

CHAPTER 43

STANDARDS FOR LICENSURE OF RESIDENTIAL HEALTH CARE FACILITIES

Authority

N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5.

Source and Effective Date

R.2005 d.73, effective February 22, 2005.
See: 36 N.J.R. 3016(a), 37 N.J.R. 591(b).

Chapter Expiration Date

Chapter 43, Standards for Licensure of Residential Health Care Facilities, expires on February 22, 2010.

Chapter Historical Note

Chapter 43, Boarding Homes for Sheltered Care, was adopted as R.1974 d.319, effective November 19, 1974. See: 6 N.J.R. 396(c), 6 N.J.R. 472(e). Chapter 43 was renamed Residential Health Care Facilities by R.1980 d.366, effective August 8, 1980. See: 12 N.J.R. 394(b), 12 N.J.R. 518(d).

Pursuant to Executive Order No. 66(1978), Chapter 43, Residential Health Care Facilities, was readopted as R.1990 d.568, effective October 24, 1990. See: 22 N.J.R. 2499(a), 22 N.J.R. 3581(a).

Pursuant to Executive Order No. 66(1978), Chapter 43, Residential Health Care Facilities, was readopted as R.1992 d.502, effective November 19, 1992. See: 24 N.J.R. 2506(a), 25 N.J.R. 109(a).

Chapter 43, Residential Health Care Facilities, was repealed and Chapter 43, Standards for Licensure of Residential Health Care Facilities, was adopted as new rules by R.1993 d.473, effective October 4, 1993 (operative February 12, 1994). See: 25 N.J.R. 25(a), 25 N.J.R. 4631(a). Pursuant to Executive Order No. 66(1978), Chapter 43 expired on October 4, 1998.

Chapter 43, Standards for Licensure of Residential Health Care Facilities, was adopted as new rules by R.1998 d.579, effective December 7, 1998. See: 30 N.J.R. 3633(a), 30 N.J.R. 4221(b). Chapter 43, Standards for Licensure of Residential Health Care Facilities, expired on December 7, 2003.

Chapter 43, Standards for Licensure of Residential Health Care Facilities, was adopted as R.2005 d.73, effective February 22, 2005. See: Source and Effective Date.

Petition for Rulemaking. See: 39 N.J.R. 4341(a).

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SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

8:43-1.1 Scope

The rules in this chapter pertain to all facilities that provide residential health care services. These rules constitute the

basis for the licensure of residential health care facilities by the New Jersey State Department of Health and Senior Services.

Case Notes

Holding, that an agreement between the trustees of a life-care community home and its residents impliedly included the residents' right to an accounting by the trustees on the grounds that the monthly fees were expected to remain stable and reasonable, was consistent with the legislative policy expressed in New Jersey's fairly extensive regulation of the residential health care facilities industry set forth in N.J.S.A. 30:11A-1 through 30:11A-12, N.J.S.A. 26:2H-1 through 26:2H-52, and N.J.A.C. 8:43-1.1 through 8:43-7.1, as amended. *Onderdonk v. Presbyterian Homes of N.J.*, 85 N.J. 171, 425 A.2d 1057, 1981 N.J. LEXIS 2589 (1981), limited by *Borbely v. Nationwide Mut. Ins. Co.*, 547 F. Supp. 959, 1981 U.S. Dist. LEXIS 10145, 11 Fed. R. Evid. Serv. (CBC) 1642 (D.N.J. 1981).

8:43-1.2 Purpose

Residential health care facilities provide sheltered care and services, in a homelike setting, to residents who do not require skilled nursing care, in order to assist residents to maintain personal interests and dignity as well as to protect their health and safety. The aim of this chapter is to establish minimum rules with which a residential health care facility must comply in order to be licensed to operate in New Jersey.

8:43-1.3 Definitions

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

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

"Assistive device" means a leg brace, splint, cane, crutch, special shoe, back brace, walker, wheelchair, or prosthesis.

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

"Basic physical plant services" means heat, power, lighting, water, food and staff.

"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 and Senior Services.

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

“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 1970, N.J.S.A. 24:21-1 et seq.

“Current” means up-to-date.

