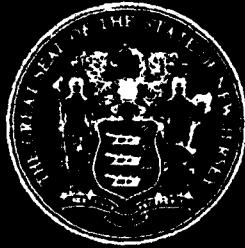


NEW JERSEY REGISTER



THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 26 NUMBER 22
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 (Includes adopted rules filed through October 27, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: SEPTEMBER 19, 1994
 See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT OCTOBER 17, 1994

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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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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

**OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 25(1994)
Day-Off on November 25, 1994
for State Executive Departments Employees**

Issued: October 20, 1994.
Effective: October 20, 1994.
Expiration: Indefinite.

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. November 25, 1994, the day following Thanksgiving, shall be granted as a day off to employees who work in the Executive Departments of State Government and who are paid from State funds or from federal funds made available to the State, whose functions, in the opinion of their appointing authority, permit such absence.

2. An alternate day shall be granted to the aforementioned category of employees whose functions, in the opinion of their appointing authority, precludes such absence on November 25, 1994.

(b)

**OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 26(1994)
Method of Bond Sale; Selection of Financial
Advisors, Senior Managers and Co-Managers;
Selection of Bond Counsel; Appointment of
Architects, Engineers and Accountants; 30-day
Reports; Annual Debt Management Plan**

Issued: October 25, 1994.
Effective: January 1, 1995.
Expiration: Indefinite.

WHEREAS, the policies and procedures of the State with regard to the issuance of bonds, notes and other obligations (hereinafter "bonds") and the awarding of underwriting, bond counsel, architectural, engineering and other professional contracts were established by Executive Order No. 79 issued on January 12, 1993 and Executive Order No. 92 issued on May 4, 1993; and

WHEREAS, it was recognized that an analysis of the effect of these policies and procedures should be conducted by the Executive Branch after they had been in place for a number of months and that, in connection with such analysis, it was appropriate to solicit the views of the public and of the affected issuers, service providers and professionals; and

WHEREAS, Executive Order No. 6 issued on January 27, 1994 created an Advisory Panel on Government Contracting Procedures (hereinafter "Advisory Panel") and directed that the Advisory Panel make a comprehensive review of the existing procedures for: the issuance of bonds; the selection of underwriters in connection with the issuance of bonds; the retention of attorneys or law firms in connection with the issuance of bonds; and the retention of any engineering, architectural or other professional firms; and

WHEREAS, the Advisory Panel was directed to report its findings and detailed recommendations as to whether the existing procedures should remain in place or be altered in order to better accomplish the goals of achieving the best economic results with the highest quality of service and integrity in the award of State contracts at the lowest cost; and

WHEREAS, the Advisory Panel has issued its report, dated July 29, 1994, which sets forth its recommendations with respect to the policies and procedures that were implemented in accordance with Executive Order No. 79 and No. 92; and

WHEREAS, the Advisory Panel has recommended modifications to the present procedures that will ensure that the citizens of the State are informed of specific criteria applied in the selection of the method of bond sale and the selection of professionals; and

WHEREAS, implementation of the Advisory Panel's recommendations will help to ensure that the methods used by the State, its agencies and authorities for issuing bonds and awarding contracts for professional services will secure public confidence and result in the receipt of the highest quality service at the lowest prices;

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:

METHOD OF BOND SALE

1. The policy of the State generally requiring that all bonds of the State and its agencies and authorities (hereinafter "issuers" or "contracting entities") to be sold on a competitive basis is hereby continued. In certain circumstances, however, where it is determined that a negotiated sale would better serve the requirements of a particular financing, negotiated sales may be conducted, if otherwise permitted by law. The circumstances under which a negotiated bond sale shall be permitted shall include the following:

- Sale of complex or poor credits;
- Sale of a complex financing structure, including those transactions that involve the simultaneous sale of more than one series with each series structured differently;
- Volatile market conditions;
- Large issue size;
- Programs or financial techniques that are new to investors; and
- Variable rate transactions.

2. Where issuers engage in similar types of transactions on a somewhat regular basis, such issuers may make determinations with respect to the method of sale, consistent with section 1 of this Order, which will be utilized for two or more transactions, provided that the transactions are part of a larger bonding program of similarly secured financings. In this instance, issuers shall render public determinations with respect to these financing programs at least annually.

3. Any decision of an issuer regarding the method of sale for a bond issue shall be made by resolution which shall be available to the public. If the issuer is the Treasurer of New Jersey (the "Treasurer"), the Treasurer shall render a written determination which shall be available to the public. When an issuer determines that the sale of bonds should be negotiated with an underwriter based on the standards enumerated in section 1 of this Order, justification in support of such a decision should not be stated in general terms, but should be specific to the particular bond sale. Such findings shall be filed with the Treasurer within five (5) days of the decision.

SELECTION OF FINANCIAL ADVISORS, SENIOR MANAGERS AND CO-MANAGERS

4. Issuers whose bonds are secured by appropriations from the State's General Fund, the full faith and credit of the State or otherwise in whole or in part by State revenues, shall adhere to the following procedures and criteria in connection with the selection of financial advisors, senior managers and co-managers:

a. A request for proposal and criteria for selection shall be developed by the issuer and the Treasurer for each financing. Criteria for such selection shall include, but not be limited to, the following:

- Quality of response regarding the proposed bond structure, credit, and/or marketing strategy;
- Sophisticated cash flow capabilities as required by a particular financing;
- Development of a new idea;
- Demonstrated ability to distribute New Jersey securities;
- Quality of relevant service to the State in previous transactions;
- Experience with similar financings in which the firm and its proposed financing team participated;
- Proposed fees for the particular bond sale; and
- Sufficient capital to participate in underwriting the issue.

b. The issuer shall provide particular consideration for firms with a presence in New Jersey and for minority-owned and women-owned firms.

c. The issuer and the Treasurer shall select the financial advisor, senior manager and/or co-manager for the financing.

d. The firm(s) solicited, the firm(s) selected and criteria applied in connection therewith shall be made available to the public.

e. Such procedures may include a process whereby a group, or "pool," of financial advisors, senior managers and/or co-managers may be utilized for two or more transactions, provided that the transactions are part of a larger bonding program of similarly secured financings. Issuers may select from such pools without soliciting separate proposals provided the pools are established via procedures and criteria consistent with this Order.

5. Issuers, other than those referred to in section 4 of this Order, shall: (a) formulate procedures consistent with the above criteria for the selection of financial advisors, senior managers and/or co-managers; (b) select such financial advisors, senior managers and/or co-managers based on said procedures and criteria; and (c) make the selection, procedures and criteria available to the public. Such procedures shall provide for an open and competitive process. Information regarding the firm(s) solicited, the firm(s) selected and criteria applied shall also be made available to the public by issuers.

6. Issuers shall undertake the selection process outlined in section 4 of this Order except in those rare instances in which each of the following three criteria have been met:

- a. An innovative idea has been brought to the issuer;
- b. A request for proposal cannot be constructed without communicating the new idea; and
- c. The issue would not benefit from a competitive selection process.

SELECTION OF BOND COUNSEL

7. Appointments of bond counsel shall generally be made on a competitive basis where price is a factor but not the sole factor. The Attorney General of New Jersey (the "Attorney General") shall develop guidelines for the solicitation of such counsel. However, where unusual circumstances may require the appointment of bond counsel with a particular expertise, such as unique prior experience with a transaction, direct appointments shall be permitted.

8. When bond counsel appointments are made pursuant to N.J.S.A. 52:17A-13 or where the Attorney General acts as general counsel to an issuer, the Attorney General shall establish procedures for the appointment of bond counsel on a competitive basis and under criteria that place great weight on the bond counsel's qualifications and suitability for a particular transaction as well as the bond counsel's fee proposal.

- a. Such criteria shall include, but not be limited to, the following:
 - 1) Experience of the bond counsel and the proposed team with similar transactions;
 - 2) Familiarity with the State laws relevant to the proposed bond issue;
 - 3) Proficiency with securities, tax and other laws relevant to the financing;
 - 4) Quality of proposed legal strategy with respect to specific questions posed in the request for proposal;
 - 5) Quality of past legal services rendered to the State and its authorities; and
 - 6) Fees.

b. Such procedures and criteria may include a process whereby a group, or "pool," of bond counsel firms may be appointed to serve as counsel to frequent bond issuers for a term not to exceed two years. Issuers may select from such pools without soliciting separate proposals for each bond issue, provided the pools are established via procedures and criteria consistent with this Order. This "pool" process shall, where appropriate, involve the establishment of a fee schedule for such transactions at the outset of the term.

c. Such procedures and criteria may include a process whereby bond counsel may be utilized for two or more transactions, provided that the transactions are part of a larger bonding program of similarly secured financings and further provided such procedures and criteria are consistent with this Order.

9. In cases where the Attorney General is not statutorily required to appoint bond counsel or does not serve as general counsel to an issuer, issuers are hereby directed to establish their own competitive appoint-

ment processes based on the criteria enumerated in section 8 of this Order to ensure the selection of the most qualified firms at the lowest possible fees.

10. In establishing policies and procedures for the selection of bond counsel, issuers and the Attorney General shall provide particular consideration for New Jersey law firms and minority-owned and women-owned law firms.

11. The policies and procedures established by issuers with respect to the appointment of bond counsel, as well as procedures established by the Attorney General in accordance with N.J.S.A. 52:17A-13, shall be available to the public.

APPOINTMENT OF ARCHITECTS, ENGINEERS AND ACCOUNTANTS

12. The State and its contracting entities shall continue to utilize, to the fullest extent practicable, competitive practices for the selection of architects, engineers and accountants. Contracting entities shall establish their own procedures for competitive selection of architects, engineers and accountants. Such practices shall be aimed at the fundamental goals of ensuring that each contracting entity of the State will receive the best services at the lowest costs. Information regarding such procedures shall be made available to the public.

13. Any selection of architects, engineers and accountants shall include particular consideration for minority-owned and women-owned firms.

