and determine whether a provisional license shall be issued. There shall be no fee charged for the issuance of a provisional license.

(c) The provisional license shall authorize a PA to secure a facility or facilities in which to provide services.

(d) A provisional license shall authorize a PA to provide services to residents.

(e) The provisional license shall be issued for a time period not to exceed six months and may be renewed in six months intervals by the Division if, in its judgement, the PA consistently made good faith efforts to establish the proposed residence(s).

(f) A PA issued a provisional license shall immediately make application for an annual renewable license under provisions of N.J.A.C. 10:39-2.1 when the residence has been secured and services to residents are ready to be initiated.

10:37B-2.4 Applicability of standards

(a) All PAs which are funded by, or have contracts with, the Division prior to *[the date this chapter is adopted]* ***May 2, 1994*** and all community residences in operation prior to *[the date this subchapter is adopted]* ***May 2, 1994*** shall be considered approved for licensing and shall not be subject to the initial or provisional licensing process. From *[the adoption date]* ***May 2, 1994*** on, licensure shall be based on the Division's annual inspection.

(b) Those PAs which are not funded by or do not have contracts with the Division on or before *[the date this chapter is adopted]* ***May 2, 1994*** and those residences established subsequent to *[adoption of this chapter]* ***May 2, 1994*** shall follow the initial licensing process, as required by this chapter, and shall be subject to annual inspections.

10:37B-2.5 Waiver of standards

(a) Requests for waivers shall be made to the Division in writing with supporting information justifying the request.

(b) Waivers of specific standards shall be considered at the discretion of the Division, provided that one or more of the following conditions have been met:

1. Strict enforcement of the standard would result in unreasonable hardship on the clients;

2. The waiver is in accordance with the particular need of a client(s) but does not adversely affect the health, safety, welfare, or rights of the client; or

3. There is a clear clinical or programmatic justification for such a waiver that will enhance a PA's effectiveness or efficiency without an adverse effect on any client's health, safety, welfare or rights.

10:37B-2.6 License renewal

(a) The license shall be subject to an annual renewal.

(b) Determination of license renewal shall be based on the annual evaluation conducted by the Division's Bureau of Licensing and Inspections.

(c) The Director of the Division (or designee) shall make the determination of renewal.

(d) In the event that a license expires prior to the determination of renewal, the license shall remain in effect until such a determination is made.

(e) There shall be no fee charged to the PA for license renewal.

10:37B-2.7 Monitoring compliance

(a) The PA shall ensure, through its quality assurance program, that residences meet the program and facilities requirements for licensure set forth in this chapter. Quality assurance visits to ensure health, safety, and welfare standards shall be conducted by the PA quarterly, at a minimum. The Division will audit the process annually.

(b) All PAs and residences shall be evaluated on site for program requirements annually by the Bureau of Licensing and Inspections, and, at the discretion of the Division, as needed.

(c) A formal report of program and facility evaluations, including all deficiencies and violations, shall be provided to the PA by the division.

(d) No later than 40 days after receipt of the report, the PA shall provide written notice to the Division that specific violations have been corrected, and that actions have been taken to abate specific violations noted and that full correction is anticipated within the time frames noted in the report.

(e) For any violations cited by the Division as life-threatening, meaning presenting an imminent threat to the health and safety of residents, the PA shall correct them and remove the threat created by such deficiencies immediately and shall provide written notice, within 48 hours, to the Bureau of Licensing and Inspections that such action has been taken.

(f) If the Division report identifies violations which are not life-threatening, representatives from the Division, as part of their ongoing monitoring responsibilities, shall visit the specified residence or program and provide a report to the Division on progress toward remediation of deficiencies every 60 days until compliance is achieved.

(g) When the PA is cited for a physical violation and the maintenance is the responsibility of another party, there must be documented evidence that the PA has informed the building owner, and his or her agent, of the need to correct any deficiencies. If such deficiencies are not corrected, the PA shall take further action as appropriate.

10:37B-2.8 Appeal of the Division's findings

(a) The PA may appeal findings of the Division, with the exception of life-threatening violations.

(b) The appeal of findings shall be directed to the director of the Division (or designee) within 20 days of the PA's receipt of the written report of findings.

(c) A response to the appeal shall be provided to the PA within 20 days of its receipt.

10:37B-2.9 Administrative sanction

(a) In the event that the PA does not submit the written notice specified in N.J.A.C. 10:39-3.1(c) by the required date, or if violations have not been abated within time frames specified in the report, the Division shall have the option of suspension of payments to which the PA may be entitled under any agreements with the Division, imposition of a moratorium on admissions to the facility, revocation of the current license to operate the facility, non-renewal of the license to operate the facility, or imposition of other administrative sanction(s) appropriate to the violations cited.

(b) In the event that the Division requires the revocation or non-renewal of the license and the relocation of the residents of the facility, a written order shall be directed to the PA's executive director (or designee) and to the President of the Board of Directors of the agency.

(c) When an order to vacate the premises and the revocation of a license has been issued by the Division, the Department shall work with the PA to ensure proper placement of residents.

10:37B-2.10 Review of administrative sanctions

Where an administrative sanction exists and the PA denies the basis of the sanction, the PA may apply to the director of the Division (or designee) for a review, which shall be afforded and a decision rendered by the director of the Division (or designee) within five working days of the receipt of the written request for a review.

10:37B-2.11 Administrative hearing of appeal

If the PA chooses to appeal a decision made pursuant to the provisions of N.J.A.C. 10:37B-2.10, the PA may request an administrative hearing, which shall be conducted pursuant to the Adminis-

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trative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:37B-2.12 Emergency situation

The Division, when it determines that the health, safety or welfare of the residents warrant it, may immediately suspend a PA license, and take the necessary action to ensure the well-being of residents. Any hearing provided in such cases shall be on an expedited basis.

SUBCHAPTER 3. ADMINISTRATION

10:37B-3.1 Statement of purpose

(a) The residences shall maintain on file a written statement of purpose that shall identify the following:

1. The residence's philosophy, goals and objectives;
2. Characteristics of the youth to be served;
3. Types of treatment services provided to the youth, including those provided directly by the residence and those provided in cooperation with community agencies or outside individuals;
4. Procedures for implementing those services; and
5. Criteria for successful completion of the program.

(b) The residence shall give this statement of purpose to the parents of the youth applying for services, to all staff members and to all persons who request this information.

(c) The residence shall secure and shall maintain on file a record of a parent or legal guardian and staff members' signatures attesting to their receipt of the statement of purpose.

10:37B-3.2 Management

The residences shall comply with all applicable management standards as promulgated by the Division, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules regarding agency rulemaking, N.J.A.C. 1:30.

10:37B-3.3 Rights of youth

(a) The residence shall prepare a list of youth's rights and shall post it in a prominent location in each residence or give it to the youth and document such in each youth's record. In either case these rights shall be explained to the youth to the extent the youth is capable of understanding them, including by appropriate means to youth whose primary language is not English or who have a communication handicap. At a minimum, the list shall specify the youth's right to:

1. Receive prompt medical treatment;
2. Have access to an appropriate education;
3. Live in a safe, clean and healthy environment;
4. Be free of physical or sexual harassment or abuse or corporal punishment;
5. Attend religious services of their choice; *[and]*
6. Have unimpeded communication to DYFS in order to report allegations of physical abuse, physical neglect, or sexual abuse*[.]* ***; and***

7. In the case of youth placed into these residences pursuant to the authority of DYFS, the provisions of N.J.S.A. 9:6B-1 et seq. shall also apply.

(b) The residence shall give this list of youth's rights to a parent or legal guardian of the youth applying for admission, all staff members, and all persons who request this information.

(c) The residence shall secure and maintain on file a record of a parent or legal guardian and staff members' signatures attesting to their receipt of the list of youth's rights.

(d) The residence shall prepare, post, or give to all staff members and youth a written grievance procedure governing how the youth may raise questions about or voice disagreements with and concerns about procedures, care, and specific incidents. The residence shall not take, or threaten to take, retaliatory or disciplinary action of any kind against a youth who uses the grievance procedure or files a grievance. The residence shall provide a procedure to explain the above to youth in a manner in which they can understand their rights.

10:37B-3.4 Information to be provided to parent, legal guardians and staff members

(a) The residence shall provide and explain to every parent, within five working days of his or her youth's placement, and to every person upon becoming a staff member, including the provision, by appropriate means, to individuals whose primary language is not English or who have a communication handicap, a written document indicating that the residence is required to:

1. Comply with all applicable provisions of this chapter;
2. Retain a current copy of this chapter and make it available for review by parents or legal guardians of resident youth;
3. Make available for review any Department reports reviewing program compliance with this chapter;
4. Indicate how parents or legal guardians may secure a copy of this chapter by contacting the Office of Children's Services, Division of Mental Health and Hospitals, CN 727, Trenton, New Jersey 08625-0727;
5. Afford parents or legal guardians the opportunity and time to review and discuss with the residence director any questions or concerns about policies, requirements, provisions, or alleged violations of this chapter;
6. Advise parents or the legal guardian that if they believe or suspect that the residence is in violation of any provision of this chapter, they may report such alleged violations to the Division *[and DYFS]*;
7. Make available, upon request, for parents' or legal guardian's review, any Inspection Violation and Complaint Reports on the residence, as well as any letters of enforcement or other actions taken against the residence during the previous two-year period;
8. Inform parents or legal guardians that they may request a copy of the residence's or agency's behavior management policy, including policies for searches, as specified in this chapter.
9. Inform parents or legal guardian that the residence or agency is required to provide the youth's parent or legal guardian with copies of the residence's or agency's visitation and communication policies, a copy of the procedure for expressing concern or registering complaints regarding their youth's placement, and a description of its religious policies, including a statement that the youth has a right to practice his or her religion;
10. Indicate through this document that any person who has reasonable cause to believe that a youth residing in the residence has been or is being subjected to any form of hitting, corporal punishment, abusive language, ridicule, or harsh, humiliating, or frightening treatment, or any other kind of youth abuse, neglect or exploitation by any person, whether working at the residence or not, is required by State law to report such allegations to the DYFS *[Office of Child Abuse Control, TOLL FREE at 1-800-792-8610,]* ***Institutional Abuse Investigation Unit, TOLL FREE at 1-800-215-6853, Monday through Friday between 9:00 A.M. and 5:00 P.M.*** or***, at other times,*** any local DYFS District Office immediately, and indicate that such reports may be made anonymously;
11. Indicate through this document how parents or legal guardians and staff members may secure information about the prevention and reporting of child abuse and neglect by contacting the DYFS District Office;
12. Inform parents or legal guardians that the residence or agency must secure written consent from the youth's parents or guardians before the residence or agency may involve the youth in fund raising, publicity, or audiovisual activities related to the residence or agency; and
13. Inform parents or legal guardian that the residence will develop a visitation schedule for parents or legal guardians and youth, as specified in this chapter.

(b) The residence or agency shall comply with the requirements specified in (a) above by:

1. Securing the parent's or guardian's and staff member's signature on a record attesting to receipt of the document, and maintaining the record on file; or
2. Documenting in the record the attempts made to secure the parent's or guardian's signature.

10:37B-3.5 Community participation

(a) The residence shall establish policies and procedures that encourage, enhance, and ensure good community relations.

(b) The director of the residence shall ensure that community activities have been scheduled or completed and shall provide up-

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dates on community involvement to the governing board on a quarterly basis.

SUBCHAPTER 4. PROGRAM REQUIREMENTS

10:37B-4.1 Affiliation agreements

Each agency operating a residence shall negotiate affiliation agreements with child-serving agencies and providers. This shall include, but not be limited to, CCIS, children's partial care programs, and other inpatient psychiatric facilities approved for referral by the Division.

10:37B-4.2 Criteria for admission

(a) The program shall develop written inclusionary and exclusionary admission criteria.

(b) Except as approved in writing by the Division, in accordance with N.J.A.C. 10:37B-2.5, admission policies of the PA shall restrict admissions to youth who have received acute inpatient care in an inpatient facility and require psychiatric treatment in a community residence setting prior to returning home or placement in a longer term residential facility, or youth who may be at risk for receiving acute inpatient care.

(c) All admission criteria and admissions procedures shall be stated in the affiliation agreements with referral sources.

10:37B-4.3 Admission information

(a) The agency or residence shall develop procedures with the referral source to obtain written information on each youth prior to admission to the program. This will be negotiated as part of the affiliation agreement. Information will include, but not be limited to:

1. The reason for referral to the residence;
2. The reason for admission;
3. The youth's full name, nicknames, if any, gender, date of birth, religion, race, and social security numbr if available;
4. The name, address, telephone number and relationship to the youth of the person(s) with whom the youth was living at the time of admission;
5. The name, address, and telephone number of father, mother, or foster parent(s), or legal guardian(s), if different from above;
6. The name, address, and telephone number of the case manager of the placing agency or other agencies involved in the case;
7. The name, address, and telephone number of the person to notify in an emergency;
8. The name of siblings, their ages, and gender;
9. Medicaid card and, if applicable, insurance numbers;
10. School(s) attended, grade level, and employer, if any;
11. In those cases where the birth certificate and immunization records are unavailable, documentation that the referral source has requested the same should be forwarded to the residence;
12. Progress summary to include the progress of treatment and stabilization that occurred while the youth was hospitalized or in an intensive psychiatric treatment program; and
13. A discharge plan, to include a review of the circumstances that precipitated prior psychiatric placement or hospitalization, a review of the youth's needs, current health, medical history, current medications, side effects, reason for referring the youth to program, and a contact person.

10:37B-4.5 Admission

(a) Upon admission, the PA shall possess such information it determines to be necessary to provide treatment.

(b) The PA or residence shall obtain consent ***from a parent or legal guardian*** for emergency medical and surgical care, semi-annual dental care and annual physical examinations for the youth.

(c) A release of information from the parent or legal guardian for all agencies having provided services for the youth admitted shall be requested. Subsequent requests for information shall be documented.

(d) The youth shall be given a secure place to store valuables and shall have explained to him or her house rules, youth's rights, the discipline policy, and the search and seizure policy, if any. ***Any search and seizure policy employed by the PA shall comply with applicable Federal and State law.*** The youth shall also be oriented in emergency and evacuation procedures.

(e) Within 72 hours of admission, a brief assessment—initial service plan shall be completed. This assessment—service plan shall include, at a minimum:

1. A face-to-face interview by the clinical staff member;
2. Consideration of the information supplied by the referring agency;
3. Consideration of needs in the following critical areas: physical health, psychiatric status, family, recreational, social, academic, behavioral, legal and psychological;
4. Specific needs to be addressed by the initial treatment plan;
5. Goals and strategies that relate to assessed needs, reasons for admission, reasons for discharge, and referral to the residence; and
6. Interventions to be implemented in the first two weeks.

10:37B-4.6 Treatment planning

(a) The residence shall develop, implement, and maintain on file a written individual master treatment plan for each youth.

(b) The residence shall form a multi-disciplinary treatment team that is responsible for the development of a treatment plan for each youth. ***Youth shall be allowed to participate in the development of their treatment plan to the extent that their clinical condition permits.*** The multi-disciplinary treatment team shall include, but not be limited to, the following members:

1. Representatives from the psychiatric community residences programs;
2. Representatives of DYFS;
3. Representatives of youth case management;
4. Representatives from the youth's responsible school district and current school district, if appropriate; and
5. The youth's parents, designated representative or legal guardian, shall be included in the treatment team unless clinically contraindicated and justified in writing.

(c) The residence shall document in the youth's record that the DYFS case manager or other placing agency, the youth's therapist, parents, or legal guardian and the youth's responsible school district and current school district, if appropriate, were invited to participate as members of the treatment team and assist in the development of the treatment plan and all subsequent revisions.

(d) The residence shall develop and implement the master treatment plan within 10 working days following a youth's admission, and review or revise the treatment plan at least every month thereafter.

(e) The master treatment plan and revisions shall be based on a comprehensive assessment that includes the following:

1. A current psychosocial history and update;
2. A psychiatric evaluation that has been completed within the last 60 days;
3. A psychological evaluation, as indicated;
4. A current report card, as available;
5. A current history of immunization;
6. A current youth study team evaluation and individual education plan;
7. A *[current]* physical and medical evaluation;
8. Information received from prior service providers;
9. A socialization and activity evaluation;
10. Other psychological, social, recreational, vocational and behavioral needs; and
11. Statements that integrate the assessment information to include findings and recommendations.

(f) The master treatment plan shall include the following:

1. Goals based on the assessments;
2. Objectives related to the goals;
3. A description of how the goals and objectives are operationalized, that is, strategies and interventions;
4. Services provided outside the facility to minimally include a listing of such services and the contact person of such services;
5. Signatures of each of the professionals participating in the development of the master treatment plan, the youth, if appropriate, and a parent or legal guardian; and
6. Criteria for discharge or reduction in service.

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10:37B-4.7 Treatment services

(a) The therapeutic program, including the environment, shall be based on a clear written statement of philosophy that reflects the needs of the client population.

(b) The residence shall provide individualized treatment sessions to meet the clinical needs of each youth. Each treatment session shall be documented in the youth's clinical record.

(c) The residence shall possess the capacity to provide individual and group counseling with the intensity and frequency necessary to meet the youth's needs and in conformance with the master treatment plan.

(d) The residence shall provide or arrange for family therapy or family counseling to the youth's family or natural support system as directed by the treatment plan.

(e) The residence shall provide or arrange psychiatric treatment services for all youth to include at a minimum:

1. Routine and emergency psychiatric evaluations;

2. Medication monitoring services; and

3. Psychiatric input and consultation into the clinical component of treatment planning.

(f) The residence shall provide crisis intervention, for example, emergency counseling, on a 24-hour basis within the residence.

(g) The residence shall coordinate and monitor access to other needed services. The agency or residence shall determine the extent to which said services shall be governed by affiliation agreements and negotiate such agreements. Examples of services include: psychological testing, needed vocational services, specialized medical services, and structured recreational activities.

(h) The residence shall have a behavior management program which includes, at a minimum, the following:

1. A manual which defines the goals and objectives of the program and outlines the program. The manual shall include staff and client responsibilities and shall be *[available]* ***provided*** to staff, youths, families, and other caretakers;

2. A behavior management system which addresses the developmental and symptomatic characteristics of the population served;

3. Documentation of the youth's response to the behavior management program and the impact on targeted behaviors; and

4. A behavior management program implemented by trained staff of the residence who can therapeutically intervene with youth. Such staff shall be available to therapeutically intervene with youth.

(i) The residence shall provide or arrange for recreation and assistance in daily living skills services.

(j) Daily routines, activities and schedules shall be based on client needs and specific treatment plan requirements. This shall be reflected in the variety and the timing and pacing of activities and the clarity of their purpose.

(k) The physical environment shall be arranged such that it facilitates treatment, protects individuals, provides privacy, and adequate space, while enabling youth to learn and grow.

(l) Any guidelines and practices for interactions between individuals, staff and clients at the facility shall reflect the philosophy of the program for both routine situations as well as emergency and unusual circumstances. Guidelines for any such interactions shall be fully described in the program's written policies and shall be consistent with daily operations.

10:30B-4.8 Behavior management practices and programs

(a) Residences that choose to utilize behavior management practices shall develop policies and procedures that assist youth in gaining control of their behavior, protect the youth from self-harm, protect other youth or staff members, and prevent the destruction of property.

(b) The residence shall not utilize behavior management practices and programs as a means of punishment, for the convenience of staff members, or as a substitute for a treatment program.

(c) Prior to the youth's admission, the residence shall:

1. Explain to the parent or legal guardian, the youth, the Divisional youth case manager or other agency working with the youth, the behavior management practice or program that is used within the residence, and the circumstances under which it will be employed;

2. A written copy of said procedures shall be provided to the parent or legal guardian; and

3. The residence shall maintain said procedures on file in the residence or residence's administrative office.

10:37B-4.9 Point system

(a) Residences that utilize point systems shall:

1. Provide staff a written description of the residence's behavioral management point system;

2. Determine the targeted behaviors to be addressed through the resident's comprehensive treatment plan and review;

3. Document that all treatment team members and the resident have opportunities for input into the determination of the behaviors to be addressed and that such input is given full consideration in decisions;

4. Record target behavior(s) on a format developed by the residence; and

5. Address, at a minimum, the following goals:

i. Reduction of *[acting-out behavior]* ***physically or verbally assaultive behavior or behavior destructive to property, self or others****;

ii. Interpersonal and social skills development;

iii. Self maintenance and independent functioning; and

iv. Preparation for discharge.

(b) Residences shall not take earned points away from a resident as a consequence for failure to meet goals or negative behavior(s).

10:37B-4.10 "Time out"

(a) Residences that utilize "time out" shall:

1. Inform staff members through written policy of the circumstances when "time out" may be utilized as a behavior management practice when a youth exhibits:

i. Disruptive behavior, including fighting, name calling, and pushing;

ii. Increased agitation;

iii. Non-compliant behavior or failure to participate in the program;

iv. Uncontrollable emotional outbursts such as crying, screaming, and inappropriate laughter; and

v. A request for "time out."

2. Ensure that the youth being given "time out" is not actively suicidal;

3. Prohibit more than one youth from being given "time out" in the same room or area;

4. Ensure that at least one staff member is responsible to make visual contact with the youth every 10 minutes and is within hearing distance of the youth when the youth is removed from the group;

5. Ensure that the residence does not utilize a closet, bathroom, unfinished basement, unfinished attic or locked room when giving "time out" to a youth from the group;

6. Ensure that the "time out" for a youth does not exceed 30 minutes without written approval by the program director-supervisor;

7. Document each "time out" for a youth in an incident report that reflects the following:

i. The name of the youth;

ii. The date and time of day the "time out" occurred;

iii. The name(s) of all staff members observing the youth;

iv. Precipitating factors that lead to the youth needing "time out";

v. Other intervention attempted;

vi. The time the "time out" ended and where the youth was given the "time out"; and

vii. The condition of the youth upon release.

8. Ensure that the youth is reintroduced to the group in a sensitive and non-punitive manner as soon as he or she has gained control; and

9. Ensure that the practice must be reviewed by the staff psychiatrist if the "time out" exceeds more than two hours within a 24 hour period.

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10:37B-4.11 Therapeutic holding techniques

(a) Residences that utilize therapeutic holding techniques with youth shall:

1. Ensure that physical restraint is used only to protect a youth from self-harm, or to protect other youth or staff members, or to prevent the destruction of property when the youth fails to respond to other non-restrictive behavior management interventions;

2. Ensure that staff members use only therapeutic holding techniques and holds, such as the basket hold or restraining the youth in the prone position. These techniques and holds shall not be utilized if the youth has not received a medical examination that documents that he or she will not be adversely affected;

3. Ensure that a youth is released from therapeutic holding technique as soon as he or she has gained control;

4. Document each therapeutic holding technique incident in an incident report that reflects the following:

i. The name of the youth;

ii. The date and time of day the restraint occurred;

iii. The name(s) of all staff members involved in the therapeutic holding technique;

iv. Precipitating factors that led to the therapeutic holding technique;

v. Other prior non-restraint interventions attempted;

vi. The time the therapeutic holding technique ended;

vii. The condition of the youth upon release;

viii. A medical review by the nurse or physician if injury to the youth is suspected; and

ix. Psychiatric community residence programs utilizing the therapeutic holding behavior management technique shall ensure that the youth is offered post-therapeutic holding technique counseling;

5. Ensure that all therapeutic holding technique incidents are:

i. Reviewed by a supervisory staff member within one working day after the incident; and

ii. If needed, discussed with the staff member involved in the therapeutic holding technique incident within one working day after the incident;

6. Ensure that staff members who are involved in the therapeutic holding technique of a youth receive training in safe techniques for therapeutic holding techniques;

7. Prohibit staff members from utilizing any technique that could likely result in injury to the youth including, but not limited to, the following practices during a therapeutic holding technique:

i. Pulling a youth's hair;

ii. Pinching a youth's skin;

iii. Twisting a youth's arm or leg in such a manner that would cause the youth pain;

iv. Kneeling or sitting on the chest or back of a youth;

v. Placing a choke hold on a youth;

vi. Bending back a youth's fingers; and

vii. Allowing other youth to assist in the physical restraint; and

8. Ensure that behavior management practices are not used as punishment, discipline or as a convenience to staff.

10:37B-4.12 Mechanical restraints

The residence shall not utilize mechanical restraints of any type on any youth.

10:37B-4.13 Behavior management quiet room

(a) A residence utilizing a behavior management quiet room shall ensure that the room:

1. Is unlocked at all times during its use;

2. Is used for only one youth at a time;

3. Has floor space that provides a minimum of 70 square feet;

4. Has a ceiling height of at least seven feet and six inches;

5. Has durable padded covering secured on the walls at least up to the six-foot level. The covering shall be made of a material that is fire retardant;

6. Provides a minimum of 10 foot candles of light in all areas of the room. All lighting fixtures shall have a protective covering to prevent tampering by a youth;

7. Has a door that is padded and equipped with a safety glass window to provide visibility of the room; and

8. Has adequate ventilation that complies with local and State regulations.

(b) The residence shall establish a written policy regarding the use of the behavior management quiet room for youth. This written policy shall specify:

1. Criteria for the use of this room, including those types of behavior that could result in the youth's need for a behavior management quiet room;

2. Those staff members who are authorized to place a youth in the room;

3. Procedures for ensuring the youth's safety while confined in the room;

4. Procedures for helping the youth re-enter the group, as specified;

5. Time frames governing a youth's time spent in the behavior management quiet room; and

6. Procedures for review of appropriateness of decisions regarding the use of behavior management quiet room. All decisions shall be reviewed by the staff psychiatrist within one working day.

(c) The residence shall ensure that objects such as belts, matches, pens, or other potentially harmful objects are removed from the youth prior to the youth's placement in the behavior management room.

(d) A staff member shall visually observe a youth in such a room at least every 10 minutes to ensure the safety of the youth. However, a staff member shall maintain constant visual contact with any youth considered to be at high risk if left unattended in such a room.

(e) The residence shall ensure that the youth has access to toilet facilities.

(f) The residence shall prohibit the use of a behavior management room for non-violent or non-assaultive offenses or behaviors or for practices such as:

1. To prevent runaways;

2. To seclude a youth who is ill;

3. To punish a youth for stealing, cursing, or failing to cooperate with house rules;

4. For the convenience of staff to facilitate supervision; or

5. To permit a youth to eat his or her meals in such a room.

(g) The residence shall maintain a behavior management log book detailing each use of such a room.

10:37B-4.14 House rules

(a) The residence shall develop house rules to help the youth develop self-control and conform to acceptable patterns of social behavior.

1. The residence shall put the house rules in writing.

2. The residence rules shall include a rationale for such rules and delineate the consequences for infractions.

3. The residence shall explain its house rule practices individually with each youth at the time the youth is placed in the residence.

4. The residence rules shall be maintained on file in the residence and made available to parents as specified in this manual.

5. The residence rules may be incorporated in the bill of rights for youth.

(b) The residence shall assign responsibility for the discipline, control, and supervision of youth to staff members and shall not delegate that responsibility to other youth.

(c) The residence shall not threaten discipline or administer discipline to a youth for the misbehavior of another youth or group of youth.

(d) The residence shall prohibit the following types of punishment from being used on a youth:

1. Any type of threat of physical hitting or the use of corporal punishment;

2. Forced physical exercise or forcing a youth to take an uncomfortable position;

3. Subjection to verbal abuse, ridicule, humiliation, or other forms of degradation;

4. Deprivation of meals, sleep, mail, clothing appropriate to the season or time of day, or verbal communication;

5. Mechanical or chemical restraint;

6. Assignment of overly strenuous physical work;

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7. Exclusion from any essential program or treatment service, such as education or clinical treatment;
8. Refusal of entry to the residence;
9. Temporary suspension and return of a youth from the residence to a parent, relative, foster home, or shelter, unless approved by the placing agency or legal guardian; and
10. Seclusion in a locked room.

SUBCHAPTER 5. HEALTH AND PHYSICAL ENVIRONMENT

10:37B-5.1 Comprehensive health plan for youth

(a) The residence shall prepare and implement a comprehensive health plan to ensure that each youth's medical, dental and other health needs are met adequately and promptly.

1. The residence shall identify a physician or health care organization who will assume responsibility for routine medical care of each youth.
2. The residence shall arrange for emergency, routine and follow-up medical care for each youth.

10:37B-5.2 Health care and medical treatment for youth

(a) Within 72 hours after admission, the residence shall ensure that each youth receives a medical examination by a licensed physician, unless the youth had received such a medical examination within 30 calendar days prior to his or her placement. The medical examination shall include, but not be limited to:

1. A measurement of height and weight;
2. A determination of blood pressure;
3. An objective vision screening which uses a Titmus or Snellen test, or equivalent;
4. A hearing screening using an audiometer and, if indicated, tympanometry;
5. A hematrocrit or hemoglobin test, if indicated; and
6. A urinalysis, if indicated.

(b) When the residence suspects that a youth is ill or carrying a contagious disease, the youth shall be examined by a physician prior to admission.

(c) When the residence suspects that a youth has been abused or neglected, the residence shall ensure that the youth is examined by a physician immediately upon admission.

(d) The residence shall ensure that eye glasses, orthopedic apparatus or other equipment is available to each youth who requires them.

(e) The residence shall ensure that all youth 13 years of age and under receive a Mantoux test, unless they have had tuberculosis, and ensure follow-up with the physician if test results are positive.

(f) The residence shall ensure that all youth are appropriately immunized.

(g) The residence shall ensure that each youth receives a dental examination within three months following admission and at least semi-annually thereafter.

(h) The residence shall ensure that youth between two and six years of age receive developmental evaluations by a physician or nurse.

10:37B-5.3 General medical practices

(a) The residence shall ensure that any medical, dental, psychological and psychiatric treatment or medication administered to a youth is explained to the youth.

(b) When serious accidents or illnesses occur to a youth, the residence shall take emergency action and notify the parents or legal guardian. The residence shall document these incidents in the youth's record.

(c) When a youth or staff member has a communicable disease, as specified in the table below, the residence shall:

1. Obtain a note from a licensed physician treating the youth or staff member confirming the diagnosis and indicating that there is no risk to the youth or staff member or to others before the youth or staff member participates in group activities; and
2. Isolate the youth or staff member posing a risk to others.

TABLE OF COMMUNICABLE DISEASES

Respiratory Illnesses	Gastro-intestinal Illnesses	Contact Illnesses
Chicken pox	Giardia lamblia	Impetigo
German measles	Hepatitis A	Lice
Hemophilus influenzae	Salmonella	Scabies
Measles	Shigella	
Meningococcus		
Mumps		
Strep throat		
Tuberculosis		
Whooping cough		

(d) The residence shall contact the New Jersey State Department of Health, the local health department or other appropriate public health authority when the youth or staff member has a reportable disease, in accordance with N.J.A.C. 8:57-1.3.

(e) If a youth or staff tests positive for HIV, the residence will follow universal precautions, as delineated in volume 38, #5-6, of the Morbidity and Mortality Weekly Report, published by the Centers for Disease Control, Atlanta, GA 30333.

(f) The agency shall adhere to State and Federal guidelines for reporting all illnesses, diseases, and health circumstances as required by the New Jersey Department of Health's rules or other procedures as approved by the New Jersey Department of Health.

10:37B-5.4 Medication other than psychotropic medication

(a) The residence shall administer prescription medication to a youth only when the medication is authorized by a physician.

(b) The residence shall have written policies and procedures that shall specify which non-prescription medication can or cannot be used and under what circumstances.

(c) The medication in (a) and (b) above shall be administered only after consultation with a physician and in accordance with the recommended dosage, age or weight of the youth.

(d) The residence may permit the dispensing of non-prescription medication other than those listed in (b) above if the youth's physician authorizes it in writing.

(e) The residence shall maintain a medication log book that shall contain the following information:

1. The name of youth receiving medication, whether prescription or non-prescription;
2. The type of medication, dosage, and intervals between dosages;
3. What to do if a dosage is missed;
4. The reason for medication;
5. The date and time medication was administered;
6. Possible side effects of the medication, if any; and
7. The signature and title of the staff member dispensing medication.

(f) The residence shall ensure that the following procedures for storage are followed.

1. The residence shall keep all prescription and non-prescription drugs in a locked cabinet or container, or if required, in a locked box in a refrigerator. The locked container(s) must be kept in a room which can be locked, such as a staff office or nursing station. The residence shall ensure that the keys are adequately safe-guarded and maintained by staff members and are kept out of the reach of the youth.
2. The agency shall develop policies and procedures to assure the safe and timely disposal of outdated stocks and prescriptions.
3. The telephone number of the regional poison control center shall be posted at all medication-dispensing stations and by each telephone.
4. Staff members shall have access to first aid supplies at all times.

10:37B-5.5 Food and nutrition for youth

(a) The residence shall ensure that each youth is provided with three nutritious meals daily, either in the residence itself or in the community, as follows:

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1. The residence shall make daily snacks available for youth who desire them, unless there is a medical reason not to provide them;
2. The residence shall select, store, prepare and serve food in a sanitary and palatable manner;
3. The residence shall prepare and date menus and keep the menus on file at the residence for a minimum of 90 calendar days;
4. The residence shall provide table service for youth;
5. The residence shall serve meals in a manner that makes mealtime a pleasant social experience; and
6. The residence shall not require a youth to eat against his or her desires, except by order of a physician.

(b) The residence shall ensure that the daily diet for each youth includes a balance of foods, that will assure the maintenance of good health.

1. The residence shall ensure that each meal contains a sufficient amount of food for every youth.
2. The residence shall make available, as necessary, an alternate choice of food for each meal served for youth on special diets or youth who, because of religious beliefs, cannot eat particular foods.
3. The residence shall follow individualized diets and feeding schedules that are submitted to the home by the youth's physician(s) or registered dietician(s).

10:37B-5.6 Health education and physical care for youth

(a) The residence shall ensure that youth receive training in personal care, hygiene, and grooming habits.

1. The residence shall discuss the physiological changes experienced during adolescence with youth in the residence.
2. The residence shall instruct youth about sexually responsible behavior, including how to protect themselves from pregnancy and sexually transmitted diseases, including AIDS.
3. The residence shall instruct all youth about the health consequences of smoking tobacco products, smokeless tobacco, alcohol and drug abuse.

(b) The residence shall ensure that youth are provided with the following:

1. Individual towels and washcloths;
2. Soap and toilet tissue; and
3. Hygiene supplies that are age appropriate for their needs, such as toothpaste, mouthwash, deodorant, razors, shaving cream and feminine hygiene articles.

(c) For youth unable to provide for their own personal care and hygiene, the residence shall bathe and groom them and provide other personal hygiene services that are necessary to meet their needs.

(d) The residence shall permit residents to maintain over-the-counter cosmetics, acne preparations, and personal hygiene supplies among their personal possessions, except when contraindicated for clinical, programmatic or behavioral management reasons, and so reflected in the client's record.

(e) The residence shall take measures to ensure that each youth has a personal supply of adequate, clean, well-fitting, and attractive clothing appropriate to his or her age, gender, individual needs, community standards and season.

1. The residence shall ensure that each youth's clothing is kept clean and in good repair and the home may require youth 13 years of age and older to do their own laundry.
2. The residence shall not require youth to wear any article of clothing that would explicitly identify them as a resident of the residence.

SUBCHAPTER 6. EDUCATION

10:37B-6.1 Enrollment of each resident in appropriate education program

(a) The residence shall ensure that each school-age youth receives an appropriate educational program pursuant to N.J.S.A. 18A:38-25 and N.J.S.A. 18A:7B, and in accordance with N.J.A.C. 6:28 and 6:9.

(b) Within three calendar days following admissions, the residence staff shall enroll the youth in the identified education program.

(c) The residence shall complete the documentation required by the Department's Office of Education for notification of the pupil's admission, in accordance with Appendix A, incorporated herein by reference.

(d) The residence shall develop policies and procedures to ensure that such education records required for admission are available.

(e) Issues regarding the initiation or appropriateness of an educational program for any pupil, which cannot be resolved by the residence and the education program staff, shall be referred immediately to the Department's Office of Education.

10:37B-6.2 Coordination with the pupil's educational program

(a) The residence shall develop and establish written procedures to ensure provisions for the following services:

1. Arranging for the provision of transportation for school age youth to and from their identified education programs;

*[1.]**2.* Emergency (such as illness) pick-up of pupils during school hours;

*[2.]**3.* Staff coverage during school hours to accommodate pupils remaining in the residence for reasons of illness, suspension, home instruction or other appropriate purposes;

*[3.]**4.* Notification of the education program staff of pupil absences prior to the start of the school day;

*[4.]**5.* Daily communication with the education program; and

*[5.]**6.* Utilization of community resources, such as the local library, recreational, and cultural activities, which support the education of the pupil.

(b) For pupils with an educational disability, the residence shall attend all child study team (CST) conferences regarding the pupil's educational program.

(c) The residence shall immediately notify the supervisor of the education program when a pupil is confined to the residence or hospital by a physician for at least a two-week period of time so that home instruction may be provided by the education program within seven calendar days after eligibility has been established. If instruction is not instituted within such time frames, the residence shall contact the Department's Office of Education.

(d) The residence staff shall cooperate with the CST case manager should the pupil require referral to the CST.

(e) For pupils with an educational disability, a copy of the individualized education program (IEP) shall be maintained with the pupil's treatment plan.

(f) Educational progress notes or report cards shall also be maintained by the residence. Upon receipt of progress notes or report cards, the residence shall review the educational progress notes or report cards with the pupil.

(g) The residence shall arrange a summer recreational or vocational program, as appropriate, for each pupil receiving a 10-month education program.

(h) The residence staff shall invite the education program staff to any meeting whose purpose is to finalize the pupil's discharge plan.

(i) The residence staff shall complete the documentation required by the Department for notification of the pupil's discharge, in accordance with Appendix B, incorporated herein by reference.

SUBCHAPTER 7. STAFF REQUIREMENTS

10:37B-7.1 General staff requirements

(a) Each residence shall employ sufficient numbers of qualified staff to provide required services.

(b) Residences shall meet the minimum staffing requirements specified in this section.

(c) Each residence or group of residences operated by the same PA shall have a program director.

(d) Each residence shall employ sufficient numbers of professional, direct care workers, paraprofessional workers, nurses, health educators, staff psychiatrists such that the responsibilities listed in this subchapter are only conducted by staff with corresponding minimum qualifications.

(e) During normal program operation hours, a minimum staff-youth ratio of one staff member for each three youths shall apply when youth are awake and present in the residence. During normal program operation hours, a minimum of two staff members shall be on duty for residences with more than six youth. One additional staff member shall be on duty for each additional group of three residents or a portion thereof.

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(f) The residence shall have at least two staff members on duty during normal sleeping hours.

1. At least one staff member shall be awake;

2. An additional staff member shall be available to provide emergency in-person coverage; and

3. Each residence shall have a written policy and procedure concerning the provision of emergency back-up coverage.

(g) The residence shall have at least one staff member present in the residence or immediately reachable by telephone when the residence is in operation but the youth are not in the residence on a particular day.

10:37B-7.2 Program director-supervisor responsibilities and qualifications

(a) The responsibilities of the program director-supervisor shall include, but need not be limited to, the following:

1. Planning, identifying, and developing the residence's programs and goals;

2. Managing and directing the daily operation of the psychiatric community residences for youth programs;

3. Ensuring compliance with accepted standards of care;

4. Ensuring that the residence(s) are serving the target population;

5. Assuring adequate staffing appropriate for an intensive treatment program;

6. Providing direct supervision to clinical staff;

7. Developing and implementing orientation and in-service training programs;

8. Apprising a governing body of all relevant information. This shall include an annual program report and any special reports as requested by the governing body;

9. Being responsible for maintaining information on current laws, regulations, licensure requirements, accreditation requirements and professional standards;

10. Establishing communication systems so that all staff are apprised of pertinent information;

11. Ensuring 24-hour staffing and back up for all needed functions;

12. Ensuring 24-hour emergency and crisis capability; and

13. Performing related duties as needed.

(b) The qualifications of the program director-supervisor shall include the following:

1. An earned master's degree in clinical social work, psychology, or its equivalent; and

2. Three years experience in the provision of youth mental health services, at least one of which has been in a supervisory capacity.

10:37B-7.3 Clinical social worker-therapist responsibilities and qualifications

(a) The responsibilities of the clinical social worker-therapist shall include, but need not be limited to, the following:

1. Providing ongoing clinical case management services;

2. Completing intake assessments on new residents;

3. Gathering and assessing case information from the CCIS;

4. Documenting the social assessments, family assessments and other pertinent case information;

5. Maintaining client records;

6. Attending and participating in treatment team meetings;

7. Assisting in the development of treatment plans;

8. Participating in case conferences;

9. Providing individual and family therapy;

10. Leading or co-leading therapy groups;

11. Developing and, if appropriate, coordinating discharge plans for residents;

12. Providing short term case follow-up after discharge;

13. Providing supervision to direct care paraprofessional staff;

14. Providing input into the evaluation of direct care paraprofessional staff performance;

15. Facilitating necessary service linkages and referrals;

16. Attending case assessment resource teams as needed; and

17. Assisting in the development of staff orientation programs.

(b) The qualifications of clinical social worker and therapist staff shall include, but need not be limited to, the following:

1. An earned masters degree in social work, psychology, counseling, family therapy or other related field;

2. Two years internship (or its equivalent), supervised direct practice internship or field practicum; and

3. One year experience in the provision of youth mental health services.

10:37B-7.4 Direct care paraprofessional responsibilities and qualifications

(a) Direct care paraprofessional worker duties shall include, but need not be limited to, the following:

1. Providing a caring and supportive environment;

2. Providing direct care services and supervision to residents;

3. Providing assistance and training in activities of daily living;

4. Providing ongoing information to professional staff;

5. Providing input into assessments, case conferences, and treatment planning;

6. Recognizing client behavioral signs indicating potential emergency and take immediate action by reporting to appropriate staff;

7. Providing one-on-one supervision and record client response;

8. Directing and assisting clients in preparing for group activities;

9. Providing social and recreational activities;

10. Performing light household duties;

11. Providing transportation; and

12. Demonstrating an ability to work positively with youth in a group setting.

(b) The qualifications of the direct care worker-paraprofessional shall include, but need not be limited to the possession of a valid driver's license and, the following:

1. A bachelor's degree in social work, psychology or a related field from an accredited college or university; or

2. An associate's degree in social work or a related field from an accredited college or university with one year experience working with youth in a group setting; or

3. A high school or high school equivalency diploma with two years full time experience working with youth in a group setting or demonstrated attributes and experience which enable the direct care paraprofessional to work appropriately with seriously emotionally disturbed youth.

10:37B-7.5 Nurse-health educator responsibilities and qualifications

(a) The responsibilities of the nurse-health educator shall include, but need not be limited to, the following:

1. Reporing physician's findings of new admission's physical examination to appropriate staff representative;

2. Providing physical examination of client upon request of client or staff, or upon observation of possible client medical problem;

3. Consulting with and advises staff on the dispensing of psychotropic and non-psychotropic medications and possible side effects, under the direction of the medical director or other physician;

4. Reporting to the medical director or physician for direction in the medical care and treatment of any client's medical condition and advises staff accordingly;

5. Providing injections of medication as needed and directed by the medical director or other physician;

6. Preparing and conducting group sessions focusing on health issues; and

7. Providing individual health related guidance as needed under supervision of medical director or physician.

(b) The qualifications for the nurse-health educator shall include the following:

1. A current New Jersey registered nursing license; and

2. One year direct care nursing experience with youth.

10:37B-7.6 Psychiatrist responsibilities and qualifications

(a) The responsibilities of the psychiatrist shall include, but need not be limited to, the following:

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1. Consulting with the program director regarding contracting with medical staff;
2. As assigned, serving as medical director;
3. Clinically supervising the nurse-health educator;
4. Developing and monitoring implementation of center medical policies and procedures;
5. Providing consultation to community agencies when appropriate;
6. Providing in-service training to center staff in special areas;
7. Providing medical input to current and planned programs;
8. Providing direct client services, such as diagnosis, evaluation, medication management, crisis intervention and therapy when appropriate;
9. Providing psychiatric consultation to all center programs as appropriate;
10. Providing recordkeeping on an accurate and timely basis as required by center and the Department of Health policies and monitor medical staff recordkeeping;
11. Having medical and legal responsibility for the treatment provided to the residence's clients; and
12. Providing input to PA management regarding issues impacting PA medical practice.

(b) The qualifications for the staff psychiatrist shall include the following:
1. A valid New Jersey license to practice medicine; and
2. Five years clinical practice in psychiatry.

10:37B-7.7 Volunteer and student intern requirements

(a) Residences may use volunteers and student interns to support the activities of regular paid staff members but shall not use volunteers and student interns to substitute for paid staff members.

(b) Residences shall ensure that volunteers and student interns who have contact with youth, parents or legal guardian receive proper training and are supervised by paid staff members. Such training and supervision shall seek to educate and inform the volunteer and intern about any special needs or problems they might encounter while working with youth.

(c) The PA shall have written policies and procedures governing the activities of volunteers and student interns, which shall clearly articulate their roles, responsibilities, and any activity restrictions.

(d) Residences shall require that references be submitted by prospective volunteer and student intern staff.

10:37B-7.8 Staff training and development

(a) The residence shall develop a training plan and the program director shall ensure that all staff members, upon employment, are trained in all areas appropriate to their responsibilities including, but not limited to, the following:
1. The residence's statement of purpose, as specified;
2. The residence's behavior management policy in these standards;
3. Emergency procedures;
4. Protocols for medication, as specified in these standards;
5. Infection control procedures, as specified in these standards; and
6. The resident's techniques for safe behavior management.

(b) The residence shall ensure that every new staff member is accompanied on his or her duties by an experienced staff member(s) as part of an orientation until the staff member is familiar with daily routines and operations of the residence.

(c) The residence shall document in each staff member's record that all social service and direct care staff members, including full and part time staff members, receive a minimum total of 12 hours of training each year in at least the following areas:
1. The principles of behavior management and crisis intervention;
2. Alcohol and substance abuse;
3. Suicide prevention;
4. Clinical treatment of various diagnoses; and
5. Medication, infection control, cardio-pulmonary resuscitation and first aid.