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

“Designated community agency” means any agency in which the resident is a participating program member or under treatment, or an agency designated by the Social Security Administration as the resident’s representative payee.

“Director of health maintenance and monitoring services” means a registered professional nurse who is responsible for the direction, provision and quality of health maintenance and monitoring services for the residents of the facility.

“Dietitian” means an individual who is registered or eligible for registration by the Commission on Dietetic Registration (Office on Dietetic Credentialing, 216 W. Jackson Boulevard-7th Floor, Chicago, Illinois 60606-6995).

“Disinfection” means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and physical means, directly applied.

1. “High-level disinfection” means that disinfection which kills vegetative bacteria, tubercle bacillus, some spores, fungi, lipid and non-lipid viruses.

2. “Intermediate-level disinfection” means that disinfection which kills vegetative bacteria, tubercle bacillus, fungi, lipid and non-lipid viruses and does not kill resistant bacterial spores.

3. “Low-level disinfection” means that disinfection which kills most vegetative bacteria, fungi, and lipid viruses and does not kill spores and non-lipid viruses. Low-level disinfection is sometimes less active against some of the gram-negative rods (*Pseudomonas*) and *Mycobacterium* (TB).

“Documented” means written, signed, and dated.

“Drug” means a substance as defined in the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39-1.2. The term “medication” is used interchangeably with the term “drug” in this chapter.

“Employee” means a member of the administrator’s family or any other person who is gainfully employed in the residential health care facility on a full or part-time basis and for whom a record of hours worked and wages paid (salaries, room and board, or any combination thereof) are maintained and who meets the health, age and other requirements of this chapter.

“Epidemic” means the occurrence 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.

“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.

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

“Guardian” means a person appointed by a court of competent jurisdiction to handle the affairs and protect the rights of any resident of the facility.

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

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

“Licensed practical nurse” means an individual who is so licensed by the New Jersey State Board of Nursing pursuant to N.J.S.A. 45:11-27.

“Licensed nursing personnel” (licensed nurse) means registered professional nurses or practical nurses licensed by the New Jersey State Board of Nursing.

“Medication,” for the purposes of this chapter, is used interchangeably with the term “drug.” Please see the definition of “drug” in this chapter.

“Medication regimen review” means an individual resident record review conducted by the consultant pharmacist, including, but not limited to, laboratory tests, dietary requirements, physician’s and nurse’s clinical notes, physician’s orders and progress notes, in order to monitor for potentially significant adverse drug reactions, drug-to-drug and drug-food interactions, allergies, contraindications, rationality of therapy, drug use evaluation, and laboratory tests results.

“Monitor” means to observe, watch, or check.

“Pharmacist” means an individual who is so registered by the New Jersey State Board of Pharmacy, pursuant to N.J.A.C. 13:39-3.

“Physician” means an individual who is licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey, pursuant to N.J.S.A. 45:9-1 et seq.

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

“Residential health care facility” means a facility that provides food, shelter, supervised health care and related services, in a homelike setting, to four or more persons 18 years of age or older who are unrelated to the owner or administrator.

“Resident” means a person who is 18 years of age or over, mobile under his or her own power with or without

assistive devices and able to effectuate his or her own evacuation from the building.

“Resident supervision” means the provision of direct services required by this chapter to residents.

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

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

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

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

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

1. “Direct supervision” means supervision on the premises.

8:43-1.4 Qualifications of the administrator of a residential health care facility

(a) The administrator of a residential health care facility shall be in good physical and mental health, of good moral character, and shall exhibit concern for the safety and well-being of residents; and shall:

1. Complete a training course approved by the Department of Human Services, or other equivalent training as approved by the Department of Health and Senior Services, within one year of his or her employment as administrator;

2. Hold a current New Jersey license as a nursing home administrator, or be eligible to take the New Jersey Nursing Home Administrator’s Licensing Examination, according to Department of Health and Senior Services requirements found in N.J.A.C. 8:34; or

3. Complete an assisted living administrator training course approved by the Department of Health and Senior as specified at N.J.A.C. 8:36-1.5(a)3.

(b) The owner of a residential health care facility who meets the qualifications listed in (a) above may also serve as the administrator.