30-DAY REPORTS

14. Within 30 days of the closing of a bond issue, the allocation of bonds and fees received by each member of the underwriting syndicate and a breakout of the costs of issuance paid by the issuer shall be reported to the Treasurer and be publicly available.

ANNUAL DEBT MANAGEMENT PLAN

15. Each issuer shall annually, on or before January 31, render a debt management plan with respect to its bond financing programs to the Treasurer. This plan shall include information on the outstanding debt and debt service costs for the prior and current year and shall also describe the proposed bond issues for the year outlining the size and purpose of each transaction; the expected sale date of the issue; the security and expected ratings for each transaction; the expected method of sale and the method of selecting financial professionals consistent with the terms of this Order.

APPLICATION AND EFFECTIVE DATE

16. This Order shall apply to the State, its agencies and all authorities that are required to submit their minutes, resolutions or actions for gubernatorial approval or veto. Additionally, the State's participation in all other financings shall, to the extent practicable, be conditioned on compliance with the procedures and criteria set forth herein. "State's participation" includes, but is not limited to, instances in which a financing: 1) is secured directly or indirectly by the moral obligation of the State; or 2) is secured or financed directly or indirectly by State appropriations; or 3) includes as part of an issuer's offering statement State financial information. The determination as to whether it is practicable to apply this Order to such financings shall be made concurrently by the Treasurer and Attorney General.

17. This Order shall take effect on January 1, 1995 (the "effective date") and shall supersede Executive Order No. 79(Florio) and Executive Order No. 92(Florio) as of that date; however, any agency and authority required to comply with the terms of this Order may do so prior to the effective date and in lieu of the terms of Executive Orders No. 79 and No. 92, provided such agency or authority has adopted the procedures necessary to comply with all aspects of this Order.

SUBSEQUENT REVIEW

18. The Advisory Panel is hereby directed to reconvene and hold at least one public hearing on or about one year from this Order's effective date for the purpose of obtaining public testimony regarding the implementation of this Order. Thereafter, the Advisory Panel shall recommend modifications, if any, necessary to better achieve the objectives of this Order as expressed above.

RULE PROPOSALS

BANKING

(a)

NEW JERSEY CEMETERY BOARD

Organizational Meetings

Proposed New Rule: N.J.A.C. 3:40-1.9

Authorized By: New Jersey Cemetery Board, William B. Waits, Executive Director.

Authority: N.J.S.A. 8A:2-1 and 2.

Proposal Number: PRN 1994-611.

Submit comments by December 21, 1994 to:

Rule Comments

Attn: William B. Waits, Executive Director

New Jersey Cemetery Board

Department of Banking, CN 040

20 W. State Street

Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed new rule would require the Cemetery Board to elect a Chairman and Vice-Chairman at its first meeting each calendar year. It also provides that the Board may elect a Secretary and any other officer which it deems appropriate.

If defines the duties of the Chairman to include setting dates for meetings of the Board, setting agendas for Board meetings in consultation with the Executive Director, presiding at Board meetings, appointing committees of the Board, and providing general oversight of, and policy guidance to, the Board office between meetings.

The duties of the Vice-Chairman are defined as those of the Chairman and shall be performed by the Vice-Chairman when the chairman is absent or recused. The duties of the Secretary are defined as the duties of the Chairman and may be exercised when the Chairman and Vice-Chairman are absent or recused. In addition to these duties, the Board may assign such other duties to its officers as it deems appropriate.

The proposed rule would also provide for an election if an officer is no longer able to serve. Finally, the proposed rule would clarify the relationship between ex officio members of the Board and their designees when either has been elected to a Board office.

Social Impact

As this proposed rule concerns the internal operations of the Cemetery Board, it would have minimal social impact.

Economic Impact

For the reasons stated above, this proposed rule would have virtually no economic impact. The only cost involved is the time of the Board required to take the necessary votes. This is expected to be minimal.

Regulatory Flexibility Analysis

The proposed rule would impose no recordkeeping, reporting or compliance requirements on the cemetery companies regulated by the Cemetery Board. Nor would it impose any such burden on any entity other than the Board itself and that burden is minimal as indicated above.

Therefore no further regulatory flexibility analysis is required, as the rule does not affect any small business as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows:

3:41-1.9 Organizational meetings

(a) The Board shall elect the following officers from among its members annually at the first Board meeting of each calendar year, which officers shall exercise the following duties:

1. A Chairman, who shall:

i. Schedule meetings of the Board;

ii. Set the agendas for Board meetings in consultation with the Executive Director, except that this shall not be deemed to bar any member of the Board or the Counsel to the Board from having a matter placed on the agenda of the next meeting;

iii. Preside at meetings of the Board;

iv. Appoint committees of the Board; and

v. Provide general oversight of, and policy guidance for, the operations of the Board office between meetings; and

2. A Vice-Chairman, who shall perform the functions of the Chairman during the absence or recusal of the Chairman.

(b) The Board may, at its discretion, elect the following officers from among its members annually at the first Board meeting of each calendar year, which officers shall exercise the following duties:

1. A Secretary, who shall perform the functions of the Chairman during the absence or recusal of both the Chairman and the Vice-Chairman; and

2. Any other officer which the Board may deem appropriate, who shall exercise whatever duties the Board may specify.

(c) In addition to the duties set forth in (b) and (c) above, each officer shall exercise such other duties as are customarily exercised by one holding such office, and such other duties as may be specified by the Board in its minutes.

(d) In the event that neither the Chairman, Vice-Chairman, or Secretary are present to preside at a meeting, the members of the Board who are present, provided that they constitute a quorum, shall elect from among their number a Chairman pro tempore who shall preside at that meeting.

(e) In the event that a person who has been serving as an officer of the Board is no longer a member of the Board, or if a person who has been serving as an officer of the Board resigns as an officer but remains a member of the Board, an election to fill the office vacated by the person shall be held at the next meeting of the Board.

(f) The exercise of the rights and duties of Board offices shall be personal to the member who is elected. Therefore, if an ex officio member of the Board namely the Attorney General, the Commissioner of Banking and the Commissioner of Health pursuant to N.J.S.A. 8A:2-1, is elected to a Board office, the designee of that ex officio member may not exercise the rights and duties of the office, and if a designee of an ex officio member of the Board is elected to a Board office the ex officio member may not exercise the rights and duties of the office.

ENVIRONMENTAL PROTECTION

(b)

WATER MONITORING MANAGEMENT BUREAU OF MARINE WATER CLASSIFICATION AND ANALYSIS

Shellfish Growing Water Classifications

Proposed Amendments: N.J.A.C. 7:12-1.2, 2.1, 3.2, 4.1, 4.2 and 9.1

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

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.

DEP Docket Number: 46-94-10/490.

Proposal Number: PRN 1994-609.

Submit written comments, identified by the DEP docket number above, by December 21, 1994 to:

Janis E. Hoagland, Esq.

Office of Legal Affairs

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) proposes to amend its rules on the classification of certain shellfish beds as the result of surveys conducted by the Bureau of Marine Water Classification and Analysis.

N.J.S.A. 58:24-1 requires the Department to inspect places within the State's jurisdiction from which oysters, clams or other shellfish are taken to be distributed or sold for use as food. In conducting these inspections, the Department's purpose is to ascertain the sanitary conditions of these shellfish beds, and to determine whether shellfish from those beds are suitable for use as food. N.J.S.A. 58:24-3 requires the Department to prohibit the taking of shellfish from places in which pollution or other conditions may make the shellfish dangerous to health.

The Department implements these statutory mandates through its Shellfish Growing Water Classification rules, currently codified at N.J.A.C. 7:12. Since 1961, the Department has amended these rules nearly every year, to reclassify shellfish growing waters based upon improvement or deterioration in water quality. N.J.A.C. 7:12 delineates the areas from which shellfish pose a danger to health.

The rules prohibit the use of shellfish from those areas for the purpose of human consumption, or impose specific conditions on harvesting for that use in order to protect public health. Under the statute, distributing, selling, offering shellfish for sale, or having shellfish in possession with the intent to distribute or sell is *prima facie* evidence that such shellfish is intended for use as food. N.J.S.A. 58:24-4.

The rules also establish special permit programs to allow some limited use of shellfish from waters in which the harvest is restricted. The Department made significant changes to the special permit rules in 1990 by revising provisions governing hard clam and soft clam depuration (that is, the process that uses a controlled aquatic environment to reduce the levels of bacteria and viruses) and revising other existing provisions of the rule.

| Chart # | Area | Action | Acres |
|---------|-----------------------------|---------------------------------|-------|
| 8 | Pecks Bay | Approved to Seasonally Approved | 102 |
| 8 | Middle River | Approved to Seasonally Approved | 76 |
| 10 | Delaware River | Special Restricted to Approved | 5,476 |
| 10 | Delaware Bay Fortescue area | Approved to Seasonally Approved | 544 |

The reclassification described reflects a continuing general trend of improvement in shellfish water quality. The proposed upgrading in the classification is the result of improved water quality as determined by increased monitoring. The downgrading of 722 acres from Approved to Seasonally Approved is attributed to either (1) the degradation in water

The proposed amendments will revise the classification of certain shellfish beds.

In conducting its surveys, the Bureau collects and analyzes water samples, inventories actual and potential sources of pollution, and performs hydrographic studies of water flow patterns which distribute pollution. These surveys are conducted in accordance with applicable State and Federal (Food and Drug Administration (FDA)) guidelines and regulations as described in the National Shellfish Sanitation Program Manual of Operations (Part I-Sanitation of Shellfish Growing Areas) (hereinafter NSSP). The FDA further requires that each state annually appraise the quality of those waters classified as "Approved" for the harvest of shellfish. New Jersey conducts scientific investigation work and research and, pursuant to N.J.S.A. 58:24-1 et seq., revises its Shellfish Growing Classification Rules annually.