APPENDIX A
NOTIFICATION OF ADMISSION

Facility:_____ Division:_____

Pupil's Name:_____

Date of Admission:_____ Date of Birth:_____ Sex:_____

Educational Placement:_____

District of Residence:_____

District of Residence Contact:_____

Telephone: (_____)_____

Pupil Records:

Date Requested:____ Date Received:____ Not Received_____

Classified Pupil:_____ Nonclassified Pupil:_____

(Grade: _____)

Classification:_____ Date of Classification:_____

Date of IEP: _____

Date of Psychological Evaluation: _____

Date of Social History: _____

Date of Learning Evaluation: _____

Date of Medical Evaluation: _____

Date of Psychiatric Evaluation: _____

Date of Neurological Evaluation: _____

Date of Speech and Language Evaluation: _____

Parent/Guardian Status:

Is this an adult pupil under his/her own guardianship_____ ?
yes/no

Does DYFS have custody____ and/or guardianship_____ ?
yes/no yes/no

DYFS Caseworker:_____

Telephone: (_____)_____

Do any court ordered restraints exist which prohibit the parent(s) from contact with the pupil? If yes, explain:

_____

_____

_____

Parent/Guardian:_____

Address: _____

_____

Telephone: (_____)_____ HOME

(_____)_____ WORK

_____

_____ _____
Program Coordinator Date

_____

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PLEASE FORWARD THIS NOTIFICATION NO LATER THAN 5 CALENDAR DAYS FOLLOWING THE PUPIL'S ADMISSION TO:

Mark Gelardo, Ph.D., Manager
Child Study Services
Office of Education
10 Quakerbridge Plaza
CN 700
Trenton, NJ 08625

APPENDIX B
NOTIFICATION OF DISCHARGE

Facility:_____ Division:_____

Pupil's Name:_____ Date of Birth:_____

Date of Admission:_____ Date of Discharge:_____

Reason for Discharge:_____

_____

_____

Discharged To (Facility):_____

Contact Person:_____ Telephone: ( )_____

Address: _____

_____

Date Pupil Records Returned: _____

Records Returned To:_____
Name and Title

School District:_____

_____

_____ _____
Program Coordinator Date

PLEASE FORWARD THIS NOTIFICATION NO LATER THAN 5 CALENDAR DAYS FOLLOWING THE PUPIL'S DISCHARGE TO:

Mark Gelardo, Ph.D., Manager
Child Study Services
Office of Education
10 Quakerbridge Plaza
CN 700
Trenton, NJ 08625

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual: Nursing Facility Relief

Adopted New Rules: N.J.A.C. 10:63-3.22 and 3.23
Adopted Repeal: N.J.A.C. 10:63-3.21

Proposed: February 22, 1994 at 26 N.J.R. 894(a).
Adopted: April 8, 1994 by William Waldman, Commissioner, Department of Human Services.
Filed: April 8, 1994 as R.1994 d.213, **without change.**
Authority: N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7, 7a, b and c; 30:4D-12.
Effective Date: May 2, 1994.
Expiration Date: November 28, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:63-3.21 (Reserved)

10:63-3.22 Transitional relief for salary region adjustment; State Fiscal Year 1993

(a) In order to provide transitional relief for those nursing facilities most negatively impacted by the adjustment to a single Statewide salary region which began July 1, 1992, a rate adjustment shall be made for qualifying facilities. Nursing facilities which incurred reductions in Medicaid reimbursement in excess of $55,000 for services provided to Medicaid recipients during State fiscal year 1993 (July 1, 1992 to June 30, 1993), as a result of the implementation of the single Statewide salary region, shall receive a prospective per diem rate adjustment.

(b) Facilities shall be reimbursed 25 percent of the annual reduction of Medicaid reimbursement in excess of $55,000. This amount represents the reduction of Medicaid reimbursement in excess of $55,000 for the period from April 1, 1993 to June 30, 1993. The per diem add-on shall be calculated for each facility as follows:

1. Determine for each facility the prospective or interim to actual per diem rate(s) for the period from July 1, 1992 to June 30, 1993 using the salary region system effective prior to July 1, 1992;

i. These calculations shall not include the "six month" acuity adjustment of rates for patient mix;

2. Determine the difference between the corresponding single salary region per diem reimbursement rate(s) for the period from July 1, 1992 to June 30, 1993 (excluding the acuity adjustment of rates) and the per diem rate(s) as calculated in (b)1 above;

3. Multiply the per diem rate difference(s) from (b)2 above by the number of the facility's Medicaid patient days paid (allocated to the applicable rate periods if appropriate) for the period from July 1, 1992 to June 30, 1993;

4. From the sum determined in (b)3 above deduct the amount of $55,000;

5. Divide the remainder from (b)4 above by four; and

6. Divide the quotient from (b)5 above by the total number of the facility's Medicaid patient days paid for the period from April 1, 1993 to June 30, 1993.

(c) The resulting per diem amount shall be paid as an add-on to each eligible facility's routine prospective rate for a three month period commencing July 1, 1993.

10:63-3.23 Transitional relief for salary region adjustment; State Fiscal Year 1994

(a) In order to provide transitional relief for those nursing facilities most negatively impacted by the adjustment to a single Statewide salary region which began July 1, 1992, a rate adjustment shall be made for qualifying facilities. Nursing facilities which incurred reductions in Medicaid reimbursement in excess of $55,000 for services provided to Medicaid recipients during State fiscal year 1994 (July 1, 1993 to June 30, 1994), as a result of the implementation of the single Statewide salary region, shall receive a per diem rate adjustment.

(b) Facilities shall be reimbursed the annual reduction of Medicaid reimbursement in excess of $55,000 for the period effective July 1, 1993 to June 30, 1994. The per diem add-on shall be calculated for each facility as follows:

1. Determine for each facility the prospective or interim to actual per diem rate(s) for the period from July 1, 1993 to June 30, 1994 using the salary region system effective prior to July 1, 1992;

i. These calculations shall not include the "six month" acuity adjustment of rates for patient mix;

2. Determine the difference between the corresponding single salary region per diem reimbursement rate(s) for the period from July 1, 1993 to June 30, 1994 (excluding the acuity adjustment of rates) and the per diem rate as calculated in (b)1 above;

3. Multiply the per diem rate difference(s) from (b)2 above by the number of the facility's Medicaid patient days paid (allocated to the applicable rate periods if appropriate) for the period from July 1, 1992 to June 30, 1993;

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4. From the sum determined in (b)3 above deduct the amount of $55,000; and

5. Divide the remainder from (b)4 above by the total number of the facility's Medicaid patient days paid for the period from July 1, 1992 to June 30, 1993.

(c) The resulting per diem amount shall be paid as an add-on to each eligible facility's routine prospective rate for a 12-month period commencing July 1, 1993.

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Business Enterprise Program

Readoption with Amendments: N.J.A.C. 10:97

Proposed: February 7, 1994 at 26 N.J.R. 725(b).

Adopted: March 30, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: April 5, 1994 as R.1994 d.209, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12, 30:6-15.1 and 15.2, 20 U.S.C. 107 et seq., 34 CFR 395.

Effective Date: April 5, 1994, Readoption;
May 2, 1994, Amendments.

Expiration Date: April 15, 1999.

Summary of Public Comments and Agency Responses:

COMMENT: Mr. Edward Mellon, an operator in the Business Enterprise Program and a member of the Committee of Business Enterprise Operators, commented that the proposals were not proposed by the Committee of Business Enterprise Operators but were prepared by the Commission for the Blind and Visually Impaired.

RESPONSE: Although the proposed amendments for establishing classes of operators' licenses (N.J.A.C. 10:97-3.1(b), (c)) and mandating bienniel eye examinations for each operator by an ophthalmologist or optometrist (N.J.A.C. 10:97-3.1(f)) were drafted by the Commission, they were based upon recommendations that had been made by the Committee. The amendment prohibiting Business Enterprise Operators from operating motor vehicles on public streets or highways (N.J.A.C. 10:97-4.16) had been discussed with the Committee but did not gain its formal endorsement. The Commission proposed the amendment in the interest of public safety and to protect the integrity of the program.

COMMENT: The same commenter objected to the provision in N.J.A.C. 10:97-3.1(f) that called for mandatory eye examinations of each operator to be done by an ophthalmologist or optometrist on a list provided by the Commission for the Blind and Visually Impaired.

RESPONSE: The Commission responded that it has reconsidered, and decided that the required examination can be made by any ophthalmologist or optometrist. This will make the rule compatible with the definition "blind person" in the Code (N.J.A.C. 10:97-1.3).

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:97.

Full text of the amendments and new rule follows (deletions from proposal indicated in brackets with asterisks *[thus]*):

10:97-3.1 Completion of probation period and license

(a) (No change.)

(b) There shall be three classes of licenses, as follows:

1. "C" licenses shall be issued to all persons who have been assigned to a business enterprise and have satisfactorily completed the probationary period. The "C" license shall qualify an individual to operate a snack bar or newsstand.

2. "B" licenses shall be issued to all persons who possess a "C" license, have satisfactorily completed vending machine training approved by the Commission, and are able to demonstrate proficiency in the operation and maintenance of vending machines. The "B" license shall qualify an individual to operate a vending machine facility.

3. "A" licenses shall be issued to all persons who possess a "C" license, have completed a Food Service Manager Certification (FMC) course sponsored by the New Jersey State Department of Health, and subsequently have been certified by that department. The "A" license shall qualify an individual to operate a coffee shop or cafeteria facility.

(c) No person who currently operates a facility in the Business Enterprise Program shall be required to surrender his or her license and operating agreement for that facility because they do not possess an appropriate license. However, to be eligible for promotion or transer to another facility in the program, he or she must possess an appropriate license for that facility.

(d) All licenses shall be displayed to the public.

(e) (No change in text.)

(f) The license shall be immediately terminated by improvement of vision if the operator no longer meets the definition of a legally blind person set forth at N.J.A.C. 10:97-1.3. This shall be determined by a mandatory biennial examination of each operator by an ophthalmologist or optometrist *[on a list provided by the Commission for the Blind and Visually Impaired]*. Also, the license shall be terminated by death, revocation or voluntary withdrawal from the business by the licensee.

(g) (No change in text.)

10:97-4.16 Motor vehicle operation

Except as may otherwise be permitted by law, Business Enterprise Program operators shall not operate any motor vehicle on any public street or highway. If it is determined that an operator has operated a vehicle on any public street or highway for which a state driver's license is required, his or her Business Enterprise Program Operating Agreement and/or Business Enterprise Program Operator's license shall be subject to revocation, effective 15 days from the date of such notice of revocation, provided that the operator has been given an opportunity for an Administrative Review and/or an Administrative Hearing in accordance with N.J.A.C 10:97-8 prior to final determination.

TRANSPORTATION

(b)

TRANSPORTATION ASSISTANCE

Office of Regulatory Affairs

Zone of Rate Freedom

Readoption: N.J.A.C. 16:53D

Proposed: March 7, 1994 at 26 N.J.R. 1205(a).

Adopted: April 7, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning.

Filed: April 8, 1994 as R.1994 d.214, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 48:4-2.20 et seq.

Effective Date: April 8, 1994.

Expiration Date: April 8, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:53D.

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(a)

NEW JERSEY TRANSIT CORPORATION

Procurement Policies and Procedures

Adopted Amendments: N.J.A.C. 16:72-1.1, 1.2, 1.5, 2.2 and 2.4

Proposed: February 22, 1994 at 26 N.J.R. 908(b).
Adopted: April 4, 1994 by New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.
Filed: April 6, 1994 as R.1994 d.211, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:25-5(e).

Effective Date: May 2, 1994.
Expiration Date: March 20, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
The following technical change has been made to correct a printing error.
1. In proposed N.J.A.C. 16:72-2.4, the reference to citation "N.J.A.C. 16:72-1.6" has been changed to "N.J.A.C. 16:72-1.4."

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

16:72-1.1 Source for public information
The public may receive information concerning NJ TRANSIT's procurement program by contacting the Procurement Department, NJ TRANSIT, One Penn Plaza East, Newark, New Jersey 07105-2246.

16:72-1.2 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

"Bid security" means a guarantee, in the form of a bond or a deposit consisting of a cashier's check, certified check or letter of credit that the bidder, if selected, will accept the contract as bid; otherwise, the bidder or its guarantor will be liable for the amount of the loss suffered by NJ TRANSIT, which loss may be partially or completely recovered by NJ TRANSIT in exercising its rights against the bond or deposit.

...

"Line item" means a procurement item specified in the Invitation for Bids for which the bidder is asked to give individual pricing information.

...

"Payment bond" means a guarantee in the form of a bond that the vendor will pay all of its obligations to its subcontractors and suppliers and that NJ TRANSIT subcontractors and suppliers will be protected from loss in the event that the vendor fails to make payment as agreed.

"Performance bond" means a guarantee, provided prior to execution of a contract, in the form of a bond that the successful bidder will complete the contract as agreed and that NJ TRANSIT will be protected from loss in the event the vendor fails to complete the contract as agreed.

...

16:72-1.5 Methods of procurement
(a) Invitation for bid: Except as provided in (c) and (d) below, the formal advertising procedures contained in N.J.A.C. 16:72-2 shall be followed for all purchases or contracts in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7).

(b) Quotation: Except as provided in (c) and (d) below, purchases or contracts for an amount greater than $2,500 but not in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7) shall be made after quotes have been obtained from at least two qualified and responsible prospective contractors. Written quotations shall be submitted for purchases in excess of $7,500.

(c) Request for proposals/negotiations: The procurement of professional and technical services in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7) shall be accomplished through the issuance of a request for proposal to a minimum of three vendors and subsequent negotiation, except where determined by the Executive Director or his or her designee, in writing, that an alternative method of procurement is in NJ TRANSIT's best interest.

(d) (No change.)

(e) Authority for procurement-by-exception: The authority for procurement under the circumstances listed above rests with the Executive Director for procurement transactions not in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7). Transactions in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7) will require approval as may be set forth in the By-Laws of NJ TRANSIT.

(f) (No change.)

16:72-2.2 Bid bonds
A bid (proposal) bond or a deposit consisting of a cashier's check, certified check or irrevocable letter of credit drawn to the order of NJ TRANSIT in an amount to be determined by NJ TRANSIT, but not exceeding 50 percent of the bid, shall accompany all bids to serve as a guarantee that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within 10 working days after issuance of a notice of intent to award any bonds submitted pursuant to this section must be executed by surety companies licensed to do business in the State of New Jersey. Any letters of credit shall be issued by Federally insured financial institutions.

16:72-2.4 Pre-qualification of firms for capital projects
(a) Prospective contractors, prior to bidding on improvements to capital facilities and equipment, must be pre-qualified as to the character or amount of work or both for which they are permitted to submit bids. Such pre-qualification shall be based on all factors relating to contractor responsibility as set forth in N.J.A.C. 16:72-*[1.6]***1.4***, and any pertinent information relating to the qualifications of contractors.

(b) (No change.)

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

General Provisions
Casino Licensees
Communications; Notices
Persons Required to Be Licensed or Qualified
Application for Qualification

Adopted Amendments: N.J.A.C. 19:40-3.3 and N.J.A.C. 19:43-2.2 through 2.7
Adopted New Rule: N.J.A.C. 19:43-2.7A

Proposed: February 7, 1994 at 26 N.J.R. 782(a).
Adopted: April 6, 1994, by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: April 11, 1994 as R.1994 d.218, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63c, 69a, 70a and b, 82, 84, 85, 89b and 95.12b.

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Effective Date: May 2, 1994.
Expiration Dates: August 24, 1994, N.J.A.C. 19:40;
December 21, 1997, N.J.A.C. 19:43.

Summary of Agency-Initiated Changes:

N.J.A.C. 19:43-2.3(a)1 and 2, 2.4(a)1 and 2 and 2.5(c)1 and 2 are revised to simply cross-reference relevant Commission rules which include the addresses rather than reiterating the addresses. Also, a typographical error is corrected in N.J.A.C. 19:43-2.7(b)2.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division); the Casino Association of New Jersey (Casino Association); Brown & Michael; Bally's Park Place, Inc. and GNOC (collectively, Bally's); Boardwalk Regency Corporation and Caesars World, Inc. (collectively, BRC); Greate Bay Hotel and Casino, t/a Sands Hotel and Casino (the Sands); and Trump's Castle Associates, t/a Trump's Castle Casino Resort (Castle).

COMMENT: The Division supports the adoption of the proposed new rule and amendments. According to the Division, N.J.A.C. 19:43-2.7A corrects an inequity in the current renewal filing system in that qualifiers of casino licensees who are also casino key employee licensees (key qualifiers) will now be required to file the same renewal forms as other qualifiers. The Division also notes that the Employee License Renewal Application (ELRA) currently filed by key qualifiers has proven to be inadequate and, as a result, an extensive amount of additional investigative effort has had to be expended to complete its renewal investigations. The Division further states that it has found that unless the application forms are fully reviewed important information is often not disclosed, causing costly delays.

RESPONSE: Accepted.

COMMENT: The Division indicates that the language of N.J.A.C. 19:43-2.7A would be easier to understand if the references in N.J.A.C. 19:43-2.7A(c)1 of the new rule were to specific questions on the Personal History Disclosure Form-1A (PHD-1A) and the Personal History Disclosure Form-1B (PHD-1B) rather than the sections of the Commission rules in which these forms are codified.

RESPONSE: Each of the application forms used by the Commission has already been codified, allowing for succinct cross-references rather than reiteration of specific questions on an application form. The referenced data is easily accessible in N.J.A.C. 19:41-5.

COMMENT: Brown & Michael argues that the filing of a complete Personal History Disclosure Form for each renewal is burdensome and pointlessly time consuming because qualifiers will be required to resubmit previously provided information and because qualifiers have a continuing obligation to update previously provided information as soon as there is any change in the information.

RESPONSE: The proposed new rule N.J.A.C. 19:43-2.7A does not require the filing of a complete PHD-1A or PHD-1B for every renewal application. A person whose most recent application for qualification included a complete PHD-1A or PHD-1B may file a PHD-1A or PHD-1B updated as specified in N.J.A.C. 19:43-2.7A(c). However, the Commission has modified its proposal to permit the filing of an updated Personal History Disclosure Form for two renewal applications before another complete application is required in response to these and similar comments below, from several casino licensees.

While it is true that qualifiers have a continuing obligation to update the information previously provided, the Division uses the application process to verify previously obtained information as well as to obtain additional information. The Division's experience has proven that requiring qualifiers to provide the information which it needs for a complete investigation on an application form is a more efficient use of the Division's resources than permitting a qualifier to provide updated information on an ad hoc basis or in periodic interviews.

COMMENT: The Casino Association, Bally's and Castle argue that requiring qualifiers of casino licensees to file either a complete or updated PHD-1A or PHD-1B for renewal applications is unduly burdensome. They suggest that the Commission develop a short, simple renewal form for qualifiers based on the Employee License Renewal Application (ELRA) set forth in N.J.A.C. 19:41-14.3 supplemented by the financial reporting sections of either the PHD-1A and PHD-1B.

RESPONSE: The Commission proposed the use of the PHD-1A and PHD-1B for qualifier renewal applications at the specific request of the Division. The Division has determined that the additional information requested in the PHD-1A and PHD-1B is required for their comprehensive investigation of an individual's fitness for qualification. According to the Division, requiring key qualifiers to file a PHD-1A as a renewal application will, in many instances, permit the elimination of costly and time-consuming personal interviews and follow-up requests which are now a standard part of renewal investigations of key qualifiers. Further the Division has represented that the filing of the PHD-1A or PHD-1B in complete or updated form by all qualifiers is the only way it can obtain the information it needs for a complete renewal and that abbreviated filings delay its renewal investigation. Although the PHD-1A and PHD-1B were recently revised and simplified, the Commission will continue to review these forms to determine if further simplification is possible.

COMMENT: BRC does not believe that any increase in filing requirements for qualifiers is necessary or appropriate. Specifically, BRC believes that key qualifiers should be permitted to continue to utilize the Employee License Renewal Application (ELRA) set forth in N.J.A.C. 19:41-14.3 as a renewal application. BRC suggests that the Commission continue using the ELRA for key qualifiers and to extend its use to other individual qualifiers or develop a similar form for that purpose.

RESPONSE: At present all qualifiers, with the exception of key qualifiers, have been filing an updated Personal History Disclosure Form-1 (PHD-1) alternately with complete PHD-1s with their renewal applications. The PHD-1 form has has been replaced by two forms—the PHD-1A and PHD-1B. All qualifiers of casino licensees or holding companies of casino licensees, except for outside directors of holding companies and certain trustees and beneficiaries, will be required to file a PHD-1A with renewal applications. In the past, key qualifiers were permitted to utilize an ELRA as a renewal application because that is the renewal application form used by other casino key employees. However, because key qualifiers, for the most part, are officers of a casino licensee, additional information was always required. The Division obtained that information by requesting supplementary filings and by conducting extensive personal interviews with the applicant. The use of a PHD-1A by key qualifiers will enable the Division to streamline its renewal investigation of these individuals with a consequent savings in the cost of such investigations.

COMMENT: BRC objects to the fact that the proposed new rule will require directors of holding companies to file a more extensive Personal History Disclosure Form-1B rather than a Personal History Disclosure Form-2A and net worth statement, which they are currently required to file. BRC also objects to the requirement that directors of holding companies file either an updated PHD-1B or a complete PHD-1B for renewal of qualification rather than an ELRA. According to BRC this increase in filing requirements will make it more difficult for holding companies to attract suitably experienced persons to serve as outside directors.

RESPONSE: BRC's comments concerning the application forms which directors are currently required to file are erroneous. The new PHD-1B is essentially the same as the new PHD-2A with net worth statements from the new PHD-1A. Moreover, these directors are currently required to file a complete PHD-1 alternately with an updated version of this form. Accordingly, the Commission disagrees that the new rule and amendments impose an added burden on directors.

The Commission understands that some individuals may be reluctant to reveal the details of their personal and business life required by the PHD-1B form and that this reluctance may cause them to decline an invitation to serve on a licensee's or holding company's board of directors. However, the Commission believes that the disclosure of the requested information is required to determine whether an applicant possesses the required character, financial and business qualifications.

COMMENT: The Sands indicates that it has no objection to the proposed amendments. However, the Sands strongly objects to requirements in the proposed new rule, N.J.A.C. 19:43-2.7A, that an application for renewal of qualification consist either of a complete or updated PHD-1A or PHD-1B. The Sands urges that a simple renewal form be developed and that the burden of updating any previously provided information be placed on the applicant.

RESPONSE: The requirement that an application for renewal consist either of a complete or updated PHD-1A or PHD-1B is proposed because the Division has determined that the information requested in these application forms is required for a complete renewal investigation. However, as stated earlier, the Commission staff is reviewing the possibility of developing a simplified renewal application form for qualifiers.

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Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

19:40-3.3 Communications; notices

(a) Except as otherwise provided by the rules of the Commission all papers, process or correspondence relating to the Commission should be addressed to or served upon the New Jersey Casino Control Commission at the Commission's main office. All papers, process or correspondence relating to the Division should be addressed to or served upon the Division of Gaming Enforcement at the Division's main office.

(b)-(g) (No change.)

19:43-2.2 Persons required to be qualified

(a)-(c) (No change.)

(d) It shall be the affirmative responsibility of each casino licensee or applicant to ensure that all persons required by the Act and the rules of the Commission to establish their qualifications in connection with an initial or renewal application for a casino license have filed any required application forms in accordance with this subchapter.

19:43-2.3 Notification of anticipated or actual changes in directors, officers or equivalent qualifiers of casino licensees and holding companies

(a) Each casino licensee or applicant or holding company shall immediately notify the Commission and the Division, in writing, as soon as is practicable, of the proposed appointment, appointment, proposed nomination, nomination, election, intended resignation, resignation, incapacitation or death of any member of, or partner in, its board of directors or partnership, as applicable, or of any officer or other person required to qualify pursuant to N.J.S.A. 5:12-85c, d or e. Such notice shall be addressed to*[:

1. Casino Control Commission
   Office of Administrative Services
   Records Management
   Arcade Building, 1st Floor
   Tennessee Avenue and the Boardwalk
   Atlantic City, N.J. 08401; and
2. Division of Gaming Enforcement
   Casino Licensing Section
   CN-047
   Trenton, N.J. 08625]*

the Document Control Unit of the Commission at the address indicated in N.J.A.C. 19:40-3.1(a) and to the Casino Licensing Section of the Division at the address indicated in N.J.A.C. 19:40-3.1(d).

19:43-2.4 Notification of new financial sources

(a) Each casino licensee or applicant shall immediately notify the Commission and the Division, in writing, as soon as it becomes aware that it intends to enter into a transaction bearing any relation to its casino project which may result in any new financial backers, investors, mortgagees, bondholders, or holders of indentures, notes, or other evidences of indebtedness who may be subject to the provisions of N.J.S.A. 5:12-84b and Article 6B of the Act. Such notice shall be addressed to*[:

1. Casino Control Commission
   Office of Administrative Services
   Records Management
   Arcade Building, 1st Floor
   Tennessee Avenue and the Boardwalk
   Atlantic City, N.J. 08401; and
2. Division of Gaming Enforcement
   Casino Licensing Section
   CN-047
   Trenton, N.J. 08625]*

the Document Control Unit of the Commission at the address indicated in N.J.A.C. 19:40-3.1(a) and to the Casino Licensing Section of the Division at the address indicated in N.J.A.C. 19:40-3.1(d).

19:43-2.5 Notification concerning certain new qualifiers of publicly traded holding companies

(a)-(b) (No change.)

(c) Notice pursuant to (a) and (b) above shall be addressed to*[:

1. Casino Control Commission
   Office of Administrative Services
   Records Management
   Arcade Building, 1st Floor
   Tennessee Avenue and the Boardwalk
   Atlantic City, N.J. 08401; and
2. Division of Gaming Enforcement
   Casino Licensing Section
   CN-047
   Trenton, N.J. 08625]*

the Document Control Unit of the Commission at the address indicated in N.J.A.C. 19:40-3.1(a) and to the Casino Licensing Section of the Division at the address indicated in N.J.A.C. 19:40-3.1(d).

19:43-2.6 Qualification of new directors, officers or other qualifiers of a casino licensee

(a) (No change.)

(b) Each person subject to (a) above shall file a Personal History Disclosure Form 1A (PHD-1A), as set forth in N.J.A.C. 19:41-5.2, with the Commission upon application for qualification or for a temporary casino key employee license.

19:43-2.7 Qualification of new directors, officers or other qualifiers of a holding company

(a) Any proposed new director, partner, officer or other natural person required to qualify pursuant to N.J.S.A. 5:12-85c, d or e by virtue of his or her position with a holding company of a casino licensee, shall not perform any duties or exercise any powers related to such position until he or she has been found qualified by the Commission to the standards, except for residency, of a casino key employee.

(b) Each person subject to (a) above shall file a Personal History Disclosure Form 1A (PHD-1A), as set forth in N.J.A.C. 19:41-5.2, with the Commission prior to or immediately upon being elected or appointed to such position, except that persons required to qualify by virtue of the following positions may alternatively file a Personal History Disclosure Form 1B (PHD-1B), as set forth in N.J.A.C. 19:41-5.3:

1. An outside director of a holding company or any business entity required to qualify with respect to a casino licensee;
2. A trustee pursuant to N.J.S.A. 5:12-*[95:12]****95.12***;
3. A trustee required to be qualified; and
4. A beneficiary of a trust required to be qualified.

(c) The Commission may, upon the written petition of the casino licensee, permit a person otherwise subject to (a) above to perform any duties or exercise any powers relating to his or her position pending qualification, provided that:

1. Such person files a Personal History Disclosure Form 4A (PHD-4A), as set forth in N.J.A.C. 19:41-5.5;
2. At least 30 days have elapsed from the date on which the PHD-4A was filed; and
3. Such person files a PHD-1A or PHD-1B, in accordance with (b) above, within 15 days of the date on which the Commission's permission is granted.

(d) Notwithstanding the provisions of (a) above, any person permitted to perform duties or exercise powers pursuant to (c) above shall:

1.-3. (No change.)

19:43-2.7A Application for renewal of qualification

(a) All persons who have been found qualified by the Commission pursuant to N.J.S.A. 5:12-85c, d or e shall file a renewal application as follows:

1. Any person whose position requires both qualification and a key employee license shall file an application for renewal when required to file for renewal of his or her casino key employee license pursuant to N.J.A.C. 19:41-14.2.

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2. Any other person required to qualify shall file an application for renewal when the casino licensee for which he or she is a qualifier files a casino license renewal application.

(b) An application for renewal of qualification shall consist of the following:

1. For the first and every third renewal application thereafter:

*[1.]****i.*** A complete PHD-1A or PHD-1B, as required by N.J.A.C. 19:43-2.6 or 2.7;

*[2.]****ii.*** A signed, dated and notarized certification of truth; and

*[3.]****iii.*** A signed, dated and notarized release authorization which shall direct all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Commission or the Division*[.]**; **or***

[(c) Notwithstanding (b) above, a person whose most recent application for qualification, whether initial or renewal, included a complete PHD-1A or PHD-1B, shall file the following:]

2. For any other renewal application:

*[1.]****i.*** The information required in N.J.A.C. 19:41-5.2(a)1 through 5, 8, 9, 18i, 19 and 20i (for PHD-1A) or the information required in N.J.A.C. 19:41-5.3(a)1 through 5, 9, 14i and 15i (for a PHD-1B);

*[2.]****ii.*** Updated information regarding any changes to any other information provided in the person's initial application for qualification or most recent renewal application;

*[3.]****iii.*** Federal income tax returns for the two preceding years and related information;

*[4.]****iv.*** A signed, dated and notarized certification of truth; and

*[5.]****v.*** A signed, dated and notarized release authorization which shall direct all courts, probation departments, selective service boards, employers, educational institutions, financial and other institutions and all governmental agencies to release any and all information pertaining to the applicant as requested by the Commission or the Division.

(a)

CASINO CONTROL COMMISSION

Applications
Employment Requirements
Adopted Repeals: N.J.A.C. 19:41-1.5 and 1.6
Adopted New Rule: N.J.A.C. 19:41-1.5

Proposed: February 7, 1994 at 26 N.J.R. 779(a).
Adopted: April 6, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: April 11, 1994 as R.1994 d.215, **without change.**
Authority: N.J.S.A. 5:12-63c, 69a, 70a, 94 and 106a.
Effective Date: May 2, 1994.
Expiration Date: April 15, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement ("Division"), TropWorld Casino and Entertainment Resort ("TropWorld"), and Trump Taj Mahal Casino Resort ("Taj Mahal").

COMMENT: Division supports the proposal and the new regulation which provides indicia which would give rise to a presumption of an employment situation. Division construes the language of N.J.A.C. 19:41-1.5(d) as permitting Division comment in any case by case determination by the Commission.

RESPONSE: The comment has been accepted.

COMMENT: TropWorld indicates that the presumption of employment created by N.J.A.C. 19:41-1.5(b)6, a pending license or registration application before the Commission which is being paid for or reimbursed by the casino licensee or applicant, is problematic. A professional who is rendering services to a casino licensee may accept an offer of employment from that licensee and submit an application to the Commission which may be paid for by the casino licensee. Once that takes place, pursuant to the proposed new rule, the casino licensee could not utilize the services of that professional until the license or registration is granted. The operation burden outweighs the regulatory purpose.

RESPONSE: N.J.S.A. 5:12-106a provides that "A casino licensee shall not appoint or employ any person not registered or not possessing a current and valid license permitting such appointment or employment." The proposed new rule provides specific guidelines to avoid the circumstances in which an individual may function as an employee of a casino licensee or applicant without the appropriate registration or license. The indicia listed in proposed N.J.A.C. 19:41-1.5(b)1 through 6 establish a presumption of employment but not an irrebuttable presumption. Pursuant to proposed N.J.A.C. 19:41-1.5(d), the Commission may consider the indicia listed as well as "any other relevant information" before requiring any natural person to obtain an employee license or registration. The facts and circumstances surrounding any agreements for goods or services will be considered. The professional hired as an independent contractor who maintains an autonomous business office to practice his or her profession other than for the benefit of the casino licensee or applicant will not be presumed to be an employee pursuant to this regulation unless one of the other indicia of employment is present.

COMMENT: Taj Mahal indicates that according to this new rule, a natural person providing service to a casino must be appropriately licensed. This will inhibit us from hiring consultants in the future.

RESPONSE: As noted in the previous response, consultants will not be presumed to be employees unless the indicia listed in N.J.A.C. 19:41-1.5(b)1 through 6 are present. Those indicia serve as guidelines to draw the necessary distinction between independent consultant and employee.

Full text of the adoption follows:

19:41-1.5 Scope and applicability of employee licensing and registration requirements

(a) No casino licensee or applicant shall employ any natural person unless such person holds a current and valid license or registration as an employee issued in accordance with sections 89, 90 or 91 of the Act and the rules of the Commission.

(b) In determining whether a natural person who will provide services to a casino licensee or applicant must hold a license or registration as an employee or, alternatively, be registered as a vendor or junket enterprise pursuant to N.J.A.C. 19:41-11.1, it shall be presumed that any such person will be required to hold the appropriate license or registration as an employee if the provision of services by such person is characterized by any of the following indicia of an employment relationship:

1. The natural person will, for a period of time unrelated to any specific project or for an indefinite period of time, directly supervise one or more employees of the casino licensee or applicant;

2. The casino licensee or applicant will withhold state and federal income taxes or make regular deductions for unemployment insurance, social security, or other wage deductions required by law from any payments made to the natural person;

3. The natural person will be given the opportunity to participate in any benefit plans offered by the casino licensee or applicant to its employees, including, without limitation, health insurance plans, life insurance plans, pension plans or profit sharing plans;

4. The natural person will not, during the time that services are rendered to the casino licensee or applicant, maintain an autonomous business enterprise, seek or provide services to other business clients, or practice a trade or profession other than for the benefit of the casino licensee or applicant;

5. There is or will be a written or verbal promise of employment or an employment contract offered by the casino licensee or applicant in return for the services of the natural person; or

6. The natural person has an employee license or registration application pending before the Commission or will submit such an application during the time the services are being rendered, the cost of which has been or will be paid for or reimbursed by the casino licensee or applicant.

(c) A casino licensee or applicant which, or a natural person who, is a party to a contractual agreement for the provision of services to the casino licensee or applicant by such natural person as an enterprise subject to the vendor or junket registration or casino service industry licensure requirements of the Act and the rules of the Commission may request, in accordance with the provisions of

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N.J.A.C. 19:42-9.1, a declaratory ruling that, notwithstanding the presumption established by (b) above, the provision of such services in accordance with the terms of the agreement shall not require the natural person to obtain an employee license or registration.

(d) The Commission may, upon consideration of the factors in (b)1 through 6 above and any other relevant information, require any natural person to obtain an employee license or registration prior to providing or continuing to provide any services to a casino licensee or applicant notwithstanding:

1. Any agreement between the casino licensee or applicant and such natural person to the contrary; or

2. That a vendor registration form or junket enterprise registration form has been filed by a casino licensee or applicant on behalf of the natural person pursuant to N.J.A.C. 19:41-11.1.

19:41-1.6 (Reserved)

19:41-1.7 (Reserved)

(a)

CASINO CONTROL COMMISSION

Applications
Fees
Duration of Licenses
Adopted Amendments: N.J.A.C. 19:41-9.8, 9.9, 9.9A, 9.11A, 9.12, 9.13, 9.14 and 14.6; 19:44-6.1 and 19:51-1.8

Proposed: February 7, 1994 at 26 N.J.R. 780(a).

Adopted: April 6, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: April 11, 1994 as R.1994 d.216, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69(e), 70(e), 94, 139 and 141.

Effective Date: May 2, 1994.

Expiration Date: April 15, 1995, N.J.A.C. 19:41;
December 15, 1996, N.J.A.C. 19:44;
April 27, 1994, N.J.A.C. 19:51 (readoption pending, see 26 N.J.R. 1212(a)).

Summary of Agency-Initiated Changes:

N.J.A.C. 19:41-9.9A(a) was amended to provide for four-year renewal terms for junket enterprise licenses. The revised license duration which is clearly indicated in the Summary of the proposal, was inadvertently omitted from the corresponding proposed amendments to N.J.A.C. 19:41-9.9A(c) and is here added upon adoption.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement (Division).

COMMENT: The Division stated that it does not oppose the proposed amendments.

RESPONSE: Accepted.

COMMENT: The Division suggested that the proposed provision regarding use of payment plans by gaming-related casino service industry enterprises ("CSI's") should be modified to reflect the fee structure for such applicants.

RESPONSE: The Commission agrees that it is inaccurate to refer to the "total application fee" in this context. A payment plan implemented upon the filing of the application does not reflect the "total application fee," which for gaming-related CSI's is based upon the number of hours expended and the expenses incurred in processing and investigating the application. See N.J.A.C. 19:41-9.8(b). Therefore, N.J.A.C. 19:41-9.8(d) is modified upon adoption to expressly refer to the $5,000 application fee that is paid at the time of filing pursuant to N.J.A.C. 19:41-9.8(b)1.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

19:41-9.8 Gaming related casino service industry enterprise license fee

(a) In accordance with subsections 92a and b of the Act, all casino service industry enterprises offering goods and services which directly relate to casino, simulcast wagering or gaming activity, including gaming equipment manufacturers, suppliers, and repairers, schools teaching gaming and dealing techniques, and casino security services, shall meet the standards established for casino key employees in order to be licensed. Such a license shall be issued for two years and shall be renewable for additional two year periods.

(b)-(c) (No change.)

(d) Any enterprise required to apply for the issuance or renewal of a subsection 92a casino service industry enterprise license may request an installment plan for payment of the application fee ***in (b)1 above*** in accordance with the following schedule:

1. Upon filing of the application, an initial installment payment equal to one-fourth of the *[total]* application fee and an additional fee of $100.00 for the cost of processing such payment plan; and

2. Three subsequent installment payments each equal to one-fourth of the *[total]* application fee, to be paid within 90 days, 180 days and 270 days from the date that the application is filed.

19:41-9.9 Non-gaming related casino service industry license fee

(a) In accordance with subsection 92c of the Act, all casino service industry enterprises offering goods and services not directly related to gaming operations to casino licensees or applicants on a regular or continuing basis shall be licensed to the standards established by the Commission. Under subsection 94d of the Act, such license shall be issued for a three year period and shall be renewable for additional four year periods.

(b) (No change.)

(c) The application and issuance fee for the renewal of a four year non-gaming related casino service industry enterprise license shall be $2,500.

(d) Any enterprise required to apply for the issuance or renewal of a subsection 92c casino service industry enterprise license may request an installment plan for payment of the application fee in accordance with the following schedule:

1. Upon filing of the application, an initial installment payment equal to one-fourth of the total application fee and an additional fee of $100.00 for the cost of processing such payment plan; and

2. Three subsequent payments each equal to one-fourth of the total application fee, to be paid within 90 days, 180 days and 270 days from the date that the application is filed.

19:41-9.9A Junket enterprise license fees

(a) In accordance with subsection 102c of the Act, all qualifiers of junket enterprises shall meet the standards established for casino key employees in order for the junket enterprise to be licensed. Under subsection 94d of the Act, a junket enterprise license shall be issued for a three year period and shall be renewable for additional four year periods.

(b) (No change.)

(c) The application and issuance fee for the renewal of a *[three]* ***four*** year junket enterprise license shall be $3,750.

(d) Any enterprise required to apply for the issuance or renewal of a junket enterprise license may request an installment plan for payment of the application fee in accordance with the following schedule:

1. Upon filing of the application, an initial installment payment equal to one-fourth of the total application fee and an additional fee of $100.00 for the cost of processing such payment plan; and

2. Three subsequent payments each equal to one-fourth of the total application fee, to be paid within 90 days, 180 days and 270 days from the date that the application is filed.

19:41-9.11A Junket representative license fees

(a) In accordance with subsection 102(b) of the Act, all junket representatives employed by a casino licensee shall meet the standards established for casino key employees, except for residency, in order to be licensed. Under subsection 94(d) of the Act, such a license shall be issued for a three year period and shall be renewable for additional four year periods.

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(b) The fee for the issuance or renewal of a junket representative license shall be as follows:

1. A minimum application charge of $750.00, which shall be credited to the total fee; and

2. (No change.)

3. Payment for all unusual or out of pocket expenses incurred by the Commission and Division on matters directly related to the applicant or licensee; provided, however, that the amount of the issuance or renewal fee shall not exceed $4,000.

19:41-9.12 Gaming school resident director license fees

(a) Under Section 92(b) of the Act, a gaming school resident director shall be qualified to the standards for a casino employee. The responsibilities and duties of a resident director require more thorough investigation and continued assurances of suitability than are routinely required of casino employees generally. Under Section 94(d) of the Act, a resident director license shall be issued for three years and be renewable for four year periods thereafter.

(b) The issuance fee or renewal fee for a four-year resident director license shall be as follows:

1.-3. (No change.)

19:41-9.13 Gaming school instructor, principal employee and sales representative license fees

(a) Under Section 92(b) of the Act, each gaming school instructor, principal employee and sales representative shall be qualified and licensed to the standards established for casino employees. Under Section 94(d) of the Act, a license for each such person shall be issued for three years and be renewable for four year periods thereafter.

(b) (No change.)

(c) The renewal fee for a four year gaming school instructor license, gaming school principal employee license or gaming school sales representative license shall be $200.00.

19:41-9.14 Casino employee license fees

(a) (No change.)

(b) Under subsection 94d of the Act, a casino employee license for a person whose position is directly related to gaming activity shall be issued for three years and be renewable for four year periods thereafter. The issuance fee for such a three year license shall be $350.00. The renewal fee for such a four year license shall be $250.00.

(c) Under subsection 94d of the Act, a casino employee license for a person whose position is not directly related to gaming activity shall be issued for three years and be renewable for four year periods thereafter. The issuance fee for such a three year license shall be $250.00. The renewal fee for such a four year license shall be $225.00.

(d)-(e) (No change.)

19:41-14.6 Duration of renewed licenses

(a) Casino employee licenses shall be renewed for a term of four years.

(b) Casino key employee licenses shall be renewed for a term of two years.

19:44-6.1 Duration of licenses

(a) Licensure as a gaming school shall be granted for a period of two years, and shall be renewable for two year periods thereafter.

(b) Licensure as a gaming school resident director, instructor, principal employee or sales representative shall be granted for a period of three years and shall be renewable for four year period thereafter.

19:51-1.8 Duration of licenses; renewal

(a) Licensure pursuant to N.J.S.A. 5:12-92a is granted for a term of two years for the initial license term and for a term of two years for all subsequent renewals; provided, however, that the Commission shall reconsider the granting of such a license at any time at the request of the Division. Licensure pursuant to N.J.S.A. 5:12-92c and 5:12-102 is granted for a term of three years for the initial license term and for a term of four years for all subsequent renewals. An application for renewal of a license shall be filed no later than 120 days prior to the expiration of that license. The application for renewal of a license need contain only that information which represents or reflects changes, deletions, additions or modifications to the information previously filed with the Commission.

(b)-(f) (No change.)

(a)

CASINO CONTROL COMMISSION

Applications
Fees
Employee License Position Additions and Deletions
Adopted Amendment: N.J.A.C. 19:41-9.16

Proposed: February 22, 1994 at 26 N.J.R. 911(a).

Adopted: April 6, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: April 11, 1994 as R.1994 d.217, **without change.**

Authority: N.J.S.A. 5:12-63c, 69a, 70a and b, 70e, 89, 90, 139 and 141.

Effective Date: May 2, 1994.

Expiration Date: April 15, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from Greate Bay Hotel and Casino, Inc., t/a Sands Hotel and Casino (Sands).

COMMENT: The Sands supports the proposed amendment.

RESPONSE: Accepted.

Full text of the adoption follows:

19:41-9.16 Employee license position additions and deletions

(a)-(b) (No change.)

(c) A request to list multiple endorsements on a license or a replacement license pursuant to N.J.A.C. 19:41-9.17(a), in any particular order other than random order, shall require a payment of $25.00 for each such request.

Recodify existing (c)-(e) as (d)-(f) (No change in text.)

(b)

CASINO CONTROL COMMISSION

Applications
Casino Licensees
Persons Doing Business with Casino Licensees
Agreements to Do Business with Casino Licensees
Vendor Requirements
Casino Service Industry License Requirements
Adopted Repeal: N.J.A.C. 19:41-11.3 and 11.4.
Adopted Amendment: N.J.A.C. 19:51-1.2.
Adopted New Rules: N.J.A.C. 19:43-10.4 through 10.6; 19:51-1.2A and 1.2B.
Adopted Recodifications with Amendments: N.J.A.C. 19:41-11.1 and 11.2 as 19:43-10.2 and 10.3.

Proposed: January 18, 1994 at 26 N.J.R. 339(b).

Adopted: April 6, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: April 11, 1994 as R.1994 d.220, **without change.**

Authority: N.J.S.A. 5:12-63c, 69a, 70c, 89a, 90a, 91a and 106.

Effective Date: May 2, 1994.

Expiration Date: December 21, 1997, N.J.A.C. 19:43;
April 27, 1994, N.J.A.C. 19:51;
(readoption pending, see 26 N.J.R. 1212(a)).

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement ("Division"), the Sands Hotel and Casino ("Sands"), Bally's Park Place Casino Hotel and Tower and GNOC Corporation t/a Bally's Grand (collectively "Bally's), Caesars Atlantic City ("Caesars"), Trump Taj

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Mahal Casino Resort ("Taj Mahal"), Resorts International Hotel, Inc. ("Resorts"), Harrah's Casino Hotel ("Harrah's") and the TropWorld Casino and Entertainment Resort ("TropWorld").

COMMENT: Division supports the entire proposal and specifically the absence of an exemption for direct advertising media and proposes that the exemption for payments to guests pursuant to court orders or stipulations of settlement could be expanded to include any individuals or companies who receive ordered damages or settlement payments.

RESPONSE: The comment is accepted as to the absence of an exemption for direct media advertising. As to the expansion of the exemption from vendor registration for payments to guests pursuant to court orders or stipulations of settlement to include any individuals or companies who receive payments pursuant to a court order or stipulation of settlement, the comments by the Division describe an appropriate example of the type of transaction which could be considered exempt pursuant to subsection (a). In any particular circumstance, the new rule does provide that the Commission, upon the request of a casino licensee or applicant or on its own initiative, may exempt a transaction from vendor registration upon a showing that such registration is not necessary to protect the public interest and further the policies of the Casino Control Act (Act) N.J.S.A. 5:12-1 et seq.

COMMENT: The Sands and Bally's propose that the list of exemptions from vendor registration be expanded to include payments made by a casino licensee to a holding, intermediary or affiliated company as its pro rata share of insurance premiums incurred under a corporate insurance program.

RESPONSE: Pursuant to N.J.S.A. 5:12-104(b) and N.J.A.C. 19:41-11.1 and 11.3(g), each casino licensee or applicant is required to maintain a record of each written or unwritten agreement regarding the business of a casino hotel for review by the Commission regardless of whether the casino licensee or applicant is a party to the agreement. A casino licensee or applicant must also submit a vendor registration form and financial reports on behalf of those enterprises who are parties to the agreement including any unqualified familial entity which purchases goods or services for the benefit of the casino licensee. Exempting all such payments or even all such insurance payments from vendor registration filing would establish an unwarranted risk to the public interest. Vendor registratin is the entry level scrutiny which drives the monitoring, investigation and licensure system for casino service industries. Exemptions from vendor registration, which are provided in the very limited circumstances described in the proposed new rule N.J.A.C. 19:41-10.5, are necessary narrow because such exemption eliminates the most elementary of filing requirements pursuant to the Act. Without the type of information provided in a vendor registration form, subsequent monitoring is not possible. While the Commission has granted exemptions from a much higher level of scrutiny, that is, licensure as a casino service industry to insurance companies, exemption from licensure is an entirely different matter from any exemption from vendor registration. There is no basis to totally exempt from vendor registration filings, paymnets made to a holding, intermediary or affiliated company for a pro rata share of insurance premiums incurred under a corporate insurance program. Such filing and reporting is currently required only on behalf of the primary insurance carriers, that is, carriers which have a direct agreement with the casino licensee or applicant or holding, intermediary or affiliated company. In addition, as noted in the previous comment, the new rule does provide that the Commission may exempt a transaction from vendor registration upon a showing that such registration is not necessary to protect the public interest and further the policies of the Casino Control Act.