8:43-1.5 Qualifications of direct care staff

(a) The facility shall exercise good faith and due diligence to ensure that staff providing direct care and resident supervision to residents in the facility:

1. Are in good physical and mental health, emotionally stable, of good moral character, and are concerned for the safety and well-being of residents;

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; and

3. Are at least 18 years of age, have obtained working papers, or are supervised at all times by an employee who is at least 18 years of age. At a minimum, one employee who is 18 years of age must be present in the facility at all times.

SUBCHAPTER 2. LICENSURE PROCEDURES

8:43-2.1 Application for licensure

(a) Any person, organization, or corporation desiring to operate a residential health care facility shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
 Long Term Care Licensing and Certification Unit
 Division of Long Term Care Systems
 New Jersey State Department of Health and Senior Services
 PO Box 367
 Trenton, New Jersey 08625-0367
 609-633-9034

16. The facility shall develop policies and procedures so that the resident is allowed visits from his or her next of kin and/or sponsor and/or guardian at any time, if ill. Members of the clergy shall be notified by the facility at the resident's request, and shall be admitted at the request of the resident and/or next of kin and/or sponsor and/or guardian at any time. Privacy shall be ensured for visits with his or her family, friends, clergy, social workers, attorney, counselor, advocates, or for professional or business purposes;

17. Is allowed unaccompanied access to telephones, in the facility, at a reasonable hour, both to make and to receive confidential calls, and has the right to a private telephone at his or her expense. If the facility provides telephones which are coin-operated, the resident shall be charged no more than the actual cost of the call, except that an access fee no greater than the charge for a local call on a coin-operated telephone may be charged;

18. Is not required to go to bed and has the right to be outside his or her bedroom;

19. Is allowed, or his or her next of kin and/or sponsor and/or guardian and/or conservator, as defined in N.J.S.A. 3B:13A-1 through 3B:13A-36, is allowed to manage the resident's personal financial affairs, or is given at least a quarterly written statement of financial transactions made on his or her behalf, should the facility accept his or her written delegation of this responsibility.

i. The written delegation of responsibility shall be witnessed by a person who is unconnected with the facility, its operations, and its personnel, and shall be included in the resident's record;

ii. The financial statement shall account for all the resident's property on deposit at the beginning of the quarter, all deposits and withdrawals transacted during the quarter (substantiated by receipts given to the resident or his or her next of kin and/or sponsor and/or guardian), and the property on deposit at the end of the quarter;

iii. The facility shall maintain a monthly written record for each resident who receives Social Security Administration (SSA) and/or Supplemental Security Income (SSI) checks. The written record shall include the resident's name, the date and amount of each check, the date and amount of each disbursement, the reasons for each disbursement, and to whom each disbursement was made;

iv. Each resident residing in a residential health care facility who receives benefits generated from the Home Energy Assistance Program in accordance with N.J.A.C. 10:89 may, but shall not be required to, provide the owner, operator, employee, or their representative with any portion of monies provided through the Home Energy Assistance Program. No owner, operator, employee, or representative of the facility shall coerce,

intimidate, or exploit residents into providing them with any portion of their home energy assistance checks;

20. Is assured of exercising civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any resident or facility. Knowledge of available choices shall not be infringed upon and the facility shall encourage and assist in the exercise of these rights. Arrangements shall be made, at the resident's expense, for attendance at religious services of his or her choice when requested;

21. Is not the object of discrimination with respect to participation in recreational activities, meals, social or other functions. The resident's participation may be restricted or prohibited if recommended by the resident's physician, advanced practice nurse, or physician assistant in the resident's record, and consented to by the resident;

22. Is not deprived of any constitutional, civil, and/or legal rights solely by reason of admission to the facility. Such rights shall include, but not be limited to, the right to gainful employment, to move to a different living arrangement, to wear his or her own clothing, and to determine his or her own dress, hair style, and other personal choices according to individual preference; and

23. Is allowed to discharge himself or herself from the facility upon presentation of a written notice to the administration and, in the case of an adjudicated mentally incompetent resident, upon the written consent of his or her next of kin and/or sponsor and/or guardian.