The proposed amendments will result in the reclassification of approximately 6,198 acres of harvest water area of which approximately 4,754 acres are to be upgraded, reflecting an improvement in the overall water quality. The names of the waterways and number of acres to be reclassified are listed below in general terms. Pursuant to N.J.A.C. 7:12-1.2, "Approved" means waters meeting the minimum sanitary requirements for year-round shellfish harvesting; "Seasonal" means waters meeting the sanitary requirements for harvesting part of the year; "Special Restricted" means waters not meeting the sanitary requirements to harvest except by special permit; and "Prohibited" means waters not meeting the sanitary requirements for shellfish harvesting:

quality or (2) the establishment of a closed buffer zone around a marina as required by the NSSP. The following table illustrates that trend, listing the increase in acreage under each classification from year to year since 1977 (with decreases in acreage listed in parentheses):

| Year | Approved | Seasonal | Special Restricted | Prohibited |
|-------|----------|----------|--------------------|------------|
| 1977 | (113) | 0 | 0 | 113 |
| 1978 | (5,400) | 1,280 | (524) | 4,644 |
| 1979 | 2,733 | 4,260 | 0 | (6,993) |
| 1980 | 8,719 | 5,613 | (1,582) | (12,750) |
| 1981 | 5,080 | (1,925) | (206) | (2,949) |
| 1982 | 150 | (346) | (15) | 211 |
| 1983 | 2,240 | 4,460 | (273) | (6,427) |
| 1984 | 5,226 | (3,063) | (680) | (1,483) |
| 1985 | 242 | 93 | (80) | (255) |
| 1986 | (853) | (582) | (92) | 1,527 |
| 1987 | (153) | (35) | 31,464 | (31,276) |
| 1988 | (1,405) | 1,250 | (725) | 880 |
| 1989 | 1,411 | (766) | (580) | (65) |
| 1990 | 2,700 | 3,270 | (350) | (5,620) |
| 1991 | 13,137 | (934) | 343 | (12,546) |
| 1992 | 1,329 | 283 | (27) | (1,585) |
| 1993 | 318 | (178) | (87) | (53) |
| 1994* | 4,754 | 722 | (5,476) | 0 |

*Under proposed amendments

Social Impact

For the reasons discussed below, the Department believes that N.J.A.C. 7:12 has had a positive social impact. The proposed amendments to N.J.A.C. 7:12-2 will enhance that positive impact.

History has shown a direct connection between the consumption of shellfish harvested from contaminated areas and human illness. However, the last major incidence of a shellfish-related illness from New Jersey waters was in 1966. Since then, greater emphasis has been placed on the classification of shellfish-producing waters and the consequent

restriction of shellfish harvesting to areas meeting sanitary standards. The National Shellfish Sanitation Program developed a manual of operations that became the guiding document in the sanitary control of shellfish harvest areas. New Jersey expanded the use of the special permit programs in the early 1970s. These programs capitalized on the natural ability of shellfish to purge bacterial contamination when moved from a contaminated site to a clean site. Revisions to the rules governing these programs have been implemented over the years as technology has changed.

Increased public awareness of the extensive shellfish water quality testing and the intensive surveys that comprise the basis for these rules continues to reveal a high regard for New Jersey shellfish quality.

In addition to the more than 13,000 persons licensed to harvest shellfish, the adoption of these amendments would benefit the far greater number of consumers who utilize the shellfish harvested from New Jersey waters. While the downgrading of specific waters may, in limited cases, reduce localized recreational opportunities, the net effect of adopting the amendments will be to increase such opportunities by making more waters available for harvest. The continued monitoring efforts undertaken by the Department insure that the State's shellfish resource remains a wholesome food product, available to both recreational and commercial harvesters.

Economic Impact

For several years, there has been a general trend of improvement in shellfish water quality. In each of the last seven years, more acreage has been classified as Approved or Seasonally approved as a result of improved water quality. Much of the improved water quality has been in areas that have been off limits to shellfishing for several years. The resulting reclassification have made available a new shellfish resource for harvest and direct marketing.

The shellfish growing water reclassification contained in these amendments represents an increase in the availability of harvest water to shellfishermen. The overall economic impact of these regulatory changes will therefore be favorable to the shellfish industry while allowing the Department to fulfill its statutory responsibility to protect the public health.

Environmental Impact

The continuous monitoring of New Jersey's shellfish growing waters benefits the State not only by affording protection from shellfish related disease, but also by serving as an environmental yardstick by which the progress of pollution abatement programs can be measured.

In addition, the demand for increased recreational, residential and commercial facilities in New Jersey's coastal zone continues to present a dilemma to environmental planners. The level of discord associated with the conflicting interests that depend upon publicly owned and managed natural resources can only be expected to increase. Therefore, the need for an objective method of evaluating the impact of man's activities upon complex estuarine and marine systems is increasing. The criteria associated with the National Shellfish Sanitation Program, which forms the basis for these water quality classifications, are but one suggested method that can be utilized to quantify the impact of development.

The proposed amendments represent a tangible measurement of the quality of New Jersey's surface waters as well as providing a historical record for future comparison. The proposed amendments will have a positive environmental impact by sanctioning the extensive monitoring efforts upon which the specific changes herein are based.

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 the adoption of these proposed amended rules will not impose additional reporting or recordkeeping requirements on small business. The proposed amendments, except for the change in the definition of "Department" and "Division", delineate areas from which shellfish may be harvested and those areas from which shellfish may not be harvested. Compliance with the restrictions imposed on those areas is required of all harvesters regardless of business size in order to maintain a safe shellfish resource.

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

7:12-1.2 Definitions

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

...
 "Department" means the New Jersey Department of Environmental Protection [and Energy].

...
 "Division" means the Division of Science and Research in the Department of Environmental Protection [and Energy].

7:12-2.1 Shellfish growing water classification—Prohibited
 (a) The following shellfish growing waters are classified Prohibited:

- 1.-8. (No change.)
- 9. Atlantic City area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):
 - i.-ii. (No change.)
 - iii. All of Beach Thorofare from a line across Beach Thorofare bearing approximately 225 degrees T from the eastern side of the mouth of Penrose Canal at its junction with Beach Thorofare to a line from the northernmost tip of runway number [442] **22** (North-South runway) at Bader Field in Atlantic City and bearing approximately 033 degrees T across Beach Thorofare; and
 - iv. (No change.)
- 10.-20. (No change.)

7:12-3.2 Shellfish growing waters that are classified as Special Restricted

(a) The following shellfish growing waters are classified as Special Restricted:

- 1.-23. (No change.)
- 24. Pleasantville-Northfield-Linwood-Margate-Ventnor-Longport area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):
 - i.-ii. (No change.)
 - iii. All of Great Thorofare and all of Beach Thorofare from a line from the northernmost tip of runway number [422] **22** (North-South runway) at Bader Field in Atlantic City and bearing approximately 033 degrees T across Beach Thorofare to a line from the tip of the stone jetty at the end of Atlantic Avenue (Longport) and bearing approximately 336 degrees T across Beach Thorofare to the center of the Longport Blvd.-Route 152 bridge, that crosses an unnamed creek on the unnamed island immediately north and west of the city of Longport;
 - iv.-vi. (No change.)
- 25.-32. (No change.)

33. Delaware River area:

i. All of the New Jersey portion of the Delaware River and its tributaries thereof and the New Jersey section of Delaware Bay and its tributaries between the two lines described herein:

- (1) A straight line beginning at the tower [at Dunks Point and bearing approximately 237 degrees T across the bay passing through Nun Buoy 2 marking Arnold Point Shoal and terminating on the Delaware Shore] **just northwest of the mouth of Mad Horse Creek bearing approximately 173 degrees T to a tower on Bombay Hook Point, Delaware, this line intersects the New Jersey-Delaware boundary line at Latitude 39 degrees 21 minutes 16 seconds N., Longitude 75 degrees 26 minutes 44 seconds W.;** and
- (2) (No change.)
- (3) **All of Stow Creek and Mad Horse Creek.**

7:12-4.1 Seasonally Approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

- 1.-6. (No change.)
- 7. Ocean City-Somers Point Area-Great Egg Harbor Bay: Seasonal-Special Restricted May 1 through October 31, yearly, Approved November 1 through April 30 yearly;
 - i.-ii. (No change.)
 - iii. All the waters of Peck Bay contained within a line from the base of the 34th Street Bridge (Ocean City) and continuing along the Ocean City shoreline in a northeasterly direction to a Department maintained marker, then bearing approximately [310] **295** degrees T [(through R "282")] to another Department maintained marker on the mainland, then along the shoreline in a southerly direction to the base of the 34th Street Bridge and across the bridge to the point of origin and terminating.

iv.-v. (No change.)

8.-10. (No change.)

11. Delaware Bay area:

i.-vi. (No change.)

vii. Fortescue Beach: Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All waters northeast of a line from the southernmost tip of Beadons Point bearing approximately 154 degrees T to the westernmost tip of a point of land just south of Raybins Beach and just north of Fishing Creek (Cumberland County).

[vii.]viii. (No change in text.)

7:12-4.2 Seasonally Approved [Growing Waters] growing waters (Approved January 1 through April 30 yearly, Special Restricted May 1 through December 31, yearly)

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the harvest of shellfish from May 1 through December 31 yearly and Approved for the harvest of shellfish from January 1 through April 30 yearly:

1.-7. (No change.)

8. Great Egg Harbor River and Middle River: Seasonal-Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All that portion of Great Egg Harbor River and Middle River contained within a line beginning at Fl R "4" and bearing approximately 215 degrees T to the western shoreline in a northwesterly direction to Middle River, then along the [south shore] entire shoreline of Middle River [to the tributary leading to Swan Pond, then directly across Middle River and along the shore to Great Egg Harbor River] and including its tributaries, then along the shore of Great Egg Harbor River to a Department maintained marker, then bearing approximately 028 degrees T to Fl R "8", then along the northern and/or eastern shore of Great Egg Harbor River in a downstream direction to the point of origin at Fl R "4".