COMMENT: Caesars and the Sands propose that the list of exemptions be expanded to include exemptions for all publication subscriptions.

RESPONSE: The proposal, as published, provides an exemption for publications purchased for employees and is so broad as to include exemptions for purchases of any publication which will directly contribute to the work performance or professional development of an employee of a casino licensee or applicant. The suggestion that the list of exemptions be expanded to include a broad-based exemption for any publication purchased for any reason is inconsistent with N.J.S.A. 5:12-104(b) and N.J.A.C. 19:41-11.1 and 11.3(g). To codify and broaden this exemption into a general publication exemption would eliminate the basic filing requirements for an entire category of casino service industries without assurances that such registration is not necessary to protect the public interest and to further the specific policies of the Act. However, in any particular circumstance, the new rule does provide that the Commission, upon the request of a casino licensee or applicant or on its own initiative, may exempt a transaction from vendor registration upon a showing that such registration is not necessary to protect the public interest and further the policies of the Casino Control Act.

COMMENT: Caesars proposes that the list of exemptions be expanded to include for all freight carriers.

RESPONSE: The proposal, as published, includes exemptions for freight carriers selected by the vendor for delivery of goods C.O.D. or freight collect. The suggestion that the list of exemptions be expanded to include a broad-based exemption for any freight carrier even if chosen by the casino licensee or applicant and even if payment were other than C.O.D. or freight collect is inconsistent with N.J.S.A. 5:12-104(b) and N.J.A.C. 19:41-11.1 and 11.3(g) which would require such filings. The fact that freight transporters are common carriers and are regulated as such offers no assurance that the basic, required filing of vendor registration is not necessary to protect the public interest and to further the specific policies of the Act.

COMMENT: The Sands, Caesars, the Taj Mahal, Resorts, Harrah's, TropWorld propose that the list of exemptions be expanded to include exemptions for direct media advertising.

RESPONSE: As previously noted in the response to Sands' and Bally's comments, the Act and Commission regulations require that each casino licensee or applicant keep a record and submit a vendor registration and financial report on each written or unwritten agreement regarding the business of a casino hotel. Exemptions from vendor registration, which are provided in the very limited circumstances described in proposed new rule N.J.A.C. 19:41-10.5, are necessarily narrow because such exemption eliminates the most elementary of filing requirements pursuant to the Act. Without vendor registration, the regulatory system is not engaged.

However, these comments may be appropriately considered in the context of exemption from a higher level of scrutiny. While the Commission has granted and may in the future grant both individual and field of commerce exemptions from licensure as a casino service industry, exemption from such licensure is an entirely different matter from exemption from vendor registration. A broad category of exemption at the entry level of vendor registration for all direct media advertising is too general to provide assurances that such registration is not necessary to protect the public interest and further the policies of the Act. However, as noted above, in any particular circumstance, the new rule does provide that the Commission, upon the request of a casino licensee or applicant or on its own initiative, may exempt a transaction from vendor registration upon a showing that such registration is not necessary to protect the public interest and further the policies of the Casino Control Act.

Full text of the adoption follows:

19:43-10.2 Presentation of agreement; termination clause

(a) Each casino licensee **or applicant** shall be required, upon directive of the Commission, to present to and file with the Commission a fully signed copy of every written agreement and a precise written description of every other agreement, including the terms thereof and the persons involved therein and associated therewith, regarding either:

1.-2. (No change.)

(b) Each agreement with a casino licensee or applicant governed by subsection 104(b) of the Act and this section, whether or not expressly included therein by the parties thereto, shall be deemed to include a provision for its termination without liability on the part of the casino licensee or applicant, or on the part of any qualified party to the agreement or any related agreement the performance of which is dependent upon such agreement, if the Commission shall disapprove thereof in accordance with subsection 104b of the Act and the regulations of the Commission.

(c) Except as otherwise provided in N.J.A.C. 19:43-10.4 and 10.5, no agreement with a casino licensee or applicant shall be either performed or in force or effect unless a written vendor registration form or junket enterprise registration form describing the enterprise performing pursuant to such agreement is properly and seasonably filed with the Commission in accordance with subsection 104b of the Act and the regulations of the Commission and the casino licensee or applicant has submitted a purchasing and disbursement report in accordance with N.J.A.C. 19:43-10.6.

19:43-10.3 Review of agreements

(a) The Commission may review each agreement governed by N.J.A.C. 19:43-10.2 to determine the following:

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1. The reasonableness of the terms of the agreement, including the terms of compensation;

2. The qualifications of the persons involved in and associated with the agreement in accordance with the standards enumerated in section 86 of the Act, after which the Commission may make a finding as to the suitability of such persons to be involved or associated with the casino licensee or applicant;

3. Whether any enterprise involved therein or associated therewith is providing or likely to provide goods or services to, or conducting or likely to conduct business with, a casino licensee or applicant, its employees or agents which requires casino service industry licensure pursuant to section 92 of the Act and N.J.A.C. 19:51-1.2 or 1.2A, in which case the Commission shall direct that a casino service industry license application be promptly filed by the enterprise; and

4. Whether any action is desirable or necessary to regulate, control or prevent economic concentration in any casino service industry or to encourage or preserve competition in any casino service industry in accordance with N.J.S.A. 5:12-1b(12) and N.J.A.C. 19:51-1.6.

(b) Whenever, pursuant to subsection 92c of the Act and the regulations of the Commission, the Commission has exempted any person involved in or associated with an agreement governed by N.J.A.C. 19:43-10.2 from the casino service industry license requirement otherwise imposed by subsection 92(c), the Commission may in its discretion base its findings as to the suitability of the person to be involved or associated with the casino licensee or applicant upon the fact of such exemption.

(c) If the Commission shall disapprove of an agreement governed by N.J.A.C. 19:43-10.2 or any person associated therewith, the Commission may by directive require the termination of such agreement or association or pursue any remedy or combination of remedies provided for in the Act or the regulations of the Commission. If such disapproved agreement or association is not thereafter promptly terminated as required by Commission directive, the Commission may pursue any remedy or combination of remedies provided for in the Act or the regulations of the Commission.

(d) No provision of this section shall in any way limit the duty and obligation of any enterprise to, on its own initiative, apply for a casino service industry or junket enterprise license.

19:43-10.4 Vendor registration; junket enterprise registration

(a) Except as otherwise provided in (b) below or N.J.A.C. 19:43-10.5, each casino licensee or applicant shall file with the Commission no later than 20 calendar days following the formal offer and acceptance of an agreement a completed vendor registration form as specified in N.J.A.C. 19:41-5.11 for any enterprise which has not already had such form filed with the Commission on its behalf by any casino licensee or applicant. Vendor registration shall be required for any enterprise which has entered an agreement which the Commission has determined is governed by subsection 104b of the Act and this section, regardless of whether any direct compensation is exchanged by the parties as a result of the agreement. Such agreements shall include, without limitation, any agreement pursuant to which a bus owner or operator agrees to transport passengers to the casino hotel facility of a casino licensee in exchange for an agreement by the casino licensee to provide the passengers with complimentary services or items upon arrival.

(b) Each casino licensee or applicant shall, prior to the arrival at the casino hotel of a junket which involves one or more junket enterprises, file with the Commission a junket enterprise registration form as specified in N.J.A.C. 19:41-5.12 for each junket enterprise involved in such junket which has not already had a junket enterprise registration form filed with the Commission on its behalf by any casino licensee or applicant. This requirement shall apply regardless whether such junket enterprise has had a vendor registration form filed with the Commission on its behalf pursuant to (a) above for an agreement unrelated to junkets. A junket enterprise registration form shall be completed and certified by the junket enterprise in a form specified by the Commission and submitted to the casino licensee or applicant participating in the junket. The casino licensee or applicant shall be required to certify, to the best of its knowledge, as to the accuracy of the information provided by the junket enterprise.

(c) Notwithstanding (a) and (b) above, an incomplete vendor registration form or junket enterprise registration form shall be considered timely filed by the licensee or applicant in accordance with this section if:

1. The incomplete registration form is substantially complete except for minor errors or omissions, and is timely filed pursuant to (a) or (b) above, as appropriate; and

2. A revised registration form, completed in accordance with a deficiency notice provided by the Commission, is filed:

i. For a vendor registration, within 10 days of service of notice or by the end of the 20 day period, whichever is later; or

ii. For a junket enterprise registration, within 10 days of service of notice or prior to the arrival of the junket, whichever is later.

19:43-10.5 Vendor registration exemptions

(a) The Commission may, upon the request of a casino licensee or applicant or on its own initiative, exempt a transaction from the vendor registration requirements in N.J.A.C. 19:43-10.4 if the Commission determines that vendor registration is not necessary to protect the public interest and further the policies set forth in sections 1(b)6, 1(b)9, 92 and 104 of the Act. In making such a determination the Commission shall consider, without limitation, the following:

1. The nature of the goods or services provided or the business transacted;

2. The nature of the enterprise providing the goods or services or transacting the business with the casino licensee or applicant; and

3. Whether such enterprise is otherwise regulated by the Act or Commission regulations.

(b) The following transactions shall be deemed exempt pursuant to (a) above unless vendor registration is otherwise directed by the Commission:

1. Contributions to non-profit charitable corporations or organizations, provided that no consideration is received for the contribution;

2. Direct payments to guests or guests and their representatives pursuant to a court order or stipulation of settlement or for settlement of guest losses or guest refunds;

3. Payments by the casino licensee or applicant for the following:

i. Payments for travel expenses incurred by an employee of the casino licnesee or applicant in the conduct of the employer's business including, without limitation, lodging, meals and transportation expenses;

ii. Payments to prospective employees for reimbursement of travel expenses incurred as a result of the employment interview; and

iii. Payments for training seminars, publication subscriptions, conference registrations or membership dues for professional associations that will directly contribute to the work performance or professional development of the employee;

4. Payments received from an employee of the casino licensee or applicant for purchases of obsolete hotel property or supplies for personal use;

5. Payments to government agencies for goods or services provided under statutory or other legal mandate, or for taxes, assessments, fines, garnishments or licensing fees and payments to public utilities having legal service monopolies;

6. Payments to or from individuals or enterprises pursuant to compliance with state or Federal law;

7. Payments by a third party manufacturer for rebates to a casino licensee or applicant for prior purchase of goods or services from licensed or registered vendors;

8. Payments for freight charges to freight transporters selected by the vendor for delivering goods C.O.D. or freight collect;

9. Transactions with travel industry enterprises that purchase or order lodging, meals, or other accommodations at a prededucted or gross commission rate which does not exceed 10 percent of cost;

10. Payments to unlicensed casino service industry applicants under transactional waivers approved pursuant to N.J.S.A. 5:12-92a and N.J.A.C. 19:51-1.2B;

11. Payments to any person required to qualify pursuant to N.J.S.A. 5:12-84b, 85c or 85e, which are a result of agreements

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pertaining to such person's status as a financial source or qualifer; and

12. Payments to labor organizations, unions and affiliates registered pursuant to N.J.S.A. 5:12-93 for employee dues and benefits programs.

19:43-10.6 Purchasing and disbursement reports

(a) Each casino licensee or applicant shall generate a master purchasing and disbursement report in accordance with this subsection for all transactions subject to N.J.S.A. 104b of the Act. Such report shall be submitted to the Commission on the Friday of the third full calendar week of each month by 5:00 P.M., unless that day is a State or Federal holiday, in which case the report shall be provided by 5:00 P.M. on the first weekday thereafter that is not a State or Federal holiday, and shall include the following information for the period since the most recent report was filed:

1. A payee register listing alphabetically by payee all non-payroll transactions drawn by the casino licensee or applicant and, at a minimum, the following information in tabular form next to the name of each payee:

i. Vendor identification number or exempt code;

ii. Amount of each individual disbursement;

iii. Date of each individual disbursement;

iv. Check number, or other identification of disbursement;

v. Subtotal of the disbursements by payee; and

vi. The grand total of all disbursements made during the reporting periods;

2. A manual attachment listing any transaction subject to this section which is not included in the payee register in (a)1 above or the magnetic computer tape in (a)6 below, including transactions with enterprises not yet assigned a vendor identification number, wire transfers and transactions by a subsidiary, intermediary company, holding company or agent of the casino licensee or applicant for goods or services that benefit the casino licensee or applicant. All transactions appearing on the manual attachment shall include, at a minimum, the following information:

i. Vendor name;

ii. Vendor identification number (if assigned) or exempt code;

iii. Date of disbursement;

iv. Amount of each disbursement; and

v. Subtotal of all disbursements;

3. A vendee register listing alphabetically by vendee all non-operating transactions in which the casino licensee or applicant was the vendor providing goods or services including, at a minimum, the following information in tabular form next to the name of the vendee:

i. Vendor identification number or exempt code;

ii. Date of each transaction;

iii. Amount of each transaction;

iv. Subtotal of all transactions; and

v. A general description of the type of good or service provided;

4. A voided check register listing alphabetically by vendor previously reported transactions that were subsequently voided or require corrected information and at a minimum, the following information:

i. Vendor name;

ii. Vendor identification number or exempt code;

iii. Date of original transaction;

iv. Amount of void; and

v. Date of void;

5. A subcontractor register listing all payments made to maintenance and construction companies performing services on the existing or proposed casino hotel or related facility, regardless of whether such company is a general contractor, subcontractor, secondary subcontractor or otherwise, including, at a minimum, the following the information:

i. Name and vendor identification number of each maintenance or construction company listed directly under the maintenance or construction company from which it received payment;

ii. Transaction dates;

iii. Dollar amount of each payment; and

iv. Monthly total dollar amount disbursed to each maintenance or construction company;

6. A magnetic computer tape listing all disbursements to enterprises appearing on the payee register (a)1 above and appearing on the subcontractor register (a)5 above, within specifications as required by the Commission, and a hard copy printout that includes the total number of transactions subject to the vendor registration filing requirements; and

7. The signature of the casino licensee's or applicant's chief operating officer or his or her designee verifying the accuracy of the information contained therein.

19:41-11.3 (Reserved)

19:41-11.4 (Reserved)

19:51-1.2 Gaming-related casino service industry license requirements

(a) No enterprise shall provide goods or services directly related to casino, simulcast wagering or gaming activity to, or otherwise transact business directly related to casino, simulcast wagering or gaming activity with, a casino applicant or licensee, its employees or agents unless licensed in accordance with subsections 92a and b of the Act.

(b) In determining whether an enterprise shall be licensed pursuant to this section, the Commission shall consider, without limitation, whether the enterprise satisfies one or more of the following criteria:

1. (No change in text.)

2. Whether the enterprise provides maintenance, service or repair pertaining to devices, machines, equipment, items, or articles governed by (b)1 above; or

3.-4. (No change in text.)

(c) (No change in text.)

19:51-1.2A Nongaming-related casino service industry and junket enterprise license requirements

(a) Unless otherwise licensed in accordance with subsections 92a and b of the Act and N.J.A.C. 19:51-1.2, no enterprise shall, on a regular or continuing basis, provide goods or services regarding the realty, construction, maintenance or business or a proposed or existing casino hotel or related facility to a casino licensee or applicant, its employees or agents unless such enterprise is licensed or exempted in accordance with subsections 92c and d of the Act. The Commission may, however, permit the enterprise to continue to provide such goods and services or conduct such business if the application is prepared and filed within a reasonable time.

(b) In determining whether an enterprise is subject to the requirements of this subsection, it shall not matter whether the casino licensee or applicant is a party to any agreement pursuant to which said goods or services are being provided. Enterprises required to be licensed in accordance with subsections 92c and d of the Act and (a) above shall include, without limitation, the following:

1. Suppliers of alcoholic beverages, food and nonalcoholic beverages, gaming table layouts and non-value gaming chip sorters;

2. In-State and out-of-State sending tracks;

3. Licensors of authorized games to casino licensees and applicants;

4. Garbage handlers, vending machine providers, linen suppliers and maintenance companies;

5. Shopkeepers located within the approved hotel; and

6. Limousine services and construction companies contracting with casino licensees or applicants or their employees or agents.

(c) No enterprise shall, on a regular or continuing basis, conduct business as a junket enterprise with a casino licensee or applicant, its employees or agents unless such enterprise is licensed in accordance with subsections 92c and d and section 102 of the Act. The Commission, however, may permit the enterprise to continue to conduct such business if the application is prepared and filed within a reasonable time.

(d) (No change in text.)

(e) Notwithstanding the provisions of (d) above, persons and enterprises which conduct business as a junket enterprise or provide,

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or imminently will provide, goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility to casino licensees or applicants, their employees or agents shall, unless otherwise determined by the Commission, be deemed to be transacting such business on a regular or continuing basis if:

1.-4. (No change in text.)

5. The enterprise transacts business which satisfies either (e)3 or 4 above within each of three consecutive 12-month periods.

(f) Based upon an analysis of the factors contained in (d) above, the Commission may, in its discretion, require an enterprise which is otherwise governed by the provisions of N.J.S.A. 5:12-92c and (a) above to be licensed as a subsection 92c casino service industry enterprise prior to conducting any business whatsoever with a casino licensee or applicant if the Commission determines that such action is necessary in order to contribute to the public confidence and trust in the credibility and integrity of the gaming industry in New Jersey. Enterprises subject to this requirement shall include manufacturers, suppliers and distributors of gaming table layouts and non-value gaming chip sorters and licensors of authorized games to casino licensees and applicants.

(g) In determining whether a person or enterprise has exceeded or will exceed the dollar thresholds established in (e) above, all types of business, including junket business, transacted by that person or enterprise with casino licensees or applicants, their employees or agents shall be accumulated.

(h) The Commission may expressly prohibit any unlicensed enterprise from providing goods or services to or conducting business with a casino licensee or applicant, its employees or agents on the basis that, after having been directed to file a casino service industry or junket enterprise license application, such enterprise failed to properly file such application within a reasonable time. Any unlicensed enterprise prohibited from providing goods or services or conducting business on the basis of its failure to properly file an application may resume providing goods or services or conducting business:

1. Thirty days following the proper filing of its casino service industry or junket enterprise license application and after the payment of an additional late filing license fee of $250.00; or

2. Immediately following a determination that the enterprise is not required to be licensed as a casino service industry or junket enterprise.

(i) No waiver of all or any portion of the 30-day period mandated by (h)1 above shall be granted by the Commission on the ground of economic hardship or loss to the unlicensed casino service industry or junket enterprise in question.

19:51-1.2B Transactional waivers

(a) Notwithstanding N.J.A.C. 19:51-1.2(a) or N.J.A.C. 19:51-1.2A(f), upon application for a transactional waiver by a casino licensee or applicant for each business transaction, the Commission may permit an applicant for a casino service industry enterprise license to conduct a business transaction with the casino licensee or applicant prior to the licensure of the casino service industry license applicant if:

1. A completed application for the appropriate casino service industry enterprise license required by N.J.A.C. 19:51-1.2(a) or N.J.A.C. 19:51-1.2A(f) has been filed by the applicant;

2. At least 30 days has elapsed since the filing of such completed application, unless the Division reports on an application for a transactional waiver prior thereto;

3. The Division does not object to the granting of the transactional waiver; and

4. The casino licensee or applicant shows good cause for granting the transactional waiver.

(a)

CASINO CONTROL COMMISSION

Casino Licensees
Employee Experiential Hours
Adopted New Rule: N.J.A.C. 19:43-9.4

Proposed: February 7, 1994 at 26 N.J.R. 783(a).
Adopted: April 6, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: April 11, 1994 as R.1994 d.219, **without change**.
Authority: N.J.S.A. 5:12-63c, 69a, 70c, 89a, 90a, 91a and 106.
Effective Date: May 2, 1994.
Expiration Date: December 21, 1997.

Summary of Public Comments and Agency Responses:

Comments were received from the Division of Gaming Enforcement ("the Division"), the Sands Hotel and Casino ("the Sands"), the Showboat Casino Hotel ("Showboat"), and Trump's Castle Casino Resort ("Castle").

COMMENTS: The Division supports the adoption of the reproposed new rule.

RESPONSE: Accepted.

COMMENTS: Castle supports the proposal.

RESPONSE: Accepted.

COMMENTS: The Sands does not object to the adoption of N.J.A.C. 19:43-9.4

RESPONSE: Accepted.

COMMENTS: Showboat submits that maintaining a record of each specific game supervised by a pit boss would be extremely difficult and burdensome.

RESPONSE: Hours spent working in a specific game serve a regulatory purpose for pit bosses because the recording of hours worked supervising an authorized game allows for the most flexibility for some current experiential requirements and any future requirements. Pursuant to administrative policy, in order to allow New Jersey casino employees to qualify to deal and supervise in poker during the test period that is now being conducted, several different qualifying alternatives were allowed. Two of those alternatives required a demonstration of hours of supervision in an authorized game. To allow employees to maximize their experience in order to be prepared to move into another game, a new game, or instructing in a particular game, the hours worked in each game must be recorded. To except pit bosses and poker shift supervisors from the recording of specific experiential hours would be to handicap those individuals regarding new game and new employment opportunities.

Full text of the adoption follows:

19:43-9.4 Employee experiential hours

(a) Each casino licensee shall maintain a complete, accurate and current record of the number of actual hours worked in each game by each employee as a pit boss, poker shift supervisor, floorperson, boxperson and dealer; and the number of actual hours worked by each employee as a slot attendant supervisor, slot attendant, lead slot technician, slot technician, chief slot technician and slot shift manager.

(b) A daily log of the actual number of hours worked by each employee in each position listed in (a) above and, as applicable, in each game shall be maintained in each pit and in the slot department, which log shall record the date and time of day when each employee began and ended working in a particular game or in the slot department. Each entry into such log shall be approved by the pit boss or the slot shift manager, as appropriate, or his or her designee, verifying the accuracy of the information therein.

(c) Upon the written request of any employee or former employee, a casino licensee shall verify the number of hours worked by such person in any position listed in (a) above identified in the request. Within 30 days of the receipt of such request, the casino licensee shall provide the employee or former employee with the following documents for submission to the Commission:

1. An affidavit from the casino licensee indicating the number of hours worked by the employee or former employee in each position identified in the request and, if applicable, in each game. The

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affidavit shall be signed by an assistant casino manager (for table game hours), or an assistant slot manager (for slot department hours) or other management personnel above that level in the casino licensee's organizational structure as filed pursuant to N.J.A.C. 19:45-1.11. The signature of any person authorized to verify experiential hours pursuant to this section must be submitted to the Commission prior to any verification by that person; and

2. An affidavit from the employee or the former employee indicating that he or she agrees with the hours of employment specified by the casino licensee in its affidavit.

(d) No casino licensee shall charge any fee for providing verification of experiential hours pursuant to this section.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Casino Licensee's Organization
Adopted Amendment: N.J.A.C. 19:45-1.11

Proposed: February 7, 1994 at 26 N.J.R. 784(a).
Adopted: April 8, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: April 11, 1994 as R.1994 d.221, **without change.**
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j) and 99.
Effective Date: May 2, 1994.
Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement and the Sands Hotel and Casino do not object to the proposal.

RESPONSE: Accepted.

COMMENT: Harrah's Casino Hotel, Showboat Casino-Hotel, Resorts International Hotel, Inc. and Bally's Park Place support the amendment as proposed.

RESPONSE: Accepted.

Full text of the adoption follows:

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1.-7. (No change.)

8. A casino accounting department supervised by a casino key employee holding a license endorsed with the position of controller. The supervisor of the casino accounting department may be responsible for the operation and conduct of the simulcast counter and, except as otherwise provided in (b)9 below, shall also be responsible for the control and supervision of the cashier's cage and any satellite cages. The casino accounting department shall be responsible for, without limitation, the following:

i. (No change.)

ii. The preparation and control of records and data;

iii. The control of stored data, the supply of unused forms, and the accounting for and comparing of forms used in operating the casino and casino simulcasting facility; and

iv. The cashier's cage, which shall be supervised by a casino key employee holding a license endorsed with the position of cage manager. The supervisor of the cashier's cage shall report to the supervisor of the casino accounting department and shall be responsible for the control and supervision of cage and slot cashiers, changepersons and casino clerks. The cashiers' cage may be separated into independent operations for table games and slot machines. If a casino licensee elects to operate both a table games cage and a slot machine cage, each independent cage operation shall be supervised by a casino key employee holding a license endorsed with the position of cage manager and each cage manager shall report to the supervisor of the casino accounting department. The supervisor of an independent slot machine cage shall be responsible for the supervision of the master coin bank, slot cashiers, changepersons and coin impressment personnel. The supervisor of an independent table games cage shall be responsible for all remaining cashiers' cage functions. If a casino licensee elects to operate one or more satellite cages, each satellite cage shall be supervised by a casino key employee holding a license whose endorsement shall depend upon the functions performed by the satellite cage. The cashiers' cage shall be responsible for, without limitation, the following:

Recodify existing i.-iv. as (1)-(4) (No change in text.)

9. Notwithstanding (b)8 above, a casino licensee which elects to operate independent table game and slot machine cages may, in its discretion, operate the independent slot machine cage as a separate department. If an independent slot machine cage is operated as a separate department, the supervisor of the slot machine cage department shall report to a casino key employee approved by the Commission. The supervisor of a slot machine cage department shall be responsible for the supervision of the master coin bank, slot cashiers, changepersons and coin impressment personnel.

10. (No change.)

(c)-(g) (No change.)

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedures for Granting Credit, and Recording Checks Exchanged, Redeemed or Consolidated
Adopted Amendment: N.J.A.C. 19:45-1.27

Proposed: February 22, 1994 at 26 N.J.R. 912(a).
Adopted: April 6, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: April 11, 1994 as R.1994 d.222, **without change.**
Authority: N.J.S.A. 5:12-63(c), 69(a) and 99(a).
Effective Date: May 2, 1994.
Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement responded that it has no objection to the adoption of the amendment.

RESPONSE: Accepted.

COMMENT: Marina Associates (Marina) supports the adoption of the proposed amendment with one change. Marina suggests that the proposal be revised to permit any casino key employee in a direct reporting line above the credit manager to approve credit limits and changes thereto.

RESPONSE: Rejected. The proposal was not intended to change the structure for approving credit limits and changes thereto. Any change in the positions of those individuals presently authorized to approve credit limits and changes thereto could result in an incompatible function.

Full text of the adoption follows:

19:45-1.27 Procedures for granting credit, and recording checks exchanged, redeemed or consolidated

(a)-(e) (No change.)

(f) The credit limit, and any changes thereto, must be approved by any one or more of the individuals holding the job positions of credit manager, assistant credit manager, credit shift manager, credit executive, or a casino key employee in a direct reporting line above the casino manager or a credit committee composed of casino key employees which may approve credit as a group but whose members may not approve credit individually unless such person is included in the job positions referenced above. The approval shall be recorded in the credit file and shall include:

1.-4. (No change.)

(g)-(o) (No change.)

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(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Signatures

Adopted Amendment: N.J.A.C. 19:45-1.45

Proposed: February 22, 1994 at 26 N.J.R. 912(b).
Adopted: April 6, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: April 11, 1994 as R.1994 d.223, **without change.**
Authority: N.J.S.A. 5:12-69(a) and (c).
Effective Date: May 2, 1994.
Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Responses:
COMMENT: The Division of Gaming Enforcement does not object to the proposal.
RESPONSE: Accepted.
COMMENT: TropWorld Casino and Entertainment Resort supports the proposal.
RESPONSE: Accepted.

Full text of the adoption follows:

19:45-1.45 Signature
(a) (No change.)
(b) Signature records shall be prepared for each person required by the rules of the Commission to sign records and documents and shall include specimens of signatures, titles of signers and the date the signature was obtained. Such signature records shall be filed alphabetically by last name either on a company-wide or departmental basis. The signature records shall be adjusted on a timely basis to reflect changes of personnel.
(c)-(d) (No change.)

(b)

CASINO CONTROL COMMISSION

Gaming Equipment
Rules of the Games
Pai Gow Poker
Automated Shuffling Devices and Dealing Shoes

Adopted Amendments: N.J.A.C. 19:46-1.13B and 1.19; 19:47-11.2, 11.4, 11.5, 11.6, 11.7, 11.8, 11.8A, 11.10 and 11.11
Adopted New Rules: N.J.A.C. 19:47-11.8B and 11.8C

Proposed: January 18, 1994 at 26 N.J.R. 344(a).
Adopted: April 6, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: April 11, 1994 as R.1994 d.224, **without change.**
Authority: N.J.S.A. 5:12-69(e), 70(f), 99(a) and 100.
Effective Date: May 2, 1994.
Expiration Dates: April 15, 1998, N.J.A.C. 19:46;
April 15, 1996, N.J.A.C. 19:47.

Summary of Public Comments and Agency Responses:
COMMENT: The Division of Gaming Enforcement and Greate Bay Hotel and Casino, Inc. (Sands Hotel & Casino) indicated that they did not object to the proposal.
RESPONSE: Accepted.

Full text of the adoption follows:

19:46-1.13B Pai gow poker table; pai gow poker shaker; physical characteristics; computerized random number generator
(a)-(c) (No change.)
(d) Except as provided in (e) below, pai gow poker shall be played with a container, to be known as a "pai gow poker shaker," which shall be used to shake three dice before each hand of pai gow poker is dealt in order to determine the starting position for the dealing or delivery of the cards. The pai gow poker shaker shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and shall, at a minimum, adhere to the following specifications:
1.-2. (No change.)
(e) As an alternative to using the shaker and dice described in (d) above, a casino licensee may determine the starting position for the dealing or delivery of the cards in pai gow poker by utilizing a computerized random number generator that automatically selects and displays a number from 1 through 7 inclusive. Any computerized random number generator proposed for use by a casino licensee shall be approved by the Commission.

19:46-1.19 Dealing shoes
(a) (No change.)
(b) Cards used to game at blackjack, pai gow poker, minibaccarat and red dog shall be dealt from a manual or automated dealing shoe which shall be secured to the gaming table when the table is open for gaming activity and secured in a locked compartment when the table is not open for gaming activity. Cards used to game at baccarat shall be dealt from a manual or automated dealing shoe which shall be secured in a locked compartment when the table is not open for gaming activity. Notwithstanding the foregoing, cards used to game at pai gow poker may be dealt from the dealer's hand in accordance with N.J.A.C. 19:47-11.8A.
(c) A device which automatically shuffles cards may be utilized at the game of blackjack, pai gow poker, minibaccarat and red dog in addition to a manual or automated dealing shoe, provided that the automated card shuffling device and the procedures for shuffling and dealing the cards are submitted to and approved by the Commission.
(d) A manual or automated dealing shoe shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and, at a minimum, shall adhere to the following specifications:
1.-3. (No change.)
(e)-(g) (No change.)

19:47-11.2 Cards; number of decks
(a) Except as provided in (b) below, pai gow poker shall be played with one deck of cards with backs of the same color and design, one additional solid yellow or green cutting card and one additional solid yellow or green cover card to be used in accordance with the procedures set forth in N.J.A.C. 19:47-11.6. The deck of cards used to play pai gow poker shall meet the requirements of N.J.A.C. 19:46-1.17 and shall include one joker. Nothing in this section shall prohibit a casino licensee from using decks which are manufactured with two jokers provided that only one joker is used for gaming at pai gow poker.
(b) If an automated card shuffling device is used for pai gow poker, a casino licensee shall be permitted to use a second deck of cards to play the game, provided that:
1. Each deck of cards complies with the requirements of (a) above;
2. The backs of the cards in the two decks are of a different color;
3. One deck is being shuffled by the automated card shuffling device while the other deck is being dealt or used to play the game;
4. Both decks are continuously alternated in and out of play, with each deck being used for every other round of play; and
5. The cards from one deck only shall be placed in the discard rack at any given time.

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19:47-11.4 Pai gow poker shaker and dice; computerized random number generator

(a) Pai gow poker shall be played with three dice which shall be maintained at all times inside a pai gow poker shaker. The dice used to play pai gow poker shall meet the requirements of N.J.A.C. 19:46-1.15 and the pai gow poker shaker shall meet the requirements of N.J.A.C. 19:46-1.13B.

Recodify (b)-(c) as 1.-2. (No change in text.)

(b) As an alternative to the pai gow poker shaker and dice described in (a) above, a casino licensee may, pursuant to N.J.A.C. 19:46-1.13B and 19:47-11.8C, play the game of pai gow poker with a computerized random number generator that automatically selects and displays a number from 1 through 7 inclusive.

19:47-11.5 Opening of the table for gaming

(a) After receiving a deck of cards at the table in accordance with N.J.A.C. 19:46-1.18, the dealer shall sort and inspect the cards and the floorperson assigned to the table shall verify the inspection as required by N.J.A.C. 19:46-1.18. If the deck of cards used by the casino licensee contains two jokers, the dealer and a casino supervisor shall ensure that only one joker is utilized and that the other joker is torn in half and discarded.

(b)-(c) (No change.)

(d) If a casino licensee uses an automated card shuffling device to play the game of pai gow poker and two decks of cards are received at the table pursuant to N.J.A.C. 19:46-1.18 and 19:47-11.2, each deck of cards shall be separately sorted, inspected, verified, spread, inspected, mixed, stacked and shuffled in accordance with the provisions of (a) through (c) above immediately prior to the commencement of play.

(e) All cards opened for use on a pai gow poker table and dealt from a manual or an automated dealing shoe shall be changed at least every eight hours. All cards opened for use on a pai gow poker table and dealt from the hand shall be changed at least every four hours. Procedures for compliance with this subsection must be submitted to the Commission for approval.

19:47-11.6 Shuffle and cut of the cards

(a) Immediately prior to the commencement of play and after each round of play has been completed, the dealer shall shuffle the cards either manually or by use of an automated card shuffling device so that the cards are randomly intermixed. Upon completion of the shuffle, the dealer or device shall place the deck of cards in a single stack; provided, however, that nothing in this section shall be deemed to prohibit an automated card shuffling device which, upon completion of the shuffling of the cards, inserts the cards directly into an automated or manual dealing shoe.

(b) After the cards have been shuffled and stacked, the dealer shall:

1. If the cards were shuffled using an automated card shuffling device, deal or deliver the cards in accordance with the procedures set forth in N.J.A.C. 19:47-11.8, 11.8A or 11.8B; or

2. If the cards were shuffled manually, cut the cards in accordance with the procedures set forth in (c) through (e) below.

(c) Upon completion of a manual shuffle, the dealer shall place the stack of cards on top of the cover card. Thereafter, the dealer shall offer the stack of cards to be cut, with the backs facing up and faces facing the layout, to the player determined pursuant to (d) below. If no player accepts the cut, the dealer shall cut the cards.

Recodify (c) as (d) (No change in text.)

(e) The player or dealer making the cut shall place the cutting card in the stack at least 10 cards from either end. Once the cutting card has been inserted, the dealer shall take the cutting card and all the cards on top of the cutting card and place them on the bottom of the stack. The dealer shall then remove the cover card and place it on the bottom of the stack. Thereafter, the dealer shall remove the cutting card and, at the discretion of the casino licensee, either place it in the discard rack or use it as an additional cutting card to be inserted four cards from the bottom of the deck. The dealer shall then deal or deliver the cards in accordance with the procedures set forth in N.J.A.C. 19:47-11.8, 11.8A or 11.8B.

(f) Whenever there is no gaming activity at a pai gow poker table which is open for gaming, the cards shall be spread out on the table either face up or face down. If the cards are spread face down, they shall be turned face up once a player arrives at the table. After the first player is afforded an opportunity to visually inspect the cards, the procedures outlined in N.J.A.C. 19:47-11.5(c) shall be completed.

19:47-11.7 Wagers

(a)-(b) (No change.)

(c) All wagers at pai gow poker shall be placed prior to the dealer announcing "No more bets" in accordance with the dealing procedures set forth in N.J.A.C. 19:47-11.8, 11.8A or 11.8B. No wager at pai gow poker shall be made, increased or withdrawn after the dealer has announced "No more bets."

19:47-11.8 Procedures for dealing the cards from a manual dealing shoe

(a) If a casino licensee chooses to have the cards dealt from a manual dealing shoe, the dealing shoe shall meet the requirements of N.J.A.C. 19:46-1.19 and shall be located on the table to the left of the dealer. Once the procedures required by N.J.A.C. 19:47-11.6 have been completed, the cards shall be placed in the manual dealing shoe and the dealer shall announce "No more bets".

(b) The dealer shall then, using one of the procedures authorized by N.J.A.C. 19:47-11.8C, determine the starting position for dealing the cards.

(c) After the starting position for dealing the cards has been determined, each card shall be removed from the dealing shoe with the left hand of the dealer and placed face down on the appropriate area of the layout with the right hand of the dealer. The dealer shall deal the first card to the starting position as determined in (b) above and, moving clockwise around the table, deal a card to all other positions, including the dealer, regardless of whether there is a wager at the position. The dealer shall then return to the starting position and deal a second card in a clockwise rotation and shall continue dealing until each position, including the dealer, has seven cards.

(d) After seven cards have been dealt to each position, including the dealer, the dealer shall remove the remaining cards from the shoe and determine whether exactly four cards are left.

1. If four cards remain, the four cards shall not be exposed to anyone and shall be placed in the discard rack. The dealer shall then collect any cards dealt to a position where there is no wager and place them in the discard rack without exposing the cards.

2. (No change.)

19:47-11.8A Procedures for dealing the cards from the hand

(a) (No change.)

(b) If a casino licensee chooses to have the cards dealt from the dealer's hand, the following requirements shall be observed.

1. Once the procedures required by N.J.A.C. 19:47-11.6 have been completed, the dealer shall place the deck of cards in either hand.

i. Once the dealer has chosen the hand in which he or she will hold the cards, the dealer shall use that hand whenever holding the cards during that round of play.

ii. The cards held by the dealer shall at all times be kept in front of the dealer and over the table inventory container.

2. The dealer shall then announce "No more bets" prior to dealing seven stacks of seven cards each to the area in front of the table inventory container. The dealer shall deal each card by holding the deck of cards in the chosen hand and using the other hand to remove the top card of the deck and place it face down on the appropriate area of the layout.

(c) (No change.)

(d) After seven stacks of seven cards have been dealt, the dealer shall determine whether exactly four cards are left by spreading them face down on the layout.

1. If four cards remain, the cards shall not be exposed to anyone at the table and shall be placed in the discard rack.

2. If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a stack has more or less than seven cards, the round of play shall be void and the cards reshuffled. If the cards have not been misdealt,

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the round of play shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18.

(e) Once the dealer has completed dealing the seven stacks and placed the four remaining cards in the discard rack, the dealer shall then, using one of the procedures authorized by N.J.A.C. 19:47-11.8C, determine the starting position for delivering the stacks of cards.

(f) After the starting position for delivering the stacks of cards has been determined, the dealer shall deliver the first stack to the starting position as determined in (e) above and, moving clockwise around the table, deliver the remaining stacks in order to all positions, including the dealer, regardless of whether there is a wager at the position. In delivering the stacks, the stack farthest to the left of the dealer shall be considered the first stack, and the stack farthest to the right of the dealer shall be considered the seventh stack. The dealer shall deliver each stack face down.

(g) After the seven stacks have been delivered to each position, including the dealer, the dealer shall collect any stacks dealt to a player position where there is no wager and place them in the discard rack without exposing the cards.

19:47-11.8B Procedures for dealing the cards from an automated dealing shoe

(a) Notwithstanding any other provision of N.J.A.C. 19:46 or this chapter, a casino licensee may, in its discretion, choose to have the cards used to play pai gow poker dealt from an automated dealing shoe which dispenses cards in stacks of seven cards, provided that the shoe, its location and the procedures for its use are approved by the Commission.

(b) If a casino licensee chooses to have the cards dealt from an automated dealing shoe, the following requirements shall be observed.

1. Once the procedures required by N.J.A.C. 19:47-11.6 have been completed, the cards shall be placed in the automated dealing shoe.

2. The dealer shall then announce "No more bets" prior to the shoe dispensing any stacks of cards.

(c) The dealer shall then, using one of the procedures authorized by N.J.A.C. 19:47-11.8C, determine the starting position for delivering the stacks of cards.

(d) Once the starting position has been determined in accordance with (c) above, the dealer shall deliver the first stack of cards dispensed by the automated dealing shoe to that position. As the remaining stacks are dispensed to the dealer by the automated dealing shoe, the dealer shall deliver a stack in turn to each of the other positions, including the dealer, moving clockwise around the table, whether or not there is a wager at the position. The dealer shall deliver each stack face down.

(e) After the seven stacks of seven cards have been dispensed and delivered to each position, including the dealer, the dealer shall remove the remaining cards from the shoe and determine whether exactly four cards are left by spreading them face down on the layout.

1. If four cards remain, the cards shall not be exposed to anyone at the table and shall be placed in the discard rack.

2. If more or less than four cards remain, the dealer shall determine if the cards were misdealt. If the cards were misdealt and a stack has more or less than seven cards, the round of play shall be void and the cards reshuffled. If the cards have not been misdealt, the round of play shall be considered void and the entire deck of cards shall be removed from the table pursuant to N.J.A.C. 19:46-1.18.

(f) If the dealer determines the cards were dealt properly, the dealer shall then collect any stacks dealt to a position where there is no wager and place them in the discard rack without exposing the cards.

19:47-11.8C Procedure for determining the starting position for dealing cards or delivering stacks of cards

(a) In order to determine the starting position for the dealing of cards or the delivery of stacks of cards for the game of pai gow poker, a casino licensee may, in its discretion, use the procedure authorized in (b) or (c) below.

(b) The dealer shall shake the pai gow poker shaker and dice described in N.J.A.C. 19:47-11.4 at least three times so as to cause a random mixture of the dice.

1. The dealer shall then remove the lid covering the pai gow poker shaker, total the dice and announce the total.

2. To determine the starting position, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one, and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the total of the three dice.

3. Examples are as follows:

i. If the dice total 8, the dealer would receive the first card or stack of cards; or

ii. If the dice total 14, the sixth betting position would receive the first card or stack of cards.

4. After the dealing or delivery of the cards has been completed in accordance with the procedures set forth in N.J.A.C. 19:47-11.8, 11.8A or 11.8B, the dealer shall place the cover on the pai gow poker shaker and shake the shaker once. The pai gow poker shaker shall then be placed to the right of the dealer.

(c) The dealer may use a computerized random number generator approved by the Commission to select and display a number from 1 through 7 inclusive, and verbally announce the number. To determine the starting position, the dealer shall count counterclockwise around the table, with the position of the dealer considered number one, and continuing around the table with each betting position counted in order, including the dealer, regardless of whether there is a wager at the position, until the count matches the number displayed by the random number generator.

(d) After the starting position for a round of play has been determined, a casino licensee may, in its discretion, mark that position by the use of an additional cut card or similar object.

19:47-11.10 Player bank; co-banking; selection of bank; procedures for dealing

(a)-(g) (No change.)

(h) If the cards are to be dealt from a manual dealing shoe, the procedures set forth in N.J.A.C. 19:47-11.8 and 11.8C shall apply, except as follows:

1. If a pai gow poker shaker and dice are being used to determine the starting position for the dealing of the cards, the bank shall shake the pai gow poker shaker three times pursuant to N.J.A.C. 19:47-11.8C(b) instead of the dealer. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow poker shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow poker shaker, the dealer shall remove the lid covering the pai gow poker shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow poker shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow poker shaker to be covered and reshaken by the bank.

2. If a computerized random number generator is used to determine the starting position for the dealing of the cards, the device shall be operated in accordance with procedures approved by the Commission.

3. When counting the betting positions, including the dealer, to determine the starting position for dealing the cards, the position of the banker, instead of the dealer, shall be considered number one.

(i) If the cards are to be dealt from the hand, the procedures set forth in N.J.A.C. 19:47-11.8A and 11.8C shall apply, except as follows:

1. Once the dealer has completed dealing the seven stacks and placed the four remaining cards in the discard rack pursuant to N.J.A.C. 19:47-11.8A, the bank shall select the first stack to be delivered by the dealer. This stack shall be designated as the first stack by the dealer moving it toward the players.

2. If a pai gow poker shaker and dice are being used to determine the starting position for the delivery of the first stack, the bank shall shake the pai gow poker shaker three times pursuant to N.J.A.C. 19:47-11.8C(b) instead of the dealer. It shall be the responsibility

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of the dealer to ensure that the bank shakes the pai gow poker shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow poker shaker, the dealer shall remove the lid covering the pai gow poker shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow poker shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow poker shaker to be covered and reshaken by the bank.

3. If a computerized random number generator is used to determine the starting position for the delivery of the first stack, the device shall be operated in accordance with procedures approved by the Commission.

4. When counting the betting positions, including the dealer, to determine the starting position for delivering the seven stacks of cards, the position of the bank, instead of the dealer, shall be considered number one.

5. The dealer shall deliver the first stack as determined in (i)1 above to the starting position as determined in N.J.A.C. 19:47-11.8C and (i)2 through 4 above. Thereafter, the dealer shall deliver the remaining stacks in a clockwise rotation beginning with the stack closest to the right of the first stack and proceeding until all stacks to the right of the first stack have been dealt and then moving to the stack farthest to the left of the dealer and proceeding left to right. If there are no stacks to the right of the first stack, the dealer will begin with the stack farthest to the left and proceed to the right. The dealer shall deliver each stack face down to each position, including the dealer, regardless of whether there is a wager at the position.

(j) If the cards are to be dealt from an automated dealing shoe, the procedures set forth in N.J.A.C. 19:47-11.8B and 11.8C shall apply, except as follows:

1. If a pai gow poker shaker and dice are being used to determine the starting position for the delivery of the first stack of cards dispensed by the automated dealing shoe, the bank shall shake the pai gow poker shaker three times pursuant to N.J.A.C. 19:47-11.8C(b) instead of the dealer. It shall be the responsibility of the dealer to ensure that the bank shakes the pai gow poker shaker at least three times so as to cause a random mixture of the dice. Once the bank has completed shaking the pai gow poker shaker, the dealer shall remove the lid covering the pai gow poker shaker, total the dice and announce the total. The dealer shall always remove the lid from the pai gow poker shaker and if the bank inadvertently removes the lid, the dealer shall require the pai gow poker shaker to be covered and reshaken by the bank.

2. If a computerized random number generator is used to determine the starting position, the device shall be operated in accordance with procedures approved by the Commission.

3. When counting the betting positions, including the dealer, to determine the starting position for delivering the stacks of cards as they are dispensed by the shoe, the position of the bank, instead of the dealer shall be considered number one.

Recodify (j)-(n) as (k)-(o) (No change in text.)

19:47-11.11 Irregularities; invalid roll of dice

(a)-(l) (No change.)

(m) If an automated card shuffling device is being used and the device jams, stops shuffling during a shuffle, or fails to complete a shuffle cycle, the cards shall be reshuffled in accordance with procedures approved by the Commission.

(n) If an automated dealing shoe is being used and the device jams, stops dealing cards, or fails to deal all cards during a round of play, the round of play shall be void, and the cards shall be removed from the device and reshuffled with any cards already dealt, in accordance with procedures approved by the Commission.