SUBCHAPTER 15. HOUSEKEEPING, SANITATION, SAFETY AND MAINTENANCE

8:43-15.1 Provision of housekeeping, sanitation, safety and maintenance services

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

(b) The facility shall provide housekeeping, laundry, pest control, and maintenance services.

(c) Written objectives, policies, a procedure manual, and an organizational plan for housekeeping, sanitation, safety, laundry and maintenance services shall be developed and implemented.

8:43-15.2 Housekeeping

(a) A written work plan for housekeeping operations shall be established and implemented, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the facility.

(b) Procedures shall be developed for selection and use of housekeeping and cleaning products and equipment.

(c) Housekeeping personnel shall be trained in cleaning procedures within the scope of their responsibility, including the use, cleaning, and care of equipment.

8:43-15.3 Resident environment

(a) The following housekeeping and sanitation conditions shall be met:

1. The facility and its contents, including all environmental surfaces, shall be clean to sight and touch and free of dirt and debris;
2. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;
3. All resident areas shall be free of noxious odors;
4. All facility furnishings shall be clean and in good repair, and facility mechanical equipment shall be in working order. Broken or worn items shall be repaired, replaced, or removed promptly;
5. All equipment and materials necessary for cleaning, disinfecting, sanitizing, and sterilizing (if applicable) shall be provided;
6. Thermometers which are accurate to within three degrees Fahrenheit shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration, in accordance with Chapter XII of the New Jersey Sanitary Code, N.J.A.C. 8:24, copies of which are available by contacting the Residential Health Care Survey Program of the Department at (609) 633-8993;
7. Sufficient and adequately lighted storage space shall be provided in the facility for the proper storage of residents' clothing, linens, drugs, food, cleaning and other supplies;
8. Articles in storage shall be elevated from the floor and away from walls (if moisture is present), ceilings, and air vents;
9. Unobstructed aisles shall be provided in storage areas;
10. Effective and safe controls shall be used to minimize and eliminate the presence of rodents, flies, roaches and other vermin in the facility. The premises shall be kept in such condition as to prevent the breeding, harborage, or feeding of vermin. All openings to the outer air shall be effectively protected against the entrance of insects;
11. Items that come in contact with open skin or mucous membranes shall be sterilized or, at a minimum, receive high level disinfection;

12. Items that come in contact with intact skin, such as bedpans, toilets and sinks, shall be disinfected, using a process for disinfection established by the facility as specified above, at N.J.A.C. 8:43-15.2; and

13. Toilet tissue, soap, paper towels or air dryers, and waste receptacles shall be provided in each bathroom at all times. Resident's personal cloth towels may be used instead of paper towels in private or semi-private bathrooms. A self-draining dish or device shall be provided for storage of bar soap, if bar soap is used.

(b) The following safety conditions shall be met:

1. Scatter rugs shall not be permitted, except that residents may have the option to use scatter rugs which have non-skid backing in individual resident bedrooms. The facility shall ensure that scatter rugs are only used in a manner that does not jeopardize resident safety. Floors shall be coated with slip-resistant floor finish. Carpeting shall be kept clean and odor free and shall not be frayed, worn, torn, or buckled;
2. Pesticides shall be applied in accordance with N.J.A.C. 7:30;
3. All household, cleaning and personal care products in the facility shall be identified and labeled. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room. The facility shall ensure that all household and cleaning products in a resident's possession are stored in the resident's locked room or other secure location. The telephone number of the poison control center shall be conspicuously posted in the facility;
4. Combustible materials shall not be stored in heater rooms or within 18 feet of any heater;
5. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in closed metal cabinets or containers and away from open flames and other sources of heat;
6. Wastebaskets and ashtrays shall be made of non-combustible materials;
7. If pets are allowed in the facility, the facility shall provide safeguards to prevent interference in the lives of residents. (See recommendations concerning pet facilitated therapy, chapter Appendix C).
8. The use of open fireplaces shall be restricted to the living and recreation rooms of the building;
 - i. When a fireplace is in use it shall be protected by a metal screen or glass enclosure;
 - ii. When a fireplace is in use it shall be under the supervision of a responsible employee;
 - iii. All ashes shall be kept in metal containers;