7:12-9.1 General Provisions; all programs

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

(c) Each application shall be accompanied by a fee in the amount of \$25.00 (check or money order made payable to Treasurer, State of New Jersey). Forms may be obtained from the New Jersey Department of Environmental Protection [and Energy], Bureau of Marine Water Classification and Analysis, Stoney Hill Road, P.O. Box 405, Leeds Point, New Jersey 08220, and New Jersey Marine Police stations located throughout the State. Duplicate permits may be issued upon written request to the Bureau of Marine Water Classification and Analysis at the aforementioned address if accompanied by a \$10.00 check or money order payable to the Treasurer, State of New Jersey.

(d)-(m) (No change.)

(a)

POLICY AND PLANNING/AIR QUALITY MANAGEMENT

Control and Prohibition of Air Pollution by Volatile Organic Compounds

Proposed Amendments: N.J.A.C. 7:27-16.1, 16.4, 16.8, 16.9, 16.10, 16.17 and 16.18

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

Authority: N.J.S.A. 13:1B-3, 13:1D-9 and 26:2C-1 et seq., in particular 26:2C-9(c) and 19.

DEP Docket Number: 47-94-10/486.

Proposal Number: PRN 1994-610.

A public hearing regarding the proposal will be held on: Wednesday, January 11, 1995 at 10 A.M.
DEP Public Hearing Room, 1st floor, East Wing
401 E. State Street
Trenton, New Jersey

Submit written comments by January 18, 1995 to:

Janis E. Hoagland, Esq.

Office of Legal Affairs

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625-0402

The proposed amendments and new rules will become operative 60 days after adoption (see N.J.S.A. 26:2C-8).

The agency proposal follows:

Summary

The Department of Environmental Protection is proposing amendments to existing rules at N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (subchapter 16). Subchapter 16 establishes standards and requirements for specified types of equipment and source operations capable of emitting volatile organic compounds (VOCs) into the atmosphere.

On August 2, 1993, proposed new rules and amendments to this subchapter were published in the New Jersey Register at 25 N.J.R. 3339(a). Those new rules and amendments established Reasonable Available Control Technology (RACT) requirements for several source categories not previously subject to those requirements. That proposal was adopted on May 27, 1994 and was published on June 20, 1994 at 26 N.J.R. 2600(a).

The amendments proposed herein are in direct response to some of the public comments received during the public comment period for the VOC RACT proposal. Although the Department found merit in the changes recommended by these commenters, the changes were considered too substantive to be incorporated without soliciting additional public comment. The specific changes proposed are discussed below.

The comments previously submitted to the Department included comments from a workgroup on leak detection and repair (the "LDAR" workgroup) which met throughout 1992-1993. Further comments on specific issues were submitted by individual members of this group in response to a request of the Department at the public hearing held on September 9, 1994. Other members of the regulated community submitted data during the public comment period which directly impact the provisions proposed herein.

Other minor amendments have come to the attention of the Department through the implementation of the VOC RACT regulations.

N.J.A.C. 7:27-16.1 Definitions

The definition of "source operation" is proposed to be modified to clarify the relationship of this term to the Federal term "emissions unit" and the term "equipment." As proposed, the term is consistent with the definition of "source operation" in the recently adopted N.J.A.C. 7:27-22, Operating permits.

N.J.A.C. 7:27-16.4 VOC transfer operations, other than gasoline

Whether or not a stationary tank or delivery vessel is subject to requirements under N.J.A.C. 7:27-16 is based on a calculation of estimated annual emissions from transfers into the storage tank or delivery vessel. For both types of transfers, the calculation is based upon the emission factor (vapor pressure multiplied by the molecular weight multiplied by a constant, 0.000024) of the VOC being transferred, and the quantity of the VOC transferred annually.

In the proposed amendments, the method of calculating annual emissions from VOC transfer operations is modified to specify that the vapor pressure of the VOC at the temperature at the point of transfer is to be used if the VOC is cooled (as opposed to the vapor pressure of the VOC at standard conditions). The amount of VOC emissions from a liquid is directly proportional to the vapor pressure of the VOC liquid. If the VOC to be transferred is cooled, it would be inaccurate to use the vapor pressure of the VOC at standard conditions ("standard conditions" means 70 degrees Fahrenheit and one atmosphere pressure) as the greater vapor pressure at this higher temperature would overestimate the amount of emissions.

While the existing rules consider the situation where the VOC is heated (and thus above standard conditions), they do not allow consideration of the opposite condition, when the VOC is cooled. These proposed amendments add such a consideration, augmenting the existing method of calculating emissions from the transfer of VOCs other than gasoline.

Changes are proposed to N.J.A.C. 7:27-16.4(f) and (g) to include in the scope of this section, tanks other than storage tanks (such as process reactor tanks) which are involved in the transfer of non-gasoline VOCs resulting in annual emissions of 2,000 pounds of VOC or greater. It was

not the previous intention of the Department to exclude such tanks and emissions from the requirements of this section. Without this change, process reactor tanks which meet the applicability criteria (located at a major facility and emit three pounds per hour of VOC) would be required to submit facility specific VOC control plans pursuant to N.J.A.C. 7:27-16.17.

A clarification is proposed in N.J.A.C. 7:27-16.4(l) to eliminate the implication that delivery vessels must be vapor-tight at all times, even during transfer of the VOCs.

N.J.A.C. 7:27-16.8 Boilers

In the existing rules, N.J.A.C. 7:27-16.8(k) provides, when an owner or operator submits a Repowering Plan pursuant to N.J.A.C. 7:27-19, an opportunity to submit facility-specific CO limits as an alternative to those specified in N.J.A.C. 7:27-16.8(b) as part of the facility's proposed Repowering Plan. These proposed amendments expand that opportunity to allow an owner or operator to also submit facility-specific VOC limits as part of the facility's proposed Repowering Plan. The rationale for allowing facility-specific VOC limits is the same reasoning that supports the existing provision for facility-specific CO limits. The Department feels it is also appropriate, in some cases, for a facility to implement CO and VOC limits other than those specified in N.J.A.C. 7:27-16 during this interim period.

Repowering encourages the replacement of older higher-polluting units with new very low polluting units which must meet state-of-the-art emissions limits. Repowering reduces the amount of emissions by 90 percent in most cases. Recent proposed amendments to N.J.A.C. 7:27-19, Control and Prohibition of Pollution from Oxides of Nitrogen (the NO_x RACT rule) expand the repowering option to all sources regulated under the NO_x RACT rule. As part of the Repowering Plan which must be submitted to the Department for approval, an owner or operator must specify the "interim RACT" measures which will be employed until the source is repowered (no later than May 1, 1999).

The framework for establishing "interim RACT" closely resembles the framework for establishing facility-specific RACT. An "interim RACT" analysis, however, reflects the limited useful life that a control technology is likely to have in a source that is to be repowered. A limited useful life results in lesser emission reductions which means that the cost must be lower if the control technology is to be reasonable. Accordingly, the Department will consider such facility-specific factors in reviewing alternative VOC and CO limits submitted as part of a Repowering Plan.

This revision is proposed for N.J.A.C. 7:27-16.8(k) for boilers that are to be repowered and for N.J.A.C. 7:27-16.9(j) for stationary gas turbines that are to be repowered.

N.J.A.C. 7:27-16.9 Stationary gas turbines

The emissions limit for carbon monoxide (CO) applicable to stationary gas turbines is proposed to be modified (from the August 2, 1993 proposal) to 250 parts per million by volume, dry basis at 15 percent oxygen. This value is based on testing data submitted to the Department which indicates that the originally proposed value of 100 parts per million by volume, dry basis at 15 percent oxygen, is not reasonably achievable at this time, which data led the Department to "reserve" this provision of the rule when it acted on the rest of the proposal in May 1994 (see 26 N.J.R. at 2624).

Data was submitted by several commenters, including Public Service Electric and Gas Company. The data resulted from tests on engines to determine maximum and minimum emissions, as well as variability of emissions. The data included results from minimum, base, peak and maximum peak load points obtained for gas and/or oil firing. Graphs developed from the data demonstrate that a CO emission limit of 100 parts per million by volume, dry basis at 15 percent oxygen is unattainable without the addition of overly expensive control technology for the purpose of RACT at this time. Many existing turbines would require stack extensions and CO catalysts. This would go beyond the scope of reasonably available control technology (RACT) to reduce emissions. Further, this would also go beyond the Department's stated policy of using CO limits only to ensure that sources do not comply with NO_x control requirements by increasing their VOC emissions; the Department's policy is not to require the installation of controls to meet these CO limits at this time. However, it is the intent of the Department that the combustion sources achieve emissions reductions in the future beyond what is required in the NO_x RACT. The Department expects owners of turbines to continue to test other control methodologies and

be prepared to implement further reductions by May 1, 1999 and by May 1, 2003, targeted dates for attainment of the ozone air quality standard.

N.J.A.C. 7:27-16.10 Stationary internal combustion engines

In response to comments to its 1993 proposal, the Department decided to reserve its provision imposing certain CO limits on stationary internal combustion engines (26 N.J.R. at 2624-2625). The CO emission limit applicable to stationary internal combustion engines is proposed to be modified to 500 parts per million by volume, dry basis at 15 percent oxygen, based on EPA's Alternative Control Techniques Document—NO_x Emissions from Stationary Reciprocating Internal Combustion Engines (EPA-453/R-93-032, July 1993). The CO emission limits for stationary internal combustion engines are intended to prevent sources from achieving reductions in oxides of nitrogen emissions by increasing their emissions of CO and VOC. Data presented in the EPA document cited above indicates that the proposed CO emission limits are achievable with various types of NO_x control technologies for internal combustion engines, including prestratified charge, nonselective catalytic reduction and low-emission combustion for rich-burn engines, and selective catalytic reduction and low-emission combustion for lean-burn engines. The proposed limits constitute RACT and will implement the Department's policy objective.