(o) Any automated card shuffling device or automated dealing shoe shall be removed from a gaming table before any other method of shuffling or dealing may be utilized at that table.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Tuition Policies for Public Institutions

Adopted Amendments: N.J.A.C. 9:5-2.1, 2.2, 2.3 and 2.5

Adopted New Rule: N.J.A.C. 9:5-2.7

Proposed: August 16, 1993 at 25 N.J.R. 3593(a).

Adopted: March 23, 1994 by the Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.

Filed: April 11, 1994 as R.1994 d.225, **without change.**

Authority: N.J.S.A. 18A:64-13 et seq. and 18A:64A-23.1, and 18A:64A-23.2.

Effective Date: May 2, 1994.

Expiration Date: April 1, 1996.

Summary of Public Comments and Agency Responses:

The proposed amendment and new rule were published on August 16, 1993. During the comment period, which closed on September 15, 1993, comments were submitted from Ms. Jean Paashaus, a private citizen, and from the New Jersey Department of Labor.

COMMENT: (1) The proposed amendments to N.J.A.C. 9:5-2 would expand the current eligibility for tuition waiver to high school students who work part time.

(2) The proposed changes would also pose a scheduling problem for tuition waiver students and create administrative problems for institutions because these students would have to rearrange their class schedules based on the availability of courses that remain open.

RESPONSE: (1) The proposed amendments do not change the eligibility requirements for the tuition waiver program. Rather, the proposed changes shift the responsibility for certifying eligibility from the individual institutions to the Department of Labor, which is better positioned to verify eligibility and also determine claimants' eligibility for other programs and services for unemployed and dislocated workers. The tuition waiver legislation was not intended to provide high school students who work part-time with tuition free access to education/training courses. Since the proposed amendments to N.J.A.C. 9:5-2 do not change the eligibility requirements, these changes will not expand the program to high school students.

(2) N.J.A.C. 9:5-2.3(e) indicates that institutions may designate separate registration periods, as provided for under the Act. The legislation also stipulates that tuition waiver enrollment will be on a space available basis. Therefore, institutions may give tuition paying students preference in selecting courses and may require tuition waiver students to make their selection and set their class schedules after space availability has been determined. This should not pose any additional burdens on these students or the institution.

COMMENT: Under N.J.A.C. 9:5-2.3(b), it was recommended that the language be changed to indicate that institutions shall designate "basic skills and other prerequisite courses as eligible course offerings under this program."

RESPONSE: This section refers to an individual's eligibility for a given course and not the universe of courses an institution will make available under this provision. Given a student's academic readiness, he/she may or may not need basic skills remediation. On the other hand, N.J.A.C. 9:5-2.3(a) indicates that an institution shall make all of its regular course offerings eligible under this provision. Therefore, basic skills courses will be included among the eligible courses; however, eligibility will be determined by individual need.

COMMENT: Under N.J.A.C. 9:5-2.7(c), it was recommended that language be added to indicate that training grant funds would only apply during the official registration period. During the drop/add period, however, institutions would be required to enroll individuals eligible for training grants under the tuition waiver policy.

RESPONSE: N.J.A.C. 9:5-2.3(e) provides that institutions may designate separate registration periods for eligible individuals. However, these separate registration periods may not necessarily coincide with the drop/add periods, as this comment assumes. In addition, N.J.A.C. 9:5-2.3(d) permits enrollment on a tuition waiver basis if space is available and tuition paying students constitute the minimum number re-

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quired for the course. During drop/add periods, tuition paying students may make changes that could affect space availability, and therefore access to classes by tuition waiver students. If individuals who have received workforce development grants were required to enroll as tuition waiver students during drop/add period, their access to courses would be restricted and they would run the risk of being closed out of their class selections. The Department of Higher Education encourages all public institutions to make every effort to enroll tuition waiver students into courses that will equip them with the skills and knowledge to reenter the workforce. The suggested change, however, would needlessly limit tuition grant recipients' access to the classes that would help them retool and reenter the workforce and therefore is rejected.

Full text of the adopted amendments and new rule follows:

9:5-2.1 Proof of eligibility

(a) Eligible individuals seeking to enroll under the job training program must submit to the institution of higher education documentation from the Department of Labor, Division of Employment Services verifying their past presence in the labor market for at least two years and their unemployed status or receipt of a layoff notice as proof of eligibility or an approved training plan from the Division of Employment Services. Said proof of eligibility must be dated no earlier than 30 days prior to the college's course registration day for the semester in which the job training course is to be taken.

(b) If deemed necessary, an institution may allow an individual to register for courses pending receipt of Department of Labor verification.

(c) Eligible individuals may seek to enroll in any New Jersey public institution of higher education regardless of their county of residence. However, charge-backs pursuant to N.J.A.C. 9:4-1.5 shall not apply for unemployed persons. Eligible individuals who wish to attend a county college must first apply to the college within their county of residence.

9:5-2.2 Eligibility for financial aid

(a) Each eligible individual seeking to enroll in credit courses under this program is responsible for filing a financial aid application and providing the institution with all information necessary to determine possible financial aid eligibility.

(b) In determining eligibility for financial aid, the institution shall consider both State and Federal sources of aid including grants, scholarships and any other sources of financial aid available to the institution's general student population, but shall not include loans.

Recodify existing (d) and (c) as (c) and (d) (No change in text.)

9:5-2.3 Eligible coursework

(a) Each institution shall ordinarily make all of its course offerings eligible under this program. However, a given course or program shall focus on an identifiable job skill or prerequisite skills for the specific job skill or shall be indicated in the individual's training plan approved by Division of Employment Services.

(b) An individual's eligibility for a given course or program shall be dependent on possession of appropriate prerequisite skills as determined by each institution. The institution may designate basic skills and other prerequisite courses as eligible course offerings under this program.

(c) Customized courses that are underwritten by specific employers for the benefit of their respective employees may be exempted from eligibility under this program.

(d) Only those courses in which enrollment space is available and tuition paying students constitute the minimum number required for the course shall be open to eligible individuals under this program.

(e) Institutions may designate separate registration periods for eligible individuals seeking to enroll in the program, ordinarily after the registration period for tuition paying students is completed.

9:5-2.5 Application of general institutional rules

When not inconsistent with applicable statutes or these rules, students participating under this program shall be governed by those procedures and rules applicable to each institution's regularly enrolled student population, including rules regarding academic progress and standards for the admission of students into specific degree programs at the undergraduate or graduate level.

9:5-2.7 Financial obligation of eligible individual

(a) Institutions may charge individuals seeking to enroll in the program an application fee not to exceed $20.00 per academic term.

(b) Individuals seeking to enroll in the program will be responsible for the cost of equipment, materials, and text books.

(c) The institution shall apply training grant funds pursuant to P.L. 1992, c.43 or financial aid, other than loans, to the total tuition and fees for the applicable academic term. The institution shall waive any remaining balance, less the charges allowable under (a) and (b) above.

(a)

EDUCATIONAL OPPORTUNITY FUND

Administrative Policies and Procedures
Program Support

Readoption with Amendments: N.J.A.C. 9:11-1 and N.J.A.C. 9:12

Proposed: February 7, 1994 at 26 N.J.R. 711(a).

Adopted: April 5, 1994 by the Educational Opportunity Fund Board of Directors, Judith Cambria, Chairperson.

Filed: April 11, 1994 as R.1994 d.226 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with proposed N.J.A.C. 9:11-2.3 and 4 not adopted and to be reproposed.**

Authority: N.J.S.A. 18A:71-33 et seq. and 18A:71-28 et seq.

Effective Date: April 11, 1994, Readoption;
May 2, 1994, Amendments.

Expiration Date: April 11, 1999.

Summary of Public Comments and Agency Responses:

Comments on the readoption with amendments were submitted by the Association of Independent Colleges & Universities in New Jersey (AICUNJ); Bergen Community College, Bloomfield College; Fairleigh Dickinson University; Jersey City State College; Middlesex County College; Passiac County Community College; Rutgers University; Saint Peter's College; Seton Hall University; and the University of Medicine & Dentistry.

1. COMMENT: AICUNJ indicated that proposed N.J.A.C. 9:11-1.7(a) requiring financial aid directors to evaluate the assets of EOF recipients requires clarification. Their financial aid directors believe this will be a difficult task creating significant amounts of new work for the financial aid office which may be impossible to perform.

1. RESPONSE: The EOF Board of Directors rejects the claim that proposed N.J.A.C. 9:11-1.7(a) would create a significant amount of new work. Based upon discussions with the task force appointed by the Board to review the regulations and propose new language where necessary, several institutions have long established processes and procedures to accomplish this task. Language requiring the verification of assets is essential. The proposed new language that describes the scope and purpose of the program at N.J.A.C. 9:11-1.1(d) clearly spells out that the program is intended to serve applicants who come from backgrounds where there has been "little or no accumulation of assets." Financial aid directors, in consultation with EOF directors, will have to use their professional judgement in cases where applicants report assets to determine if additional information is required to certify the student is eligible for the EOF program.

2. COMMENT: Bergen Community College recommended that the proposed language on the verification of financial eligibility at N.J.A.C. 9:11-1.7 should also include independent students.

2. RESPONSE: The EOF Board concurs with this statement and informed the institution that the proposed language as written includes independent students.

3. COMMENT: Bergen and Saint Peter's College both suggested a regulation stipulating a student/counselor ratio of 75:1.

3. RESPONSE: The Board declined to make this change. The changes proposed to N.J.A.C. 9:12-1 are a clear indication that the Board wishes to expand the definition of program support services from that of basic skills remediation, counseling and tutoring. To only consider the student counselor ratio narrowly defines the mix of support services that many

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students require. The Board's policy is not to prescribe the strategies EOF programs use to enhance their student outcomes.

4. COMMENT: Bergen also requested the inclusion of language that would only count attrition in the community colleges when the student left for academic reasons in the Program Performance Criteria (PPC).

4. RESPONSE: The Program Performance Criteria (PPC) is an administrative criteria which consists of institutional EOF program outcome data (enrollment, retention and graduation rates, and student academic progress indicators). The PPC is used to monitor and compare the performance of institutional EOF programs by sector and to help guide the EOF Board of Director's allocation decisions. The process used to collect the data contained in the PPC does not allow DHE/EOF staff to differentiate between attrition that results for academic, health, financial, personal or any other reasons. All programs are affected by different forms of student attrition. The collection of this type of data would significantly expand the amount of paperwork institutional EOF administrators are currently asked to complete. N.J.A.C. 9:11 or 9:12 does not contain any references to the PPC so the Board rejected this recommendation.

5. COMMENT: Bloomfield College supported the adoption of the regulations as proposed because they clearly work to define the mission and intent of the program.

5. RESPONSE: The EOF Board concurs with Bloomfield College's comments.

6. COMMENT: Fairleigh Dickinson University recommended the inclusion of the criterion "sexual orientation" to the proposed language in N.J.A.C. 9:11-11.1, Scope and purpose.

6. RESPONSE: The EOF Board concurs with this statement and notes that this phrase is contained in the proposed language which is being adopted.

7. COMMENT: Fairleigh would like to add an additional criterion to N.J.A.C. 9:11-1.6(f) which would also allow institutions to consider over-income students if their parent was or is currently enrolled in an EOF Program.

7. RESPONSE: The Board rejects this recommendation as it is inconsistent with the proposed language in N.J.A.C. 9:11-1.1(c) which paraphrased states that the program was created to ensure meaningful access to families disadvantaged by lack of access to quality educational preparation necessary to attend college. If a student's parent is currently enrolled in an EOF program or has received a grant previously, then one could argue that the student hails from a family background where access to higher education was available. One goal of the EOF program is that the children of former EOF students will no longer be eligible due to the program's success.

8. COMMENT: Fairleigh Dickinson also suggested that the criterion of class standing should be added to the list of items used to determine the amount of the EOF student grant in N.J.A.C. 9:11-1.8(a).

8. RESPONSE: The Board declined to make this change as the language proposed for N.J.A.C. 9:1.8(d) already indicates that the amount of the grant is based on class standing.

9. COMMENT: Fairleigh Dickinson has proposed the inclusion of language which would require the EOF director to have access to students' financial aid awards.

9. RESPONSE: This language currently exists in N.J.A.C. 9:12-1.8(b).

10. COMMENT: Fairleigh has also suggested including the phrase "for EOF students" in N.J.A.C. 9:12-1.11.

10. RESPONSE: The EOF Board believes that it is unnecessary to include the phrase since the rules at N.J.A.C. 9:12 are the program support regulations which specifically refer to the EOF Program.

11. COMMENT: Fairleigh Dickinson has also recommended the inclusion of the terms "counseling logs and student counselor contact sheets" in N.J.A.C. 9:12-1.22.

11. RESPONSE: The Board declined to make that change because that particular level of specificity is not necessary. The items suggested for inclusion are covered in the broad definition of the terms data and assessment.

12. COMMENT: Fairleigh wishes to have the language in N.J.A.C. 9:12-2.6 revised to extend the deadline for submission of a financial aid form for students participating in the summer program to the end of the summer program rather than prior to summer program enrollment.

12. RESPONSE: The Board declined to make that change after discussion with the task force because the language as currently proposed provides institutions with the flexibility they need to respond to extenuating circumstances.

13. COMMENT: Jersey City State College and Saint Peter's College recommended changes to N.J.A.C. 9:11-1.2, 1.13(c) and 1.23 which would expand participation in the part-time pilot to all institutions and the number of semesters a student could receive part-time funding.

13. RESPONSE: The Board declined to consider those changes at this time because the part-time program was originally implemented as a pilot program that was to be evaluated after two years. The evaluation has not occurred due to severe staff reductions. However, their recommendations will be taken into consideration when that evaluation is completed.

14. COMMENT: Jersey City suggested changing N.J.A.C. 9:11-1.8 to allow students who are making satisfactory academic progress to continue to receive their EOF Article III grant up to the maximum allowable terms, even if the student will not be able to meet the institution's graduation requirements, before they exhaust their EOF eligibility. The institution's rationale is that refusing the student the last two semesters of support does not motivate the student to graduate and may hamper their efforts to complete their education because of a lack of funding.

14. RESPONSE: The Board rejected this recommendation after discussion with the task force who stated that the language as currently proposed serves as an extremely useful academic advising tool, particularly with transfer students who need to understand exactly how many courses they need to complete and the financial resources available to them to earn their bachelor's degree.

15. COMMENT: In addition, Jersey City State College recommended revisions to the language proposed for N.J.A.C. 9:11-2, Graduate EOF Financial Eligibility. The institution recommended the deletion of references to full-time enrollment and wish to have it replaced with language that requires students to minimally enroll in nine credits. They believe this will assist in the recruitment and retention of graduate applicants because many students cannot afford to attend graduate school full-time.

15. RESPONSE: The Board rejected this recommendation because institutions have the ability to define what constitutes full-time graduate enrollment. The data provided to the Department's EOF staff suggests that the number of credit hours varies depending upon the graduate course of study an individual wishes to pursue. However, because of other issues pertaining to the proposed graduate regulations, the EOF Board of Directors decided not to adopt the proposed rules for N.J.A.C. 9:11-2, Graduate EOF Financial Eligibility; N.J.A.C. 9:11-3, Ferguson Scholarships; and N.J.A.C. 9:11-4, King Scholarships. The rules have been revised and will be reproposed as new rules in the May 16, 1994 issue of the New Jersey Register.

16. COMMENT: Jersey City has suggested that the language proposed for N.J.A.C. 9:12-1.9(d) leaves the impression that EOF directors are seeking the authority to have input on all readmission decisions rather than the determination of who is readmitted to the institution's EOF Program.

16. RESPONSE: The Board rejects this comment. N.J.A.C. 9:12-1 specifically refers to program support for EOF students and the language as proposed specifically refers to the fact that the students were initially admitted as EOF students.

17. COMMENT: Middlesex County College commented that they are concerned about how they will meet the intent of N.J.A.C. 9:11-1.7(a), since the Free Federal Financial Aid Form no longer includes information about a family's real assets.

17. RESPONSE: The Board recognizes that this information is no longer readily available via the needs analysis; however, N.J.A.C. 9:11-1.7(c) also requires institutions to obtain copies of internal revenue service documents. A review of an applicants complete 1040 will indicate whether or not a family has assets. If this is the case, a few other questions of the applicant and the professional judgement of the financial aid director, in consultation with the EOF director are all that is required to determine if they meet the eligibility requirements of the program.

18. COMMENT: Passiac County Community College simply indicated that the proposed readoption was reviewed and that they have no recommendations.

18. RESPONSE: The Board thanked the institution's leadership for their response.

19. COMMENT: Rutgers University recommended that the amount of the Article III student grant for undergraduate and graduate students be increased to $1,200 and $3,000, respectively. The amount of the grant has not increased in the last 15 years which is woefully inadequate and cannot be mitigated by increases in the Tuition Aid Grant (TAG) for undergraduate students. Saint Peter's College also recommended an increase in the amount of the Article III student grant.

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19. RESPONSE: The EOF Board concurs with Rutgers University and Saint Peter's College desire to see an increase in the amount of the Article III student grants. The Board requested an increase in their FY 1995 budget for this purpose and have made similar requests for the last three fiscal years. However, the amount of the student grant is directly related to the size of the annual appropriation, and unless the amount of the appropriation is increased it is impossible to develop a grant increase solely through rulemaking.

20. COMMENT: Seton Hall University recommended the elimination of the reference to the term assets in N.J.A.C. 9:11-1.7(a) for the following reasons: Institutions would be forced to collect asset data on a separate form; once collected it would be difficult to verify if applicants and their parents had to submit copies of bank statements and real estate assessments, since home equity is no longer part of the Federal and State calculations for estimated family contribution (EFC) and the New Jersey Eligibility Index (NJEI) the data collected could not be easily assessed; and without guidelines similar to the current income criteria by household size it would be up to the college to judge what level of assets prohibit a student's entrance into the program.

20. RESPONSE: The EOF Board declines to accept this recommendation. This language was proposed because it has become increasingly difficult to assess historical poverty and differentiate between families and individuals with the same income. Several institutions have long established processes and procedures to accomplish this task. While this does require applicants to provide additional information and financial aid staff to complete further assessments, it is essential to maintaining the integrity of the program. The Board also rejects the recommendation of developing an asset eligibility scale because home values differ significantly by region of the State; it also reduces institutions' ability to consider extenuating circumstances, and intrudes on the institution's ability to define the process they would like to use to comply with the regulation.

21. COMMENT: Seton Hall University has also recommended that N.J.A.C. 9:11-1.7(d) include language to clarify that the collection of this information would only have to take place at the time of the student's initial enrollment into the program.

21. RESPONSE: The Board declines to make this change, because N.J.A.C. 9:11-1.7(a) already indicates that this type of information only needs to be collected at the time of initial enrollment.

22. COMMENT: Seton Hall University recommended the deletion of the phrase "student's signed acceptance of the financial aid package" because the Federal regulations do not require signed acceptances for grant aid, a desire to reduce paper collection, and the fact that many institutions operate on sophisticated computer systems that provide award and disbursement audits acceptable to Federal, state and general accounting auditors.

22. RESPONSE: The Board declined to make this change because they have no evidence that students are actually aware of the sources and amount of financial aid awarded to them.

23. COMMENT: Seton Hall University and the University of Medicine and Dentistry both commented that the new Federal definition of an independent student automatically considers graduate students independent. Consequently, the references to dependent student's and parent's income documentation contained in N.J.A.C. 9:11-2, Graduate Financial Eligibility, are contradictory.

23. RESPONSE: The Board concurs with the comments provided by these institutions and in response has chosen not to adopt the proposed rules for N.J.A.C. 9:11-2, Graduate Financial Eligibility; 9:11-3, Ferguson Scholarship; and 9:11-4 King Scholarships. The rules have been revised and will be reproposed as new rules in the May 16, 1994 issue of the New Jersey Register.

Summary of Agency Initiated Changes:

1. The following technical change has been made to correct the referenced citation. The citation correction was not originally picked up during the proposal but is necessary because of the adopted recodification:

In proposed N.J.A.C. 9:11-1.3(b), the referenced citation N.J.A.C. 9:11-1.4 has been changed to N.J.A.C. 9:11-1.5 and the word "of" is changed to "for" to correct language currently in error in the Code.

2. The following technical change has been made to maintain consistency and appropriateness in the language:

In proposed N.J.A.C. 9:11-1.17(a), the words "guidelines and regulations" have been changed to "rules".

3. The following technical change has been made to correct the referenced citation:

In proposed N.J.A.C. 9:12-2.6(b), the referenced citation N.J.A.C. 9:11-1.6, Verification of Financial Eligibility, of the Financial Aid Regulations has been changed to 9.11-1.7, Verification of financial eligibility of the Undergraduate EOF Financial Eligibility.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from the proposal indicated in brackets with asterisks *[thus]* (**Agency Note:** Proposed N.J.A.C. 9:11-2, as shown below, is not being adopted, and N.J.A.C. 9:11-3 and 4 are not being readopted):

SUBCHAPTER 1. UNDERGRADUATE EOF FINANCIAL ELIGIBILITY

9:11-1.1 Scope and purpose

(a) The rules contained in Chapter 11 govern the awarding of Article III Educational Opportunity Fund Grants to students for undergraduate study leading to a baccalaureate degree, associate degree, or other approved certificate, and for graduate and professional study leading to an approved Master's and Doctoral degree.

(b) Subchapter 1 governs the determination of financial eligibility for undergraduate financial assistance from the New Jersey Educational Opportunity Fund (EOF) based on need and potential for success in college.

(c) The EOF Program was created by law in 1968 to ensure meaningful access to higher education for students who are from families disdavantaged by low income and the lack of access to the quality educational preparation necessary to attend college.

(d) Each campus is expected to give priority to applicants from families burdened by historical poverty, which implies that either the family has endured long-term economic deprivation or that the student represents a segment of the population underrepresented in higher education, or both. Families in this status are generally characterized by little or no accumulation of assets, and the inability to provide for more than the basic needs of family members. Eligible students are as a rule the first generation to attend college in their families.

(e) There shall be no discrimination in admissions decisions based on race, age, creed, religion, marital status, national origin, color, gender, sexual orientation, or disability.

9:11-1.2 Student eligibility

(a) The undergraduate EOF Program is designed to provide an opportunity for higher education to disadvantaged New Jersey residents who would not be able to attend and/or succeed academically in college without the financial assistance and special services that are part of this program. The program is geared toward the student who shows potential, and traditionally has been unable to attend college because of poor high school preparation coupled with a background of historical poverty.

(b) To be initially eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:

1. Is now and has been a legal resident of the State of New Jersey for at least 12 consecutive months prior to receiving the grant.

2. Meets the financial criteria established in N.J.A.C. 9:11-1.5 and 1.6.

3. Is or will be a full-time student as defined by the institution offering the undergraduate program of study.

4. As an undergraduate student, is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to an undergraduate degree or certificate in an institution of collegiate grade in New Jersey approved or licensed by the State Board of Higher Education and participating in the EOF Program. Degree or certificate programs must have a minimum requirement equivalent to 24 semester hours and be at least one academic year in duration. An eligible student must exhibit evidence for potential success in college, but:

i. Has not demonstrated a sufficient academic preparation to gain admission to an approved institution of higher education under its regular standards of admission (where applicable); or

ii. Has standardized test scores that are below the institutional norms; or

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iii. Has an educational background that indicates a need for improvement of basic skills; and

iv. Comes from an economic background which reflects a history of poverty as defined in N.J.A.C. 9:11-1.1 and 1.6(f)1 through 5.

Recodify (d)-(e) (No change in text.)

9:11-1.3 Student residency

(a) (No change.)

(b) A dependent student as defined in N.J.A.C. 9:11-*[1.4]***1.5*** is presumed to be a legal resident of the state which his or her parent(s) or guardian(s) are residents. A dependent student whose parent(s) or guardian(s) are not legal residents of New Jersey is presumed to be in the state *[of]* ***for*** the temporary purpose of obtaining an education. Any dependent student, as defined in N.J.A.C. 9:11-*[1.4]***1.5***, who is domiciled in this state and who is enrolled as an EOF student in an institution of higher education in New Jersey, shall continue to be eligible for participation in the EOF Program despite his or her supporting parent(s) or guardian(s) change of domicile to another state, while such student continues to reside in New Jersey during the course of each academic year. The student's eligibility continues only if the student received a State grant or scholarship for at least one semester before the parent(s) or guardian(s) change of domicile to another state.

9:11-1.4 Foreign nationals

(a) A foreign national must present affirmative evidence that he or she is not in the United States for the temporary purpose of obtaining an education. Such evidence must include documentation from the United States Immigration and Naturalization Service that the student may remain permanently in this country and such evidence must be placed in the student's file. The student must:

1.-3. (No change.)

4. Be the holder of an arrival departure record form I-94 endorsed by the Immigration and Naturalization Service showing one of the following:

i. Parole Indefinite Humanitarian: Paroled pursuant to Sec. 212(d)(5) of the Immigration and Naturalization Act; or

ii. Refugees: Admitted as a refugee pursuant to Sec. 207 of the Immigration and Naturalization Act; or

iii. Granted Asylum: Asylum status granted pursuant to Sec. 208 of the Immigration and Naturalization Act; or

iv. Cuban-Haitian Entrant: Status pending; or

v. Conditional Entrant: Admission into this status through March 31, 1980.

5. The Arrival Departure Record form I-94 for persons in the aforementioned categories must be updated for each award year as required by the Immigration and Naturalization Service.

(b) (No change.)

9:11-1.5 Dependent/independent student defined

(a) (No change.)

(b) An individual meets the requirements of this subsection if such individual:

1.-5. (No change.)

6. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For the purposes of receiving financial assistance under the E.O.F. Program as an independent student due to unusual circumstances, at least one of the following criteria must be met:

i.-ii. (No change.)

iii. The student's economic and personal circumstances are of such a unique or unusual nature that denial of independent student status would create an unjust hardship upon the student. Documentation of eligibility under this subparagraph must be acceptable to the Executive Director of the Educational Opportunity Fund.

(c) (No change).

9:11-1.6 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial EOF undergraduate grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth in the EOF dependent student income eligibility scale. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. EOF Dependent Student Income Eligibility Scale:

Applicants with a household of	Gross Income (Not to Exceed)
2 persons	$15,590
3	18,190
4	20,790
5	23,390
6	25,990
7	28,590

2. For each additional member of the household, an allowance of $2,600 shall be added to this amount in order to determine eligibility for EOF for the 1994-95 Academic Year. This allowance shall be adjusted annually to reflect changes in the Income Protection Allowance as published in the Federal Register. In addition, the gross income level for each household size also shall be adjusted to reflect the change in the annual Income Protection Allowance.

3. The E.O.F. Executive Director shall annually inform institutions of adjustments to the Income Eligibility Scale, in accordance with the Income Protection Allowance published in the Federal Register.

(b) A dependent student who comes from a family with both parent(s) or guardian(s) working and whose combined incomes exceed the applicable amount set forth in the E.O.F. dependent student income eligibility scale above, may be eligible for E.O.F., only if:

1. The total income does not exceed the applicable amount set forth in the E.O.F. dependent student income eligibility scale when 50 percent of the income of the smaller wage earner is subtracted from the gross combined income of the two wage earners.

2. (No change.)

(c) An independent student (as defined in N.J.A.C. 9:11-1.5) who demonstrates evidence of a background of historical poverty as defined in N.J.A.C. 9:11-1.1 or by meeting the criteria set forth in N.J.A.C. 9:1-1.6(f)1 through 5 is financially eligible for an EOF undergraduate grant if the student/or the student's spouse's gross income for the calendar year prior to the academic year for which aid is requested and the calendar year during which aid is received does not exceed the applicable amount in the EOF independent student income eligibility scale:

1. $10,600 family size (including student) 1;
2. $13,490 family size (including spouse) 2;
3. $16,670 family size (including spouse) 3;
4. $19,660 family size (including spouse) 4;
5. $23,000 family size (including spouse) 5;
6. Add $2,600 for each additional dependent. This amount shall be adjusted annually to reflect changes in the Independent Student Income Protection Allowance as published in the Federal Register.
7. (No change.)

(d) In determining the financial eligibility of dependent and independent students, separation, divorce, or death of a wage earner in the calendar year prior to the academic year for which eligibility is being determined with an accompanying decrease in family income below the EOF income eligibility scales does not automatically satisfy the family characteristic of historical poverty (as stated in N.J.A.C. 9:11-1.1 and 1.6(f)1 through 5) expected of EOF students.

(e) The campus EOF director must approve students in these cases (9:11-1.6(d)), after review and recommendation by the financial aid office. The campus EOF director, in cooperation with the director of financial aid, shall have the discretion to use professional judgment to assess whether a family is historically and economically disadvantaged in determining an applicant's financial eligibility for admission to the EOF Program.

(f) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the campus EOF director may admit up to a maximum of 10 percent of the annual freshman class under a waiver pursuant to the provisions of this section. Students admitted under this

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provision must have family incomes that do not exceed 175 percent of the official national poverty threshold as published annually by the Federal Government adjusted to reflect New Jersey's cost of living and meet one of the following criteria:

1.-2. (No change.)

3. The student has resided in an area of a municipality that is historically populated by low-income families; such an area is commonly known as a "pocket of poverty" as characterized by criteria outlined in (f)2 above.

4.-5. (No change.)

(g) The student's record must contain sufficient documentation for verification of the above criteria. All efforts should be made to give priority to those students whose incomes are within the limits of N.J.A.C. 9:11-1.6.

(h) (No change in text.)

9:11-1.7 Verification of financial eligibility

(a) It is the responsibility of institutional officials to verify the income and assets of all undergraduate EOF grant applicants' parent(s) or guardian(s), as well as the applicant and applicant's spouse at the time of initial enrollment. The purpose of the verification is to insure that E.O.F. funds are not granted to a student, regardless of his or her status or relationship to his or her family, whose family is in an economic position to assist in financing his or her education.

(b)-(e) (No change.)

(f) In every case, files should contain completed forms indicating all relevant data such as annual income, household size, sources of income and assets, parent(s) or guardian(s) income and assets, etc. Students' records should include the application for financial aid, the student's signed acceptance of the financial aid package and proof that the grant was actually received by the student.

9:11-1.8 Grant amount

(a) (No change).

(b) The exact amount of the EOF award will be determined by the institution's EOF and financial aid directors. Priority for determining need and awarding EOF grants shall be given first to students who meet the educational and income criteria in accordance with N.J.A.C. 9:11-1.1(c) and (d), 9:11-1.2(a) and (b), and 9:11-1.6 (a) through (c), followed by those students admitted using N.J.A.C. 9:11-1.6(f) through (h).

(c) (No change).

(d) The EOF Board of Directors shall annually review the State grant amounts of EOF students and make adjustments, if necessary. The minimum and maximum award range for adjustments to full-time Undergraduate EOF grants for each type of institution follows:

Undergraduate	Minimum	Maximum
Community Colleges:		
Freshman/Sophomore	$200	$ 650
State Colleges:		
Commuter:		
Freshman/Sophomore	200	750
Junior/Senior	200	550
Residential:		
Freshman/Sophomore	200	1,000
Junior/Senior	200	800
Rutgers, NJIT, UMDNJ-SHRP:		
Commuter:		
Freshman/Sophomore	200	750
Junior/Senior	200	550
Residential:		
Freshman/Sophomore	200	1,000
Junior/Senior	200	800
Independent Colleges:		
Freshman/Sophomore	200	1,950
Junior/Senior	200	1,700

(e)-(f) (No change.)

9:11-1.9 Duration of student eligibility

(a) Students deemed eligible at the time of initial enrollment shall retain eligibility for program support services throughout the duration of the initial degree of study as long as he or she maintains full-time enrollment or has been approved in writing for a part-time EOF grant by the campus EOF program director. Part-time grant eligibility will be available only at those institutions approved to award part-time EOF grants by the EOF Board of Directors. In addition, students shall retain eligibility for an EOF grant as long as the student has demonstrated financial need as determined by the institution through submission of a financial aid form approved by the EOF Board of Directors in accordance with the annually established deadline dates and continues to meet the academic progress standards in accordance with N.J.A.C. 9:11-1.11.

(b) Students are eligible for a maximum of 12 semesters or the equivalent of undergraduate study. Students in an established five year undergraduate course of study at a senior institution shall be eligible for an additional two semesters beyond the 12 semesters as stipulated in (c), (d) and (e) below.

(c) Students attending four-year institutions will receive ten terms of EOF payment to complete four class levels. Additional term awards up to the maximum allowable terms are available to students who are making satisfactory academic progress as stipulated in N.J.A.C. 9:11-1.11 and will be able to complete the institution's graduation requirements in these two additional semesters.

(d) Students attending two year institutions will be eligible to receive six terms of EOF payment to complete two class levels. Additional term awards up to the eight maximum allowable terms are available to students who are making satisfactory academic progress as stipulated in N.J.A.C. 9:1-1.11 and will be able to complete the institution's graduation requirements in these two additional semesters.

(e) A formal written request from the institution and approval by the Executive Director of EOF is required for students enrolled in an established five year course of study who require additional term awards up to the 14th maximum allowable term.

(f) (No change.)

9:11-1.10 Non-funded students

(a) (No change.)

(b) Students who are denied Article III grants due to their inability to meet satisfactory academic progress, as defined in N.J.A.C. 9:11-1.11, who enroll full-time the subsequent term, may be considered non-funded and are entitled to Program Support Services.

(c) Students who, due to extenuating circumstances, are advised to enroll at less than full time status, may be considered non-funded and are entitled to Program Support Services. Documentation of advisement shall be maintained in the student's record.

(d) To retain eligibility for program services a non-funded student must continue to file the financial aid form approved by the Educational Opportunity Fund Board of Directors and have been determined eligible and received Article III academic year funds during initial enrollment into the program.

(e) A student who enrolls in the pre-freshman summer program prior to the completion of eligibility determination and who is determined financially ineligible at the end of the eligibility determination process cannot be considered as a non-funded student.

9:11-1.11 Academic progress

(a) (No change.)

(b) Academic progress criteria for EOF Article III Student Grants is as follows:

1. EOF students must complete 12 credits, or their equivalent, in a semester. With the written approval of the EOF campus director, a student may, for academic reasons, complete no less than an average of nine credits in a semester. Directors approving such circumstances must maintain documentation on file. The provision permitting completion of less than 12 credits in a semester may only be used during the first four terms of enrollment or in the first year following transfer for transfer students.

2.-3. (No change.)

(c) (No change.)

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Recodify 9:11-1.11 through 9:11-1.13 as 9:11-1.12 through 9:11-1.14 (No change in text.)

9:11-1.15 Discontinuance of EOF grants and program support services

(a) The Article III student grant is to be discontinued immediately when the student ceases to be eligible under the criteria listed in N.J.A.C. 9:11-1.

(b) The Article III student grant is to be discontinued for any student who has been academically dismissed unless reinstated in good standing by institutional officials.

(c) The Article III student grant is to be discontinued for any student who is not matriculated in a full-time or EOF Board approved part-time program of study or any student who is not enrolled. The amount of any grants paid to the institution for that student must be repaid by the institution.

(d) The Article III student grant and program support services are to be discontinued for any student who refuses to abide by regulations established by the institution for participation in the EOF Program.

(e) The Article III student grant and program support services are to be discontinued for any student who intentionally falsifies or gives misleading information upon which eligibility was based. The amount of any grants previously paid to that student must be repaid by that student.

9:11-1.16 Liability

(a)-(b) (No change.)

(c) In cases where institutions have made awards in good faith based upon fraudulent and misleading information which has been conveyed by a student, the student is liable for the return of the EOF grant. A written statement to this effect shall accompany each student's award notification.

(d) (No change.)

9:11-1.17 Grant usage

(a) The EOF grant must be applied to the student's educational costs only. Educational costs as they relate to these *[guidelines and regulations]* ***rules*** are inclusive of whatever constitutes each institutional educational budget and may include tuition, fees, room and board, transportation, books, educational supplies, and child care.

(b) (No change.)

9:11-1.18 Grant awarding cycle

(a) An EOF grant is available for each semester of an academic year which usually includes two terms.

1.-2. (No change.)

9:11-1.19 Operational provisions for undergraduate grants

(a) (No change.)

(b) Notification of action on institutional requests will be given in writing to the president of each institution.

(c) To apply for Article III student grant funds, the Financial Aid and EOF Directors must complete a payment request form to be established prior to the academic year for which funds are being requested for undergraduate students.

(d) At the request of the Executive Director, institutions shall submit to the DHE/EOF office student background information that was essential in determining student eligibility for the EOF program. The format for the collection of this information shall be established prior to the academic year for which the students are enrolled.

(e) (No change.)

(f) All files of students receiving EOF grants are subject to a fiscal audit conducted by the Department of Higher Education.

(g) All participating institutional programs shall be required to cooperate fully in specified program analysis and evaluation activities carried out by the DHE/EOF office, in accordance with N.J.A.C. 9:12-1.17 "Program audits and evaluations".

9:11-1.20 Application procedures for EOF undergraduate grants

(a) (No change.)

(b) Applicants for undergraduate EOF must complete a financial aid form in accordance with N.J.A.C. 9:11-1.7(e). Students must apply for the Pell Grant and State student assistance programs by authorizing release of information to the New Jersey Department of Higher Education.

9:11-1.21 Appeals

(a) A student or his or her parents may file a written appeal with the Executive Director of EOF regarding institutional decisions of ineligibility.

(b)-(e) (No change.)

(f) If, after State payment deadline dates, new information or evidence has been presented regarding previous institutional eligibility decisions, the institution may request consideration by the EOF Executive Director for payment in the same fiscal year. Such requests must be submitted before fiscal year end reconciliation and should be submitted through payment rosters co-endorsed by the EOF campus director and financial aid officer. The fiscal year ends on June 30 of each year.

(g) (No change.)

9:11-1.22 Refunds and repayments of disbursements made to students

(a) If a refund is due to a student under the institution's refund policy and the student received financial assistance under any State student assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the Treasurer, State of New Jersey, through the Office of Student Assistance:

$$\text{divided by } \frac{\text{amount of State financial assistance (minus work earnings) awarded for the payment period}}{\text{total amount of financial aid (minus work earnings) awarded for the payment period}}$$

(b)-(g) (No change.)

9:11-1.23 Part-time students

(a) (No change.)

(b) Part-time grant eligibility shall only be available to EOF students attending those institutions approved by the Board of Directors of EOF to award part-time EOF grants to students pursuant to the provisions of N.J.A.C. 9:11-1.9(a).

(c) (No change.)

(d) Part-time EOF grant awards shall be prorated against the full-time grant award for the applicable institutional sector and shall take into consideration any aid received from PELL and/or TAG. For the purposes of N.J.A.C. 9:11-1.23, full-time shall be considered to be 12 credit hours (part-time enrollment for nine credit hours shall equal 75 percent of a full-time grant award, six credit hours shall equal 50 percent, etc.) and determinations for such awards at Rutgers, NJIT and the state colleges shall be based upon full-time commuter award levels.

(e) (No change.)

(f) Any residential student at the state colleges, Rutgers, or NJIT receiving a part-time EOF grant, shall have $250.00 added to his or her award as determined by N.J.A.C. 9:11-1.23.

(g) (No change.)

Agency Note: Subchapter 2, Martin Luther King Physician-Dentist-Scholarship Program is recodified as new Subchapter 4.

*[SUBCHAPTER 2. GRADUATE EOF FINANCIAL ELIGIBILITY

9:11-2.1 Scope and purpose

(a) N.J.A.C. 9:11-2 governs the determination of financial eligibility for graduate financial assistance from the New Jersey Educational Opportunity Fund (EOF) based on need and potential for success in college.

(b) The EOF Program was created by law in 1968 to ensure meaningful access to higher education for students who are from families disadvantaged by low income and who have not had access to the quality educational preparation necessary to attend college.

(c) Each campus is expected to give priority to applicants from families burdened by historical poverty, which implies that either the

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family has endured long-term economic deprivation or that the student represents a segment of the population underrepresented in higher education, or both. Families in this status are generally characterized by little or no accumulation of assets, and the inability to provide for more than the basic needs of family members. Eligible students are as rule the first generation to attend college in their families.

(d) There shall be no discrimination in admission decisions based on race, age, creed, religion, marital status, national origin, color, gender, sexual orientation, or disability.

9:11-2.2 Student eligibility

(a) The overall objective of the graduate EOF Program is to increase the participation of New Jersey residents from backgrounds of historical poverty participating in graduate and professional study. The academic deficiencies that serve to identify the undergraduate student as educationally disadvantaged are not applicable at the graduate level. The graduate EOF Program is designed to provide the opportunity for New Jersey residents whose undergraduate record reflects the potential for advanced study beyond the baccalaureate degree, and whose economic background reflects a history of poverty.

(b) To be initially eligible for an Educational Opportunity Fund graduate grant, a student must have demonstrated that he or she:

1. Is and has been a legal resident of the State of New Jersey for at least 12 consecutive months prior to receiving the grant;

2. Meets the financial criteria established in the N.J.A.C. 9:11-2.6, Financial eligibility for graduate grants;

3. Is or will be a full-time graduate student as defined by the institution offering the graduate program of study; and

4. Is enrolled or intends to be enrolled full-time and matriculated in a curriculum leading to a graduate degree or certificate at an institution of collegiate grade in New Jersey approved or licensed by the State Board of Higher Education and participating in the EOF Program, provided that the student has not already received a graduate or professional degree at the same level of study for which he or she is applying. Graduate EOF degree or certificate programs must have a minimum requirement equivalent to 24 semester hours and be at least one academic year in duration.

(c) Students may not receive assistance under the programs administered by the EOF Board of Directors if they owe a refund on a grant or scholarship previously received from a State or Federal program through any institution, or are in default on any loan made under any State or Federal student financial assistance program at any institution. Students owing a refund on a grant or scholarship or who are in default on a loan may receive State financial assistance if they make arrangements with the appropriate office to repay the debt.

(d) EOF graduate grant awards may not be used by students attending out-of-state institutions.

9:11-2.3 Student residency

(a) Students must be legal residents of New Jersey for a period of not less than 12 consecutive months immediately prior to receiving a grant. The residence of a student is defined in terms of domicile. Domicile is defined as the place where a person has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning. Residence established solely for the purpose of attending a particular college cannot be considered as fulfilling the definition of domicile. When in question, a student must demonstrate proof of residence by presenting one of the following documents:

1. Driver's license;

2. Voter registration form; or

3. Tax returns.

(b) A dependent student as defined in N.J.A.C. 9:11-2.5 is presumed to be a legal resident of the state which his or her parent(s) or guardian(s) are residents. A dependent student whose parent(s) or guardian(s) are not legal residents of New Jersey is presumed to be in the state for the temporary purpose of obtaining an education. Any dependent student, as defined in N.J.A.C. 9:11-2.5, who is domiciled in this state and who is enrolled as an EOF graduate student in an institution of higher education in New Jersey, shall continue to be eligible for participation in the EOF Program despite his or her supporting parent(s) or guardian(s) change of domicile to another state, while such student continues to reside in New Jersey during the course of each academic year. The student's eligibility continues only if the student received a State grant or scholarship for at least one semester before the parent(s') or guardian(s') change of domicile to another state.

9:11-2.4 Foreign nationals

(a) A foreign national must present affirmative evidence that he or she is not in the United States for the temporary purpose of obtaining an education. Such evidence must include documentation from the United States Immigration and Naturalization Service that the student may remain permanently in this country and such evidence must be placed in the student's file. The student must:

1. Be the holder of an Alien Registration Receipt Card form I-151 or I-551;

2. Be the holder of an Approval Notice from the Immigration and Naturalization Service form I-181 stating that the non-citizen has met the requirements for Permanent Resident status;

3. Be the holder of a Temporary Resident Card form I-688 with a valid expiration date from the Immigration and Naturalization Service; or

4. Be the holder of an Arrival Departure Record form I-94 endorsed by the Immigration and Naturalization Service showing one of the following:

i. Parole Indefinite Humanitarian: Paroled pursuant to Sec. 212(d)(5) of the Immigration and Naturalization Act;

ii. Refugees: Admitted as a refugee pursuant to Sec. 207 of the Immigration and Naturalization Act;

iii. Granted Asylum: Asylum status granted pursuant to Sec. 208 of the Immigration and Naturalization Act;

iv. Cuban-Haitian Entrant: Status pending; or

v. Conditional Entrant: Admission into this status through March 31, 1980.

5. The Arrival Departure Record form I-94 for persons in the aforementioned categories must be updated for each award year as required by the Immigration and Naturalization Service.

(b) Foreign nationals with Student Visa Status, Fl or F2 Exchange Visitor Visa status of J1 or J2 Visa status even when stamped "employment authorized", or holders of form I-94 with one of the endorsements: "adjustment applicant", "245", "245 applicant", "applicant for permanent residence", "voluntary departure", and "deferred action", are considered to be in the United States for temporary reasons and are therefore not eligible for student assistance.

9:11-2.5 Dependent/independent student defined

(a) The term "independent", when used with respect to a student, means any individual who:

1. Is 24 years of age or older by December 31 of the award year; or

2. Meets the requirements of (b) below.

(b) An individual meets the requirements of this section if such individual:

1. Is an orphan or ward of the court; or

2. Is a veteran of the Armed Forces of the United States; or

3. Is a graduate or professional student; or

4. Is a married individual; or

5. Has legal dependents other than a spouse; or

6. Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For the purpose of receiving financial assistance under the EOF Program as an independent student due to unusual circumstances, at least one of the following criteria must be met:

i. The student has been separated from his or her parents due to an unsafe home environment or has been institutionalized in a correctional facility. Documentation of such status must be received from a court, social service agency, or other similar source acceptable to the Executive Director of the EOF Program;

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ii. The student has been separated from his or parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-2.1, and 9:11-2.6, and is living with another relative who is providing support to the student; or

iii. The student's economic and personal circumstances are of such a unique or unusual nature that the denial of independent student status would create an unjust hardship upon the student. Documentation of eligibility under this subparagraph must be acceptable to the Executive Director of the Educational Opportunity Fund.

(c) A dependent student shall be any student who does not meet any of the eligibility criteria listed in (a) or (b) above for independent student status.

9:11-2.6 Financial eligibility for graduate grants

(a) A dependent student is financially eligible for an initial EOF graduate grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth in the EOF dependent student income eligibility scale. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. EOF Dependent Student Income Eligibility Scale:

Applicants with a household of	Gross Income (Not to exceed)
2 persons	$15,590
3	18,190
4	20,790
5	23,390
6	25,990
7	28,590

2. For each additional member of the household an allowance of $2,600 shall be added to this amount in order to determine eligibility for EOF for the 1994-95 academic year. This allowance shall be adjusted annually to reflect changes in the Income Protection Allowance as published in the Federal Register. In addition the gross income level for each household size also shall be adjusted to reflect the change in the annual Income Protection Allowance.

3. The EOF Executive Director shall annually inform institutions of adjustments to the Income Eligibility Scale, in accordance with the Income Protection Allowance published in the Federal Register.

(b) A dependent student who comes from a family with both parent(s) or guardian(s) working whose combined incomes exceed the applicable amount set forth in the dependent student income eligibility scale above, may be eligible for EOF, only if:

1. The total income does not exceed the applicable amount set forth in the EOF dependent student income eligibility scale when 50 percent of the income of the smaller wage earner is subtracted from the gross income of the two wage earners.

2. Documentation in each student's file includes the mathematical computation along with wage and tax statements (form W2) of both parent(s) or guardian(s).

(c) An independent student (as defined in N.J.A.C. 9:11-2.5) who demonstrates evidence of a background of historical poverty as defined in N.J.A.C. 9:11-2.1 or by meeting the criteria set forth in N.J.A.C. 9:11-2.6(f)1 through 5 is financially eligible for an EOF graduate grant, if his or her and/or his or her spouse's gross income for the calendar year prior to the academic year for which aid is requested and the calendar year during which aid is received does not exceed the applicable amount set forth in the EOF independent student income eligibility scale:

1. $10,600 family size (including student) 1
2. $13,490 family size (including spouse) 2
3. $16,670 family size (including spouse) 3
4. $19,660 family size (including spouse) 4
5. $23,000 family size (including spouse) 5

6. Add $2,600 for each additional dependent. This amount shall be adjusted annually to reflect changes in the Independent Student Income Protection Allowance as published in the Federal Register.

7. An independent student who received welfare as the primary means of family support is presumed to be eligible without regard to the amount of primary welfare support.

(d) In determining the financial eligibility of dependent and independent students, separation, divorce, or death of a wage earner in the calendar year prior to the academic year for which eligibility is being determined, with an accompanying decrease in family income below the EOF income eligibility scales does not automatically satisfy the family characteristic of historical poverty (as stated in N.J.A.C. 9:11-2.1 and 2.6(f)1 through 5) expected of EOF students.

(e) The campus EOF director must approve students in these cases (N.J.A.C. 9:11-2.6(e)), after review and recommendation by the financial aid office. The campus EOF director, in cooperation with the director of financial aid, shall have the discretion to use professional judgment to assess whether a family is historically and economically disadvantaged in determining an applicant's financial eligibility for admission to the EOF Program.

(f) Where there is evidence that strict adherence to the maximum income eligibility cut-offs will not serve the purpose of the EOF Program, the institution may submit a formal written request to the executive director for permission to admit students under a waiver pursuant to the provisions of this section. Students admitted under this provision must have family incomes that do not exceed 175 percent of the official national poverty threshold as published annually by the Federal government adjusted to reflect New Jersey's cost of living and meet one of the following criteria:

1. The student attended high school in a district factor group a or b school district as certified by the New Jersey Department of Education.

2. The student has resided in a municipality defined as a "high distress" area. A high distress area, as defined by the New Jersey Office of Management and Budget, is one which, in comparison to the rest of the state, is characterized by old or sub-standard housing and/or low real estate value, low per capita income, high unemployment, population decline, and a high percentage of residents receiving welfare and other benefits targeted for low-income families.

3. The student has resided in an area of a municipality that is historically populated by low-income families; such an area is commonly known as a "pocket of poverty" as characterized by criteria outlined in (g)2 above.

4. The student has a sibling who was, or is currently enrolled in an EOF Program; or

5. The student (or family) is eligible for government assistance and educational programs targeted toward low-income and disadvantaged populations (TRIO programs, free and reduced breakfast/lunch programs, food stamps) and is a first-generation college student.

(g) The student's record must contain sufficient documentation for verification of the above criteria. All efforts should be made to give priority to those students whose incomes are within the limits of N.J.A.C. 9:11-2.6.

9:11-2.7 Grant amounts

(a) The dollar amount of each EOF graduate grant will be based on three factors:

1. Full time approved enrollment as defined by the institution offering the graduate program of study;

2. The financial need of the student; and

3. The type of institution which the student will be attending.

(b) The exact amount of the EOF award shall be determined by the institution's EOF and financial aid directors. Priority for determining need and awarding EOF graduate grants shall be given first to students who meet the educational and income criteria in accordance with N.J.A.C. 9:11-2.1(c) and (d), 9:11-2.2(a) and (b) and 9:11-2.6(a) through (c), followed by those students admitted using N.J.A.C. 9:11-2.6(f) through (h).

(c) Once it is determined that a student is eligible, he or she shall not receive less than the minimum grant nor more than the maximum grant. Under no circumstances shall an EOF award be granted which, in combination with other aid, exceeds the cost of attendance as determined by the institution.

(d) The EOF Board of Directors shall annually review the state grant amounts of EOF students and make adjustments if necessary. The minimum and maximum award ranges for full-time graduate EOF grants for each type of institution follows:

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Graduate	Minimum	Maximum
State Colleges	$200.00	$2,000
4 Year Independent	200.00	2,500
Rutgers, NJIT	200.00	2,500
UMDNJ	200.00	4,000

(e) The minimum award, as set forth in this section, shall be granted to all eligible EOF students.

(f) The awarding of all grants within the above stated minimum and maximum range shall be based upon a careful analysis of the student's total financial situation and financial need. The neediest students must be accorded priority.

9:11-2.8 Duration of student eligibility

(a) Students deemed eligible at the time of initial graduate enrollment shall retain eligibility for program support services throughout the duration of the initial degree of study as long as he/she maintains full-time enrollment.

(b) In addition, students shall retain eligibility for an EOF grant as long as the student has demonstrated financial need as determined by the institution through submission of a financial aid form approved by the EOF Board of Directors, in accordance with annually established deadline dates.

9:11-2.9 Eligibility requirements for graduate grants

(a) The EOF Board of Directors must approve each institution's initial request to establish an EOF graduate Program. This written request is to be submitted on forms provided by the Executive Director of EOF. Requests must include information outlining the expected objectives to be achieved through participation in the EOF graduate program, the number of students estimated to be eligible, and administrative responsibilities.

(b) Any New Jersey institution of higher education is eligible to participate in the EOF graduate program as long as it is certified as a licensed, accredited public or independent, non-proprietary, graduate or professional school.

(c) Priority in the granting of EOF graduate grants shall be given to those students who received EOF undergraduate grants, and who continue to meet the financial eligibility criteria outlined in N.J.A.C. 9:11-2.6 and 9:11-2.9(d). Graduate students who did not receive an undergraduate grant must supply copies of their parents' and/or guardian's income documentation and verification of historical poverty.

(d) Graduate EOF students must continue to qualify based on all of the criteria set in N.J.A.C. 9:11-2.1 through 9:11-2.9 with the following exceptions:

1. Financial eligibility for independent students who received EOF as undergraduates and enroll in a graduate program within one academic year of graduation, shall be based upon their projected academic year student (spouse) income and assets.

2. The annual gross income and assets of all graduate grant recipients must be verified by the institution through the use of Internal Revenue Service documents. Appropriate documentation of income must be maintained in each student's file.

3. No student shall be eligible for a graduate EOF grant for more than 10 semesters, however:

i. Length of eligibility at four year public colleges, four year independent colleges, Rutgers and NJIT shall be restricted to one semester beyond the normal number of semesters usually required for a full-time student to complete the degree requirements. For example:

Degree Requirements	Full-Time Graduate Student	Length of Eligibility
36 credits	9 credits	(36/9) = 4 + 1 = 5 semesters
84 credits	12 credits	(84/12) = 7 + 1 = 8 semesters

ii. Length of eligibility in the pursuit of a medical or dental degree shall be restricted to one year beyond the normal number of years usually required for a full-time student to complete the degree requirements. In no case shall the maximum graduate eligibility exceed the equivalent of 10 semesters.

4. Graduate grant recipients may pursue more than one advanced degree, however:

i. Each degree must be a higher level than the previous one, and

ii. In no case shall the combined eligibility exceed the equivalent of 10 semesters.

5. No EOF graduate grant is to be awarded for summer program study excepting those programs that, by nature, require that specific courses be taken during the summer.

i. Exception are possible, in cases where the program of study requires a mandatory sequence of courses for more than two terms in an academic year.

ii. In order to qualify for an exception, the institution must submit a request in writing to the DHE/EOF Office.

9:11-2.10 Operational provisions for graduate grants

(a) Participating institutions are to submit an annual academic year request for student slots to the Executive Director of EOF.

(b) Notification of action on institutional requests from the Executive Director of EOF will be given in writing to the President of each institution.

(c) To apply for Article III, graduate student grant funds, the financial aid and EOF directors must complete a payment request form to be established prior to the academic year for which funds are being requested for graduate students.

(d) The institutions shall annually submit to the DHE/EOF Office an EOF graduate payment request information form.

(e) A timetable for submission of reports and payment request forms shall be made available to each participating institution.

(f) All files of students receiving EOF graduate grants will be subject to a fiscal audit conducted by the Department of Higher Education.

9:11-2.11 Student notification and payment

(a) A student(s) shall be notified in writing by the institution's financial aid officer of the content of his or her financial aid package. The institution's written notification to the student shall contain a clause absolving the State of any responsibility for funding in the event that the grant is based upon fraudulent, inaccurate, or misleading information.

(b) The EOF Board of Directors may elect to provide payment directly to institutions on behalf of student recipients. Payments will be made to institutions for the eligible students in equal installments over the regular academic year, the number of installments corresponding to the number of school terms. Listings of eligible students to be credited will be provided to institutions.

9:11-2.12 Discontinuation of EOF graduate grants

(a) The Article III graduate grant is to be discontinued immediately when the student ceases to be eligible under the criteria listed in N.J.A.C. 9:11-2.

(b) The Article III graduate grant is to be discontinued for any student who has been academically dismissed unless reinstated in good standing by institutional officials.

(c) The Article III graduate grant is to be discontinued for any student who is not matriculated in a full-time program of study or any student who is not enrolled. The amount of any grant paid to the institution for that student must be repaid by the institution.

(d) The Article III graduate grant is to be discontinued for any student who refuses to abide by regulations established by the institution for participation in the EOF Program.

(e) The Article III graduate grant is to be discontinued for any student who intentionally falsifies or gives misleading information upon which eligibility was based. The amount of any grant previously paid to that student must be repaid by that student.

9:11-2.13 Liability

(a) The basic responsibility for submitting accurate information to institutional officials rests with the student.

(b) In the event that an institution has knowingly conveyed fraudulent and/or misleading information in order to obtain EOF grants for ineligible students, the institution will be held liable and will be required to make restitution.

(c) In cases where institutions have made awards in good faith based upon fraudulent and/or misleading information which has been

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conveyed by the student, the student is liable for the return of the EOF grant. A written statement to this effect shall accompany each student's award notification.

(d) The EOF Executive Director, with the cooperation of institutional officials, shall undertake appropriate steps to reclaim monies due the Educational Opportunity Fund from ineligible students.

9:11-2.14 Grant usage

(a) The EOF graduate grant must be applied to the student's educational costs only. Educational costs are inclusive of whatever constitutes each institutional educational budget and may include tuition, fees, room and board, transportation, books, educational supplies and child care.

(b) Use of EOF graduate grants for any other costs is strictly prohibited.

9:11-2.15 Grant awarding cycle

(a) An EOF grant is awarded for each semester of an academic year which usually includes two (2) terms.

1. If a student is not enrolled for two (2) terms, then the EOF graduate grant will only be awarded for the term the student is enrolled.

2. In no case will an initial EOF graduate award be given for the student's last two terms of graduate study.

9:11-2.16 Appeals

(a) A student(s) or his or her parent(s) may file a written appeal with the EOF Executive Director regarding institutional decisions of ineligibility.

1. The first step in appealing EOF grant eligibility begins within the institution. As a campus based program, the verification of EOF grant eligibility is the responsibility of institutional officials.

2. A student must have already appealed through institutional channels before his or her appeal will be heard by the EOF Executive Director.

3. The letter of appeal must furnish detailed information as to the nature of the case and contain the names of institutional officials who have been contacted.

(b) If, after state payment deadline dates, new information or evidence has been presented regarding previous institutional eligibility decisions, the institution may request consideration by the EOF Executive Director for payment in the same fiscal year. Such requests must be submitted before fiscal year end reconciliation and shall be submitted through payment rosters co-endorsed by the EOF campus director and financial aid officer. The fiscal year ends on June 30 of each year.

(c) In no case should institutional requests for opinions, clarification, or consideration based on new evidence constitute an appeal for a student or students who have not met the minimum standards set forth in state regulations. These standards are intended to be the "floor" above which institutional standards and appeals may operate, but no appeals, institutional or central, shall result in an EOF student not meeting these state minimum standards for eligibility.

9:11-2.17 Refunds and repayments of disbursements made to students

(a) If a refund is due to a student under the institution's refund policy and the student received State financial aid under any State student financial assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the Treasurer, State of New Jersey, through the Office of Student Assistance:

$$\text{divided by } \frac{\text{Amount of state financial assistance (minus work earnings) awarded for the payment period}}{\text{Total amount of financial aid (minus work earnings) awarded for the payment period}}$$

(b) The payment period is the time between the first day of classes for an academic term and the end of that term according to the institutional calendar.

(c) The refund period is the time between the first day of classes for an academic term and the date the student officially or unofficially withdraws from an institution, is expelled by an institution, or reduces his/her academic course load such that he/she is no longer eligible for State assistance.

(d) The formula at (a) above should be applied if a full-time student reduces his/her academic course load to less than full-time, prior to the end of the institutional refund period. However, if the student reduces his/her academic course load to less than full-time, or reduces the number of credits for which the student is enrolled on less than a full-time basis, after the end of the institutional refund period, a refund to the State is not required.

(e) If a combination of State student funds has been packaged for the student and a refund is due the State, a prorated amount is applied to each of the State programs in the student's financial assistance package.

(f) If a cash disbursement has been made by an institution for non-institutional costs from a State assistance program, and it is determined by application of the institution's refund policy and the formula in (a) that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the Department of Higher Education of the amount owed for each State financial assistance program. Non-institutional costs may include, but are not limited to: room and board, books and supplies, transportation, child care, and miscellaneous expenses.

(g) If a student utilizes any portion of a full-time award, it will be treated the same as a full semester payment in calculating the number of semesters of eligibility. Thus, the institution shall afford the student the opportunity to decline and repay the State award for that payment period.]*

SUBCHAPTERS 2 through 4. (RESERVED)

CHAPTER 12
PROGRAM SUPPORT

9:12-1.1 Scope and purpose

(a) N.J.S.A. 18A:71-39 provides that the Chancellor of Higher Education shall develop, establish and maintain programs of remedial and supplementary education for students who receive assistance under the Educational Opportunity Fund. The programs shall be designed to provide access to and preparation for undergraduate, graduate and professional education.

(b) N.J.S.A. 18A:71-39 governs the process by which institutions receive and utilize funds pursuant to this authority.

1. EOF students, as students of the institution who pay tuition and for whom the institution receives State support other than EOF are entitled to all services available to all other students at the institution.

2. EOF funds are intended to supplement and not supplant existing services provided by the institution. The EOF program may not be charged directly nor through the institutional match provision of these rules for services which are not over and above those provided to the general student population.

9:12-1.2 Institutional eligibility

(No change in text.)

9:12-1.3 Eligible EOF program requirements

(a) Any program shall be eligible for funding consideration which increases access to higher education for students eligible for EOF grants, improves EOF student academic performance and promotes student retention, promotes student progress toward graduation within the established period of program eligibility and within the academic regulations of the institution, and provides effective administrative support for the operation of the EOF program within the institution. All programs at a minimum must meet all of these objective mandates for funding under this provision. Such programs shall include, but are not limited to:

1.-5. (No change.)

6. Remedial/developmental and supplemental instruction;

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7. (No change.)
8. Preparation for students enrolled at county/community colleges to transfer to four year institutions;
9. Preparation for graduate and professional education;
10. (No change in text.)
11. (No change in text.)
12. (No change in text.)

9:12-1.4 Application process

(a) The EOF Executive Director will distribute a standard application form to all eligible participating colleges and universities in the State each year.

(b) Each institution shall submit the application to the EOF Executive Director each year. All applications must include written endorsement of the campus EOF director, the Community Advisory Board, the President and/or governing board of the institution.

(c) The application will be reviewed by the EOF Executive Director in the Department of Higher Education for compliance and development of program recommendations to the EOF Board of Directors. The Board shall conduct an annual meeting to determine funding allocations for the next academic year for each institution. The Executive Director shall provide written notification of the Board's decision on each application. This shall be in the form of a preliminary notification specifying the funding level and any stipulations regarding the conduct of the program or the disbursement of funds. This preliminary notification shall be endorsed by the institutional President and returned to the Executive Director.

(d)-(e) (No change.)

9:12-1.5 Restriction on use of EOF funds

(a) EOF grant funds must not be used for the following items:

1.-2. (No change.)

3. Indirect expenses (for example, overhead cost—space heat, lights, postage and telephone); and
4. Transportation of students for normal commuting costs.

9:12-1.6 Institutional commitment

(a) (No change.)

(b) The EOF Executive Director shall conduct a review of any exceptional items to determine acceptability of in-kind contributions on all applications and make recommendations to the EOF Board of Directors. Institutions may appeal this decision by submitting a written request to the EOF Executive Director within 30 days of issuance of the formal agreement. The Executive Director will conduct a review of the appeal and make a recommendation to the Board of Directors.

1. The institutional share shall consist of:

i. (No change.).

ii. The provision and maintenance of state of the art technological equipment (i.e., computer hardware, modems, fax machines).

iii. (No change in text.)

iv. Direct services rendered by other institutional staff to the EOF program.

2. Institutional share items shall not include:

i.-iv. (No change.)

9:12-1.7 Accountability of institutional share

The budget application shall provide a format to record items for consideration of institutional share. Final determination will be made by the Board of Directors on the basis of their allocation decision on each budget application. Each institution will receive written notification of its allocation from the EOF Executive Director. Institutional share and grant award items including fringe benefits shall be recorded by the program and are subject to audit at any time by the Department of Higher Education.

9:12-1.8 Institutional administration

(a) Each participating institution with 16 or more students which receives program support funds under Article IV is required to have a full-time Director responsible for the administration of the EOF program.

(b) Each participating institution shall insure that provisions are made for the director to fulfill the following responsibilities:

1. Program planning;
2. Budget development and administration;
3. Training and supervision of staff;
4. Monitoring of student progress in basic skills, developmental skills, and English as a Second Language courses;
5. Monitoring of student progress to include the development of policies and procedures which facilitate retention and graduation;
6. Supervision and/or coordination of recruitment activities;
7. Review of financial aid packages for EOF students to determine the appropriateness and adequacy of financial aid awards;
8. Evaluation of the outcomes of all program components;
9. Supervision and submission of all required materials to the DHE/EOF Office; and
10. Supervision of all data collection and development of research reports on the program.

(c) Those programs with less than 16 students may employ a part-time staff member as long as adequate administrative support is provided to all program components.

(d) Each participating institution shall maintain clearly defined written guidelines for cooperative interaction with the various offices responsible for the activities outlined in N.J.A.C. 9:12-1.8(b)1 through 10.

(e) Each participating institution shall insure that provisions are made for the director to actively participate in all institutional policy making that impacts the EOF Program.

(f) Each participating institution with an open admissions policy, shall insure that the EOF director makes the final determination on students admitted to the EOF Program and receiving an EOF grant.

9:12-1.9 Recruitment and admission

(a) Each participating institution shall develop and implement an annual plan for the recruitment of potential students for the EOF program. This plan shall be subject to an audit by DHE/EOF at any time. The plan will identify a significant pool of potential students from specific disadvantaged groups in the geographic region. Target populations shall include significant numbers of students with a background of historical poverty (in the black, Puerto Rican and other Hispanic communities, as well as other disadvantaged ethnic groups of the region). In addition, the plan shall identify a significant pool of potential non-traditional students such as welfare recipients, unemployed or underemployed adults, and participants enrolled in JTPA and Veterans Programs, as well as various social rehabilitation services in the community. The recruitment plan shall include the timetable, goals, objectives, and selection process for EOF students at the participating institution.

(b)-(c) (No change.)

(d) Students initially admitted to the institution's EOF Program who have stopped out, were academically dismissed or suspended, who are seeking readmission to the institution, must be reviewed by the institution's EOF director prior to being readmitted.

9:12-1.10 Criteria for admission

(a) Each institution shall develop clearly defined criteria for the admission of students into the EOF program. Such criteria shall be consistent with N.J.A.C. 9:11-1.2 student eligibility. Such criteria should be available to secondary schools and community organizations in the recruitment region and documentation of such action attached to the annual plan for recruitment.

(b) (No change).

9:12-1.11 Eligible program support components

(a) Each institution participating in this program shall conduct an on-going evaluation of all students after admission. This process shall at a minimum include, clearly defined activities to assist students with the identification of educational and career goals and the development of an academic plan that will ensure retention, graduation, preparation for county/community college students to transfer to a four year institution, and preparation for graduate and professional school for all undergraduate students. These activities shall include—but not be limited to:

1. Skills Assessment: An assessment of student basic skills needs and performance;

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2. Remedial Developmental Instruction: The development of remedial, ESL and developmental programs designed to remedy academic deficiencies;

3. Counseling: Each institution shall provide counseling programs designed to assist students to realize their personal and educational goals.

4. Supplemental instruction/tutoring: Each institution shall provide well-defined programs of supplemental instruction, tutoring, and study supervision to assist students to resolve learning difficulties. These programs may include specially adapted versions of courses that serve as gateways to majors and the use of peer learning groups.

5. Preparation for county/community college students to transfer to four year institutions: Each institution shall provide programs designed to inform county/community college students of the educational opportunities available for them at four year institutions. This service shall be coordinated by the EOF campus staff and include articulation agreements and joint admissions policies institutions have established with four year institutions, pre and post-transfer orientation, instructional exchanges during intersessions and summers, academic advisement and financial aid information.

6. Preparation for careers, graduate and professional education: Each institution shall provide programs designed to prepare undergraduate students for careers and enrollment in graduate/professional school. These services shall be coordinated by the EOF campus staff in conjunction with the institutional placement office and academic departments. These services shall include career interest testing, preparation of resumes, job search and interview techniques, as well as programs to nurture student interest in graduate and professional education. These programs may include the identification of and assistance with the application process for undergraduate research experience programs (e.g., Biomedical Careers, Mathematics Immersion Program, Pre-Legal Program, etc.), GRE test preparation, graduate and professional school application process, grants, scholarships, fellowships and other forms of financial assistance.

7. Student leadership development: Each institution shall provide programs designed to help foster cultural diversity, racial harmony, and the improvement of human relations. The program design may also include the development of conflict resolution and empowerment skills, as well as an understanding of the responsibilities leaders must assume.

9:12-1.12 Students for whom English is a second language

(a) Each institution shall establish developmental services to enhance and strengthen the academic performance of students for whom English is a second language. These services shall include:

1.-2. (No change.)

3. Courses and programs designed to develop the English language skills and academic needs of students;

4. (No change).

(b) (No change).

9:12-1.13 Transfer procedure

(a) Each participating institution shall develop and maintain in writing a well defined policy to facilitate transfer of EOF students from two-year to four-year institutions and between institutions.

(b) The EOF director shall make the final determination on students admitted and receiving an EOF grant as transfer students. This is to ensure that the EOF program can provide these students with adequate educational support services, and an EOF financial aid grant, and continue to monitor their academic progress.

(c) The EOF program shall have procedures to demonstrate delivery of services to students who are eligible for funding consideration under N.J.A.C. 9:11-1.13 Transfer of grant.

9:12-1.14 Academic progress

(a) Each institution shall establish a policy and maintain a process to monitor student performance in the EOF program. This process shall include operational procedures to record and review student progress prior to the beginning of each academic year as indicated by credits accumulated, courses completed, grade point average, and extracurricular activities.

(b) To remain eligible for EOF program support services, students shall maintain satisfactory academic standing and progress according to the institution's established policy for the academic progress of EOF students and N.J.A.C. 9:11-1.9, 9:11-1.10, and 9:11-1.11.

9:12-1.15 Academic probation/dismissal of EOF students

(a) Program support services may be discontinued for reasons outlined in N.J.A.C. 9:11-1.15 Discontinuance of EOF grants and program support services.

(b)-(c) (No change.)

9:12-1.16 Experimental programs

(No change in text.)

9:12-1.17 Program audits and evaluations

(a) The EOF Executive Director shall maintain adequate procedures to monitor all program functions and components of all institutions receiving funds under this section. Due notice shall be provided from the DHE/EOF Office to visit any institution to conduct monitoring activities which may include evaluation, audits, and post-audit activities on a random or selected basis as needed.

(b) The EOF Executive Director shall conduct regular program audits and evaluations to determine regulatory compliance and program effectiveness. During these processes, DHE/EOF Staff shall document any exceptional budgetary items and ineffective program components and report such items to the EOF Executive Director.

9:12-1.18 Transfer of funds

(a)-(b) (No change.)

9:12-1.19 Program non-compliance

(No change in text.)

9:12-1.20 Program probationary status

(No change in text.)

9:12-1.21 Community Advisory Board

(a) (No change.)

(b) The Community Advisory Board shall meet at least six times during the calendar year. The Board shall demonstrate involvement in the following activities at a minimum:

1.-5. (No change.)

6. Reviewing and commenting on the institution's EOF funding application, prior to its submission to the Department of Higher Education; and

7. (No change.)

(c) (No change.)

9:12-1.22 Record keeping and data collection

(a)-(b) (No change.)

(c) Each institution participating in this program shall maintain thorough academic and financial aid files on program participants. This information shall include, but not be limited to, the following:

1.-2. (No change.)

3. Data and assessment of tutorial/supplemental instruction services directed toward the resolution of academic difficulty;

4.-6. (No change.)

(d)-(e) (No change.)

9:12-1.23 Annual Program Report

(No change in text.)

9:12-2.2 Summer program requirements

(a) Summer programs shall be eligible for funding consideration if they:

1.-4. (No change.)

5. Provide a remedial and developmental curriculum to assess and work toward improving academic skills and performance. In addition, institutions may elect to develop projects which address objectives six, seven, eight and nine;

6.-7. (No change.)

8. Improve graduate and/or professional school placement;

9. Provide a systematic effort to assist students to succeed in majors traditionally underrepresented by minority students.

(b) All participating institutions shall operate program objectives one through five to receive funds for summer program. Any program

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may elect to develop projects according to objectives six, seven, eight and nine.

(c) (No change.)

9:12-2.3 Student eligibility

(a) Any student deemed eligible for admission and matriculation to the EOF program by the institution in the academic year (pursuant to N.J.A.C. 9:11-1) is qualified to receive additional grant funds to support enrollment and full participation in the summer program in accordance with the following procedures:

1. Summer or pre-freshman attendance should be mandatory for all entering students. Institutions may permit entering students to enroll without attending the summer program, but shall provide alternative activities for such students consistent with criteria listed in N.J.A.C. 9:12-2.2 of the Summer Program requirements, during the academic year. Such program offerings must be described in the annual funding application.

2. (No change.)

9:12-2.4 Application process

Each institution shall submit a summer program application in addition to its regular academic year funding application in accordance with provisions of N.J.A.C. 9:12-1.4, 1.5, and 1.6.

9:12-2.5 Funding process

(a) Funds will be allocated to eligible institutions according to program budget applications submitted to the DHE/EOF Office and approved by the EOF Board of Directors.

(b) (No change.)

9:12-2.6 Verification of financial eligibility

(a) (No change.)

(b) Procedures for verification of student eligibility for summer program attendance shall be consistent with those outlined in N.J.A.C. 9:11-*[1.6 Verification of Financial Eligibility, of the Financial Aid Regulations]* ***1.7, Verification of financial eligibility, of the Undergraduate EOF Financial Eligibility***.

9:12-2.7 Liability

(a)-(c) (No change.)

(d) The EOF Executive Director, with the cooperation of institutional officials, shall undertake appropriate steps to reclaim monies due the Department of Higher Education/Educational Opportunity Fund from ineligible students.

9:12-2.8 Operational provisions for summer program payment

(a)-(c) (No change.)

(d) All files of students receiving EOF grants will be subject to a fiscal audit conducted by the Department of Higher Education.

9:12-2.9 Refunds and repayments of disbursements made to students

(a) If a refund is due to a student under the institution's refund policy and the student received financial aid under any State student assistance program, the institution shall multiply the institutional refund by the following fraction to determine the amount to be refunded to the Treasurer, State of New Jersey, through the Office of Student Assistance:

$$\frac{\text{Amount of State assistance (minus work earnings) awarded for the payment period}}{\text{Total amount of financial aid (minus work earnings) awarded for the payment period}}$$

(b)-(c) (No change.)

9:12-2.10 Summer program evaluation

(a) The EOF Executive Director shall distribute a standard summer program evaluation form to participating programs. Each institution shall submit the completed form according to the required submission timetable to the DHE/EOF Office.

(b) The DHE/E.O.F. Office may, in addition, conduct summer program evaluations to insure maximum program effectiveness and accountability.

(c) (No change.)

INSURANCE

(a)

DIVISION OF FINANCE EXAMINATIONS

Limited Assignment Distribution Servicing Carriers

Adopted Amendments: N.J.A.C. 11:3-3

Proposed: April 5, 1993 at 25 N.J.R. 1327(b).

Adopted: April 5, 1994 by Andrew J. Karpinski, Acting Commissioner, Department of Insurance.

Filed: April 5, 1994 as R.1994 d.210, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8; 17:1-8.1, 17:1C-6(e); 17:32-1 et seq. and 17:29D-1.

Effective Date: May 2, 1994.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department of Insurance ("Department") received five timely written comments from insurers, an insurer trade association, and entities that provide policy administration services to insurers as follows:

1. The American Insurance Association;
2. State Farm Indemnity Company;
3. Policy Management Systems Corporation;
4. Selective Insurance Company of America; and
5. LeBeouf, Lamb, Leiby & MacRae (on behalf of National Grange Mutual Insurance Company and MSA Information Systems & Services Corporation).

COMMENT: Several commenters expressly supported these rules to require all limited assignment distribution (LAD) servicing carriers to retain at least 25 percent of the risk. One commenter specifically stated that, although it did not utilize LAD servicing carriers and was not specifically commenting on the details of the proposed rules, it believed that LAD servicing carriers currently do not have the incentives to provide adequate service for an assigned risk plan which is small, provides good service to its insureds, controls losses and has adequate rates. The commenter stated that LAD servicing carriers make more profit with higher volumes of business, so their interest is in a larger assigned risk plan. Moreover, the commenter stated that LAD servicing carriers make more profit by cutting their expenses and therefore the incentive is to not make expenditures that may be necessary to provide good service to insureds and control losses. The commenter also believes that "risk-bearing" LAD servicing carriers may benefit the voluntary market as well and that these carriers may be able to identify profitable segments of the New Jersey Personal Automobile Insurance Plan (PAIP) business from its experience. The commenter stated that this could form the basis of the LAD servicing carrier entering the voluntary market as a high risk carrier.

Another commenter additionally stated that it believed that the time frames within which a LAD servicing carrier must assume the maximum amount of risk should be accelerated. The commenter suggested that maximum level of risk be retained after two years rather than four years.

RESPONSE: The Department notes that the commenters' support for these rules and the Department's goal of helping to ensure that LAD servicing carriers have an incentive to provide adequate service and properly perform their role in the automobile insurance market. The Department notes, however, that, for the reasons set forth in a response to a subsequent comment, the rules are revised upon adoption to clarify that the "risk retention" requirement applies only to LAD servicing carriers which, either directly or through one or more affiliates, provide all of the policy administration and claims administration services for an insurer, and to certain LAD servicing carriers that perform all or substantially all of the claims or policy administration for an insurer and provide some other administrative services as well.

In addition, the Department does not believe that it is reasonable or appropriate to accelerate the time frames within which a LAD servicing carrier must retain the maximum level of risk. As noted in the proposal Summary at 25 N.J.R. 1327, the Department recognized that to the extent a LAD servicing carrier is not presently licensed to transact private passenger automobile insurance in this State, it is not in a position to immediately retain risk. For this reason, the Department provided a

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transition period of two years from the date of appointment to retain the minimum amount of risk and four years to retain the maximum amount of risk. These time frames provide an adequate transition period within which the LAD servicing carrier must: 1) become licensed as an insurer in this State; and 2) be in a position to retain the risk. The Department also notes that the change suggested by the commenter could not be made upon adoption and would require reproposal of these rules. For these reasons, the Department has determined not to change this provision.

COMMENT: One commenter stated that these rules are "without foundation either in the law or in the realities of insurance." The commenter stated that there is no factual record establishing a need for these rules, only "assertions" in the proposal Summary regarding consumer service without statistical or other factual backup.

RESPONSE: The Department disagrees. The Department believes that these rules are authorized by law, and are reasonable under the circumstances. N.J.S.A. 17:29D-1 provides that the Commissioner of Insurance ("Commissioner") may promulgate rules for the provision and apportionment of insurance coverage for applicants "who are in good faith entitled to, but are unable to procure" insurance through ordinary means. This statute was amended by the Fair Automobile Insurance Reform Act of 1990 ("FAIR Act") to provide, among other things, that any assigned risk plan for automobile insurance established by the Commissioner shall provide "for a limited assignment distribution system permitting insurers to enter into agreements with other mutually agreeable insurers or other qualified entities to transfer their applicants and insureds under the plan to such insureds or other entitities". See N.J.S.A. 17:29D-1c (emphasis supplied). The Department has interpreted the term "other qualified entity" to mean an entity which, at the time of its application to become a LAD servicing carrier, has the potential to accept risk and become an insurer within two years or an entity that is an affiliate of an insurer who can accept the risk on its behalf. The Department believes that its interpretation of the term "other qualified entity" as set forth in these rules is reasonable, appropriate, and consistent with the policies and goals expressed by the Legislature through the FAIR Act.

One need look no further than the experience of the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA or JUA) and the performance of its servicing carriers to provide support for the Commissioner's determinations as set forth in these rules. The FAIR Act comprehensively reformed the laws governing private passenger automobile insurance in this State by, among other things, returning to an assigned risk plan in which all insurers "shared directly in the risk of insuring the 'bad driver'". (See N.J.S.A. 17:33B-2h(5).) This is similar to the plan utilized prior to 1983 to apportion drivers who were not able to procure coverage "through ordinary methods". Between 1983 and 1990, however, the assigned risk plan was the JUA. (See N.J.S.A. 17:30E-1 et seq.) Under JUA Act:

> [i]nsurers (and subsequently certain qualified non-insurer entities) could apply to become "servicing carriers", which would bear administrative responsibility for collecting premiums, arranging coverage, and the like, and which would receive fees for such services from the JUA. However, the statute, the plan of operation and the agreements between the JUA and servicing carriers all provided that claims and liabilities of the JUA would be borne by it independently; servicing carriers were to be insulated from such claims and liabilities. *State Farm v. State,* 124 *N.J.* 32, 41 (1991) (emphasis added).

Accordingly, similar to a LAD servicing carrier system, which allows insurers and other qualified entities to service private passenger automobile insurance business, the JUA Act permitted insurers and eligible non-insurers to service residual market business, but with no direct liability on claims or policies which they serviced on behalf of the JUA. (See N.J.S.A. 17:30E-7e and *State Farm, supra,* 124 *N.J.* at 41.

As is by now well known, audits ultimately revealed that servicing carriers for the JUA did not operate efficiently, which increased the JUA's liabilities. Through enactment of the FAIR Act, the Legislature specifically found that the JUA was "operating in a substantially impaired financial state with an operating deficit ... estimated to be in excess of $3 billion and that ... the Commissioner of Insurance stated that mismanagement by insurance companies acting as servicing carriers cost the association $908 million between its inception in 1984 and 1988." N.J.S.A. 17:33B-3a. Accordingly, the FAIR Act's establishment of an assigned risk system acknowledges the failure of the prior JUA system in which servicing carriers did not assume direct risk or ultimate responsibility for the business which they service.

The Department therefore believes it is reasonable to conclude that the Legislature did not intend to create a new market mechanism with the potential to repeat the inefficiencies of the JUA, and has interpreted a "qualified entity" under the LAD servicing system to be an entity motivated to provide efficient policyholder and claims services so that unnecessary costs are not transferred to the insurer and ultimately to the policy holder through increased rates. For the foregoing reasons, the Department believes that these proposed rules, as revised upon adoption, are both authorized by law, reasonable and consistent with the goals expressed by the Legislature through the FAIR Act.

COMMENT: Several commenters, while supporting the goal of these rules to benefit participants in the private passenger automobile insurance market and recognizing the importance of cost effectiveness and quality service, objected to the requirement that this goal be achieved by requiring LAD servicing carriers to become an insurer and retain a portion of the risk, particularly those servicing carriers providing only policy administration services. The commenters also stated that these rules may cause disruption to the ability of insurers to perform duties assigned to them by law and make compliance with existing laws more costly. Accordingly, the commenters believe that the rules may actually increase costs to insurers rather than reduce costs.

One commenter specifically stated that in light of today's increasing complex technologies, the accelerating rate of industry change, and the attendant requirement that insurers master a widening array of divergent skills, few insurers are sufficiently equipped to provide the level of policy and claim service attempted to be addressed in these rules. The commenter stated that absent the services of qualified entities, expenses in fact increase, poor service results, and costs are passed on to the consumer. The commenter believes that the financial burden imposed by required insurance and technological expertise, coupled with the unique characteristics of the automobile insurance marketplace, create the necessity for qualified "third party administrators" or servicing carriers where attendant resources can be appropriately leveraged. The commenter believes that sufficient incentive is created for the LAD servicing carrier to provide cost-effective, quality service by the very definition of its marketplace. The commenter does not believe that it is necessary for the LAD servicing carrier to bear any portion of the risk to realize this incentive. Furthermore, the commenter believes that the imposition of such a financial burden would impede the LAD servicing carrier's ability to provide "expense relief" to its client insurer.

In addition, the commenter stated that there are several inconsistencies in the proposed rules. First, the commenter stated that claims expenses greatly exceed underwriting expense. The sharing of insurer expense is disproportional to those sets of services with a LAD servicing carrier which provides only policy administration services to the insurer. Secondly, the commenter stated that the rules apply only to private passenger automobile insurance and not to any other line of business. In addition, the commenter stated that the rules do not appear to preclude other "outsourcing " as commonly practiced in this State (for example, claims administration, computer resources, collection, application and management of information services, and data entry of application and other insurance documents). However, the commenter stated that performance of policy administration insurance functions for only private passenger automobile insurance by one entity requires that it be recognized as the LAD servicing carrier and be burdened with risk sharing. The commenter believes that this is inequitable.

The commenter concluded that if these rules are adopted, its competitive position will be unduly impeded and hampered. The commenter stated that it currently offers its services to insurance companies in all 50 states and is not required to bear risk in any other state. The commenter stated that its relationship with its insurer clients precludes it from assuming such a risk. The commenter believes that prohibiting its ability to offer its services in this State would, in addition to increasing the costs of the insurance to the insurer, reduce competition by eliminating its services in New Jersey. The commenter stated that eliminating its services in New Jersey would also negatively impact its national sales effort in that it could no longer offer services to insurers transacting business throughout the country.

Another commenter specifically stated that it provides specific services for assigned risk business in 40 states. These services include: screening of assignments; issuing policies; obtaining and reviewing motor vehicle reports to properly rate and surcharge new and renewal policies; filing cancellations and reinstatements; and collecting and remitting premiums.

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The commenter does not provide any claims adjustment or settlement services. The commenter thus stated that control of losses and 100 percent of the risk of loss remains with the insurers assigned the residual market business. The commenter agreed with the underlining theory of the rules as applied to claims services only, but does not believe that the same logic applies to forcing a LAD servicing carrier to bear a percentage of the risk when it has no control over servicing claims and limiting losses.

The commenter noted that the rules as currently in effect at N.J.A.C. 11:3-3.1(a) provide that a LAD servicing carrier shall not be considered a person with whom an insurer contracts to perform only certain aspects of policy administration or claims administration (including, but not limited to, data processing, loss appraisal, policy coverage verification and rate pursuit). The commenter therefore believes that the Department contemplated that providers of certain limited services should not be considered LAD servicing carriers and would not be subject to the new requirement that it bear 25 percent of the risk of loss. The commenter was unsure as to whether it would fall within the exclusion. Accordingly, it recommended that proposed N.J.A.C. 11:3-3.3(c) be revised to read as follows:

> Any person which is not licensed to transact private passenger automobile insurance in this State registered as a LAD servicing carrier pursuant to this subchapter which performs claims adjustment and settlement services shall: .... (Language underlined is to be added.)

RESPONSE: Upon review of the commenters' concerns, the Department while maintaining the general requirement that a LAD servicing carrier share the risk it is servicing, has determined that it is necessary and appropriate to revise and clarify application of the "risk retention" requirements. The LAD servicing carrier rules as presently in effect provide that if an insurer delegates all or substantially all of its policy administration or claims administration functions to another entity, that entity must be registered as a LAD servicing carrier. However, to the extent an insurer delegates substantially all of these administration functions to another entity and the insurer merely becomes the entity "paying the bills," the system created is one which strongly resembles the JUA which, as discussed at length in the response to the previous comment, resulted in inefficiencies, and additional costs to policyholders, insurers and the market generally, and should not be repeated. While one commenter stated that "sufficient incentive" is created for the LAD servicing carrier to provide cost-effective service, to the extent the system created resembles that under the JUA, the factual history indicates otherwise. In order to avoid the recurrence of such a system, the Department believes that it is reasonable and appropriate to require an entity to which an insurer has delegated all or substantially all of its policy administration and claims administration functions to "feel the bottom line" and thereby help ensure efficiencies in providing such services. While, as one of the commenters notes, this may increase the direct costs to provide these services, the Department believes that any additional direct costs will be mitigated by the efficiencies to be obtained through the system contemplated by the FAIR Act as implemented by these rules. Therefore, the benefits to be achieved outweigh any additional burdens that may be imposed by these rules.

Further, the Department does not believe that requiring the servicing entity to retain risk precludes the entity from providing services to its clients. The Department notes that no insurer individually objected to these rules as precluding its ability to utilize entities to service its business, or that these rules would increase the costs of utilizing such services. The Department also notes that the rules permit the LAD servicing carrier to assume risk directly, or through an affiliate licensed to transact private passenger automobile insurance in this State. The Department believes that this provision mitigates against any additional undue burden that may be imposed by these rules.

However, upon review of the comments received as noted above, the Department has determined that it is appropriate to revise the rules to require a LAD servicing carrier to assume risk only if it provides, either directly or through one or more affiliates, all of the policy administration and claims administration services for the insurer. The "risk retention"requirement shall not apply to an entity which provides only policy administration services or claims administration services for an insurer, but not both. The Department believes that these revisions are both reasonable and appropriate to effectuate the intent of the Legislature as expressed in the FAIR Act, while minimizing any undue burdens that may be imposed on entities providing either policy or claims administration services, but not both. As discussed above, where an entity provides all of the policy and claims administration services on behalf of the insurer, the potential impact and costs to the market due to any inefficiencies is greater. Moreover, such a mechanism would closely resemble that which existed under the JUA which, as discussed previously, the Legislature sought to avoid. However, where an entity provides only one of the administration functions (that is, policy or claims), the resulting mechanism less closely resembles that under the JUA, and the potential impact and resulting costs to the insurer from the entity's actions are minimized. Also, since the insurer has not delegated all of the traditional insurance functions to another entity, the Department believes that the insurer would have a greater ability and incentive to ensure that the LAD servicing carrier operates in a cost-effective manner than where the insurer has delegated all of those functions to the entity.

However, the rules as revised upon adoption provide that the Commissioner may nevertheless require a LAD servicing carrier to assume risk if it is providing all of one of the administration functions (policy or claims) and some aspects of the other. For example, the Commissioner may require a LAD servicing carrier to assume risk if it provides all of the claims administration services for an insurer and aspects of policy administration (such as underwriting and policy coverage verification). The Commissioner's determination would be based on the degree to which the entity provides the other administrative services, the degree to which the entity may exercise independent judgment in providing those services, and the degree to which the exercise of independent judgment is constrained by adherence to the insurer's guidelines and the insurer's oversight of the LAD servicing carrier's performance of the duties. The Department believes that this provision is reasonable and appropriate where an entity provides all of one type of administration service and parts of the other. The more duties that are undertaken, the closer the arrangement resembles that where the entity provides all of administration services.

In addition, the Department recognizes that these rules apply only to private passenger automobile insurance, and that other states may not require servicing entities to assume risk under similar circumstances. However, the Department believes that the rules are both reasonable and appropriate in light of the cost and availability problems associated with the private passenger automobile insurance market in the past. The Department also notes that in the assigned risk plan, the experience of one insurer has a greater effect on all other member insurers and insureds since the rates for the PAIP are based on its overall experience and not that of an individual member alone. Accordingly, inefficient, unnecessarily costly services to one member increases the costs reflected in the overall PAIP experience, thus potentially increasing costs to all insureds in the PAIP. This is of particular concern in that the rates for the PAIP are substantially higher than those in the voluntary market. Any increases in PAIP rates due to inefficiencies should be avoided as higher rates may result in more drivers going uninsured, to the detriment of insurers, policyholders and the market generally. For these reasons, the Department believes that it is reasonable to initially address problems associated with servicing private passenger automobile business through these rules.

Further, with respect to the comment that the Department does not oppose the validity of other "outsourcing" of other specific services, except for policy administration, the commenter has apparently misinterpreted the rules as currently in effect. Under the rules as presently in effect, any person to whom an insurer delegates the authority to perform substantially all of the functions related to policy administration or claims administration for any private passenger automobile insurance of the insurer must be registered as a LAD servicing carrier, except for arrangements entered into between affiliates where services are provided solely to members of the group. The Department recognized, however, that insurers routinely delegate specific functions or aspects of policy administration or claims administration (such as data processing, loss appraisal, or policy coverage verification and rate pursuit). In those limited circumstances, the concerns to be addressed by these rules are not present and accordingly those entities providing those limited services are not required to be registered as LAD servicing carriers. However, to the extent an insurer delegates all of its general insurance functions and in effect becomes merely the "bill payer", the system created becomes one very similar to that created by the JUA which, as discussed previously, should be avoided.

With respect to the commenter that was unsure whether it would be required to be registered as a LAD servicing carrier, the Department makes no ruling on this issue here. Such a ruling would have to be made based on the specific fact situation, which may require further informa-

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tion. While the commenter stated the services that it performs, which are extensive, it is unclear as to which services or how many of those services are expressly provided to an individual insurer in this State. Nevertheless, for the reasons set forth above, the Department believes that no changes are required.

The Department also notes that while the commenters' support the Department's goal and the underlying theory behind the rules, while objecting to the method of achieving those goals, they provided no alternatives by which the Department may achieve these goals.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 3. LIMITED ASSIGNMENT DISTRIBUTION SERVICING CARRIERS

11:3-3.1 Purpose and scope

(a) The purpose of this subchapter is to set forth application and procedural requirements for insurers or other qualified entities which seek to become a limited assignment distribution servicing carrier and all insurers which seek to appoint a limited assignment distribution servicing carrier as referenced in N.J.S.A. 17:29D-1c. A limited assignment distribution servicing carrier under these rules is a person or persons to whom an insurer delegates the authority to perform substantially all of the functions related to policy administration or claims administration for any policy of private passenger automobile insurance of the insurer. A person with whom an insurer contracts to perform only certain aspects of policy administration or claims administration (including, but not limited to, data processing, loss appraisal, policy coverage verification and rate pursuit) shall not be deemed to be a limited assignment distribution servicing carrier for purposes of these rules.