N.J.A.C. 7:27-16.17 Facility-specific VOC control requirements

In N.J.A.C. 7:27-17(a)1i, the conjunction "or" is replaced with the conjunction "and." The previous VOC RACT adopted rule, 26 N.J.R. 2600(a), was in error to use "or" in this provision. Facility-specific VOC control requirements apply only if the source is **both** not regulated elsewhere **and** not exempted in another part of the rule. The use of "or" does not make sense in respect to the intended meaning. For instance, it would not make sense to have facility-specific requirements that apply to sources that are regulated elsewhere (there would be no need for facility-specific requirements) or to require sources that are exempted from the subchapter to comply with facility-specific requirements (if they are exempted there should be no requirements). Hence, both conditions (not regulated elsewhere and not exempted) must be met to trigger the facility-specific requirements of this section.

This section is modified to include an exemption for currently permitted sources from the demonstration requirement of N.J.A.C. 7:27-16.17(b) that the source already meets 90 percent capture and 90 percent control. The exemption is for sources which have an existing permit and certificate that states the source is required to attain at least this level of control. Owners of those sources need only comply with that permit and certificate in order to be deemed in compliance with this section.

N.J.A.C. 7:27-16.18 Leak detection and repair

The applicability threshold for chemical plants that are required to implement a leak detection and repair (LDAR) program is proposed to be modified from including equipment that is in applicable VOC service for 300 hours to including equipment which processes a total quantity of applicable VOC greater than 550 tons per year. This applicability threshold generated an enormous amount of comment during the public comment period following the proposal of the VOC RACT regulations at 25 N.J.R. 3339(a). Many commenters challenged the reasonableness of establishing a threshold of 300 hours as the basis for implementing a RACT program, citing EPA's proposed use of 300 hours for regulating hazardous air pollutants, as a Maximum Achievable Control Technology (MACT) standard. The MACT standard, the commenters argued, is not intended or suggested by EPA to be used as a RACT standard. Other commenters pointed out the 300 hours/year equates to only 12.5 days of production in VOC service, and, since VOC emissions from equipment leaks are proportional to the time in VOC service, the costs in \$/ton of VOC emission reduction, associated with leak detection programs conducted on short duration processes is unreasonable. The Department agrees with these commenters that 300 hours is an inappropriate measure for the reasons identified by these commenters. The Department feels "hours in service" is not an appropriate parameter upon which to set the threshold for applying this rule to a diverse class of chemical plants. For some plants this threshold would cause the rule to apply to processes with minimal emissions.

Several of the commenters, including the public work group which was convened to provide input on the development of the initial proposal, recommended using a threshold applicability criteria of 1,100 tons per year of VOC produced (same as the applicability criteria for the synthetic

organic chemical or polymer manufacturing facilities). In evaluating that suggestion, the Department considered its objective of regulating chemical plants in the State with significant potential to reduce VOC emissions. These chemical plants have a broad spectrum of operations, some of which have no recycling of VOC in their processes and some which have a significant amount. For these reasons, the Department has decided that the appropriate trigger is a total quantity of 550 tons per year of VOC processed in equipment. The Department acknowledges that this approach differs from that employed for leak detection programs required for synthetic organic chemical or polymer manufacturing facilities, but feels it is appropriate given the wide variation in percentage of VOC recycled in chemical plant processes and the difficulty in estimating the amount of recycled VOC.

As in the existing rules for petroleum refineries and for synthetic organic chemical or polymer manufacturing facilities, only equipment at a chemical plant that is in contact with a substance that is at least 10 percent or greater by weight applicable VOC is subject to the LDAR requirements. Equipment which is in contact with a substance that is less than 10 percent by weight applicable VOC would not be a significant source of fugitive emissions. The low amount of VOC present in such a VOC could not justify inclusion in a LDAR program in terms of the amount of emissions that could be detected and eliminated.

The total quantity of applicable VOC processed in a year is the appropriate measure of concern to trigger a LDAR program as it is possible several specific types of VOCs may be processed in a particular piece of equipment. It is the aggregate quantity of all applicable VOCs processed that is of concern in implementing a LDAR program. The annual time period is appropriate for the types of facilities required to comply with the LDAR requirements. Many production records are kept on a yearly basis. The yearly timeframe is consistent with other planning, compliance and reporting activities in the Air Quality Management program.

Social Impact

The proposed amendments will have a positive impact on air quality by implementing VOC emissions control of previously unregulated sources. These provisions represent a significant component of projected reductions resulting from VOC RACT regulations. These amendments will reduce levels of ground level ozone and contribute to achievement and maintenance of the NAAQS for ozone. The proposed amendments will enable the State to meet its State Implementation Plan (SIP) commitments.

Economic Impact

The proposed amendment at N.J.A.C. 7:27-16.4 should reduce the cost of compliance for owners or operators who transfer VOC at temperatures below standard conditions by more realistically calculating emissions and hence eliminating unnecessary controls which may result from overestimating emissions.

The proposed amendment at N.J.A.C. 7:27-16.8 will increase compliance flexibility for those facilities which are planning to repower.

The proposed amendment at N.J.A.C. 7:27-16.17 will eliminate paperwork, and thus costs of compliance, for facilities with an existing air permit. The owner or operator need only comply with that permit to be deemed in compliance with the section; they need not submit the demonstration required by N.J.A.C. 7:27-16.17(b).

The CO emission limits proposed for both stationary gas turbines and stationary internal combustion engines are not anticipated to significantly increase operating costs. The proposed limits should not involve unreasonable expenses. These CO emission limits should decrease the need for additional controls relative to the CO emission limits previously proposed.

The proposed amendments at N.J.A.C. 7:27-16.18 presents an applicability threshold for requiring leak detection and repair (LDAR) programs at chemical plants. Since this source of fugitive emissions has not been previously regulated, it is anticipated the amendments will result in increased compliance costs for some facilities that are not currently implementing a LDAR program. The LDAR regulations for chemical plants will require annual testing of all pumps, valves and pressure relief devices in liquid service; quarterly testing of all compressors, valves and pressure relief devices in gas service; visual inspections of seals and pumps; and repair of leaks within an allotted time after they are detected. The total cost will depend on what equipment is present at a plant.

Some facilities already have in place a leak detection program and survey equipment on a regular basis for evidence of leaks. For these facilities, costs due to the additional requirement will be relatively low.

For other facilities which have no leak detection program, and perhaps poor housekeeping practices, the cost of the leak detection program will be more substantial.

In an effort to minimize those costs while still protecting air quality, the Department developed this requirement after lengthy public comment solicitation and discussion with members of the LDAR workgroup, which included representatives of the chemical industry.

For some chemical plants the proposed applicability threshold will not alter the number of process trains subject to LDAR requirements relative to the previously proposed applicability threshold (300 hours of operation), while some plants will reduce the number of subject process trains by 30 to 70 percent over the previously proposed threshold based on available estimates.

In certain situations, it should be noted, cost-effectiveness figures for LDAR programs have been reported as negative, meaning that there is actually a cost savings when LDAR programs are implemented due to the conservation of VOC product.

Environmental Impact

The Department expects the emission limits for stationary gas turbines and stationary internal combustion engines to avoid a negative impact that could otherwise result from misguided efforts to comply with the N.J.A.C. 7:27-19, the NO_x RACT rule. The emission limits are intended to prevent compliance with N.J.A.C. 7:27-19 from coming at the expense of increased VOC and CO.

The LDAR requirements at N.J.A.C. 7:27-16.18 will apply to approximately 1,000 chemical plants in the State and will substantially reduce fugitive VOC emissions, thus contributing towards the state's ongoing efforts to meet the health based National Ambient Air Quality Standard for ozone.

It is not anticipated that the other minor proposed amendments will have any direct negative or positive environmental impact.

Regulatory Flexibility Analysis

The proposed amendments will apply to some small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Stationary internal combustion engines and stationary gas turbines will normally achieve compliance with the proposed CO limits through relatively inexpensive adjustments to their combustion processes. The Department believes that small businesses will be able to comply with these requirements as a matter of routine maintenance along with annual testing of emissions.

It is not anticipated that the proposed change to N.J.A.C. 7:27-16.17(a) will impact small businesses other than to eliminate some confusion concerning how to interpret that provision. The proposed modification to N.J.A.C. 7:27-16.17(b) will decrease compliance requirements for small businesses that would be required to submit a facility-specific VOC control plan but already have an existing permit and certificate to operate. These businesses will not be required to submit a demonstration that the source already meets 90 percent capture and 90 percent control if the permit and certificate state the source is required to attain at least this level of control.

The Leak Detection and Repair applicability requirement for chemical plants will require approximately 1,000 additional facilities to implement a leak detection program, some of them small businesses. However, the currently proposed applicability threshold is less likely to have a negative impact on small businesses than the previously proposed 300 hour per year (of VOC service) threshold because the equipment threshold proposed herein (550 tons VOC per year) would not impact equipment that is used frequently to process relatively small amounts of materials. This current proposal is based on the amount of VOC processed by the equipment, thus making it less likely that small businesses will be affected by the rule. Costs are discussed in the Economic Impact above.

For most small businesses which are required to implement a LDAR program, the owner or operator of the small business will most likely find it more economical to conduct the LDAR program using in-house personnel rather than employ an outside service. Some small businesses, however, may decide to employ the professional services of an environmental engineer knowledgeable about air pollution control to perform the periodic inspections required under N.J.A.C. 7:27-16.18. The repairs required in a Leak Detection and Repair program are those that would occur even in the absence of such a program (as product would be lost otherwise). Thus the repairs required are not expected to incur additional costs to small businesses.

The change in the definition of "source operation" is a clarification and will not impose additional compliance requirements on small busi-

nesses. The changes proposed to N.J.A.C. 7:27-16.4 will reduce compliance requirements for small businesses who have process reactor tanks that emit greater than 2,000 pounds of VOCs annually by eliminating the need to submit facility-specific VOC control plans. The changes in N.J.A.C. 7:27-16.8 will increase compliance flexibility for small businesses that repower their boilers by providing an opportunity to establish interim VOC emission limits (in addition to CO limits) until the boiler is repowered. Small businesses that repower stationary gas turbines are afforded this same increase in flexibility in N.J.A.C. 7:27-16.9.