(b) This subchapter applies to all insurers and other qualified entities which seek to become a limited assignment distribution servicing carrier and to all insurers which seek to appoint a limited assignment distribution servicing carrier. These rules shall not apply to arrangements entered into between affiliates, provided that services are provided solely to members of the group.

11:3-3.2 Definitions

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

"Affiliate" means an entity within the same holding company system as the LAD servicing carrier.

. . .

11:3-3.3 General requirements

(a) No person shall act as, offer to act as, or hold itself out to be a LAD servicing carrier in this State unless registered as a LAD servicing carrier pursuant to the subchapter.

(b) Any person licensed to transact private passenger automobile insurance in this State registered as a LAD servicing carrier shall retain not less than 25 percent of the risk which the LAD servicing carrier services on behalf of the insurer***, except as provided pursuant to (g) below***.

(c) *[Any]* ***Except as provided at (g) below, any*** person which is not licensed to transact private passenger automobile insurance in this State registered as a LAD servicing carrier pursuant to this subchapter shall:

*[i.]***1.*** Within two years from the date of appointment as a LAD servicing carrier, retain, either directly or through an affiliate licensed to transact private passenger automobile insurance in this State, not less than 10 percent of the risk which the LAD servicing carrier services on behalf of the insurer; and

*[ii.]***2.*** Within four years from the date of appointment as a LAD servicing carrier, retain, either directly or through an affiliate licensed to transact private passenger automobile insurance in this State, not less than 25 percent of the risk which the LAD servicing carrier services on behalf of the insurer.

(d) The LAD servicing carrier shall become licensed to transact private passenger automobile insurance in this State pursuant to N.J.S.A. 17:17-1 et seq. and N.J.A.C. 11:1-28 or N.J.S.A. 17:32-1 et seq. and N.J.A.C. 11:1-10, as applicable, so that it may retain risk within the time frames set forth in (c) above. However, a LAD servicing carrier may retain risk which it services through an affiliate licensed to transact private passenger automobile insurance in this State.

(e) All LAD servicing carriers or their affiliates, as applicable, licensed to transact insurance in this State shall be subject to all applicable laws in subtitle 3 of Title 17 of the Revised Statutes and all applicable regulations in Title 11 of the New Jersey Administrative Code.

(f) If the LAD servicing carrier is not licensed to transact private passenger automobile insurance or otherwise in a position to retain risk as set forth in (d) above so that it may retain risk within the time frames set forth in (c) above, or if at any time the Commissioner determines that the financial condition of the LAD servicing carrier is such that retention of risk by the LAD servicing carrier may render the insurer's and/or LAD servicing carrier's method of operation hazardous to the public or policyholders, after notice and opportunity for a hearing 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, the Commissioner may non-renew or revoke the LAD servicing carrier's Certificate of Registration.

(g) The requirements set forth in (b) through (f) above shall apply to any LAD servicing carrier which, either directly or through one or more affiliates, has been delegated the authority to perform all of the functions related to both policy administration and claims administration on behalf of the insurer. The requirements set forth in (b) through (f) above shall not apply to any LAD servicing carrier which has been delegated the authority to perform all or substantially all of the functions related to policy administration or claims administration, but not both. The Commissioner, may, however, require that a LAD servicing carrier comply with the requirements set forth in (b) through (f) above if it has been delegated the authority to perform all or substantially all of the functions related to one of the administration services (that is, policy or claims) and certain aspects of the other (for example, loss appraisal, policy coverage verification, or underwriting). The Commissioner shall make this determination based on consideration of the following:

1. The degree to which the LAD servicing carrier has been delegated the authority to perform the functions related to the relevant administrative service;

2. The degree to which the LAD servicing carrier may exercise independent judgment in the performance of its duties related to the authority delegated; and

3. The degree to which the exercise of independent judgment is constrained by requirements that the LAD servicing carrier adhere to specific guidelines of the insurer and by the general oversight by the insurer of the LAD servicing carrier's actions.*

11:3-3.4 Registration

(a) Persons, other than insurers licensed in this State, seeking to act as a LAD servicing carrier in this State shall make an application to the Commissioner for a certificate of Registration. The application shall be on a form approved by the Commissioner and include or be accompanied by the following information and documents:

1.-5. (No change.)

6. A copy of the proposed contracts between the LAD servicing carrier and the insurer;

i. The applicant shall highlight or otherwise indicate on the contract the provisions of the contract that satisfy the specific requirements set forth in N.J.A.C. 11:3-3.5(a), and provide a separate summary that references each requirement in N.J.A.C. 11:3-3.5(a)1 through 15 to the appropriate provision in the contract;

7. The application fee set forth in N.J.A.C. 11:1-32.4(b)12;

8. *[A]* ***If required to retain risk pursuant to N.J.A.C. 11:3-3.3, a*** statement certified by an officer of the applicant that:

i. The applicant has filed, or intends to file within 180 days of the date of its application for a Certificate of Registration, an application for authorization or admission to transact private passenger automobile insurance in this State pursuant to N.J.S.A. 17:17-1 et seq. and N.J.A.C. 11:1-28, or N.J.S.A. 17:32-1 et seq. and

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N.J.A.C. 11:1-10, as applicable; or that the applciant otherwise will satisfy the requirement that it retain a portion of the risk of the insurer as set forth in N.J.A.C. 11:3-3.3(c) by retaining the risk through an affiliate licensed to transact private passenger automobile insurance in this State;

ii. The applicant is familiar with the requirements to become licensed to transact private passenger automobile insurance in this State pursuant to N.J.A.C. 11:1-28 or 11:1-10, as applicable; and

iii. The applicant will possess and maintain the minimum required capital and surplus to become licensed to transact private passenger automobile insurance in this State and that the applicant or affiliate, as applicable, will maintain adequate capital and surplus to have the capacity to retain the minimum amounts of risk from all insurers on whose behalf the LAD servicing carrier intends to act; and

9. Such other information as the Commissioner may request.

(b) An insurer licensed in this State which seeks to obtain a Certificate of Registration shall submit, in lieu of all of the requirements in (a) above, a plan of operation which contains the information set forth in (a)5 above, a copy of the proposed contract as set forth in (a)6 above, the certification set forth in (a)8iii above, ***if required to retain risk pursuant to N.J.A.C. 11:3-3.3*** and the application fee as set forth in (a)7 above.

(c) Upon a finding that the applicant has satisfied all of the requirements set forth in (a) or (b) above, that it is or will be in a position to retain risk as required under N.J.A.C. 11:3-3.3(b) or (c), as applicable, and that its proposed methods of operation are not such as would render its operation hazardous to the public or policyholders, the Commissioner shall issue a Certificate of Registration to the applicant which shall authorize the applicant to act as a LAD servicing carrier in this State. The Commissioner may refuse to issue a Certificate of Registration if he or she determines that the applicant, or any individual responsible for the conduct of affairs of the applicant, is not competent, trustworthy, financially sound or of good personal and business reputation, or in the case of an insurer, has had an insurance license denied or revoked for cause by any state.

(d) A Certificate of Registration issued pursuant to (c) above shall remain in effect from the date of issuance until June 30 immediately following, and shall be renewed each year prior to June 30, unless surrendered, suspended or revoked by the Commissioner, for so long as the LAD servicing carrier continues in business in this State and remains in compliance with this subchapter and any other applicable laws.

Recodify existing (f)-(i) as (e)-(h) (No change in text.)

11:3-3.5 LAD servicing carriers; contract provisions

(a) No entity shall act as a LAD servicing carrier on behalf of an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party, and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

1.-13. (No change.)

14. If the contract provides for a sharing of interim profits by the LAD servicing carrier, the contract shall specify the manner and the LAD servicing carrier's authority with respect to the determination of interim profits. The Commissioner may disapprove the contract based on such provision if he or she believes that such method of compensation may render the insurer's and/or LAD servicing carrier's methods of operation hazardous to the public or its policyholders. The Commissioner may, in lieu of disapproving the contract, condition approval upon modifications made as he or she deems necessary; and

15. The LAD servicing carrier shall not, without the prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net or reinsurance, which amount shall not exceed one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year.

11:3-3.6 Requirements for insurers appointing LAD servicing carriers

(a)-(c) (No change.)

(d) Within 30 days of executing or terminating a contract with a LAD servicing carrier, the insurer shall provide written notification of such appointment or termination to the Commissioner. In the case of the appointment of a LAD servicing carrier, the insurer shall provide with such notification a copy of the contract, and shall provide a statement describing any differences between the contract entered into and the proposed contract submitted pursuant to N.J.A.C. 11:3-3.4. The appointment of the LAD servicing carrier shall take effect 60 days after written notification thereof is filed with the Department, unless disapproved by the Commissioner prior to that date. In the case of the termination of the appointment of a LAD servicing carrier, or the nonrenewal or revocation of the LAD servicing carrier's Certificate of Registration by the Commissioner, the insurer shall provide a statement that sets forth the manner and methods by which it intends to service the business and perform the duties delegated to the LAD servicing carrier. Any agreement to terminate shall take effect 90 days after the date of the execution of the agreement.

(e) (No change.)

11:3-3.7 Application of rules to persons currently acting as LAD servicing carriers and insurers utilizing LAD servicing carriers

(a) Any person acting as a LAD servicing carrier and any insurer utilizing the services of a LAD servicing carrier prior to the effective date of this subchapter, as amended shall, within 30 days after the effective date of this subchapter, as amended:

1. Notify the Department in writing of the existence of such relationship; and

2. Certify that it intends to comply with the requirements of this subchapter by within 120 days.

(b) Any person acting as a LAD servicing carrier prior to the effective date of this subchapter, as amended may continue to act in such capacity provided the person satisfies the requirements set forth in (a) above.

Recodify existing 11:3-3.7 as 11:3-3.8 (No change in text.)

(a)

SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Carrier Certification of Non-Member Status; The Market Share Report

Adopted New Rules: N.J.A.C. 11:21-8 and 21-10, and Exhibit CC to the Appendix to N.J.A.C. 11:21

Adopted Amendment: N.J.A.C. 11:21-1.2

Proposed: February 16, 1994 in accordance with N.J.S.A. 17B:27A-51 at 26 N.J.R. 1588(a).

Adopted: April 11, 1994 by the New Jersey Small Employer Health Benefits Program Board, Maureen Lopes, Chair.

Filed: April 11, 1994 as R.1994 d.228, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17B-27A-17 et seq. as amended by N.J.S.A. 17B:27A-51.

Effective Date: April 11, 1994.

Expiration Date: October 15, 1998.

The Small Employer Health Benefits ("SEH") Program Board of Directors ("Board") is adopting these rules in accordance with the provisions of N.J.S.A. 17B:27A-51. That provision provides that the Board may propose rules subject to at least a 20-day public comment period, after which the proposed rules may be adopted immediately. Notice of the proposed rules must be provided to affected and other

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interested parties, and sent to the Office of Administrative Law for publication. The Board must respond to comments received within a reasonable time following adoption of the rules and provide for those comments and responses to be published by the Office of Administrative Law.

The list of commenters, their relevant comments and the Board's responses are contained within this notice of adoption. Comments were received from the following:

State Farm Insurance Companies
Home Life Financial Assurance Corporation
Meeker Sharkey Benefits
Great-West Life and Annuity Insurance Company

Readers should note that certain comments received regarding the change in the definition of "health benefits plan" specific to the issue of stop loss or excess risk insurance were received from Meeker Sharkey Benefits, Home Life Financial Assurance Corporation and Great-West Life and Annuity Insurance Company. Recent legislative amendments to the statutes establishing the SEH Program have prompted the Board not to adopt that proposed amendment at this time. Therefore, the comments have been listed, but as the Board has not adopted the proposed amendment to N.J.A.C. 11:21-1.2(11) at this time, no specific response has been provided to address comments concerning this proposed amendment. A more specific explanation is set forth in the Summary of Public Comments and Agency Responses.

Summary of Public Comments and Agency Responses:

COMMENT: One commenter suggested that the term "carrier", as proposed in N.J.A.C. 11:21-8, be corrected to read "carrier or other entity". The commenter suggested that this phrase would be more accurate as an insurer seeking non-member certification may not be a "carrier" as defined by the SEH regulations.

RESPONSE: The Board agrees with the suggestion and has made the change in the adoption.

COMMENT: One commenter suggested that N.J.A.C. 11:21-8 be amended to add a provision such that a carrier appeal from the Board's non-member certification determination, would be made to the Commissioner of Insurance. The commenter recommended that, based upon the nature of the determination and the interrelationship between the SEH Board and the Commissioner, appeals of denials be delegated to the Commissioner.

RESPONSE: The Small Employer Health Benefits Program Act, N.J.S.A. 17B:27A-17 et seq., created the SEH Program and authorizes the SEH Board to administer virtually all aspects of the Program. Since determinations of which entities are carriers and which carriers are members of the Program subject to compliance and assessment is essential to the SEH Board's duties, the Board believes that directing appeals of such determinations to the Commissioner would be a delegation not consistent with the Act. Therefore, the Board will hear appeals of non-member certification and follow the procedure established in the regulations as proposed.

COMMENT: (Note: the following comments are specific to the proposal to amend the N.J.A.C. 11:21-1.2 "health benefits plan" definition to include a paragraph 11 defining stop loss. As addressed in the Response, the Board has not adopted the proposed amendment at this time.)

One commenter gave examples of split funded programs which have been purchased by "self-funded" small employers, and noted that, in that commenter's experience, split funded deductibles are likely to be in the $20,000 to $50,000 range per person per year. Another commenter stated that the maximum specific it normally provides for a 35 life group is $25,000 per person annual limit. That commenter also noted its strong belief that the stop loss plans in the small employer market are in need of regulation in order to level the playing field and clarify the criteria applicable to these policies.

Another commenter noted that although the 125% of expected claims aggregate limit set forth in the proposed stop loss definition is the common aggregate stop loss level in many self funded plans, they questioned the purpose of setting it down in regulation form.

Another commenter commented that to the extent that the proposed regulation purports to require stop loss policies to include certain benefit designs, it is preempted by ERISA with respect to self insured plans.

RESPONSE: The recent enactment of amendments to the statutes governing the SEH Program (see, Assembly Substitute for Assembly Bill 635 with Recommendations by the Governor, enacted April 5 and effective immediately) has caused the Board to reconsider whether a definition of stop loss and excess risk insurance most appropriately should be promulgated by the Board or by the Department of Insurance. Failure to adopt the proposed amendment represents a substantive change, but by its nature, is one which is less onerous for affected parties. Therefore, no additional public notice or comment is required.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 11:21-10.4(a)iv and v have been changed consistent with the current statement blank reporting options in New Jersey. Use of the NAIC HMO Blank remains optional for 1993 reporting; carriers may elect to file the New Jersey state HMO Annual Statement instead. The change is of a technical nature, not requiring additional public notice or an opportunity for additional public comment.

2. Proposed N.J.A.C. 11:21-10.3(b), which provides instruction on the use of Exhibit CC, has been broken down into two paragraphs for clarification and codified under subsection (a). The change is of a technical nature, not requiring additional public notice or an opportunity for comment.

Full text of the adoption follows:

11:21-1.2 Definitions

Words and terms contained in the Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise, or as such words and terms are further defined by this chapter.

. . .

"Health benefits plan" means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier to a small employer group pursuant to section 3 of the Act (N.J.S.A. 17B:27A-19), or any other similar contract, policy or plan issued to a small employer not explicitly excluded from the definition of health benefits plan. "Health benefits plan" excludes the following plans, policies, or contracts:

1. Accident only;
2. Credit;
3. Disability;
4. Long-term care;
5. Coverage for Medicare services pursuant to a contract with the United States government;
6. Medicare supplement;
7. Dental only or vision only;
8. Insurance issued as a supplement to liability insurance;
9. Coverage arising out of a workers' compensation or similar law;
10. Automobile medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (N.J.S.A. 39:6A-1 et seq.); ***and***

[11. Stop loss or excess risk insurance designed to reimburse a self-funded arrangement of one or more small employers for expenses exceeding per person limits of no less than $100,000 per year and aggregate limits of no less than 125 percent of expected claims per year (whether or not the aggregate and per person limit are combined), wherein neither the employees nor other individuals are third party beneficiaries under the policy, contract or plan; and]

*[12.]***11.*** Any group or group type supplemental hospital indemnity benefits program wherein the benefit does not exceed $250.00 per day, except that a hospital indemnity benefits program does not fail to meet the test therein so long as the benefit paid for the first two days of hospitalization does not exceed that which would be paid under the following formula:

$$\frac{\text{1st day benefit} - \text{2nd day benefit}}{5} + \text{2nd day benefit} \leq \$250$$

. . .

SUBCHAPTER 8. CARRIER CERTIFICATION OF NON-MEMBER STATUS

11:21-8.1 Purpose and scope

(a) The purpose of this subchapter is to establish which carriers ***or other entities*** are not members of the SEH Program and how those carriers ***or entities*** may be certified as non-members.

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(b) This subchapter applies to any carrier which files Annual Statements with the Department evidencing premium earned on group health insurance.

11:21-8.2 Definitions

Words and terms used in this subchapter shall have the meanings set forth in the Act or N.J.A.C. 11:21-1.2, unless otherwise defined below, or the context indicates otherwise.

"Group health benefits plan" means a hospital and medical expense insurance policy, a health service corporation subscriber contract, a hospital service corporation subscriber contract or a health maintenance organization enrollment contract issued to a small employer. A group health benefits plan includes, but is not limited to, a health benefits plan. A group health benefits plan excludes the following plans, policies, or contracts: accident only, credit, disability, long-term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers compensation or similar law, automobile medical payment insurance or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (N.J.S.A. 39:6A-1 et seq.)

"Small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed no more than 49 eligible employees, the majority of whom are employed within the State. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer.

11:21-8.3 Non-member status

(a) A carrier ***or other entity*** shall be a non-member of the SEH Program for the calendar year for which it submits a completed request for non-member certification if the non-member certification is approved by the Board.

(b) A request for non-member certification shall state that:

1. The carrier ***or entity*** neither issued nor had inforce a group health benefits plan covering New Jersey small employers during the calendar year for which certification is submitted; or

2. Other reasons which under law permit a carrier ***or entity*** to be certified as a non-member.

11:21-8.4 Non-member certification requests

(a) To be considered a non-member in any calendar year, a carrier ***or entity*** shall file with the Board a completed request for non-member certification no later than March 1 of the following calendar year, except that, to be considered a non-member for calendar year 1993, a carrier ***or entity*** shall file a completed request for non-member certification no later than April 15, 1994. Such request shall be sent to the SEH Program Administrator as specified at N.J.A.C. 11:21-1.3.

(b) All requests for non-member certification shall be certified by a duly authorized officer of the carrier ***or other entity*** and shall include an affirmative statement that the carrier ***or entity*** had no group health benefits plan covering New Jersey small employers inforce during the calendar year for which non-member status is requested, or shall set forth the other reason(s) under law why the carrier ***or entity*** qualifies as a non-member.

(c) A copy of such request also shall be filed by the carrier ***or other entity*** with the Commissioner as follows:

Attn: SEH-Annual Certification of Non-member Status
Life/Health Actuarial Services
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625-0325

11:21-8.5 Decisions on filings by the Board

The Board shall grant or deny requests for non-member certification in writing, stating the reasons for the determination, after review of a carrier's filing. A copy of such decision shall be sent to the carrier ***or other entity*** and to the Commissioner.

11:21-8.6 Review

(a) A carrier ***or other entity*** which has been denied non-member certification may contest that determination by filing an appeal with the Board no later than 20 calendar days after receiving the written determination from the Board.

(b) The appeal shall specify the reasons why the Board's determination is inaccurate and shall include all documentation that supports or tends to support the carrier's ***or entity's*** position. The carrier ***or entity'** also shall specify whether a hearing is requested.

(c) Within 30 days of its receipt of a request for a hearing, the Board shall determine whether bona fide issues of material fact exist such that a hearing shall be conducted. If bona fide factual issues do not exist, the Board shall review the challenge itself and may delegate this review to an appropriate Board committee to make a recommendation to the Board. If a hearing is appropriate, the Board shall determine whether to hear the matter itself or refer it to the Office of Administrative Law for a hearing in accordance with the Adminstrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 10. THE MARKET SHARE REPORT

11:21-10.1 Scope and applicability

(a) This subchapter sets forth annual reporting requirements of market share data for the assessment of operational and administrative expenses of the SEH Program.

(b) This subchapter shall apply to all carriers that are, or become, members of the SEH Program for any portion of a calendar year for which reports under this subchapter are required to be filed, whether or not the carrier is a member on the report filing due date.

11:21-10.2 Definitions

Words and terms used in this subchapter shall have the meanings as set forth in the Act or the chapter, unless otherwise defined below, or the context clearly indicates otherwise.

"Group health benefits plan" means a hospital and medical expense insurance policy, a health service corporation subscriber contract, a hospital service corporation subscriber contract or a health maintenance organization enrollment contract issued to a small employer. A group health benefits plan includes, but is not limited to, a health benefits plan. A group health benefits plan excludes the following plans, policies, or contracts: accident only, credit, disability, long-term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers compensation or similar law, automobile medical payment insurance or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (N.J.S.A. 39:6A-1 et seq.)

"Small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed no more than 49 eligible employees, the majority of whom are employed within the State. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer.

11:21-10.3 Filing of the Market Share Report

(a) Every member of the SEH Program shall file the Market Share Report set forth as Exhibit CC in the Appendix to this chapter, incorporated herein by reference, on or before April 15, 1994 and annually thereafter no later than March 1. Every member shall complete Parts A, B, C, and D of the Market Share Report.

*[(b)]***1.*** Affiliated carriers shall submit a combined Market Share Report, except *[that any]* ***as (a)2 below implies. The combined Market Share Report shall be submitted under the name of one of the affiliated carriers' members.**

2. Any* insurance company, health service corporation, hospital service corporation, or medical service corporation that is an affiliate of a health maintenance organization located in the State, and any health maintenance organization located in the State that is affiliated

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with an insurance company, health service corporation, hospital service corporation, or medical service corporation shall submit separate Market Share Reports. *[The combined Market Share Report shall be submitted under the name of one of the affiliated carriers' members.]*

*[(c)]**(b)* Certified Market Share Reports shall be submitted by mail or facsimile to the SEH Program Administrator, as set forth at N.J.A.C. 11:21-2.

11:21-10.4 Net earned premium

(a) Every member's net earned premium for the preceding calendar year ending December 31 shall be set forth in Part C of the Market Share Report.

1. Net earned premium set forth in Part C of the Market Share Report shall include net earned premium resulting from health benefits plans issued, continued or renewed during the preceding calendar year for one or more small employers.

2. Net earned premium reported in Part C of the report form shall be based upon, if not the same as, the data set forth in the member's annual reports, as follows, adjusted to meet the definition of group health benefits plan, as necessary:

i. The NAIC Life and Health Blank (Blue), State page 19, entitled "Accident and Health Insurance," Column 3 less Column 4, line 23 plus line 23.2 plus line 24.6;

ii. The NAIC Fire and Casualty Blank (Yellow), State page 14 entitled "Exhibit of Premiums and Losses," Column 3 less Column 4, line 13 plus line 15.1 through line 15.6;

iii. The NAIC HMDI blank (White), page 6, entitled "Underwriting and Investment Exhibit," Part 1, line 5, Column 9 less (Column 2 minus Column 3), and less reinsurance portions of (Column 5 minus Column 8);

iv. The New Jersey State HMO Annual Statement (for 1992 ***and 1993, if elected***), page 32 Report #2, Current Year Lines 1 plus 2 plus 4 plus 5; or

v. The NAIC HMO Blank (for 1993*, **if elected,*** and ***1994*** thereafter), page 4, Report #2, Column 2, lines 1 plus 2 plus 3 plus 4.

11:21-10.5 Certification

All reports shall be certified as accurate, complete and conforming with the requirements of this subchapter by the Chief Financial Officer or other duly authorized officer of the member.

11:21-10.6 Failure to comply

Failure to comply with the reporting provisions of this subchapter shall result in the Board determining that the premium set forth in the member's most recent Annual Statement filed with the Department is the premium based upon which that member's market share allocation of assessments shall be calculated by the Board.

EXHIBIT CC

New Jersey Small Employer Health Benefits Program
Carrier Small Employer Market Share Report

This report must be completed in accordance with the provisions of N.J.A.C. 11:21-10, and certified by the Chief Financial Officer or other duly authorized officer of the Carrier. Reports must be completed and returned on or before April 15, 1994 and by March 1 of each year thereafter. Completed Reports must be returned to the SEH Program Administrator as set forth at N.J.A.C. 11:21-1.3.

Part A. Carrier Information

1. Carrier's Name: _____

2. Carrier's NAIC Number: _____

3. Is the above named Carrier an affiliated Carrier?

_____ Yes _____ No

a. If Yes, please list all Carriers with whom the above named Carrier is affiliated. List only those affiliates that had group health benefits plans in force for small employers in the preceding calendar year.

Name NAIC #

_____

_____

_____

_____

Part B. Personal Respondent Information

1. Name: _____

2. Title: _____

3. Mailing Address: _____

_____

4. Telephone No. _____ Facsimile No. _____

Part C. Calendar Year Information for 199____

Net earned premium for all small employer group health benefits plans: $ _____

Part D. Certification

I certify that the information provided in this Report is accurate and complete, and has been prepared in accordance with the provisions of N.J.A.C. 11:21-X.

_____ _____ _____

Signature Title Date

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF NURSING

Certification of Nurse Practitioners/Clinical Nurse Specialists

Adopted New Rules: N.J.A.C. 13:37-7

Proposed: July 6, 1993 at 25 N.J.R. 2829(a).

Adopted: February 4, 1994 by the State Board of Nursing, Golden Bethune, President.

Filed: April 8, 1994 as R.1994 d.212, **with substantive and technical changes,** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:11-24 and 45:11-46 to 50.

Effective Date: May 2, 1994.

Expiration Date: January 23, 1995.

The Board of Nursing afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:37-7, relating to certification of nurse practitioners and clinical nurse specialists.

The official comment period ended on August 6, 1993.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 6, 1993 at 25 N.J.R. 2829(a). Announcements were also forwarded to The Star Ledger, The Trenton Times, the Department of Health and other interested parties. A full record of this opportunity to be heard can be inspected by contacting the Board of Nursing, Sister Teresa Harris, Executive Director, 124 Halsey St., P.O. Box 45010, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the 30 day comment period, the Board received 246 written comments regarding the proposal. A list of the commenters follows:

Goldie Markowitz, RN, MSN

Margaret Creevey

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Joan Feiler
Sharon Ferrante, MS, RN
Nancy L. Risser, MN, RN, CS, ANP
Fern R. Kumler
Doris L. Collins, Ed.D, RN, CS
Kimberly J. Arrowsmith, RNC, MSN
Karen Jean Feury, RN, MS, CCRN
Mary Ann Siegert, MSR, RN, CS, CARN
Nina R. Johnston, MS, RN, CS
Jeanne Kirsch, RN, MS
Carol C. Cornfeldt, MS, RN, CS
Ruth W. Skay, CPNP
Kaigl L. Reed, MSN, RN
Charlotte W. Smedley, RNC, MSN
Sandra Hartnett, RN, MSN, OC
Maureen Simko Hreha, RN, MSN
Karen Smith-Hagman, RN, CS, MSN
Kristine Olson, RNC, MSN
Katherine Grant-Davis, MBA
Nancy I. Chamberlain, M.Ed., RN, CS
Kathy Mahoney, RNC, MSN
Karen Hedigen
Margaret H. Pipchick, RN, MA, CS
Brother Benjamin M. Evans, MSC, MSN, RNC
Kathleen K. Furniss, RNC, MSN
Constance Snelgrove, RN, MSN
Dee L. Martindale, RN, MS, CS
Terri Maxwell, RN, MSN, OCN
Dorothy A. Borresen
Judith R. Kay, MS, RN, CS
Martha Niedrach, RNC, MSN, IBCLC
Donald L. Yson, RN, MSN, CPAN
Marie Hogarty, RNC, MSN
Kathleen Baker
Janice Bernhardt
Barbara F. Beyers
Janet E. Boecke-Gonzales
Lynne C. Borucki
Linda Botti-Nolan
Carol Sue Bowe
Elizabeth M. Broderick
Jo Anne Bronstein
Patricia Carroll
Dianne S. Charsha
Marie Cueman
Elizabeth C. Elkind
Jean Buerle Farley
Kathleen G. Freeman
Sharon Q. Garnier
Ann L. Gibbons
Claire Grande
Elizabeth L. Greene
Donna Handelsman
Jeanine M. Haerne-Barsanian
Kathleen Hemsley
Sandra M. Huneke
Susan E. Hutchinson
Jeanne Jacobwitz
Theresa Kuhlmann
Elizabeth Lade
Claire Lindberg
Catherine J. Lipton
Julia A. Lutz
Kathleen M. Mahoney
Joan L. Mariani
Anne B. Marshall
Pamela S. Martin
Denise M. McDonald
Adrienne E. McDonnell
Cheryl A. McGrath
Mary E. McTigue
Christine M. Moraca
Christine Morando Wagner
Patricia O'Brien-Barry
Susan A. Orshan
Eileen Peternostro
Audrey Pituk
Katherine Prihoda
Eileen M. Prybys
Carol Ann Ruf
Marilyn R. Stringer
Lillian Termini
Judith M. Town
Judith P. Vaadurr
Kenia G. Zukowsky
Donna Eversten
Anne Krose
Dody Angelini
Debra Brown
Wendy Budin
Robyn D'Oria
Joanne McCollium
Nancy Buhnarczyk
Ann Becker
Mary Knapp
Nancy Sharry
Kay Casce Lane
Ellen Strong
Jo Ellen Brannigan
Marlene Schwebel
Ellen Shuzman
Pam Graziadei
Susan Ellis-Murphy
Donna Eversten, RNC, MSN
Pamela S. Martin
Carol A. Ruf, RNC, MSN
Eileen Gillis, RNC
Faye Giesmann, MS, RNC
Dale Beckett, MSN, CRRN
Patricia Hunter, MSN, CRRN
Al Rundio, Jr., Ph.D., RN, CNAA, CIC, CEN
Wendy Silverstein, RN, NA
Donna M. Dziedzic, RN, MSN
Ann Gibbons, RNC, MSN, CRNP
Esther D. Baxam, RNC, MSN, NNP
Patricia Kortbawi, RNCS, MSN, CCRN
Jodi Young, RNC, MSN, CNNP, CPNP
Mary Ann Foley, RN, MSN, CCRN
Helen Miley, RN, MSN, CCRN
Pamela Buckalew, RN, MSN, CS
Della Campbell, RNC, MSN
Patty Gordon, RNC, MSN
Ruth Ann Petzinger, RN, MS, CDE
Cathy Amato-Bowden, RNC, MSN
Ellen Schuzman, RNC, MSN, Ph.D.
Kathleen B. Saunders, RNC, MSN
Sara Thompson, RNC, MSN
Marlene Schwebel, RNC, MA
Kathleen Russell-Babin, RN, MS
Tara Ryan, RNC, MSN
Charlotte W. Smedley, RNC, MSN
Saul M. Kilstein
Carol A. McDougall, RN, MSW, CCRN
Judith Evans, RN, Ed.D.
Rosemary O. Leach, RN, M.Ed.
Regina Cole, Ph.D.
Dorothy D. Flemming, RN, MSN
Janice C. Geller, RN, MSC, SC
Robert M. D'Angel, Esq.
Alice Duigon, MSN, RN, CS, OCN
Catherine J. Lipton , RNC, MSN
Goldie Markowitz, RN, MSN
Cheryl Lee, MN, SC, RN, CS, CETN
Joan Farrell Monaghan, RN, MS, CS
Maureen Simko Hreha, RN, MSN
Carol Ann Nunno, RN, MSN
Ruth Duffield, RNC, CPNP
Carolyn Lewis-Spruill, RNC, MSN
Anna Redington, RN, MSN

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Diane Synhorst, RN, MA
Elizabeth B. Lake, MA, RNC
Frances W. Quinless, Ph.D, RN
Martin S. Manno, RN, BSN
Gaylene Maichuk, RN, MSN, CPNP
Carol Stapeton Rhodes
Eileen M. Carrera, RNC, MSN, NNP
Lisa Maneval, RNC, MSN
Curt Lindberg
Lyda Sue Cunningham, MA, RN
Marsha L. Cohen, RN, MSN
Carol Stier Goetz, MSN, RN, NCS
Shirley Hoeman, RN, Ph.D.
Debra J. Roe, MS, RN, CS
Judith L. Verney, MS, RN
Denyse McGovern, MS, RN, CS
Ricki Fler, RN, MS, CS
Susan D. Zboray, MS, RN, CS
Mary Santorelli, RN, MSN, CS
Carol Healey, RN, MS, CS
Mary Ann Lancasterr, MS, RN, CS
Judith M. Hochberger, MS RN, CS
Marie Rizzo
Leah Beardsley, RNC, MSN
Anne Grier Valenzano, RN, MS
Renee F. Bevour, RN, MS, OCN
Joan Roop, MSN, RN
Marilyn A. Legato, MS, RN, CS
Joanne Sherman Goldstein, MS, RN, CS
Perry Aievoli, RN, CS, MSN
Barbara Hughes, RN, MA, CNA
Virginia Stemhagen, RN, MA, CNAA
Marilyn Murto, RN, MA, CNA
Linda Dite, RN, MSN, CNAA
James Hoeiz, RN, MS, CEN, MBA
June Rosso, RN, BS, CNCOR
Mary R. Carabelli, MSN, RN
Karen Setti, RN, MSN, CCRN
Debbie Grammer, RN, MS
Janice Terlizzi, RN, MS, OCN
Judy Donlen, DNSC, RN,
Sheila Carr, RN, CNA
Jean Bronock-Zaccone, RN,
Kathleen Titus, MSN, RNC
Denise Callasan
Paula Lawrence, MSN, RN, CS
Susan Brown-Goebeler
Karen Jean Feury
Elaine Karesek
Kathleen Kraft
Betty Lade
Mary McCarthy
Dalell McCune
Fran Melchionne
Susan More
Lolita Navarro-Iqbal
Terry Nebel
Carol Ann O'Hanlon
Kathleen Pearl
Annett Sinski
Denise Sweeney
Judith Tice
Christine Wagner
Catherine Casey-Lane, RNC, MSN
Mary Mishler, RN, MSN, CS, CNN
Georgeanne V. Stilley, RN, MSN, OCN
Delores Hentrich, RN, MSN, CCRN
Kathleen Tully, RN, MSN, CCRN
Jill Cox, MS, RN
Sharon Roche, MS, RN, CCRN
Susan DeGennaro, MS, RN, OCN
Krystyna Toczylowski, MSN, RN
Leah Z. Zishin, MD, MS
Elizabeth Simpson, RNC, MSN
Sandra DeLeu, RN, CS
Joseph M. Picardi, RNC
Arthur L. Taub, Pharmacist
Margaret J. Foulks, RNS
Joseph Alifante
Patricia S. Brakman, RNC
Carolyn T. Torre
Anita Leone
Mary Yori, FPNP
Delores Tyson
G. Lynn Brown
Suzanne M. Herron, RN, MPH
Christine Reynolds, RNC, OB/GYN, NP
Carol R. Beaugard, RN, Ed.D
Christine Weiss, RNC/OGNP
Eileen Toughill, RNC, MSN
Judith Miller, MS, RN
Claire E. Lindberg, MS, RNC
Veronica Mausser, RN, MSN, OCN
Karen B. Giquinto, RN, MSN, CCRN

Following is a summary of the comments received together with the Board's responses:

N.J.A.C. 13:37-7.1

COMMENT: Eight respondents wrote to express their overall approval of the rules.

RESPONSE: No response is necessary.

COMMENT: Two respondents asked the Board to keep the certification procedures reasonable and the fees minimal. Two respondents objected to the biennial certification fee since a biennial RN licensure fee is already charged.

RESPONSE: N.J.A.C. 13:37-7.1 provides clear and specific instructions regarding the certification procedure. The materials required under N.J.A.C. 13:37-7.1 are necessary in order to validate the applicant's qualification and competency to practice as a nurse practitioner/clinical nurse specialist (NP/CNS). The fees are imposed pursuant to N.J.S.A. 45:1-3.2 to defray the costs of administering the certification program.

N.J.A.C. 13:37-7.2

COMMENT: One respondent was concerned that 10 hours of continuing education in pharmacology is deemed equal to a graduate course in pharmacology. Another respondent asked for clarification on the continuing education course requirements. Four respondents requested that, in lieu of a graduate level course in pharmacology, the Board should accept a 30 hour pharmacology course.

RESPONSE: The Board did not intend to substitute continuing professional education for the pharmacology course requirement. Each applicant must complete a graduate level pharmacology course (separate course or pharmacology content integrated into a MSN program) within five years of making initial application. Those applicants who completed this course work more than five years after making initial application, must complete 30 contact hours of continuing professional education.

COMMENT: Two respondents suggested that the pharmacology course requirement should be waived or reduced for masters of science in nursing (MSN) prepared nurse practitioners/clinical nurse specialists (NP/CNS).

RESPONSE: Those applicants who have completed a MSN program may not have to take a pharmacology course if they completed a separate or integrated pharmacology course within five years of making initial application.

COMMENT: One respondent suggested that the pharmacology course requirement should be waived for applicants who can document post-master's experience.

RESPONSE: While experiential knowledge is important, experiences vary for each individual. N.J.A.C. 13:37-7.2(b) and (c) is intended to assure a consistent acceptable level of theoretical knowledge about pharmacology.

COMMENT: Six respondents expressed concern that the pharmacology course requirements are not sufficient to assure safe practice. Two of these respondents also raised concern that the ANA certification examination should reflect pharmacology content.

RESPONSE: The Board agrees that there is a need to assure safe practice and the qualification provisions of N.J.A.C. 13:37-7.2(b) and (c) and 7.3 are intended to achieve this result.

COMMENT: Two respondents asked for guidance on whether the Board will accept self-learning modules as a substitute for the pharmacology course requirements.

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RESPONSE: Self-learning modules may be acceptable as an educational modality. The Board will have to review each module (for example, length, content and date of completion) to determine if it meets the graduate level pharmacology course requirement.

COMMENT: Two respondents objected to the graduate credit course requirement because of its costs and burdens.

RESPONSE: The Board has and will continue to assist nurse practitioner/clinical nurse specialists (NP/CNSs) in locating acceptable programs within the State. During the past two years, hundreds of NP/CNSs have completed the pharmacology course requirement in anticipation of these rules. Graduate level pharmacology courses are offered throughout the State. State universities offer courses at rates less than private institutions. Based on the potential income level and billing practices of the nurse practitioner/clinical nurse specialist, the Board does not believe this subsection will cause undue hardship.

COMMENT: One respondent urged that the pharmacology course requirements should only apply to new graduates. The respondent suggested that the pharmacology course requirements should be waived for applicants who are certified in another state.

RESPONSE: Those applicants who complete a MSN program in which pharmacology was integrated into the curriculum within five years of making initial application may not have to take an additional graduate level pharmacology course.

COMMENT: Two respondents suggested that "high level" nursing programs should be added to the subsection to cover entry-level earned Ph.D. in nursing and Ed.D. in nursing graduates.

RESPONSE: The Board obviously intended that entry-level Ph.D. and Ed.D. graduates have met the standards of N.J.A.C. 13:37-7.2(a).

N.J.A.C. 13:37-7.3

COMMENT: Three respondents asked whether the Board intended to administer an examination or whether the Board would rely upon the exam administered by a nationally accredited certification organization.

RESPONSE: The Board does not intend to administer an exam and will rely upon an exam administered by a nationally accredited certification agency.

COMMENT: Five respondents inquired as to whether not passing the examination would prevent a nurse practitioner/clinical nurse specialty from practicing or using the title, "NP/CNS."

RESPONSE: N.J.S.A. 45:11-46 prohibits the use of the title "NP/CNS" or practice without Board certification. The Board has amended the language of N.J.A.C. 13:37-7.3(b) to clarify its intent to require that all applicants must complete the exam within two years and may only assume the title "NP/CNS" or practice as such, if they also clearly delineate their status as a certification "applicant."

COMMENT: One hundred twenty-eight respondents objected to the examination requirement in view of the fact that there is currently no specialty exam in many areas. Six respondents suggested that in lieu of passing an advanced practice examination, the Board should accept the "highest level" certification exam available in a specialty area. Seven respondents suggested that the Board either postpone adopting the rules until an examination in all specialty areas is available, waive the examination requirement entirely or allow continued use of the NP/CNS title an examination is available.

RESPONSE: The Board did not intend to exclude from Board certification nurse practitioner/clinical nurse specialists who specialize in areas without an available advanced practice exam. The Board has clarified its intent at N.J.A.C. 13:37-7.3(a).

COMMENT: Thirty-four respondents asked whether the Board will approve advanced practice exams administered by agencies other than the ANA.

RESPONSE: The Board will approve advanced practice exams administered by agencies other than the ANA. Each practitioner must review the requirements for reimbursement in their individual specialty and meet the necessary conditions if they plan to seek reimbursement by Medicare or Medicaid.

COMMENT: Seven respondents objected that passing a "generic" examination is not a sound way to determine competency for specialty practice.

RESPONSE: The Board agrees that a generic exam is not appropriate for specialty practice. The Board will accept the highest level exam available in the area of specialty.

COMMENT: Two respondents questioned the need for an examination in view of the ANA definition of an advanced nurse practitioner. Another respondent asked for clarification on the definition of "advanced nurse practitioner."

RESPONSE: The examination is required by statute. N.J.S.A. 45:11-47(a) states that:

"The New Jersey Board of Nursing may issue a certification as a nurse practitioner/clinical nurse specialist to an applicant who ... has passed a written examination approved by the Board."

The Board has defined advanced practice using the standard adopted by the National Council of State Boards of Nursing. Advanced practice is based on the following: 1. knowledge and skill acquired in basic nursing education; 2. demonstration of minimal competency in basic nursing as evidenced by licensure as an R.N.; 3. Graduate degree with a major in nursing or graduate degree with a concentration in an advanced nursing practice category which includes both didactic and clinical components, advanced knowledge in nursing theory, physical and psycho-social assessment, appropriate interventions and management of health care.

COMMENT: Five respondents suggested that the exam requirement should be waived for MSN prepared clinical nurse specialists.

RESPONSE: The Board agrees that graduate education provides the basis for advanced practice, but the statute itself requires an examination approved by the Board. The Board has agreed to accept an existing certification exam in lieu of giving another exam.

COMMENT: One respondent suggested that in lieu of the examination requirement, the Board should accept a specified amount of continuing education credits in the specialty area.

RESPONSE: N.J.S.A. 45:11-47 requires that there be an exam approved by the Board. The Board will accept the certification exam of a national accrediting agency in lieu of giving another exam.

N.J.A.C. 13:37-7.4

COMMENT: Nine respondents objected to the waiver of the masters degree requirement for OB/GYN Women's Health practitioners.

RESPONSE: The Board believes that the level of education for entry into practice as a nurse practitioner/clinical nurse specialist should be at the masters level. However, the Board was advised of a number of factors which justified the need for this section. Among these factors are that there are no current masters of science in nursing programs in New Jersey in the area of OB/GYN Women's Health and the masters education requirement would negatively impact the services of maternal-child health services.

COMMENT: Thirty-one respondents requested that the waiver should be extended to all specialty areas.

RESPONSE: The Board believes that the level of education for entry into practice as a nurse practitioner/clinical nurse specialist should be at the masters level. Only one group (OB/GYN-Women's Health practitioners) requested an extension and submitted data to support their request. The Board provided the extension to avoid a negative impact upon maternal child health services.

COMMENT: Two respondents objected that no distinction was made between OB/GYN nurse practitioners and clinical nurse specialists. Another two respondents advised that there are no certification programs for OB/GYN clinical nurse specialists.

RESPONSE: N.J.S.A. 45:11-45 et seq. includes both nurse practitioners and clinical nurse specialists. The Board is aware of the different types of preparation and has attempted to work with each group to resolve differences.

COMMENT: Twenty respondents requested clarification on the pharmacology requirements for OB/GYN Women's Health nurse practitioners/clinical nurse specialists.

RESPONSE: The Board has made changes to clarify its intent that the pharmacology requirements be equivalent to those required for new graduates.

N.J.A.C. 13:37-7.5

COMMENT: One respondent asked for guidance on whether the Board will accept self-learning modules as a substitute for the continuing education requirements.

RESPONSE: Self-learning modules may be an acceptable modality. The Board will have to review each module to determine if it meets the continuing professional educational requirements.

COMMENT: Twenty-six respondents asked for clarification on the approved continuing professional education course providers.

RESPONSE: The Board has modified this section to clarify this issue, in keeping with the changes to N.J.A.C. 13:37-7.2(c).

COMMENT: One respondent suggested that the Board recognize the need for continuing education courses to be taken in the area of specialty.

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RESPONSE: The Board agrees that continuing education courses should be taken in his or her area of specialty and has made the appropriate changes to reflect this intent.

N.J.A.C. 13:37-7.6

COMMENT: Twenty-four respondents urged the Board to enable clinical nurse specialists who do not wish to prescribe/order medications to continue to use the title of "clinical nurse specialist" without becoming certified by the Board. Twenty-seven respondents objected that the certification process is tied to prescriptive authority. They urged a mechanism be created for allowing the use of the title by MSN prepared clinical nurse specialists. Two respondents questioned the utility of prescriptive authority for clinical nurse specialists in psychiatric nursing.

RESPONSE: N.J.S.A. 45:11-45 et seq. requires that all nurse practitioners/clinical nurse specialists must be certified by the Board; that in order to obtain Board certification, an applicant must have successfully completed an educational program including pharmacology; and that a Board certified nurse practitioner/clinical nurse specialist may prescribe medications and devices subject to certain conditions. The Board met with representatives of the Society of clinical nurse specialists in psychiatric nursing to respond to their specific concerns. The Board explained that the use of the Title "NP/CNS" is statutorily defined as described above.

COMMENT: One respondent asked whether a hospital could force a nurse practitioner/clinical nurse specialist to prescribe medications.

RESPONSE: N.J.S.A. 45:11-49 grants the nurse practitioner/clinical nurse specialist permission to prescribe medications. Nurse practitioner/clinical nurse specialists must recognize the limits of their knowledge and experience and should not be forced to perform functions that they do not feel qualified to perform.

COMMENT: One respondent was concerned that the prescriptive practice requirements will drive clinical nurse specialist to seek employment out of State.

RESPONSE: Forty-three states have regulated advanced practice, the majority of which include prescriptive authority. There has been no credible evidence presented to show that nurse practitioner/clinical nurse specialists will be hampered from obtaining employment in New Jersey.

COMMENT: One respondent requested clarification on the meaning of the word "location."

RESPONSE: Location is intended to mean the office(s), institution(s) or agenc(ies) where the nurse practitioner/clinical nurse specialist will practice.

COMMENT: One respondent expressed a desire to use acronyms but was concerned that it would confuse the public.