The Department has attempted to minimize the effect of the rules on small businesses to the extent possible permitted by Federal and State law and the Department's obligation to protect the public health, safety and welfare.

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

7:27-16.1 Definitions

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

...
 "Source operation" means any process or any identifiable part thereof that emits or can reasonably be anticipated to emit any air contaminant either directly or indirectly into the outdoor atmosphere. A **source operation may include one or more pieces of equipment or control apparatus which are used in a process or part thereof. This term includes the term "emissions unit" as defined at 40 CFR 70.2.**
 ...

7:27-16.4 VOC transfer operations, other than gasoline

(a)-(c) (No change.)
 (d) For the purposes of (c) above, the total calculated annual emission rate for each tank shall be determined in accordance with the following procedure:
 1. Calculate the emission factor for each applicable VOC as follows:

$$EF = VP \times MW \times 24 \times 10^{-6}$$

Where:

EF = the emission factor for each applicable VOC being transferred;

VP = the vapor pressure (psia) of each applicable VOC. If the VOC is heated or cooled, this term is the vapor pressure of the VOC at the temperature at the point of transfer; if the VOC is not heated or cooled, this term is the vapor pressure of the VOC at standard conditions;

MW = the molecular weight of the applicable VOC; and
 24×10^{-6} = a constant to convert units;

2.-3. (No change.)
 (e) (No change.)
 (f) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transfer of any applicable VOC into any delivery vessel, except railroad tank cars, from a [storage] tank having a maximum capacity of 2,000 gallons (7,570 liters) or greater and having a total calculated annual emission rate over 2,000 pounds of applicable VOC from transfer operations, as determined pursuant to (g) below, unless the transfer is directly from a tank equipped with a floating roof or unless any such delivery vessel is connected to one of the following control apparatus:
 1.-2. (No change.)
 (g) For the purposes of (f) above, the total calculated annual emission rate of applicable VOC transferred into delivery vessel from each [storage] tank shall be determined in accordance with the following procedure:
 1.-3. (No change.)
 (h)-(k) (No change.)
 (l) On and after May 31, 1995, no person shall cause, suffer, allow, or permit the transport or [transfer] **storage** of any applicable VOC in a delivery vessel having a maximum capacity of 2,000 gallons (7,570 liters) or greater unless such vessel, while containing any applicable VOC, is vapor-tight at all times, except during:
 1.-4. (No change.)
 (m)-(q) (No change.)

7:27-16.8 Boilers

(a)-(j) (No change.)
 (k) Any owner or operator submitting a Repowering Plan for a combustion source pursuant to N.J.A.C. 7:27-19 may submit facility-specific CO and VOC limits as an alternative to those specified in this section as part of the facility's proposed Repowering Plan.

7:27-16.9 Stationary gas turbines

(a) (No change.)
 (b) [(Reserved)] **The owner or operator of any stationary turbine shall cause it to emit CO in concentrations that do not exceed 250 parts per million by volume, dry basis (ppmvd) at 15 percent oxygen.**
 (c)-(i) (No change.)
 (j) Any owner or operator submitting a Repowering Plan for a combustion source pursuant to N.J.A.C. 7:27-19 may submit facility-specific CO and VOC limits as an alternative to those specified in this section as part of the facility's plan proposed Repowering Plan.

7:27-16.10 Stationary internal combustion engines

(a) (No change.)
 (b) [(Reserved)] **The owner or operator of a stationary internal combustion engine subject to this section shall cause it to emit CO in concentrations that do not exceed 500 parts per million by volume, dry basis (ppmvd) at 15 percent oxygen.**
 (c)-(h) (No change.)

7:27-16.17 Facility-specific VOC control requirements

(a) This section establishes procedures and standards for the establishment of VOC control requirements for any source operation that:
 1. Is located at a major facility and has the potential to emit at least three pounds per hour (potential batch cycle emission rate of three pounds per hour for batch processes), and:
 i. Is not regulated elsewhere in this subchapter; [or] and
 ii. (No change.)
 2. (No change.)
 (b) [The] **Except as provided at (t) below, the owner or operator of any facility that contains a source operation subject to (a)1 above shall:**
 1.-2. (No change.)
 (c)-(s) (No change.)
 (t) **If a source operation is covered by a preconstruction permit and operating certificate or an operating permit, either of which requires the source operation to utilize a control apparatus, the owner or operator need only be in compliance with that permit or certificate to be deemed in compliance with this section; the owner or operator need not submit the demonstration required by (b) above.**

7:27-16.18 Leak detection and repair

(a) (No change.)
 (b) The provisions of this section shall apply only to equipment in contact with a substance that:
 1.-3. (No change.)
 4. [(Reserved) (applicability threshold for other chemical plants)]
At any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, is 10 percent by weight or greater applicable VOC, and the total quantity of applicable VOC processed in the equipment is greater than 550 tons per year. The total quantity processed shall include the total annual quantity of applicable VOC charged to all operations for which the equipment is used.
 (c)-(t) (No change.)

(a)

**OFFICE OF AIR QUALITY MANAGEMENT
Low Emission Vehicles Program
Notice of Extension of Public Comment Period
Reproposed New Rules: N.J.A.C. 7:27-26
DEPE Docket No. 18-94-03/99.**

Take notice that, in response to the interest generated by the Low Emission Vehicles (LEV) Program reproposal, the Department of Environmental Protection (the Department) is extending the comment period on the above-captioned reproposal. Such extension provides the public an opportunity to reconsider the New Jersey LEV rule reproposal at N.J.A.C. 7:27-26 in light of the U.S. Environmental Protection Agency's (EPA) proposed approval of the Ozone Transport Commission's LEV petition asking that EPA approve the LEV program for all of the states in the ozone transport region and EPA's subsequent consideration of an alternative proposal from the automobile industry which would extend the LEV program to include all of the states. Notice of the New Jersey LEV program reproposal was published in the April 4, 1994 New Jersey Register at 26 N.J.R. 1467(a). The extended comment period ends at 5:00 P.M. on February 1, 1995.

The Department is accepting written comments on the rule reproposal. Written comments must be identified by the docket number above, and submitted by February 1, 1995 to:

Janis E. Hoagland, Esq.
DEP Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

A copy of the LEV reproposal published on April 4, 1994 may be obtained by contacting:

Department of Environmental Protection
Office of Air Quality Management
Bureau of Transportation Control
CN 411 (380 Scotch Road)
Trenton, New Jersey 08625A
(609) 530-4035

LAW AND PUBLIC SAFETY

(b)

NEW JERSEY RACING COMMISSION

Harness Rules Safety Vests

Proposed New Rule: N.J.A.C. 13:71-19.6

Authorized By: New Jersey Racing Commission,
Frank Zanzuccki, Executive Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1994-601.

Submit written comments by December 21, 1994 to:
Michael Vukceвич, Deputy Director
New Jersey Racing Commission
CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule would require all drivers during race events to wear a safety vest, and all others on horseback or in a sulky or jogging cart, warming up, qualifying or otherwise exercising or racing horses on New Jersey racetracks and licensed off-track stabling facilities shall be required to wear a safety vest. The vest shall have a shock absorbency protection of at least five as defined by the British Equestrian Trade Association (BETA).

Social Impact

The proposed new rule would not have any social impact to the public. In that the safety vest will provide the drivers and others with an additional measure of protection in the event of a fall or collision, the Racing Commission views the new rule as having a beneficial impact upon these classes of licensees.

Economic Impact

The proposed new rule would not have any economic impact on the general public. The safety vest requirement would, however, have a monetary impact on drivers and others since they would be required to purchase the vests, at a cost of approximately \$200.00 each.

Regulatory Flexibility Analysis

The proposed new rule imposes no reporting or recordkeeping requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, certain drivers and other licensees may operate as or be affiliated with such small businesses and the safety vest requirement would impose compliance responsibilities with respect to such concerns. Per vest cost is approximately \$200.00. In that the purpose of this aspect of the new rule is to enhance the safety of race participants and others, uniform application without regard to business size is needed to most effectively meet the objective.

Full text of the proposed new rule follows:

13:71-19.6 Safety vests

All individuals, at all times, on horseback or in a sulky or jogging cart affixed to a horse, on a racetrack or licensed off-track stabling facility, shall wear a safety vest designed to provide shock absorbing protection of at least a rating of five, as defined by the British Equestrian Trade Association (BETA).

PUBLIC UTILITIES

(c)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Grant and Loan Programs

Proposed Readoption with Amendments and Recodification: N.J.A.C. 14A:6 as 14:31

Authorized By: Board of Public Utilities, Herbert H. Tate, Jr.,
President, Carmen J. Armenti and Dr. Edward H. Salmon,
Commissioners.

Authority: N.J.S.A. 52:27F-11q.

BPU Docket Number: AX94090406Y.

Proposal Number: PRN 1994-596.

Submit comments by December 21, 1994 to:

Michael Ambrosio, Director
Division of Energy Planning and Conservation
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Business Energy Improvement Program (Program or BEIP) provides funds to eligible applicants for the purpose of fostering energy conservation and encouraging investment in renovations, equipment replacement, energy conservation construction, alternative energy production facilities, resource recovery projects and energy demonstration projects. The rules governing the Program, including Program information, application and submission requirements and review, interest subsidies, eligibility, the payment or withholding of funds, payment amounts and Program monitoring, are set out in N.J.A.C. 14A:6. These rules administer four main programs:

1. Loan Interest Subsidy—Provides a discounted award equivalent to half of the interest due on an applicant's negotiated commercial loan up to six percent;
2. Farm Matching Grant—Provides grants of 60 percent to 80 percent of the cost of energy conservation measures while the applicant covers the amount outstanding. These funds are designed to increase the energy efficiency of family farms by helping to replace or to retrofit existing inefficient equipment;
3. Revolving Loan Fund—Offers an alternative source of funding to small businesses, municipalities, family farms and non-profit agencies through the authorization of interest-free loans of up to \$200,000 for projects demonstrating a 10 year or less simple payback; and

4. Urban Enterprise Zone—Provides financial incentives to businesses located within designated areas in need of rehabilitation to encourage them to become more energy efficient.

Pursuant to Reorganization Plan No. 001-94 which was issued by Governor Christine Todd Whitman on May 5, 1994, and became effective on July 4, 1994, the Division of Energy Planning and Conservation was reinstated and all of its functions, powers and duties were transferred to and vested in the Board of Public Utilities (Board). After review of the subject chapter, which pursuant to Executive Order No. 66(1978), is scheduled to expire on January 16, 1995, the Board is of the opinion that the programs set out therein remain viable and that the provisions thereof should be readopted except for minor changes pertaining mostly to codification. These modifications are as follows:

1. Recodification of the chapter from N.J.A.C. 14A:6 to N.J.A.C. 14:31 as required by the Office of Administrative Law, noting that N.J.A.C. 14A:6-2 will be recodified as N.J.A.C. 14:31-1;
2. Correcting the reference to N.J.A.C. 14A:13-1.11 set out in the definition of "Energy audit" to N.J.A.C. 7:32-1.12 as the latter provision now contains the applicable energy conserving renovations;
3. Correcting the reference to N.J.A.C. 14A:3-4 as set out in the definitions of "Energy conserving construction" and "Incremental grant" to N.J.A.C. 5:23-3.18 as the latter provision now pertains to the Energy Subcode;
4. Identifying and recodifying references in the text to N.J.A.C. 14A:6; and
5. Correcting text to reflect the Board's designation as the Board of Public Utilities.

Social Impact

The readoption of this chapter will continue the availability of funds to eligible applicants to encourage investment in energy conservation measures such as renovations, equipment replacement, energy conservation construction, alternative energy production facilities, resource recovery projects and energy demonstration projects.

Economic Impact

The program will continue to have a positive economic impact by providing to participants a choice of programs which best fits their business needs.

Environmental Impact

The proposed readoption will have a positive indirect effect on the environment by making businesses more energy efficient. These programs result in improved environmental conditions by promoting, for example, a reduction in electric consumption, an increase in the efficiency of electric and steam production and a reduction in fossil fueled sources of pollution.

Regulatory Flexibility Analysis

The proposed readoption, as does the existing rules, imposes filing requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The information to be submitted for participation in the grant and loan programs is the minimum data necessary to allow the Board to appropriately administer said programs for the benefit of those applying therefor. Costs involved are those for application and providing any information requested by way of monitoring. No professional services outside the project will need to be employed. Accordingly, no differentiation in requirements based on business size is necessary or required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14A:6.

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

Recodify existing 14A:6-2 as **14:31-1** (No change in text at N.J.A.C. 14A:6-2.1, 2.3, 2.5 through 2.11, 2.13 through 2.18)

[SUBCHAPTER 1. (RESERVED)]

[14A:6-2.2] **14:31-1.2** Definitions

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

... "Eligible loan" means a loan made by a lender to the applicant for energy conservation renovations or an alternative energy produc-

tion facility[,] which meets the requirements of N.J.A.C. [14A:6-2.6] **14:31-1.6** and [2.7] **1.7**.

"Energy audit" means a study of a building(s) or facilities conducted by an engineer or an architect/engineering firm or other Division approved party to determine operating and maintenance procedures and renovations which would result in reduced energy consumption. The energy audit shall provide the estimated costs of implementation and the expected dollar and energy savings for the recommended project and maintenance procedures. The energy audit shall include, but not be limited to, the energy conserving renovations listed in N.J.A.C. [14A:13-1.11] **7:32-1.12**.

"Energy conservation renovation" means any equipment, materials, alterations or improvements installed within an existing structure owned or leased by an eligible applicant that would reduce energy consumption or increase energy efficiency, and which have been approved by the Division pursuant to N.J.A.C. [14A:6-2.11] **14:31-1.11**, but shall not include new construction or energy conservation renovations installed prior to receipt of a completed Business Energy Improvement Program application by the Division.

"Energy conserving construction" means materials, practices or equipment that exceeds the energy efficiency of those required under the Energy Subcode, N.J.A.C. [14A:3-4] **5:23-3.18** as amended.

... "Incremental grant" means full payment for the incremental cost of using materials, practices and equipment that exceed those materials, practices and equipment required under the ["Energy Subcode"] **Energy Subcode**, N.J.A.C. [14A:3-4] **5:23-3.18** as amended.

[14A:6-2.4] **14:31-1.4** Requests for applications

The Division shall make available Business Energy Improvement Program applications on request, until the Program is suspended pursuant to N.J.A.C. [14A:6-2.3] **14:31-1.3**. Application requests may be addressed to the Secretary, Board of Public [Utility Commissioners] **Utilities**, Two Gateway Center, Newark, N.J. 07102.

[14A:6-2.12] **14:31-1.12** Application and review procedures

(a) Applicants shall submit to the Division a completed Business Energy Improvement **Program** application. The application shall bear either a legible (non-metered) postmark or a date stamp from the Division's Office of Operations indicating that the application was submitted on or before any deadline established pursuant to N.J.A.C. [14A:6-2.3] **14:31-1.3**.

(b) The Division shall conduct a review of the applications, commencing with the application bearing the earliest submission date. The Division may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. The Division shall review the applications to determine whether:

- 1.-3. (No change.)
4. The application is complete as to the submission requirements of N.J.A.C. [14A:6-2.5] **14:31-1.5**;
- 5.-6. (No change.)
7. For energy conserving construction, evidence that capital expenditures are sufficient to cover the construction cost estimate provided under [14A:6-2.5(a)3] **N.J.A.C. 14:31-1.5(a)3**.

(c) (No change.)

(a)

**BOARD OF PUBLIC UTILITIES
DIVISION OF ENERGY PLANNING AND
CONSERVATION**

Energy Facility Review Board

**Proposed Readoption with Amendments and
Recodification: N.J.A.C. 14A:8 as N.J.A.C. 14:33**

Authorized By: Board of Public Utilities, Herbert H. Tate, Jr.,
President, Carmen J. Armenti and Dr. Edward H. Salmon,
Commissioners.

Authority: N.J.S.A. 52:27F-11(g), 52:27F-15(c) and 48:2-12.

BPU Docket Number: AX94090407Y.

Proposal Number: PRN 1994-597.

Submit comments by December 21, 1994 to:

Michael Ambrosio, Director
Division of Energy Planning and Conservation
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to the authority set out in N.J.S.A. 52:27F-15(c), an Energy Facility Review Board is to be established in the event that the views of the Board of Public Utilities (BPU), as contained in the Report of the Director of the Division of Energy Planning and Conservation, with respect to an application for any permit for the construction or location of any energy facility differ from the views of the State instrumentality with the power of approval over such application. An energy facility refers to any plant or operation which produces, converts, distributes or stores energy or converts one form of energy to another.

The rules governing the procedures of an Energy Facility Review Board established by statute are set forth in N.J.A.C. 14A:8. This chapter speaks to the function of such Board as well as to the notice of its meetings, the minutes of its meetings, its review of the record, its final decision and its membership which consists of the Director of the Division of Energy Planning and Conservation, the director or chief executive officer of the State instrumentality with the power of approval over the application and a designee of the Governor. The Board would meet within 30 days of the issuance of the final decision by the approving State instrumentality. It also provides that the BPU may enter into Memoranda of Understanding with other State instrumentalities to establish procedures to govern the review of particular categories of applications.

Pursuant to Reorganization Plan No. 001-94 which was issued by Governor Christine Todd Whitman on May 5, 1994, and became effective on July 4, 1994, the Division of Energy Planning and Conservation was reinstated and all of its functions, powers and duties were transferred to and vested in the BPU. After review of the subject chapter, which is scheduled to expire pursuant to Executive Order No. 66(1978), on January 16, 1995, the BPU is of the opinion that the provisions set out therein remain viable and should be readopted with only the following minor modifications:

1. Recodification of the chapter from N.J.A.C. 14A:8 to N.J.A.C. 14:33 as required by the Office of Administrative Law; and
2. Recognition of the agency's designation as the Board of Public Utilities.

Social Impact

The subject rules are necessary in that they set out a procedure that is intended to result in a reasoned decision as to whether a particular energy facility is needed in the event that the views of a State instrumentality with the power to approve an application differ from the views of the Board of Public Utilities as expressed through the Report of the Director of the Division of Energy Planning and Conservation.

Economic Impact

The subject rules which carry out legislative directives, will help to ensure that State residents do not pay for any energy facility that is not required to provide energy services.

Environmental Impact

The procedures set out in the proposed re Adoption are intended to eliminate the placement or operation of any energy facility that is not specifically found to be needed thus minimizing any adverse impact on the environment that may be caused by the presence of an energy facility.

Regulatory Flexibility Statement

The proposed re Adoption of the subject rules do not impose any reporting, recordkeeping or other compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules simply govern the procedures of the Energy Facility Review Board. Therefore a Regulatory Flexibility Analysis is not required.

Full text of the proposed re Adoption may be found in the New Jersey Administrative Code at N.J.A.C. 14A:8.

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

Recodify existing N.J.A.C. 14A:8 as **14:33** (No change in text at N.J.A.C. 14A:8-1.1 through 1.5, 1.7 through 1.11)

[14A:8-1.6] **14:33-1.6** Correspondence with the Board

All correspondence with the Board shall be addressed to:
Secretary [to the Board of Public Utility Commissioners]

Board of Public Utilities

Two Gateway Center
Newark, N.J. 07102

(b)

**DIVISION OF ENERGY PLANNING AND
CONSERVATION**

**Periodic Reporting by Energy Industries of Energy
Information**

**Proposed Readoption with Amendment and
Recodification: N.J.A.C. 14A:11 as 14:34**

Authorized By: Board of Public Utilities, Herbert H. Tate, Jr.,
President, Carmen J. Armenti and Dr. Edward H. Salmon,
Commissioners.