RESPONSE: N.J.A.C. 13:37-7.7 sets forth acceptable acronyms that are nationally recognized and should not be confusing to the public.

COMMENT: Seven respondents were concerned that the rule will raise health care and malpractice insurance costs.

RESPONSE: There is no credible evidence to show that health care or malpractice insurance costs will increase because nurse practitioners/clinical nurse specialists are authorized to prescribe medications.

COMMENT: Three respondents asked for guidance on what will occur if a nurse practitioner/clinical nurse specialist does not have a collaborating physician or in the event that physicians are unwilling to serve as collaborating physicians for nurse practitioner/clinical nurse specialists.

RESPONSE: A nurse practitioner/clinical nurse specialist must have a collaborating physician to the extent required by N.J.S.A. 45:11-49(b)(c). There is no credible evidence to show that physicians will be unwilling to work with nurse practitioner/clinical nurse specialists to care for patients.

COMMENT: Three respondents objected that the collaborative protocol requirements may threaten the autonomy of clinical nurse specialists in psychiatric nursing. Another respondent was concerned that it may limit the practice of the nurse practitioner/clinical nurse specialist.

RESPONSE: There is no credible evidence presented to show that collaborative practice will threaten or limit the practice of the nurse practitioner/clinical nurse specialist.

COMMENT: One respondent asked whether the Board will have input into the development of standards for joint protocols by the Division of Consumer Affairs.

RESPONSE: The Board views these joint protocols as procedural guidelines and not substantive practice requirements.

N.J.A.C. 13:37-7.7

COMMENT: Four respondents suggested that prescriptive practice should be expanded to include prescribing controlled dangerous substances. Four respondents asked whether prescribing/ordering CDS is permitted. One respondent was concerned about the prohibition on prescribing CDS. Four respondents asked for clarification on the meaning of "assistive device."

RESPONSE: N.J.S.A. 45:11-49(c)(1) prohibits the prescribing/ordering of CDS by nurse practitioners/clinical nurse specialists. "Assistive device" should be given its ordinary accepted meaning within the nursing community (for example, wheelchairs, walkers, bedside toilets).

COMMENT: Five respondents asked for clarification on the qualifications of the nurse practitioner/clinical nurse specialist who prescribes/orders in the acute or sub-acute setting. The respondents requested guidance on verbal orders.

RESPONSE: N.J.A.C. 13:37-7.1 sets forth the basic qualifications for all nurse practitioners/clinical nurse specialists who may prescribe/order medications. Additional requirements are specific to each specialty. In an acute or sub-acute setting, standards are executed by the credentialling staff. There is nothing to prohibit nurse practitioner/clinical nurse specialists from giving verbal orders as long as they countersign the order within 24 hours.

COMMENT: Nine respondents suggested that identifying information contained in the patient's chart should not be required on every order.

RESPONSE: The Board agrees with this suggestion and has amended N.J.A.C. 13:37-7.6 to list circumstances when identifying information need not appear on the order.

COMMENT: One respondent asked whether a nurse practitioner/clinical nurse specialist in an institutional setting will be able to utilize the institution's script.

RESPONSE: While the institution's scripts may be used as long as the information of N.J.A.C. 13:37-7.7 is contained therein, the Board encourages nurse practitioner/clinical nurse specialists to utilize their own scripts.

COMMENT: The New Jersey Department of Health and five respondents asked for clarification on the use of the academic degree on prescriptions/orders.

RESPONSE: The Board has clarified this issue by amending N.J.A.C. 13:37-7.7(a)4 by adding, "as R.N., N.P., C." or "R.N., C.N.S., C."

COMMENT: Two respondents inquired why each prescription should contain the nurse practitioner/clinical nurse specialist's certification number.

RESPONSE: The certification number will assure that the prescribing practitioner is authorized to do so. The pharmacy requires this information in order to process the prescription/order.

N.J.A.C. 13:37-7.8

COMMENT: Two respondents requested that the Board delete the requirement that an applicant must hold a current certification in a state with substantially equivalent standards. Seven respondents expressed concern that an applicant from a state where there is no certification will have difficulty in obtaining certification by endorsement in New Jersey.

RESPONSE: The Board does not believe the rules will limit the mobility of nurse practitioner/clinical nurse specialists. The Board also believes that all practitioners should be held to consistent standards.

COMMENT: Three respondents request clarification of the phrase "at the time of application."

RESPONSE: The phrase "at the time of application" refers to the time of original application to the state of original certification.

COMMENT: One respondent suggested that all candidates be given 180 days at the time of their application to meet the certification requirements.

RESPONSE: In order to take advantage of the 180 day grace period of N.J.S.A. 45:11-48, an applicant must apply within 180 days after the rule is adopted.

N.J.A.C. 13:37-7.9

COMMENT: Two respondents asked for clarification on the pharmacology requirements for certification under this section.

RESPONSE: Applicants for certification under this subsection are required to meet the same standards as all other applicants.

COMMENT: One respondent suggested that this section should contain the specialization areas outlined in N.J.A.C. 13:37-7.11.

RESPONSE: The Board agrees that the specialization areas should be referenced in this section. The cross-reference to N.J.A.C. 13:37-7.8 should have been to N.J.A.C. 13:37-7.11, Categories of advanced practice. The Board has corrected this error upon adoption.

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COMMENT: Two respondents were concerned that application for certification under this section must be made within 180 days. Three respondents suggested that this subsection should permit current nurse practitioner/clincal nurse specialists eight years to complete the pharmacology requirements. Another two respondents requested additional time to fulfill the pharmacology requirements under this section.

RESPONSE: N.J.S.A. 45:11-48 establishes the 180 day time period. Due to the availability of courses in the geographic area and the need for consistent knowledge of pharmacology, the Board does not believe it is necessary or advisable to extend the period of time to complete the pharmacology requirement beyond six months.

COMMENT: The New Jersey Nurses Association and one other respondent stated that advanced practice nurses will hold a masters or higher level degree as of December 31, 2001 except those who apply under this subsection.

RESPONSE: No comment is necessary.

COMMENT: One respondent objected to "grandfathering" nurse practitioner/clinical nurse specialists without a masters degree. One respondent requested that the Board "grandfather" all MSN prepared nurses without further requirements.

RESPONSE: N.J.S.A. 45:11-48 establishes the "grandfather clause."

COMMENT: Six respondents requested that all current members of the Society of Certified Clinical Specialists in Psychiatric Nursing should be "grandfathered." Three respondents questioned whether it is necessary for such practitioners to take a pharmacology course since they do not intend to prescribe medications.

RESPONSE: N.J.S.A. 45:11-48 requires all nurse practitioners/clinical nurse specialists to complete the pharmacology component regardless of their intent to prescribe. The Board met with the Society for Certified Clinical Specialists in Psychiatric Nursing and agreed to work to assist them in meeting the standards.

COMMENT: One respondent asked for clarification on whether this subsection will apply to nurses now enrolled in a master's or Ph.D./Ed.D. nursing program.

RESPONSE: N.J.S.A. 45:11-48 applies to all nurses who have completed the nursing program and applied for Board certification within 180 days of the time the procedures are established.

COMMENT: Three respondents inquired whether nurse practitioners certified by a national accrediting agency must apply for certification under this subsection.

RESPONSE: It is a New Jersey requirement.

COMMENT: One respondent requested special permission to apply for certification under this section because he wants to specialize in the care of HIV infected individuals.

RESPONSE: The Board believes all practitioners should be held to a basic consistent level of competency regardless of the specialty area.

COMMENT: Two respondents asked that, in lieu of a graduate level course in pharmacology, the Board will accept an equivalent continuing education course.

RESPONSE: The Board does not view continuing professional education as the equivalent of a graduate course in pharmacology.

N.J.A.C. 13:37-7.11

COMMENT: Eleven respondents were concerned that the rule does not differentiate the roles of the nurse practitioner and clinical nurse specialist practice.

RESPONSE: While the Board recognizes that the roles of the nurse practitioner and clinical nurse specalist differ in many respects, there are also many similarities. N.J.S.A. 45:11-45 et seq. establishes their certification under one law and thus the Board also believes that its regulations should apply to both classes as well.

COMMENT: One respondent questioned the listing of psychiatric mental health nursing within the category of nurse practitioner.

RESPONSE: By combining the categories of nurse practitioner/clinical nurse specialist into one all-inclusive list, this issue has been resolved.

COMMENT: One hundred fifteen respondents requested that the Board identify sub-specialty areas such as "perinatal nursing" (109 commenters); "rehabilitative nursing" (two commenters); and "neuroscience nursing," "HIV/AIDS-Infection Control nursing," "Medical-Surgical nursing," "Critical Care," (one commenter). Three respondents requested the creation of sub-specialty areas within "Adult Health nursing" such as critical care, cardiovascular, pulmonary, surgical or oncologic nursing.

RESPONSE: The Board has determined that to certify each and every sub-specialty area would be administratively too cumbersome. The Board will certify only nationally recognized areas.

COMMENT: The New Jersey Department of Human Services requested that the Board specifically define the scope of practice of each advanced practice nursing category for purposes of Medicaid reimbursement.

RESPONSE: The Board does not believe specific definition of the scope of practice is feasible or advisable. It is the Board's intent to include all current nationally recognized specialty areas. The Board worked closely with Medicaid staff to approve CPT codes for nurse practitioner/clinical nurse specialists to bill for services and to establish standards that will facilitate reimbursement.

COMMENT: Three respondents asked for clarification about the process for creating new approved specialty areas.

RESPONSE: The Board will approve new specialty areas based upon nationally recognized standards.

COMMENT: The New Jersey State Nurses Association requested that the Board merge the categories of nurse practitioner/clinical nurse specialist for consistency and organizational purposes.

RESPONSE: The Board agrees and has made the appropriate changes to reflect this intent.

General Comments:

COMMENT: Three respondents asked for a public hearing or a public discussion/forum.

RESPONSE: The Board conducted two open forums at the pre-proposal stage and responded to many calls and requests for information. The Board expended considerable time and effort in drafting regulations to implement N.J.S.A. 45:11-45 et seq. and carefully reviewed all of the voluminous comments and has made appropriate changes. A public hearing/forum at this time would only serve to delay the process and would not serve the best interests of the public or currently practicing or future nurse practitioner/clinical nurse specialists.

Summary of Agency-Initiated Changes:

In adopting new rules N.J.A.C. 13:37-7 on February 4, 1994, the Board of Nursing incorporated technical and substantive changes not requiring additional public notice and comment. These changes from the new rule as originally published in the New Jersey Register on Monday, July 6, 1993 at 25 N.J.R. 2829(a) consist of the following:

N.J.A.C. 13:37-7.2(a) and (b) have been amended to insert the words "any national accrediting agency" and "approved by" in place of specific accrediting bodies so as to clarify that the Board always intended to recognize all nationally accredited MSN programs. This change clarifies the Board's original intent and is not a substantive change.

N.J.A.C. 13:37-7.2(c)1 and (c)1i through iv have been amended to enumerate the criteria necessary for acceptable continuing professional education courses in place of specific references to an accrediting mechanism. This change clarifies the Board's original intent that the continuing professional education courses must meet certain accepted professional education standards. In view of this clarification, N.J.A.C. 13:37-7.2(c)2 has been deleted.

N.J.A.C. 13:37-7.3(a) has been amended to insert the words "the highest level" in place of "a written advanced" exam. This change clarifies the Board's original intent to accept the highest level exam available in each area of specialty.

N.J.A.C. 13:37-7.3(b) has been amended to insert the following words: "the applicant clearly delineates the word, 'applicant' each time said applicant assumes the title or designation of a 'nurse practitioner/clinical nurse specialist' or any of its abbreviations" and that "[s]aid examination requirements must be completed within two years of the date of initial application." This provision has also been amended to insert language to preclude applicants who fail the certification exam two consecutive times from practice. These changes codify what is already implied in the law regarding the use of the title "NP/CNS," and recognize that it takes up to two years for some NP/CNS applicants to be eligible to sit for their specialty exam.

N.J.A.C. 13:37-7.4(a)4iii and 7.5(a) have been amended to insert the words, "approved by the Board as set forth in N.J.A.C. 13:37-7.2(c)1." These are technical changes which were made so that there would be internal consistency throughout the regulation concerning continuing professional education courses.

N.J.A.C. 13:37-7.4(a)4 has been amended to reflect the Board's intent as expressed in the Summary of the proposal that those applicants seeking certification in the area of OB/GYN Women's Health will be required to complete a pharmacology course integrated into his or her post basic nursing certificate program. As stated in the Summary of the proposal, this section requires that each applicant who has completed

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the pharmacology requirements more than five years prior to the filing date of the initial application must successfully complete either an equivalent pharmacology course as determined by the Board or 20 contact hours in approved continuing professional education courses devoted to pharmacology and patient care management. These are purely technical changes which have been made to correct an oversight which appeared in the text of the proposal.

N.J.A.C. 13:37-7.6 shifts the word "only" from before to after "prescribe/order medications and devices." This is purely a technical change.

N.J.A.C. 13:37-7.7(a), (b) and (c) have been amended to clarify the Board's original intent regarding the requirements for issuing prescriptions and orders. In subsection (b), the words, "'R.N., N.P., C.' or 'R.N., C.N.S., C.'" clarify the acceptable initials which may be utilized by nurse practitioners and clinical nurse specialists. In subsections (a) and (c), the language is intended to clarify that in acute and long term care facilities when routine identifying information is maintained on file in a central repository or in the patient's record, it is not required for the information to be contained on each prescription or order. In other settings, the information must be contained on each prescription or order. The second sentence of N.J.A.C. 13:37-7.7(a)2 has been reworded and recodified at N.J.A.C. 13:37-7.7(d) for greater clarity.

N.J.A.C. 13:37-7.9 have been amended to insert the following language "insert date—180 days after application procedures are established," "agency," and "has successfully completed." These are purely technical changes.

N.J.A.C. 13:37-7.9(a)3ii, which requires successful completion of a written examination which included pharmacology, has been deleted to avoid misunderstanding. N.J.S.A. 45:11-48 requires that the examination be a part of (and not in addition to) the certificate program. Existing subparagraph (a)3i accurately states the requirement as successful completion of an advanced practice nurse program which included pharmacology in its required curriculum.

N.J.A.C. 13:37-7.11(a) has been amended to insert the words "or clinical nurse specialists" and to combine all of the specialty areas for advanced nursing practice into one section. This is a technical change which will simplify the regulation.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 7: CERTIFICATION OF NURSE PRACTITIONERS/CLINICAL NURSE SPECIALISTS

13:37-7.1 Application for certification

(a) Any nurse who wishes to practice as a nurse practitioner/clinical nurse specialist, or present, call or represent himself or herself as a nurse practitioner/clinical nurse specialist must be certified by the Board.

(b) Each applicant for certification shall submit the following materials to the Board:

1. Proof of a current New Jersey registered professional nurse license in good standing;

2. A completed application form and the application fee set forth in N.J.A.C. 13:37-12.1. The application form solicits information including: general biographical, educational and experiential data;

3. Proof that the applicant has successfully completed the educational requirements set forth in N.J.A.C. 13:37-7.2 or, where applicable, N.J.A.C. 13:37-7.4. The applicant shall obtain verification of successful completion from the school(s) where the applicant completed the educational requirements; and

4. Proof that the applicant has successfully completed the examination requirements set forth in N.J.A.C. 13:37-7.3 or, where applicable, the certification requirements of N.J.A.C. 13:37-7.4.

13:37-7.2 Educational requirements for certification

(a) Each applicant for certification shall be required to successfully complete and graduate from a masters level program designed to educate and prepare the nurse practitioners/clinical nurse specialists at a school duly accredited by *[the Council of Baccalaureate and Higher Degree Programs of the National League for Nursing and approved by the New Jersey Department of Higher Education or such other approving entity with equivalent educational standards acceptable to*[***any national accrediting agency approved by*** the Board.

(b) Each applicant shall be required to successfully complete a graduate ***level*** credit course in pharmacology from a school duly accredited by *[the National League for Nursing or the American Council on Pharmaceutical Education or approved by the New Jersey Department of Higher Education]* ***any national accrediting agency approved by the Board***. Successful completion of a pharmacology course integrated into the masters level program referred to in (a) above will satisfy this requirement. *[Said course shall have been successfully completed within five years prior to the filing date of the initial application for certification.]*

(c) Each applicant who has completed the pharmacology requirements referred to in (b) above more than five years prior to the filing date of his or her initial application for certification under N.J.S.A. 45:11-45 et seq. and this subchapter, shall be required to successfully complete one of the following:

1. A graduate ***level*** credit course in pharmacology from a school duly accredited by *[the National League for Nursing or the American Council on Pharmaceutical Education or approved by the New Jersey Department of Higher Education or such other approving entity with equivalent educational standards acceptable to the Board]* ***any national accrediting agency approved by the Board***; or

2. Thirty contact hours in continuing professional education which:

i. Are related to the applicant's advanced practice category's scope of practice;

ii. Include pharmacokinetics and pharmacodynamic principles and their clinical application;

iii. Include the use of pharmacological agents in the prevention of illness, restoration and maintenance of health; and

iv. Are obtained within five years immediately prior to the date of application for prescriptive authority.*

[2. Thirty contact hours in continuing professional education courses devoted to pharmacology and patient care management and approved for credit by the New Jersey Department of Higher Education, the National League for Nursing, American Nurses' Association, New Jersey Nurses' Association or the American Council on Pharmaceutical Education or such other approving entity with equivalent educational standards acceptable to the Board. Ten of the 30 contact hours shall be in the area of pharmacology. The remaining 20 contact hours shall be in the specialty area of patient care management. Each contact hour shall represent or be equivalent to 50 minutes of actual course attendance.]

13:37-7.3 Examination requirements for certification

(a) Each applicant for certification shall be required to successfully pass *[a written advanced]* ***the highest level*** practice examination in the area of specialization approved by the Board.

(b) Each applicant who meets the educational requirements of N.J.A.C. 13:37-7.2 *[and applies]* ***shall apply*** to take the first available examination for which the applicant is eligible***. The applicant*** may engage in advanced nursing practice pending the results of the first available examination, provided that *[the applicant does not assume the title or designation of a "nurse practitioner/clinical nurse specialist" or any of its abbreviations]* ***the applicant clearly delineates the word, "applicant" each time said applicant assumes the title or designation of a "nurse practitioner/clinical nurse specialist" or any of its abbreviations***. ***If the applicant is unsuccessful in passing two consecutive examinations, he or she shall not be eligible to engage in advanced nursing practice but shall not be denied the right to continue to take any examination for certification for he or she qualifies. Said examination requirements must be completed within two years of the date of initial application.****

13:37-7.4 Educational and examination certification requirements in the area of OB/GYN and women's health

(a) Applicants seeking certification as a nurse practitioner/clinical nurse specialist in the specialty area of OB/GYN or women's health on or before *[December 31, 2001 or eight years from the effective

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date of these rules (whichever is longer)]* ***May 2, 2002*** may be certified, provided said applicant submits the following to the Board:

1. Proof of successful completion of a post basic nursing certificate program accredited and/or approved by an entity acceptable to the Board of at least one academic year in the area of OB/GYN or women's health;

2. Proof of current certification from a nationally recognized OB/GYN or women's health certifying body approved by the Board;

3. Proof of successful completion of a six month preceptor program approved or given by an entity acceptable to the Board; and

4. Proof of successful completion of a pharmacology course which meets the following requirements:

i. A pharmacology course integrated into the post basic certificate program referred to in (a)2 above *[completed within five years prior to the filing date of the initial application for certification]* ***or equivalent pharmacology course, as determined by the Board***;

[ii. An equivalent pharmacology course, as determined by the Board, completed within five years prior to the filing date of the initial application for certification; or]

ii. Each applicant who has completed the pharmacology requirements referred to in (a)4i above more than five years prior to the filing date of the initial application for certification under this subchapter shall be required to successfully complete one of the following:

(1) A graduate level credit course in pharmacology from a school duly accredited by any national accrediting agency approved by the Board; or*

*[iii.]***(2)*** Thirty contact hours of continuing professional education courses devoted to pharmacology and drug management ***approved by the Board as set forth in N.J.A.C. 13:37-7.2(c)1*** *[approved for credit by the New Jersey Department of Higher Education, the National League for Nursing, American Nurses' Association, New Jersey Nurses' Association or the American Council on Pharmaceutical Education or such other approving entity with equivalent educational standards acceptable to the Board. Ten of the 30 contact hours shall be in the area of pharmacology. The remaining 20 contact hours shall be in the OB/GYN or women's health area of patient care management]*. Each contact hour shall represent or be equivalent to 50 minutes of actual course attendance.

13:37-7.5 Biennial certification renewal

(a) Every person who has been granted initial certification under N.J.S.A. 45:11-47 and 48 and this subchapter shall submit a timely application for certification renewal on a biennial basis. Subject to the grounds for disciplinary action listed in N.J.S.A. 45:1-21 or elsewhere in N.J.S.A. 45:11-23 et seq. or 45:1-14 et seq., a biennial certificate shall be issued by the Board upon the applicant's submission of proof that during the two calendar years immediately preceding application for renewal the applicant successfully completed 30 contact hours in continuing professional education courses ***approved by the Board as set forth in N.J.A.C. 13:37-7.2(c)1*** *[devoted to specialty practice and pharmacology. Said courses shall be approved for credit by the New Jersey Department of Higher Education, the American Nurses' Association, the National League for Nursing, the New Jersey Nurses' Association, the American Council of Pharmaceutical Education or such other approving entity with equivalent educational standards acceptable to the Board. A minimum of 10 contact hours of such continuing professional education shall be in the area of pharmacology. The remaining 20 contact hours shall be in the specialty area of patient care management]*. Each contact hour shall represent or be equivalent to 50 minutes of actual course attendance. Failure to submit the aforementioned proof of continuing education shall constitute grounds for the refusal to renew said certification.

(b) No person shall practice as a nurse practitioner/clinical nurse specialist, or present, call or represent himself or herself as a nurse practitioner/clinical nurse specialist unless he or she has been duly issued and received a current biennial certificate to practice as a nurse practitioner/clinical nurse specialist pursuant to N.J.S.A. 45:11-45 et seq.

13:37-7.6 Prescriptive practice

Each nurse practitioner/clinical nurse specialist shall prescribe/order medications and devices in conformity with the provisions of this subchapter, N.J.S.A. 45:11-45 et seq., (especially N.J.S.A. 45:11-49) and jointly developed protocols. Each nurse practitioner/clinical nurse specialist shall prescribe/order medications and devices only at location(s) where written joint protocols are reviewed, updated and signed at least annually by the nurse practitioner/clinical nurse specialist and his or her collaborating physician.

13:37-7.7 Requirements for issuing prescriptions and orders; dispensing medications

(a) Every nurse practitioner/clinical nurse specialist ***issuing prescriptions and orders or dispensing medications in any setting other than in a licensed acute care or long-term care facility*** shall provide the following on all ***said*** prescriptions and orders:

1. The prescriber's full name, address, telephone number, license number, certification number and academic degree. This information shall be printed on all prescriptions/orders;

2. The full name, age and address of the patient*[. For orders only, this information may be contained in a conspicuous location in the patient chart]*;

3. The date of issuance of prescription/order;

4. The signature of prescriber, hand-written ***as "R.N., N.P., C." or "R.N., C.N.S., C."****; and

5. The full name and academic degree of the collaborating physician. For prescriptions only, the address and telephone number of the collaborating physician shall be printed.

(b) Every nurse practitioner/clinical nurse specialist who prescribes/orders medications shall, in addition to the information set forth in (a) above, provide the following on all prescriptions.

1. The name, strength, route and quantity of drug or drugs to be dispensed;

2. Adequate instructions for the patient; a direction of "prn" or "as directed" alone shall be deemed an insufficient direction;

3. The number of refills permitted or time limit for refills, or both;

4. Every prescription blank shall be imprinted with the words "substitution permissible" and "do not substitute" and shall contain space for the nurse practitioner/clinical nurse specialist's initials next to the chosen option, in addition to the space required for the signature in (a)4 above;

5. Every nurse practitioner/clinical nurse specialist shall assure that each container of medication dispensed directly to a patient is labeled in a legible manner with at least the following information:

i. The full name(s) of the nurse practitioner/clinical specialist and the collaborating physician;

ii. The full name of patient;

iii. The date medication is dispensed;

iv. The expiration date of medication;

v. The name, strength and quantity of medication dispensed; and

vi. Adequate instructions for the patient regarding the frequency of administration of the medication;

6. When a nurse practitioner/clinical nurse specialist dispenses a pharmaceutical sample which has been packaged and labeled by the manufacturer and such sample package contains the information required by (b)5ii, v and vi above, the information listed in (b)5i and iii, inclusive, above need not be added;

7. When a nurse practitioner/clinical nurse specialist dispenses a medication other than a sample exempted pursuant to (b)6 above in a container without sufficient space for the information required by this subsection, the container shall be placed in a large container or envelope and the larger container or envelope shall be labeled as indicated in this subsection; and

8. Each container of medication dispensed shall contain only one type of medication.

(c) In no instance shall a nurse practitioner/clinical nurse specialist dispense drugs or sign a blank prescription form without complying with the standards in (b) above.

(d) In licensed acute care and long term care facilities where routine identifying information is maintained on file in a central repository or in the patients' record, it shall not be required for

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the nurse practitioner/clinical nurse specialist to include the identifying information contained in (a)1, 2 and 5 above on each prescription or order.*

13:37-7.8 Certification by endorsement

A nurse practitioner/clinical nurse specialist certified in another state who wishes to practice as a nurse practitioner/clinical nurse specialist, or present, call or represent himself or herself as a nurse practitioner/clinical nurse specialist must be certified by the Board and must meet all of the requirements provided in N.J.A.C. 13:37-7.1. The Board may, in lieu of the examination requirements of N.J.A.C. 13:37-7.1(b)4, accept proof that an applicant holds a current certification in a state whose standards at the time of application are substantially equivalent to those of this State.

13:37-7.9 Requirements for nurse practitioner/clinical nurse specialists certified pursuant to N.J.S.A. 45:11-48

(a) Until *[180 days after the effective date of this subchapter]* ***October 29, 1994***, an individual who submits the following may qualify for certification without completing the educational and examination requirements set forth in N.J.A.C. 13:37-7.2 and 7.3:

1. Proof of a current New Jersey license as a registered professional nurse in good standing;

2. A completed application form and the application fee set forth in N.J.A.C. 13:37-12.1. The application form solicits information including: biographical, educational and experiential data; and

3. Proof that the applicant has been certified as a nurse practitioner/clinical nurse specialist or advanced practice nurse in one or more of the specialization areas listed in N.J.A.C. 13:37-*[7.8]****7.11*** by a national accrediting *[organization]* ***agency*** approved by the Board and that said national accrediting *[organization]* ***agency*** certifies that all persons awarded certification *[by said national accrediting organization met the following requirements:]*

[i. Successful completion of] ***Have successfully completed*** a nurse practitioner/clinical nurse specialist or advanced practice nurse program which included pharmacology in its required curriculum***.**[; and

ii. Successful completion of a written examination which included pharmacology.]*

(b) Each applicant awarded certification under N.J.S.A. 45:11-48 shall be required to meet the pharmacology requirements of N.J.A.C. 13:37-7.2(c) and the biennial certification renewal requirements of N.J.A.C. 13:37-7.4.

13:37-7.10 Practice as registered professional nurse

Nothing in N.J.S.A. 45:11-45 et seq. or this subchapter shall be construed to limit, preclude or otherwise interfere with the practice of nursing as defined by N.J.S.A. 45:11-23 by persons duly licensed as a registered professional nurse in this State, provided that such duties are consistent with the accepted standards of nursing and said registered professional nurse is not represented as a nurse practitioner/clinical nurse specialist.

13:37-7.11 Categories of advanced practice

(a) The following categories of nurse practitioners ***or clinical nurse specialists*** may be certified in accordance with the provisions of N.J.S.A. 45:11-45 et seq. and this subchapter:

1. Adult Health;
2. Family;
3. Pediatric;
4. School;
5. Gerontological;
6. Women's Health;
7. OB/GYN;
8. Neonatal; *[and]*
9. Psychiatric/Mental Health*[.]****;***
10. Community Health;
11. Perinatal;
12. Maternal/child; and
13. Oncology.

*[(b) The following categories of clinical nurse specialists may be certified in accordance with the provisions of N.J.S.A. 45:11-45 et seq. and this subchapter:

1. Community Health;
2. Gerontological;
3. Neonatal;
4. Maternal/Child;
5. Adult Health;
6. Psychiatric/Mental Health;
7. Oncology; and
8. Pediatric]*

*[(c)]****(b)*** Other categories may be approved by the Board through the rulemaking process. Consistent with requirements for approval of the practice areas outlined in (a) and (b) above, any additional approved practice areas must meet nationally accepted standards.

13:37-7.12 Reporting

(a) Each nurse practitioner/clinical nurse specialist shall immediately notify the Board in writing upon the following:

1. Failure to renew or maintain, on a biennial basis, certification as a nurse practitioner/clinical nurse specialist;

2. Use of alcohol or drugs which has adversely impaired or adversely impairs nursing practice;

3. Current indictment and/or conviction of a crime involving moral turpitude and/or a crime relating adversely to nursing practice;

4. Being a named defendant or respondent in a civil, criminal, or administrative investigation, complaint and/or judgment involving alleged malpractice, negligence, or misconduct relating to practice as a nurse practitioner/clinical nurse specialist; or

5. Voluntary license surrender or any disciplinary action against the nurse practitioner/clinical nurse specialist by any state or Federal agency, board or commission, including any order of limitation or preclusion.

(b) A nurse practitioner/clinical nurse specialist who violates any provision of the Nurse Practice Act, N.J.S.A. 45:11-23 et seq. or N.J.S.A. 45:1-14 et seq. may, upon notice to the licensee and the opportunity for a hearing in accordance 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, be subject to disciplinary action by the Board including a restriction on practice.

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EMERGENCY ADOPTION

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries

Summer Flounder Management

Adopted Emergency Amendment and Concurrent Proposed Amendment: N.J.A.C. 7:25-18.1

Emergency Amendment Adopted and Concurrent Amendment Authorized: April 6, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Gubernatorial Approval (see N.J.S.A. 52:14B(c)): April 6, 1994.

Emergency Amendment Filed: April 13, 1994 as R.1994 d.230.

Authority: N.J.S.A. 23:2B-6, 23:2B-14.

Emergency Adoption Effective Date: April 13, 1994.

Emergency Amendment Expiration Date: June 12, 1994.

DEPE Docket Number: 22-94-04/441.

Concurrent Proposal Number: PRN 1994-284.

Submit written comments by June 1, 1994 to:

Richard McManus, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625

The agency proposal follows:

Summary

The purpose of the proposed amendments to N.J.A.C. 7:25-18.1 are to change the recreational fishing season and possession limit for summer flounder, change the procedure for instituting season dates, and revise the method of public notification of changes to season dates and possession limits.

A person angling with a hand line or with rod and line or spearfishing can currently possess summer flounder from May 24 to October 9, with a possession limit of six summer flounder. The Atlantic States Marine Fisheries Commission (ASMFC) and Mid-Atlantic Fishery Management Council (MAFMC) have recommended a recreational season from April 15 to October 15 with states having the flexibility to open and close the season two weeks earlier or later. This emergency adopted and concurrently proposed amendment establishes a season from April 30 to October 30. In accordance with ASMFC and MAFMC recommendations, the daily summer flounder possession limit will be raised from six to eight.

The Commissioner of the Department of Environmental Protection and Energy, after consultation with the Marine Fisheries Council, can modify the possession limit of summer flounder during the open season but cannot change the open season. This proposed amendment allows the Comissioner to set the open season in addition to possession limits for summer flounder. In addition, the Department must now provide notice of any changes in possession limits by filing and publishing in the New Jersey Register. This amendment revises notification of changes to possession limits and open seasons to publishing in the New Jersey Fish and Wildlife Digest and preparing news releases with submission to individuals on the Division of Fish, Game and Wildlife's outdoor writers mailing list.

Social Impact

The proposed amendments to N.J.A.C. 7:25-18.1 are expected to have positive social impacts. The open season for recreational summer flounder fishing will be expanded, allowing participants additional days to pursue this activity. Changes in possession limits will allow for the harvest of two additional summer flounder per day. Each year the ASMFC and MAFMC will recommend season and possession limits for summer flounder in February or March. Allowing seasons and possession limits to be modified by the Commissioner and changing the public notification procedures described in the Summary will allow the Department to be more responsive to changes in the fishery and provide for easier dissemination of information to the public.

Economic Impact

The economic impacts of the proposed amendments should be positive. Increasing the recreational fishing season and possession limit for summer flounder will increase business activity related to summer flounder for boat liveries, charter boats, party boats, bait and tackle shops, marinas and the New Jersey tourist industry. Allowing season modifications by the Commissioner and public notification changes described in the Summary will allow for more timely changes in regulations that can provide economic benefits to businesses involved in recreational fishing for summer flounder. Failure to implement these modifications would result in those businesses associated with the recreational summer flounder fishery being placed at a disadvantage over neighboring states which could have severe negative economic impacts.

Environmental Impact

The proposed amendments to N.J.A.C. 7:25-18.1 will have positive environmental impacts. The summer flounder recreational fishery is currently managed under a system of size limits seasons and possesion limits. As the resource increases or decreases, seasons and possession limits need to be changed to compliment the condition of the resource. The proposed amendments will allow for a more timely revision of seasons and possession limits to ensure that stocks are harvested at a proper level.

Regulatory Flexibility Analysis

The proposed amendments apply to recreational fishermen and party and charter boats fishing for summer flounder. Most of the party and charter boats would be defined as small businesses in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:43-16 et seq. Although these businesses would have to comply with the provisions of the regulations concerning possession limits, no additional recordkeeping requirements or capital costs will result from complying with the proposed amendments.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:25-18.1 Size and possession limits

(a)-(b) (No change.)

(c) A person angling with a hand line or with rod and line or spearfishing shall not possess any summer flounder or summer flounder parts beginning October [10] **31** through [May 23] **April 29** nor shall any person angling with a hand line or with rod and line or spearfishing possess more than [six] **eight** summer flounder at any time during the period beginning [May 24] **April 30** through [October 9] **October 30**, except as provided in N.J.A.C. 7:25-18.14. The Commissioner, after consultation with the Marine Fisheries Council, may modify the possession limit of summer flounder during the open season **and/or set the open season** [(May 24 through October 9)] by notice[,]. [to be consistent with the] **The** possession limit of summer flounder **shall be consistent with the possession limit** established by the Northeast Regional Director of the National Marine Fisheries Service. [The possession limit shall be set from a range of 0 to 15]. The Department shall provide notice of any change by [filing and] publishing in the **New Jersey Fish and Wildlife Digest, and preparing a news release and submitting to individuals on the Division of Fish, Game and Wildlife's outdoor writers mailing list** [New Jersey Register. All such notices shall be effective when the Department files notice with the Office of Administrative Law or as specified otherwise in the notice].

(d)-(q) (No change.)

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that on March 20, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Delaware Water Quality Management Plan was adopted by the Department. The amendment acknowledges the existing Fairton Trailer Park discharge(s) to ground water at a planning flow rate of 46,900 gallons per day (gpd) from 130 existing units and four additional planned and approved units, previously not identified in the Lower Delaware WQM Plan. This amendment also allows an expansion to the existing Fairton Trailer Park discharge(s) to ground water to serve an additional nine units with a projected planning flow rate of 3,140 gpd. Fairton Trailer Park is located at Clark's Pond Road and Ramah Road, being Block 35, Lot 2 and Block 36, Lot 64, a total of approximately 16.75 acres in Fairfield Township, Cumberland County. A total of 143 units with a projected wastewater planning flow of 50,050 gpd is now identified.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegration; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that on March 24, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment will reduce the sewer service area and size of the proposed Route 78 Office Service Area Sewage Treatment Plant (STP) to serve only Block 48, Lots 47 and 48, and Block 46.01, Lots 6.01, 7, 8, 9, 15, 16 and 17, all under the ownership of Bellemead Development Corporation, along the southerly side of Route 78. This STP will be privately owned, not municipally owned, as previously planned. The A.M. Best STP, originally slated to be abandoned, will continue to serve properties identified as Block 46, Lots 6 and 7.01 owned by A.M. Best. No expansion of the A.M. Best STP to serve beyond the A.M. Best properties is planned. The remainder of the Route 78 Office Sewer Service Area originally identified in the Tewksbury Township WMP as sewer service area of the Route 78 Office STP, will be identified as "On-site Ground Water Disposal Areas for Facilities With Design Flows of Less Than 20,000 Gallons Per Day."

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plant); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This amendment proposal was noticed in the New Jersey Register on November 15, 1993. Comments on this amendment were received during the public comment period and are summarized below with the DEPE's responses.

COMMENT: A.M. Best Company expressed concern that submitted mapping and items recently addressed in modification of their New Jersey Pollutant Discharge Elimination System Permit are not correctly reflected.

RESPONSE: The discrepancy in the mapping has been corrected to include Block 46, Lots 6 and 7.01 in the A.M. Best service area. The A.M. Best Facility Table #3 has been revised to delete all reference to ground water discharge.

COMMENT: One commenter has expressed a concern that the amendment is inconsistent with N.J.A.C. 7:15-5.18(b)2, 4 and 8, which consider adequate wastewater service for land use deemed appropriate for anticipated development occurring in a 20-year period.

RESPONSE: The tract in question (Block 45—Lot 42) is presently zoned as Agriculture and designated for individual subsurface sewage disposal system type wastewater facilities. The Department feels this type of wastewater facility is appropriate for this land use zoning.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on March 28, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment submitted on behalf of the Warren County Board of Chosen Freeholders, modifies the Washington Township and Franklin Township Wastewater Management Plans. The amendment allows the future Warren County Community College building, which is to be located in Washington Township, to utilize the existing Warren County Vocational-Technical School sewage treatment plant, located in Franklin Township, for its wastewater disposal. The Warren County Community College building will be on a 13 acre parcel of the 130 acre Warren County Educational Park. This amendment request is specific to the 13 acre Warren County Community College, consisting of one building (Block 69, portion of Lot 1).

This amendment proposal was noticed in the New Jersey Register on November 1, 1993. Comments on this amendment were received during the public comment period and are summarized below with the DEPE's response.

COMMENT: Because supporting documentation was not issued to the Township of Franklin in a timely manner, therefore, not allowing them an opportunity to thoroughly review the proposed amendment, they had expressed concern that the long term plans for the continued use of the Warren County Vocational-Technical School sewage treatment plant may have far reaching consequences on the quality of the environment in their municipality and surrounding region.

RESPONSE: The Warren County Vocational-Technical School sewage treatment plant (STP) is currently permitted by the Department to discharge up to 12,000 gallons per day (gpd) to the Pohatcong Creek (New Jersey Pollutant Discharge Elimination System [NJPDES] #NJ0020711). Their STP is currently receiving between 3,000 gpd and 4,000 gpd. During the summer months, the flow falls to approximately 1,300 gpd. The additional flow (6,000 gpd) from the proposed Warren County Community College (one building) will not exceed the 12,000 gpd capacity the Warren County Vocational-Technical School STP was designed to handle.

COMMENT: On behalf of the Township of Franklin, a comment was received concerning whether the allocation of wastewater loadings to the

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proposed Washington Township STP, which is conceptual at the present time, would conflict with the existing wasteload allocation of the Borough of Washington's STP.

RESPONSE: The Department shares the Township of Franklin's concern. However, this proposed amendment only addresses the Vocational-Technical School. Approval of the proposed Washington Township STP's wasteload allocation and its effect on the Borough of Washington STP's wasteload allocation is a separate issue and will require its own Department review.

COMMENT: The Warren County Vocational-Technical School had concerns about the legal responsibility for their sewage treatment plant NJPDES permit and plant operations in relationship to the current NJPDES permit #NJ0020711.

RESPONSE: Legal ownership of the Warren County Vocational-Technical School STP is being acquired by the Warren County Board of Chosen Freeholders (WCBCH). However, until such time as the legal binding ownership takes place, and NJPDES permit #NJ0020711 is modified by the Warren County Board of Chosen Freeholders to reflect their legal ownership of the plant, Warren County Vocational-Technical School will remain responsible for the operation of the plant in conformance with conditions currently mandated by NJPDES permit #NJ0020711. Once ownership is legally transferred from the Vocational-Technical School to the Warren County Board of Chosen Freeholders, plant operations and NJPDES permit limitations will then be the legal responsibility of the Warren County Board of Chosen Freeholders. Regulations addressing ownership transfer of permits are codified at N.J.A.C. 7:14A-2.11.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensistive areas which are subject to regulation under Federal or State statutes or rules.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on March 28, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. The amendment identifies a 10,500 gallons per day wastewater collection, treatment and discharge to ground water disposal system to serve the proposed Olde York Country Club facilities to be located at Block 701, Lot 2A in Chesterfield Township and Block 1, Lot 5A in Mansfield Township, Burlington County. The country club will include a club house and banquet hall with a proposed limited membership of 300 persons. No permanent housing units are proposed for the project site. This amendment proposal also modifies the Mansfield Township Wastewater Management Plan by identifyng Block 1, Lot 5A within Mansfield Township as sewer service area of the proposed new wastewater disposal system.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

HEALTH

(b)

THE COMMISSIONER

Notice of Invitation for Certificate of Need Applications from Licensed Acute Care Hospitals for the Addition of Beds within certain Bed Categories

Take notice that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Len Fishman, Acting Commissioner, New Jersey Department of Health, is inviting certificate of need applications from licensed acute care hospitals for the addition of beds within any of the bed categories for which the hospital is currently licensed by the Department of Health solely through the conversion of underutilized and permanently licensed beds and only where the total cost of the project is not in excess of the five percent certificate of need threshold set forth at N.J.S.A. 26:2H-7b and N.J.A.C. 8:33-6.1(b). Accordingly, capital expenditures resulting from implementation of certificates of need approved pursuant to this call will not be considered subject to the Statewide limit on capital construction projects established pursuant to N.J.S.A. 26:2H-9. Proposals for the conversion of underutilized beds will be accepted for processing only if they result in bed increases in any of the following categories and only if the hospital proposing the bed conversion is currenly licensed for beds in the category to which the conversion is proposed: medical/surgical, ICU/CCU, (acute) psychiatric, and alcohol beds dedicated exclusively to medical detoxification.

The total number of permanent beds for which the hospital is licensed at the time the certificate of need application is submitted to the Department may not increase as a result of the proposed bed conversions. Bed additions must occur in the same hospital facility from which the underutilized beds are being proposed for conversion. Applications will not be accepted for processing pursuant to this call if they propose the expansion of a hospital's physical plant or the construction of a new health care facility. Applications will not be accepted at this time for bed additions within the following licensed bed categories: obstetrics, pediatrics, and burn beds. Applications will not be accepted for processing if the proposed conversion will result in the introduction of a new bed category for which the hospital is not currently licensed.

Applications for bed conversions will be reviewed in accordance with the provisions of N.J.S.A. 26:2H-1 et seq., N.J.A.C. 8:33, and N.J.A.C. 8:33A.

Such applications will be received in the Department of Health on the first day of any month in 1994 and will be processed in accordance with full review procedures as set forth in N.J.A.C. 8:33.

Geographic area to be served: Applications will be received from any licensed acute care hospital in the State of New Jersey.

Date application is due: Applications are to be received in the offices of the New Jersey Department of Health's Certificate of Need Program, Room 603, CN360, Trenton, New Jersey 08625 on the first day of any month in 1994.

Date completeness review decision issued: Upon receipt of all information and documentation requested during completeness review.

Date Local Advisory Boards will review the applications and submit recommendations to the Commissioner and the State Health Planning Board: In accordance with the time-frames set forth in N.J.A.C. 8:33-4.

Date State Health Planning Board will review applications and submit recommendations to the Commissioner: In accordance with the time-frames set forth in N.J.A.C. 8:33-4.

Applications may be requested from and must be filed with:

Certificate of Need Program
New Jersey State Department of Health
Room 604
CN 360
Trenton, New Jersey 08625-0360
609-292-6552

Applications must also be filed with: Local Advisory Board(s) serving the region in which the applicant hospital is located.

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(a)

DIVISION OF ALCOHOLISM, DRUG ABUSE AND ADDICTION SERVICES

Notice of Grant Availability; Extension of Application Deadline

Gambler's Treatment and Prevention Program

Take notice that, in compliance with N.J.S.A. 52:14B-34.4, 34.5 and 34.6, the Department of Health announces the following availability of funds:

Name of Grant Program: Gambler's Treatment and Prevention Program.

Purpose for which the Grant Program funds will be used:

(1) To provide out-patient intervention, assessment and treatment to compulsive gamblers, "problem bettor's" and their significant others; and

(2) To provide for Statewide awareness, public information and referral services regarding compulsive gambling.

Amount of money in the Grant Program: The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

Groups or entities which may apply for the Grant Program: County governments, not-for-profit corporations and other local government organizations.

Qualifications needed by an applicant to be considered for a grant: Ability to demonstrate expertise in area of compulsive gambling treatment/prevention programming; ability to meet guidelines of Requests for Proposal. Priority will be given to Statewide, regional and county initiatives.

Procedures for eligible entities to apply for Grant Funds: Submit a concept paper (five pages or less) including: (1) an agency description; (2) CG services to be provided (with measurable goals and objectives); (3) implementation methods; (4) needs description; (5) implementation time frames; (6) site description; (7) target population; (8) operating budget with source of funds. A copy must be submitted to the County Local Advisory Committee on Alcoholism and Drug Abuse.

For information contact:

Mr. Matthew Martin
Division of Alcoholism, Drug Abuse and Addiction Services
CN 362
Trenton, NJ 08625
(609) 292-4414

Deadline by which applications must be submitted: Concept paper due to funding program by May 18, 1994.

Date by which applicant shall be notified whether they will receive funds: Applicant will be notified 30 days prior to start date of grant.

HUMAN SERVICES

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Availability of State Grants-in-Aid Funds

Privatization of Six DYFS-Operated Child Care Centers

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services announces the following availability of funds:

Name of Grants-in-Aid Program: Privatization of Six DYFS-operated Child Care Centers.

Purpose for which the Grants-in-Aid funds shall be used: The intent of these initiative funds is to privatize the operation of these programs and provide child care services and family support services to the types of children (that is, infant/toddlers, pre-school and after school) referred by the DYFS District Offices and Adoption Resource Centers. The total operating capacity of these six centers—to serve a maximum of 347 children on any given day—will be maintained through subsequent referrals from the DYFS District Offices and Adoption Resource Centers. The majority of these child serving spaces (273 of the 347), are strictly earmarked for children under DYFS supervision.

The six centers to be privatized, as well as their city and county locations, are: Darts Mill (Flemington in Hunterdon County), Hamilton Avenue (Trenton in Mercer County), Florida Grove (Perth Amboy in Middlesex County), Communipaw Avenue (Jersey City in Hudson County), Lyons Avenue (Newark in Essex County) and Linden (Linden in Union County).

These programs offer child care and developmental services to children and also provide transportation (with the exception of the Communipaw Avenue Child Care Center and the non-DYFS children at the Darts Mill Child Care Center) and a variety of family support services through linkages with local community programs. The centers are open for services five days a week, 10 hours a day, with children attending the program for at least six hours daily. The child care component of these programs consists of:

- Pre-school educational activities, especially those focusing on verbal communication skills;
- Age-appropriate recreational activities;
- Nutritional services in accordance with the Child and Adult Food Program administered by the State Department of Education;
- Bilingual/Bicultural services, activities and events that reflect the cultural diversity of the catchment area served by the center; and
- Transportation services for the children enrolled (except for the Communipaw Avenue Child Care Center and the non-DYFS children at Darts Mill Child Care Center).

The centers also provide support services—either at the center sites or in community-based settings, such as hospital clinics, to which the children are transported. The array of support services provided include:

- Speech therapy to screen and treat children with speech delays and disorders;
- Early intervention and pre-school handicapped programs to address developmental delays;
- Parent support groups;
- Vision, hearing and lead poisoning screening, as well as follow-up treatment, if needed; and
- Intergenerational programs, through the Foster Grandparent or other senior volunteer programs or local Senior Citizens' Groups, which address parenting education and arrange joint activities between the children and parents.

Amount of available funding: Selected providers will be reimbursed in accordance with DYFS Policy Circular 3.50, Child Care Service Contracting, and the terms or conditions listed below to ensure for consistency in the provision of services described within the context of this announcement:

- The initial award will cover the period October 1, 1994 through September 30, 1995—consistent with the contractor(s) assuming operational responsibility for the program(s) on October 1, 1994.
- Funds awarded to all selected providers will be recurring and shall equal the annualized amount of the allocation, contingent upon the provider's compliance with applicable federal and state rules and regulations and the quality and level of services provided, as measured by DYFS.
- Selected applicants will be reimbursed for operating a full-time child care program on the basis of a day care day (10 hours per day).

Selected applicants will be required to provide the child care components currently available at each of the sites. These components, as well as the number and ages of children served, are specified in the section on Funding Allotments. Any change in the components of children served is contingent upon a request being made to and the prior approval of the Division of Youth and Family Services. The rate of reimbursement may not exceed the prevailing **maximum** weekly rates established by the Department of Human Services (DHS), less the child care providers' assessed parental co-payments applicable to the contract service component. Selected applicants will be expected to assess parental co-payments (fees) for child care services in accordance with the DHS fee policy. Maximum weekly child care rates established by the Department of Human Services are listed below:

—Preschool Care: $97.70 per child per week;
—After School Care: $48.85 per child per week;
—Summer Care for School Aged: $97.70 per child per week; and
—Infant/Toddler Care: $118.50 per child per week;

The maximum reimbursement rate from the State will be the above rates adjusted (that is reduced) by the assessed parental co-payment (fees). The parental co-payment (fees) are retained by the provider, with

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the result that the **total** funding available to the provider per child is equal to the respective maximum weekly rate noted above.

For example, for a preschool child, whose parent is assessed a weekly co-payment (fee) of $5.00, the reimbursement rate from DYFS would be $92.70 (plus the $24.00 per child per week transportation allowance, if applicable). When combined with the parental co-payment (fee), the provider's total weekly revenue for this child would be $97.70 (plus the $24.00 transportation allowance, if applicable).

Note that providers will be expected to assess and make every effort to collect child care co-payments. However, in the event of non-payment of the assessed co-payment by the parents of a child under DYFS supervision, the Division will reimburse the provider for the unpaid amount.

• Selected applicants will be reimbursed by DYFS for the provision of transportation services in five of the six centers; these services will be provided either directly by the provider or through a sub-contract with a private transportation vendor. Reimbursement will be made on the basis of a **maximum** weekly rate of $24.00 **per child** to include the transportation of children under DYFS supervision and, as warranted, members of their families, to and from the child care center and the child's residence. In those centers where non-DYFS children are served, DYFS will not provide this transportation allowance for transporting children who are not under DYFS supervision.

DYFS will **not** provide funds for transportation services for the children attending the Communipaw Avenue Child Care Center because most enrollees are community children not under the direct supervision of DYFS and, thus, there are no transportation services currently being provided at this center. Therefore, DYFS will **not** provide funds for the provision of transportation services at this center.

DYFS will **not** provide funds for transportation services for the non-DYFS children attending the Darts Mill Child Care Center.

• DYFS is **requiring** the selected applicants to relocate **two** of the six child care centers to be privatized—Florida Grove and Linden Child Care Centers—to different sites, as specified in the RFP. The four remaining centers to be privatized—Darts Mill, Communipaw Avenue, Hamilton Avenue and Lyons Avenue Child Care Centers—may remain in their current locations or be relocated to different sites, as specified in the RFP.

Non-recurring (one-time-only) funds, above the amount to be reimbursed to the provider for direct child care and (where applicable) transportation services, will be provided by DYFS to assist with the completion of renovations and repairs needed to meet State Child Care Center Licensing requirements at the sites selected for the **mandated** relocation of the **Florida Grove** and **Linden** Child Care Centers. The provider(s) can include in their proposal a request for up to $50,000 per site from the FY 1995 Child Care Center Equipment and Renovation Fund for the needed capital improvements. (Note: for the four centers not mandated to relocate, funding for renovation and repairs will not be made available).

Non-recurring (one-time-only) funds, above the amount to be reimbursed to the provider for direct child care and (for five of the centers) transportation services, will be provided by DYFS to cover expenditures (that is moving costs) related to relocating, as applicable, any of the child care centers, as well as, one-time-only funds for the replacement of any major institutional appliances such as ranges (including the ranges' fire suppression systems), refrigerators, dishwashers and freezers that cannot be relocated. The decision on whether to replace any equipment will be made by DYFS. If DYFS agrees that any major appliances must be replaced, DYFS has established the following maximum **per site** amounts for moving costs and appliance replacements:

• moving costs: $4,000
• institutional range: $8,600
• range hood with fire suppression system: $8,000
• institutional refrigerator: $4,000
• institutional freezer: $4,000
• institutional dishwasher: $3,500

The provider should include in its proposal any requests for such funding.

• The obligation of DYFS to implement the terms of this RFP and the resulting contracts is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal responsibility on the part of DYFS for payment shall be made unless and until funds are made available to DYFS from the Legislature and incorporated in the DYFS budget for this purpose.

• DYFS assumes no responsibility or liability for the costs incurred by an applicant for planning or preparing a proposal in response to this announcement.

Funding Allotments:

The funding allotments for each site will be based upon the current operational capacity and the program components of the center, as follows:

• Darts Mill: 5 Infant/Toddler
10 After School (become 10 full-time summer care for 12 weeks)
48 Pre-School
(no transportation for 18 of the child-serving slots)
• Florida Grove: 6 Infant/Toddler
54 Pre-School
• Lyons Avenue: 56 Pre-School
• Linden: 56 Pre-School
• Hamilton Avenue: 46 Pre-School
10 Infant/Toddler
• Communipaw: 56 Pre-School (no transportation)

In accordance with State policy, parents of children receiving State subsidized child care services are assessed a co-payment (fee) based upon their income. This co-payment (fee) is netted out of the relevant maximum per child reimbursement rate paid by the State, as noted in the preceding section. Utilizing the above capacity and program component information, DYFS has calculated the gross total funding allotments (including transportation with the exception of the Communipaw Avenue Child Care Center and the non-DYFS children at the Darts Mill Child Care Center), estimated assessed parental co-payments (fees) and estimated net State allotments in the following chart. Note that the gross total allotment minus the assessed co-payments (fees) from parents is the amount of funding that will be provided by DYFS. The amounts for each center are as follows:

Center	Gross Total Allotment	Estimated Assessed Parental Co-payments	Estimated Net State Allotment
Darts Mill	$ 362,093.20	$13,000	$ 349,093.20
Florida Grove	$ 386,193.60	$ 3,000	$ 383,193.60
Lyons Avenue	$ 354,390.40	$ 3,000	$ 351,390.40
Linden	$ 354,390.40	$ 3,000	$ 351,390.40
Hamilton	$ 365,206.40	$ 3,000	$ 362,206.40
Communipaw	$ 284,502.40	$32,000	$ 252,502.40
TOTAL	$2,106,776.40	$57,000	$2,049,776.40

The actual funding allotments will vary depending on the outcome of final contract negotiations and the actual identification of assessed fees throughout the contract period.

Organizations eligible to apply for funding: In all cases, only the following agencies and organizations are considered eligible to submit a proposal in response to this announcement:

• Social Service Block Grant (SSBG)-funded community-based agencies or child care centers, who operate licensed child care centers within the State, as defined in N.J.A.C. 10:122, Manual of Requirements for Child Care Centers, (N.J.S.A. 30:5B-1 through 15);

• Federally funded Head Start grantee agencies, which operate licensed child care centers within the State, as defined in N.J.A.C. 10:122, Manual of Requirements for Child Care Centers, (N.J.S.A. 30:5B-1 through 15);

• Any public or private agency, whether for-profit or not-for-profit, including bonafide church-sponsored programs/organizations, which operate licensed child care centers within the State, as defined in N.J.A.C. 10:122, Manual of Requirements for Child Care Centers, (N.J.S.A. 30:5B-1 through 15); and

• Any public or private agency, whether for-profit or not-for-profit, including bonafide church-sponsored programs/organizations, which **do not** operate licensed child care centers within the State, as defined in N.J.A.C. 10:122, Manual of Requirements for Child Care Centers, (N.J.S.A. 30:5B-1 through 15), but that believe they can meet the requirements of this RFP.

Qualifications needed by an applicant: In all cases, applicants must meet the following requirements:

1. The applicant must be willing to enter into a contract with DYFS and comply with the contracting rules, regulations and program standards of the Department of Human Services;

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2. The applicant must give the DYFS employees who are impacted by privatization the "right of first refusal" for employment at the privatized centers in which they currently work. In other words, DYFS employees at these six centers must be offered employment by the selected provider, and given the opportunity to accept or reject this offer, before any non-DYFS persons are recruited, interviewed or hired for positions at these centers.

3. The applicant must be willing to adhere to the conditions for funding, program requirements, level of service requirements and restrictions on who may be served as specified in the Request for Proposals (RFP); and

4. The applicant must not discriminate in providing services to clients based on age, race, creed, national origin, sex, handicap or financial status.

Application selection criteria: Proposals shall be ranked and rated in accordance with the criteria listed below. The maximum score for all criteria is 100 points.

I. Narrative Sections (Maximum Score: 45)

- **Program Description** (Maximum Points: 35)—A brief description of the applicant's **current** effort in providing child care and/or social services.
- **Program Model** (Maximum Points: 5)—An overview of the proposed program model to include number of classrooms, group size by class and staff to child ratios by classroom.
- **Expansion Plan** (Maximum Points: 5)—A description of the plan, if applicable, to expand beyond the current operational capacity, without additional State funds. This plan description should include the child care option to be expanded or developed (that is pre-school, infant, school-age).

II. Program Activity Plans (Maximum Score: 50)

- **Child Care Curriculum** (Maximum Points: 20)—A description of the program of activities or curriculum components to be provided, noting any special emphasis in addressing the needs of protective services children and their families. This section will also address how parents will be afforded opportunities to be involved and participate in the experiences of their children through a variety of roles and opportunities, as well as the provision of nutritional and, where applicable, transportation services.

This section should also describe how the agency plans to address/currently addresses the needs of bilingual/bicultural clients who are eligible to receive services from the agency and who would be eligible to receive services from the child care center(s) which the agency seeks to operate under a contract with DYFS.

- **Support Services** (Maximum Points: 20)—A listing of the support services by service component—that is, medical, dental, social services, mental health, etc. to be provided. This listing should indicate if the support services will be provided directly by the applicant or through linkages with community service providers. This section should also address communications (that is, case conferencing, etc.) with the respective Division offices in the provider's catchment area.
- **Staff Development and Training** (Maximum Points: 10)—An overview of the staff training plan is to be provided. This plan will include a listing of proposed in-service training sessions and their frequency, as well as the availability of release time and funding for specialized training opportunities and/or workshops.

This section should also document the agency's policies concerning/pertaining to: (1) any certifications to be held by classroom teaching staff, such as DYFS Bureau of Licensing Group Teacher Approval; (2) specialized support staff, that is, social worker, nurse, speech therapist, to be employed by the applicant; and (3) the average years of experience for classroom teachers and, if applicable, by specialized support staff.

In addition, this section will document the personnel management process for the transition of DYFS employees, including a compensation package that specifies salary ranges and benefits.

III. Budget (Maximum Score: 5)

- **Budget Information Summary** (Maximum Points: 5)—The completion of the Request for Proposal (RFP): Budget Information Summary—P1.04, Attachment 4—**will be required from any applicant(s) who are not currently under contract to the Division to provide child care services.** This summary must provide contract summary information, RFP budget expense summary information, RFP personnel detail and budget category detail—reflecting a reasonable and appropriate allocation of resources to deliver the required services and maintain a viable program. Applicants currently under contract to DYFS to provide child care services will automatically be scored with five points.

Procedures for eligible applicants to apply: Agencies and organizations interested in applying for these funds may obtain a copy of the Request for Proposals by contacting Ron Bruschini, Assistant Administrator, DYFS Office of Statewide Operations and Support, at (609) 292-9515.

DYFS will provide eligible applicants additional and/or clarifying information about the privatization program and application procedures at a special meeting indicated below. It is a **prerequisite** and a **requirement** that prospective applicants attend the **Bidders' Conference.** Failure to attend the Bidders' Conference will disqualify individuals, agencies or organizations from the application process. Those who will attend this conference must confirm their attendance by calling the below listed contact number at least five working days prior to the scheduled date of the meeting:

Date: May 17, 1994
Time: 10:00 A.M.
Place: Department of Personnel—HRDI Training Center
Address: 3131 Princeton Pike, Building 6—2nd Floor—Room B
Lawrenceville, NJ
Contact: Ron Bruschini, DYFS Office of Statewide Operations and Support
(609) 292-9515

DYFS—at the telephone number noted above—should be notified if any person with a physical disability, planning to attend this meeting, will require any special accommodations.

Submission of Proposals: Agencies and organizations interested in applying for these funds must submit **one** signed original and **eight** copies of the application, including all attachments comprising the project proposal package, by no later than **5:00 P.M., on July 1, 1994.** Applications may be mailed or hand delivered to the:

Mail Delivery:
Division of Youth and Family Services
Office of Statewide Operations and Support
CN 717
Trenton, NJ 08625-0717
Attention: Ron Bruschini

Hand Delivery:
Division of Youth and Family Services
Office of Statewide Operations and Support
Capital Center
7th Floor
50 East State Street
Trenton, NJ 08625-0717
Attention: Ron Bruschini

In addition, consistent with the date and time frame indicated above, **one** copy must be sent to the Chairperson and **one** copy to the Staff Person of the appropriate County Human Services Advisory Council. As part of the proposal review process, the County Human Services Advisory Councils will be given the opportunity to provide the Department/Division with comments and recommendations on all proposals submitted for funding in their county.

Date by which applicants shall be notified of acceptance: August 2, 1994.

TREASURY

(a)

CAPITAL CITY REDEVELOPMENT CORPORATION

Notice of Availability of Grant Funds
Commercial Space Design Services for Commercial Businesses in the Capital City District, Trenton, New Jersey

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6 the Capital City Redevelopment Corporation, a public body corporate and politic within the Department of Treasury, announces the following availability of funds:

Name of program: The Capital City Redevelopment Corporation Commercial Real Estate Loan Program. (This notice pertains only to the grant portion dedicated to commercial space design services.)

Purpose for which the grant program funds shall be used: This program is intended to provide a grant for commercial and merchandising design services in conjunction with the CCRC Commercial Real

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Estate Loan Program. This grant will be distributed by the Trenton Downtown Association (TDA), agent for the Capital City Redevelopment Corporation (CCRC), to approved individual property owners and merchants in the Capital City District. This grant is to be used for two purposes: (1) to commission construction and merchandising design services and cost estimates from a designer to be selected by TDA for the renovation of commercial space owned or occupied by applicants to the CCRC Real Estate Loan Program, and (2) to pay for the design and engineering services for the renovation of commercial space. The properties shall be in the Capital City District as defined in P.L. 1987, c.58. The grant cannot be used toward deferred maintenance.

Amount of money in the grant program: Funding in the amount of $50,000 in State funds from the Capital City Redevelopment Corporation's Loan and Grant Fund is available through TDA for this program. The maximum for each grant is $10,000 or 10 percent of the construction cost of the renovation, whichever is less, for each project approved through the CCRC Real Estate Loan Program.

Requirements to be eligible to apply for funding under this program: In response to this announcement, prospective applicants must own a commercial property within the Capital City District as defined in P.L. 1987, c.58. Applicant can also be a tenant of a property located in the Capital City District provided that the tenant has secured the written approval of the property owner for such improvement. This approval must be submitted with the application for funding.

Qualifications needed by an applicant to be considered for funding: The property must be in good standing with the all applicable State, municipal and special improvement district taxes.

Application selection criteria: Applications will be reviewed by the following criteria: (1) feasibility of planned improvement, and (2) the project's overall economic development impact.

Procedures for those who are eligible to apply: Eligible parties must submit a description of the planned improvement, written approval from the property owner for such improvement if applicant is a tenant or proof of ownership if applicant is the property owner, with a completed application form. Applicants to the grant are required to submit a $25.00 non-refundable application fee to TDA, which shall be used to defray the costs of administering the commercial design program. Application forms are available at the following locations:

Trenton Downtown Association, Inc.
23 E. State Street
Trenton, NJ 08608

Capital City Redevelopment Corporation
28 West State Street, Suite 602
Trenton, NJ 08625

If the applicant is applying for both grant and loan funding please submit a $50.00 non-refundable application fee along with a completed application to the Capital City Redevelopment Corporation.

Address to which applications must be submitted: Eligible parties interested in applying for only grant funding should submit a completed application with a $25.00 non-refundable application fee to the following address:

Trenton Downtown Association, Inc.
23 E. State Street
Trenton, NJ 08608

Eligible parties interested in applying for both grant and loan funding should submit a completed application with a $50.00 non-refundable application fee to the following address:

Capital City Redevelopment Corporation
28 West State Street, Suite 602
Trenton, NJ 08625

Deadline by which applications must be submitted: Applications are reviewed on a rolling basis contingent on available funding remaining in the program and subject to the appropriation and state budgetary process.

Date by which applicants will be notified of acceptance or rejection: The Trenton Downtown Association, as the agent for the Capital City Redevelopment Corporation for the grant, will notify the respondents within 30 days of receipt of completed application materials.

The Capital City Redevelopment Corporation, managers of the loan, will notify the respondents within 30 days of receipt of completed application materials.

(a)

CAPITAL CITY REDEVELOPMENT CORPORATION

Notice of Availability of Grant Funds
Facade Renovation of Commercial Businesses in the Capital City District, Trenton, New Jersey

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6 the Capital City Redevelopment Corporation, a public body corporate and politic allocated within the Department of Treasury, announces the following availability of funds:

Name of grant program: The Trenton Downtown Association Facade Renovation Program.

Purpose for which the grant program funds shall be used: This program is intended to provide a construction grant that will be distributed by the Trenton Downtown Association (TDA), agent for the Capital City Redevelopment Corporation (CCRC), to individual property owners in conjunction with the property owner's renovation of the facade of a building in the Capital City District. This grant is to be used for the purposes of paying the expenses of design and construction in connection with a facade renovation in the Capital City District as defined in P.L. 1987, c.58. The grant cannot be used toward deferred maintenance.

Amount of money in the grant program: Funding in the amount of $100,000 in State funds from the Capital City Redevelopment Corporation's Loan and Grant Fund is available through TDA for this program. The maximum for each grant is $7,500. There is a dollar for dollar match requirement.

Requirements to be eligible to apply for funding under this program: In response to this announcement, prospective applicants must own a commercial property within the Capital City District as defined in P.L. 1987, c.58. Applicant can also be a tenant of a property located in the Capital City District provided that the tenant has secured the written approval of the property owner for such improvement. This approval must be submitted with the application for funding.

Qualifications needed by an applicant to be considered for funding: The property must be in good standing with the all applicable State, municipal and special improvement district taxes.

Application selection criteria: Applications will be reviewed by the following criteria: (1) demonstration of the applicant's ability to provide matching funds, (2) feasibility of planned improvement, and (3) project's overall economic development impact.

Procedures for those who are eligible to apply: Eligible parties must submit a description and preliminary cost estimate of the planned improvement, written approval from the property owner for such improvement if applicant is a tenant or proof of ownership if applicant is the property owner, and documentation demonstrating the applicant's ability to provide matching funds with a completed application form. Application forms are available at:

Trenton Downtown Association, Inc.
23 E. State Street
Trenton, NJ 08608

Address to which applications must be submitted: Eligible parties interested in applying for these funds should submit a completed application to the following address:

Trenton Downtown Association, Inc.
23 E. State Street
Trenton, NJ 08608

Deadline by which applications must be submitted: Applications are reviewed on a rolling basis contingent on available funding remaining in the program subject to the appropriation and state budgetary process.

Date by which applicants will be notified of acceptance or rejection: The Trenton Downtown Association, as the agent for the Capital City Redevelopment Corporation, will notify the respondents within 30 days of receipt of completed application materials.

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the March 7, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT FEBRUARY 22, 1994

NEXT UPDATE: SUPPLEMENT MARCH 21, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
25 N.J.R. 1797 and 1912	May 3, 1993	25 N.J.R. 4981 and 5382	November 15, 1993
25 N.J.R. 1913 and 2150	May 17, 1993	25 N.J.R. 5383 and 5728	December 6, 1993
25 N.J.R. 2151 and 2620	June 7, 1993	25 N.J.R. 5729 and 6084	December 20, 1993
25 N.J.R. 2621 and 2794	June 21, 1993	26 N.J.R. 1 and 280	January 3, 1994
25 N.J.R. 2795 and 3050	July 6, 1993	26 N.J.R. 281 and 520	January 18, 1994
25 N.J.R. 3051 and 3276	July 19, 1993	26 N.J.R. 521 and 878	February 7, 1994
25 N.J.R. 3277 and 3582	August 2, 1993	26 N.J.R. 879 and 1178	February 22, 1994
25 N.J.R. 3583 and 3884	August 16, 1993	26 N.J.R. 1179 and 1272	March 7, 1994
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993	26 N.J.R. 1739 and 1904	May 2, 1994
25 N.J.R. 4813 and 4980	November 1, 1993		

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1:1-11.1	Subpoenas	26 N.J.R. 1276(a)		
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1:13A	Lemon law hearings	25 N.J.R. 5387(a)	R.1994 d.107	26 N.J.R. 1223(a)
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1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
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3:1-2.25, 2.26	Charter conversions	26 N.J.R. 286(a)	R.1994 d.208	26 N.J.R. 1827(a)
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-8.2, 8.3, 17	Charter conversions	26 N.J.R. 286(a)	R.1994 d.208	26 N.J.R. 1827(a)
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:13-5	Mutual holding companies	26 N.J.R. 1213(a)		
3:14	Bank service corporations	26 N.J.R. 3(b)	R.1994 d.117	26 N.J.R. 1223(c)
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3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
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CIVIL SERVICE—TITLE 4				
Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)				

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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4A:2-2.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
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4A:4-2.9	Make-up examinations	25 N.J.R. 4823(a)	R.1994 d.114	26 N.J.R. 1225(a)
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4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.3, 3.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
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5:15	Emergency shelters for the homeless	26 N.J.R. 1421(a)		
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)	Expired	
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)	Expired	
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-5.5	Licensed electrical inspectors: administrative correction	_____	_____	26 N.J.R. 1495(a)
5:25A-1.3	Fire-retardant treated plywood failure: notice of rule invalidation regarding definition of major structural defect	_____	_____	26 N.J.R. 1828(a)
5:60	Displaced Homemaker Programs: eligibility for grants-in-aid	26 N.J.R. 1622(b)		
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)		
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)		
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5:91-1.3	Counseling on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
5:92-1.1, 13.1	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
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7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)		
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7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)		
7:1G-1.2	Community Right to Know Survey: administrative correction	———	———	26 N.J.R. 1337(a)
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:6	Repeal (see 13:82)	26 N.J.R. 744(a)	R.1994 d.205	26 N.J.R. 1673(a)
7:7	Coastal Permit Program	26 N.J.R. 917(a)		
7:7	Coastal Permit Program	26 N.J.R. 918(a)		
7:7	Coastal Permit Program: extension of comment period	26 N.J.R. 1561(a)		
7:7E	Coastal zone management	26 N.J.R. 943(a)		
7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:7E-3.43	Coastal zone management: administrative correction regarding special urban areas	26 N.J.R. 1561(b)		
7:7E-8.12	Coastal zone management: notice of clarification	26 N.J.R. 1561(c)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9B-1.15	Surface water classifications: administrative corrections	———	———	26 N.J.R. 1226(a)
7:11-2.1-2.4, 2.9, 2.10, 2.13	Delaware and Raritan Canal—Spruce Run/Round Valley Reservoirs System: sale of water	25 N.J.R. 5742(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)		
7:12-1.2, 2.1, 2.2, 3.2, 4.1, 9.1	Shellfish growing water classifications	26 N.J.R. 789(a)	R.1994 d.201	26 N.J.R. 1632(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)		
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)		
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:23	Flood Control Bond Grants	26 N.J.R. 1334(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-6.22	1994-95 Fish Code: snapping turtles, bull frogs and green frogs	26 N.J.R. 1047(a)		
7:25-7.13, 14.1, 14.2, 14.4–14.8, 14.10–14.13	Crab management	25 N.J.R. 4831(a)	R.1994 d.152	26 N.J.R. 1337(b)
7:25-18.1	Flounder management	Emergency (expires 6-12-94)	R.1994 d.230	26 N.J.R. 1885(a)
7:25-18.1, 18.2	Marine fisheries: size and possession limits; pound nets	26 N.J.R. 291(a)		
7:25-18.5, 18.6, 18.12	Delaware Bay gill net permits	25 N.J.R. 5397(a)	R.1994 d.202	26 N.J.R. 1633(a)
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	26 N.J.R. 1652(a)		
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
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7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
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7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-15.1, 15.4	Enhanced Inspection and Maintenance (I/M) program	25 N.J.R. 5400(a)		

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7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)		
7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
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7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27B-4.1, 4.5–4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
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8:44-2.11	Clinical laboratories: reporting of blood lead levels	26 N.J.R. 294(b)		
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8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b), 4497(b), 6060(b))	25 N.J.R. 875(a)	R.1993 d.155	26 N.J.R. 1347(a)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a), 4496(a))	25 N.J.R. 1814(b)	R.1993 d.676	25 N.J.R. 6061(a)
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8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a))	25 N.J.R. 2802(b)	R.1994 d.40	26 N.J.R. 364(b)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b))	25 N.J.R. 4844(a)	R.1994 d.156	26 N.J.R. 1347(b)
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8:100	State Health Plan rules: notice of invalidation	———	———	26 N.J.R. 1828(b)

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9:2-2	Minority Undergraduate Fellowship Program	26 N.J.R. 80(a)		
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)	Expired	

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9:9-1.23	NJHEAA reporting of loan status credit bureaus	26 N.J.R. 893(a)		
9:11	Educational Opportunity Fund program: procedures and policies	26 N.J.R. 711(a)	R.1994 d.226	26 N.J.R. 1857(a)
9:12	Educational Opportunity Fund program support	26 N.J.R. 711(a)	R.1994 d.226	26 N.J.R. 1857(a)
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10:15C-1.1	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1637(a)
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10:31	Mental Health Screening and Screening Outreach Programs	26 N.J.R. 1424(a)		
10:37-5.37–5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
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10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)	R.1994 d.227	26 N.J.R. 1828(c)
10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)		
10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:41	Division of Developmental Disabilities: administration	26 N.J.R. 81(a)	R.1994 d.196	26 N.J.R. 1656(a)
10:41	Division of Developmental Disabilities: extension of comment period regarding records confidentiality and human rights committees	26 N.J.R. 725(a)		
10:48-1	Division of Developmental Disabilities: appeal procedure	26 N.J.R. 1280(a)		
10:49-17.5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)		
10:50-1.2, 1.3, 1.4, 1.6, 1.7, 2.2	Transportation services for Medicaid recipients	26 N.J.R. 1425(a)		
10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)		
10:60-5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)		
10:63-3.21, 3.22, 3.23	Nursing facility relief	26 N.J.R. 894(a)	R.1994 d.213	26 N.J.R. 1840(a)
10:65-1.1, 1.2, 1.4, 1.5, 1.7, 1.8, 2.1, 2.2, App. H	Pediatric medical day care services	26 N.J.R. 1427(a)		
10:66-6.5	Independent clinic services; HealthStart: administrative correction	_____	_____	26 N.J.R. 235(a)
10:69A-1.2, 6.2	PAAD eligibility: exclusion of reparation payments as countable income	25 N.J.R. 5750(a)	R.1994 d.191	26 N.J.R. 1658(a)
10:81	Public Assistance Manual	26 N.J.R. 1573(a)		
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-2.6, 3.4, 11.2, 11.3	Public Assistance Manual: client Social Security numbers	26 N.J.R. 324(a)		
10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)		
10:81-11.7, 11.9	Automated Child Support Enforcement System	26 N.J.R. 84(a)	R.1994 d.159	26 N.J.R. 1349(a)
10:81-14.18A	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1636(a)
10:82	Aid to Families with Dependent Children (AFDC)	26 N.J.R. 1584(a)		
10:82-5.3	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1636(a)
10:84-1.2	Program administration: administrative correction	_____	_____	26 N.J.R. 1657(b)
10:85-3.3	General Assistance Manual: administrative correction regarding income exclusions	_____	_____	26 N.J.R. 1658(a)
10:85-8.4	General Assistance Manual: administrative correction regarding referral to State agencies	_____	_____	26 N.J.R. 1657(b)
10:86-10.2, 10.6	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1636(a)
10:89-2.3, 3.1, 3.2, 3.3	Home Energy Assistance: income eligibility guidelines	26 N.J.R. 256(a)	R.1994 d.109	26 N.J.R. 1227(a)
10:97	Commission for the Blind and Visually Impaired: Business Enterprise Program	26 N.J.R. 725(b)	R.1994 d.209	26 N.J.R. 1841(a)
10:122	Manual of Requirements for Child Care Centers	25 N.J.R. 4987(a)		
10:127-6.5	Residential child care facilities: money and allowance	25 N.J.R. 5751(a)	R.1994 d.158	26 N.J.R. 1350(a)

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10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		
10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)	Expired	
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		

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10A:1-10	Research projects	26 N.J.R. 726(a)	R.1994 d.181	26 N.J.R. 1505(a)
10A:4-1.2, 1.3	Adult county correctional facilities: disciplinary procedures and sanctions	26 N.J.R. 727(a)	R.1994 d.182	26 N.J.R. 1506(a)
10A:4-4.1	Inmate discipline: administrative correction regarding prohibited acts	———	———	26 N.J.R. 1228(a)
10A:4-4.1	Inmate prohibitions: failure to keep scheduled appointment	26 N.J.R. 1287(a)		
10A:4-4.1, 5.1, 5.2, 5.3	Inmate prohibitions: misuse of electronic equipment	26 N.J.R. 1286(a)		
10A:9-4.6	Gang minimum and full minimum custody status: criteria for consideration	26 N.J.R. 728(a)	R.1994 d.197	26 N.J.R. 1658(b)
10A:16-8.1, 8.2, 8.3	Medical clemency	26 N.J.R. 326(a)	R.1994 d.154	26 N.J.R. 1350(b)
10A:19	Public information	26 N.J.R. 1287(b)		
10A:22	Inmate and parolee records	25 N.J.R. 5754(a)	R.1994 d.113	26 N.J.R. 1228(b)
10A:31-1.3, 16.1, 16.2, 21.4	Adult county correctional facilities: disciplinary procedures and sanctions	26 N.J.R. 727(a)	R.1994 d.182	26 N.J.R. 1506(a)
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-3.47	State Parole Board: victim input	25 N.J.R. 4705(a)	R.1994 d.180	26 N.J.R. 1507(a)
10A:71-3.51	State Parole Board: interstate corrections compact and serving time out-of-State cases	26 N.J.R. 1191(a)		
10A:71-8.2	State Parole Board: eligibility for Certificate of Good Conduct	26 N.J.R. 1193(a)		

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11:1-7	Medical malpractice reporting requirements	26 N.J.R. 1433(a)		
11:1-37	Public adjusters' licensing	25 N.J.R. 5432(a)	R.1994 d.207	26 N.J.R. 1711(a)
11:1-37	Public adjusters' licensing: public hearing and extension of comment period	26 N.J.R. 327(a)		
11:3-2A	Automobile Full Insurance Underwriting Association: deferral of payment of residual bodily injury claims	26 N.J.R. 898(a)		
11:3-2B	Market Transition Facility of New Jersey: suspension of claims payments	Emergency (expires 4-30-94)	R.1994 d.164	26 N.J.R. 1393(a)
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)	R.1994 d.210	26 N.J.R. 1869(a)
11:3-15.7	Automobile insurance Coverage Selection Form	26 N.J.R. 85(a)	R.1994 d.195	26 N.J.R. 1659(a)
11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
11:3-29.2, 37.10	Automobile insurance PIP coverage: application of medical fee schedules to acute care hospitals and other facilities	25 N.J.R. 4706(a)		
11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)		
11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)	R.1994 d.112	26 N.J.R. 1229(a)
11:5-1.15, 1.23	Real Estate Commission: discriminatory conduct prohibitions	26 N.J.R. 729(a)		
11:5-1.15, 1.23	Real Estate Commission: correction to proposal concerning discriminatory conduct prohibitions	26 N.J.R. 1194(a)		
11:5-1.15, 1.23, 1.28, 1.44, 2.5, 4.9	Real Estate Commission: extension of comment periods for proposals published February 7	26 N.J.R. 1222(a)		
11:5-1.28	Real Estate Commission: requirements for prelicensure schools and instructors	26 N.J.R. 730(a)		
11:5-1.28	Real Estate Commission: correction to proposal concerning requirements for prelicensure schools and instructors	26 N.J.R. 1194(b)		
11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:5-1.44	Real Estate Commission: collection of licensee Social Security numbers	26 N.J.R. 735(a)		
11:5-2.5	Real Estate Commission: access to commission records	26 N.J.R. 736(a)		
11:5-4.9	Real Estate Commission: temporary suspension of license	26 N.J.R. 737(a)		

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11:10-1.4, 1.12, 1.13, App. A, B	Dental plan organizations: renewal of certificate of authority	26 N.J.R. 738(a)	R.1994 d.200	26 N.J.R. 1661(a)
11:17-3, 5.1–5.4, 5.6, 5.7	Professional qualifications of insurance producers	26 N.J.R. 1289(a)		
11:17C-2.6	Insurance producers: record maintenance	26 N.J.R. 328(a)	R.1994 d.160	26 N.J.R. 1351(a)
11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)		
11:20-2.17	Individual Health Coverage Program: assessments for reimbursable net paid losses	26 N.J.R. 1200(a)	R.1994 d.165	26 N.J.R. 1507(b)
11:20-8, 9, 13	Individual Health Coverage Program: certification and audit requirements; exemptions; non-member status	26 N.J.R. 1294(a)	R.1994 d.177	26 N.J.R. 1509(a)
11:20-10	Individual Health Coverage Program: performance standards and filing requirements	26 N.J.R. 1202(a)	R.1994 d.142	26 N.J.R. 1351(b)
11:21-1.2, 8, 10, Exh. CC	Small Employer Health Benefits Program: carrier certification of non-member status; Market Share Report	26 N.J.R. 1588(a)	R.1994 d.228	26 N.J.R. 1873(a)
11:21-2.5	Small Employer Health Benefits Program: notice of public hearing	26 N.J.R. 1591(a)		
11:21-4.2, 4.3, 17.3, App. Exh. BB	Small Employer Health Benefits Program: certification of utilization compliance	26 N.J.R. 741(a)	R.1994 d.153	26 N.J.R. 1352(a)

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12:18	Temporary Disability Benefits	26 N.J.R. 1326(a)		
12:18-1.1, 2.4, 2.27, 2.40, 2.43, 2.48, 3.1, 3.2, 3.3	Temporary Disability Benefits Program	25 N.J.R. 1515(c)	Expired	
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)	R.1994 d.166	26 N.J.R. 1512(a)
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)	R.1994 d.167	26 N.J.R. 1514(a)
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)	R.1994 d.168	26 N.J.R. 1515(a)
12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)	R.1994 d.190	26 N.J.R. 1663(a)
12:56-6.1, 7.5, 7.6	Wage and Hour compliance: limousine operators	26 N.J.R. 94(a)		
12:235-9.4	Workers' Compensation: appeals regarding discrimination complaints	26 N.J.R. 1591(b)		

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12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 2216(c)		
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13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 1297(a)		
13:10	Division on Civil Rights: multiple dwelling reports	26 N.J.R. 901(a)	R.1994 d.203	26 N.J.R. 1666(b)
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)		
13:20-34.2, 34.3	Division of Motor Vehicles: license plates' identifying marks	26 N.J.R. 1487(a)		
13:20-39.1, 39.2, 39.3, 39.5, 39.9	Special automobile registration plates for non-profit organizations	26 N.J.R. 331(a)	R.1994 d.175	26 N.J.R. 1516(a)
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		

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13:23	Division of Motor Vehicles: driving schools	26 N.J.R. 1299(a)		
13:27-3	Board of Architects: scope of architectural services	25 N.J.R. 5439(a)	R.1994 d.169	26 N.J.R. 1517(a)
13:27-5.8, 8.15	Board of Architects: licensure examination fees	26 N.J.R. 1490(a)		
13:27-6.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
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13:29-1.6, 1.7	Board of Accountancy: applications for original examination and for reexamination	26 N.J.R. 1217(a)		
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:31-1.3	Board of Examiners of Electrical Contractors: licensing examination	26 N.J.R. 1218(a)		
13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)		
13:31-1.10	Board of Examiners of Electrical Contractors: duty of licensee to return pressure seal	26 N.J.R. 1594(a)		
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:34-1.1	Board of Marriage Counselor Examiners: examination fee	26 N.J.R. 1301(a)		
13:35-2A.9, 2A.11, 6.13	Certified midwife practice: prescriptive authority	25 N.J.R. 4583(a)	R.1994 d.170	26 N.J.R. 1520(a)
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.5	Board of Medical Examiners: permissible charges for copies of patient records	25 N.J.R. 4862(a)	R.1994 d.119	26 N.J.R. 1522(a)
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		
13:35-6.10	Board of Medical Examiners: licensee testimonial advertisements	26 N.J.R. 1219(b)		
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-6.21	Hair replacement techniques: stay of operative date	_____	_____	26 N.J.R. 1354(a)
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:36-7.1	Board of Mortuary Science: handling and embalming bodies dead of infectious or contagious disease	26 N.J.R. 1302(a)		
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)	R.1994 d.212	26 N.J.R. 1876(a)
13:37-12.1	Board of Nursing: fees for certification of nurse practitioner	26 N.J.R. 1490(b)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		
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13:39-10.2, 11	Board of Pharmacy: sterile admixture services in retail pharmacies	26 N.J.R. 1303(a)		
13:39A-2.3	Board of Physical Therapy: public forum on direct supervision of physical therapist assistants	26 N.J.R. 1604(a)		
13:40-7.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:40A-2A.3	Board of Real Estate Appraisers: certification as residential appraiser	26 N.J.R. 902(a)		
13:40A-4.1–4.9	Board of Real Estate Appraisers: licensee continuing education	26 N.J.R. 903(a)		
13:41-4.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		

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13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.9	Board of Chiropractic Examiners: notification of change of address; service of process	25 N.J.R. 3936(a)	R.1994 d.120	26 N.J.R. 1230(b)
13:44E-2.10, 2.11	Board of Chiropractic Examiners: display of license; right to licensure hearing	25 N.J.R. 3936(b)	R.1994 d.121	26 N.J.R. 1231(a)
13:44E-2.13	Board of Chiropractic Examiners: overutilization of services; excessive fees	25 N.J.R. 3937(a)	R.1994 d.122	26 N.J.R. 1231(b)
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:44E-2.14	Board of Chiropractic Examiners: referral of patients to physical therapists	25 N.J.R. 3938(a)	R.1994 d.123	26 N.J.R. 1234(a)
13:44G-1–5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)	R.1994 d.189	26 N.J.R. 1524(a)
13:44G-5.1, 5.2, 5.3	Board of Social Work Examiners: licensure and certification	26 N.J.R. 1604(b)		
13:45A-14.7	Office of Consumer Protection: unit price labeling	26 N.J.R. 1306(a)		
13:45A-16.1	Home improvement practices: security protection devices	26 N.J.R. 1605(a)		
13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)	R.1994 d.204	26 N.J.R. 1667(a)
13:45A-26	Automotive dispute resolution	25 N.J.R. 3939(a)	R.1994 d.176	26 N.J.R. 1535(a)
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47B	Weights and measures	25 N.J.R. 5102(a)	R.1994 d.124	26 N.J.R. 1235(a)
13:57	Uniform Crime Reporting (UCR) system	26 N.J.R. 905(a)		
13:60	Motor carrier safety	26 N.J.R. 1307(a)		
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)	R.1994 d.134	26 N.J.R. 1354(b)
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)	R.1994 d.125	26 N.J.R. 1236(a)
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	25 N.J.R. 3100(a)	R.1994 d.129	26 N.J.R. 1237(a)
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:70-20.11	Thoroughbred racing: limitations on entering or starting	25 N.J.R. 3101(a)	R.1994 d.130	26 N.J.R. 1238(a)
13:70-20.13	Thoroughbred racing: trainer fees	25 N.J.R. 5107(b)	R.1994 d.135	26 N.J.R. 1355(a)
13:70-21.4	Thoroughbred racing: medication	25 N.J.R. 3102(a)	R.1994 d.131	26 N.J.R. 1238(b)
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Harness racing: intent of medication rules	25 N.J.R. 3104(a)	R.1994 d.126	26 N.J.R. 1238(c)
13:71-23.8	Harness racing: administering medication to respiratory bleeders	25 N.J.R. 3105(a)	R.1994 d.128	26 N.J.R. 1240(a)
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
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13:75	Violent Crimes Compensation Board: practice and procedure	26 N.J.R. 1491(a)		
13:82	Boating rules	26 N.J.R. 744(a)	R.1994 d.205	26 N.J.R. 1674(a)

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14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)	Expired	
14:17	Office of Cable Television: practice and procedure	26 N.J.R. 96(a)	R.1994 d.194	26 N.J.R. 1683(a)
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		
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15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)
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16:28-1.32, 1.56	Speed limit zones along Route 154 in Cherry Hill, and U.S. 40 and U.S. 40/322 in Egg Harbor and Pleasantville	26 N.J.R. 106(a)	R.1994 d.115	26 N.J.R. 1240(a)
16:28-1.67	Speed limit zones along U.S. 202 in Somerset County	26 N.J.R. 1316(b)		
16:28A-1.33	No stopping or standing zones on Route 47 in Gloucester County: administrative correction	_____	_____	26 N.J.R. 1537(a)
16:28A-1.34, 1.71	Restricted parking along Route 49 in Millville and Route 67 in Fort Lee	25 N.J.R. 5760(a)	R.1994 d.149	26 N.J.R. 1358(a)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:30-3.10	Lane usage along I-287 in Morris County	26 N.J.R. 107(a)	R.1994 d.116	26 N.J.R. 1241(a)
16:30-3.10	Lane usage along I-287 in Morris County: administrative correction	_____	_____	26 N.J.R. 1690(a)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships	26 N.J.R. 908(a)		
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-10.16	Midblock crosswalks along Route 71 in West Long Branch and Eatontown	25 N.J.R. 5762(a)	R.1994 d.150	26 N.J.R. 1358(b)
16:31-1.34	Turn prohibitions along Route 52 in Ocean City	26 N.J.R. 332(a)	R.1994 d.179	26 N.J.R. 1537(b)
16:41D	Motorist service signs on non-urban interstate and limited access highways	25 N.J.R. 2836(a)	R.1994 d.148	26 N.J.R. 1359(a)
16:44	Construction services	25 N.J.R. 1954(a)		
16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
16:44	Construction services	25 N.J.R. 4727(a)	R.1994 d.198	26 N.J.R. 1690(b)
16:46	Drawbridge operations	26 N.J.R. 755(a)	R.1994 d.199	26 N.J.R. 1694(a)
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reductiion Program tax credit	26 N.J.R. 756(a)		
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16:53	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53	Autobuses	26 N.J.R. 1606(a)		
16:53B	Jurisdictional assignments for railroad overhead bridges	26 N.J.R. 1203(a)		
16:53D	Autobus carrier Zone of Rate Freedom	26 N.J.R. 1205(a)	R.1994 d.214	26 N.J.R. 1841(b)
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:56	Airport safety improvement aid	26 N.J.R. 1607(a)		
16:72-1.1, 1.2, 1.5, 2.2, 2.4	NJ TRANSIT: procurement policies and procedures	26 N.J.R. 908(b)	R.1994 d.211	26 N.J.R. 1842(a)

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17:2-1.4	Public Employees' Retirement System: replacement of member-trustee who declines to serve	25 N.J.R. 5113(a)		
17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 108(a)	R.1994 d.162	26 N.J.R. 1537(c)
17:3-1.1	Teachers' Pension and Annuity Fund: conduct of Board meetings	25 N.J.R. 5762(b)	R.1994 d.161	26 N.J.R. 1537(d)
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 108(b)	R.1994 d.163	26 N.J.R. 1538(a)
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		

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18:3	Alcoholic Beverage Tax	26 N.J.R. 758(a)	R.1994 d.183	26 N.J.R. 1695(a)
18:5	Cigarette Tax Act rules	26 N.J.R. 759(a)	R.1994 d.184	26 N.J.R. 1695(b)
18:6	Unfair Cigarette Sales Act rules	26 N.J.R. 760(a)	R.1994 d.185	26 N.J.R. 1696(a)
18:7	Corporation Business Tax	26 N.J.R. 761(a)	R.1994 d.186	26 N.J.R. 1696(b)
18:8	Financial Business Tax	26 N.J.R. 333(a)	R.1994 d.144	26 N.J.R. 1369(a)
18:12-7.1	Homestead Property Tax Rebate: filing extension for certain claimants	26 N.J.R. 109(b)	R.1994 d.136	26 N.J.R. 1370(a)
18:18	Motor Fuels Tax	26 N.J.R. 777(a)	R.1994 d.187	26 N.J.R. 1706(a)
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18:23	Railroad Property Tax	26 N.J.R. 110(a)	R.1994 d.132	26 N.J.R. 1371(a)
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18:35-1.17	Gross Income Tax: Workforce Development Partnership Fund and Health Care Subsidy Fund withholding	26 N.J.R. 336(a)	R.1994 d.146	26 N.J.R. 1372(a)
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19:30-7	Economic Development Authority: Disability discrimination complaint procedure	25 N.J.R. 4864(b)	R.1994 d.111	26 N.J.R. 1248(a)
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19:41-1.3	Casino employment: U.S. citizenship or Federal authorization to work	26 N.J.R. 339(a)	R.1994 d.171	26 N.J.R. 1538(b)
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19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
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