Authority: N.J.S.A. 52:27-11(g), 52:27-18 and 48:2-12.

BPU Docket Number: AX94090408Y.

Proposal Number: PRN 1994-598.

Submit comments by December 21, 1994 to:

Michael Ambrosio, Director
Division of Energy Planning and Conservation
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

N.J.A.C. 14A:11 deals with the filing of certain energy related information by bulk terminals (facilities primarily used for the storage or marketing of petroleum products), retail dealers of motor fuel who sell fuels from fixed locations (filling stations, etc.) directly to end users and retail fuel merchants who sell home heating oil directly to end users of such heating oil.

This information, which supports most energy related planning, emergency planning and analysis, is an important part of the data that makes up the New Jersey Energy Data System (NJEDS). This information includes the consumption, supply and price of gas, electric and petroleum products. The monthly data is collected from New Jersey utilities, petroleum suppliers, bulk terminal operators, other State agencies, the Energy Information Administration data bases of the United States Department of Energy, regularly published sources and surveys of New Jersey retail heating oil and gasoline dealers. The data is then summarized into two reports: the New Jersey Monthly Energy Profile and the New Jersey Energy Profile, Annual Edition. In addition, NJEDS data is utilized by utilities, State agencies, regulators, university researchers, consultants and libraries to formulate energy policy and emergency plans for independent studies.

The subject chapter specifies what information is required to be filed and the penalties, if any, for failure to submit said information in a timely manner. It should be noted that while bulk terminal operators are required to make monthly filings of information pertaining to the preceding month, retail dealers of motor fuel and retail fuel merchants do not have to make filings unless they are selected by the Division of Energy Planning and Conservation from a pool of merchants through a random sampling procedure.

It should be further noted that pursuant to Reorganization Plan No. 001-94 which was issued by Governor Christine Todd Whitman on May 5, 1994, and became effective on July 4, 1994, the Division of Energy Planning and Conservation was reinstated and all of its functions, powers and duties were transferred to and vested in the Board of Public Utilities. After review of the subject chapter, the Board is of the opinion that the information requested therein is still of great importance to energy planning in this State and that the chapter should be readopted with two minor modifications:

1. Recodification of the chapter from N.J.A.C. 14A:11 to N.J.A.C. 14:34 as required by the Office of Administrative Law, noting that N.J.A.C. 14A:11-3 through 5 will be recodified as N.J.A.C. 14:34-1 through 3;
2. Recognition of the designation of this agency as the Board of Public Utilities.

Social Impact

These rules indirectly have a positive social impact. The information required by the rules is used partially to assess the impact of shortages of certain types of petroleum fuels during times of energy emergencies. It allows the Division of Energy Planning and Conservation to diagnose evolving price patterns and shortages which may result from those patterns. The information allows the Division to more equitably manage an energy emergency throughout the State.

Economic Impact

The proposed readoption will have a positive economic impact by providing the Division with data needed to anticipate supply and pricing problems with respect to petroleum based fuels. This data will be used to minimize economic disruption to sectors of the State's economy during periods of energy emergencies. There will be some costs to those energy providers who have to submit the required information. However, as the information is basic and should be readily available to these merchants, the costs anticipated in reporting are minimal.

Regulatory Flexibility Analysis

This chapter regulates reporting by members of the energy industry, some of whom may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose performance standards in the form of recordkeeping and reporting requirements, which are kept to the minimum possible to achieve the desired results. In the case of the bulk terminal reporting rules, the information required is a copy of a form which is already submitted to the Federal government. When requested, information submitted is treated on a confidential basis by the Division. No professional services need be employed for compliance. Because the information obtained is used for long-term energy planning and management of energy emergencies, in the interest of the public welfare, the Board does not consider it appropriate to exempt small businesses as a category from the requirements of the rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14A:11.

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

Recodify existing 14A:11-3, 4 and 5 as **14:34-1, 2 and 3** (No change in text at N.J.A.C. 14A:11-3.1, 3.2, 4 and 5)

[SUBCHAPTERS 1 AND 2. (RESERVED)]

[14A:11-3.3]**14:34-1.3** Reporting
(a) (No change.)

(b) The tabulation of bulk terminal stocks shall be in the form of EIA-811, Bulk Terminal Stocks of Finished Petroleum Products. This information should be sent to:

Secretary [to the Board of Public Utility Commissioners]
Board of Public Utilities
Two Gateway Center
Newark, N.J. 07102

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF LOCAL HIGHWAY DESIGN

**New Jersey Transportation Trust Fund Authority Act
Federal Aid Urban System Substitution Program:
County and Municipal Aid**

Proposed Readoption: N.J.A.C. 16:20A

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47, 27:7-13.1 et seq. and the New Jersey Transportation Trust Fund Authority Act, N.J.S.A. 27:1B-1 et seq.

Proposal Number: PRN 1994-603.

Submit comments by December 21, 1994 to:

Renee Rapciewicz
Deputy Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:20A, New Jersey Transportation Trust Fund Authority Act Federal Aid Urban System Substitution Program: County and Municipal Aid, will expire on February 20, 1995. These rules were proposed to implement provisions and purposes of the New Jersey Transportation Trust Fund Authority Act. The Department must ensure and maintain a safe and reliable transportation system. Additionally, safe and reliable road and bridge improvements are essential to the well being of the citizens and the economy of the State. The rules outline procedures and guidelines to be followed by counties and municipalities in the receipt of State Aid. The funds under the Act are appropriated by the Legislature as the State's share of the cost for construction, reconstruction, replacement, improvement, planning, acquisition, engineering and rehabilitation of public transportation projects, which will enable the State to construct and maintain a safe and efficient transportation system.

The Bureau of Local Aid Highway Design has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose of which they were originally promulgated; therefore, the Department proposes to readopt N.J.A.C. 16:20A.

The subchapters are summarized as follows:

N.J.A.C. 16:20A-1 outlines the general provisions of the rules.

N.J.A.C. 16:20A-2 describes the State's participation in the project eligible costs, project approval, and standards to be followed.

N.J.A.C. 16:20A-3 prescribes the responsibility of the municipality in the preparation of plans and specifications.

N.J.A.C. 16:20A-4 provides the procedure to be followed in the awarding of contracts.

N.J.A.C. 16:20A-5 outlines the requirements for an annual audit by county and/or municipality.

Appendix I lists the municipalities qualified for Depressed Rural Centers Aid.

Appendix II lists the municipalities qualified for Urban Aid Funding.

Social Impact

The proposed readoption will continue to provide a source of revenues to county and local government in the rehabilitation and improvement of any public roads or bridges. The rules will also assist in providing a safe and reliable system of bridge and road improvements which is essential to the well being of the citizens and the economy of the State.

Economic Impact

The Department and local governments will incur direct and indirect cost for its workforce in the processing of plans and specifications, cost of engineering, contractual agreements and cost sharing regarding the specific rehabilitation or improvement project. The cost of design engineering and right of way acquisition shall be borne totally by the county or municipality.

Regulatory Flexibility Statement

The proposed readoption does not place any bookkeeping, 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 rules primarily affect counties and municipalities.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:20A.

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF LOCAL HIGHWAY DESIGN
New Jersey Transportation Trust Fund Authority Act:
Municipal Fund**

Proposed Readoption: N.J.A.C. 16:20B

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47, 27:7-13.1 et seq. and the New Jersey Transportation Trust Fund

Authority Act, N.J.S.A. 27:1B-1 et seq.

Proposal Number: PRN 1994-604.

Submit comments by December 21, 1994 to:

Renee Rapciewicz
Deputy Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:20B, New Jersey Transportation Trust Fund Authority Act: Municipal Fund, will expire on February 20, 1995. These rules were proposed to implement provisions and purposes of the New Jersey Transportation Trust Fund Authority Act. The Department must ensure and maintain a safe and reliable transportation system. Additionally, safe and reliable rail and road transportation is essential to the well being of the citizens and the economy of the State. The regulations outline guidelines and procedures to be followed by municipalities in the receipt of State Aid. The funds under the Act are appropriated by the Legislature as the State's share of the cost for the improvement of public highways under municipal jurisdiction.

The Bureau of Local Aid Highway Design has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose of which they were originally promulgated; therefore, the Department proposes to readopt N.J.A.C. 16:20B.

The subchapters are summarized as follows:

N.J.A.C. 16:20B-1 outlines the general provisions of the rules.

N.J.A.C. 16:20B-2 prescribes the responsibility of the local government in the preparation of plans and specifications.

N.J.A.C. 16:20B-3 provides the procedure to be followed in the awarding of contracts.

N.J.A.C. 16:20B-4 describes the cost sharing or cost participation by the responsible agency.

N.J.A.C. 16:20B-5 outlines the requirements for an annual audit by municipalities.

Appendix I lists municipalities qualified for Depressed Rural Centers Aid.

Appendix II lists municipalities qualified for Urban Aid Funding.

Social Impact

The proposed readoption will continue to provide a source of revenues to the local government in the rehabilitation and improvement of public highways under municipal jurisdiction. The rules will also assist in providing a safe and reliable system of public highways which is essential to the well being of the citizens and the economy of the State.

Economic Impact

The Department and local governments will incur direct and indirect cost for its workforce in the processing of plans and specifications, cost of engineering, contractual agreements and cost sharing regarding the specific rehabilitation or improvement project. The municipality shall bear the costs for a professional engineer to prepare construction plans and specifications, and to provide construction engineering and inspection and material testing as required.

Regulatory Flexibility Statement

The proposed readoption does not place any bookkeeping, 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 rules primarily affect municipalities.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:20B.

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits
Route N.J. 179**

**West Amwell Township in Hunterdon County
Proposed Amendment: N.J.A.C. 16:28-1.158**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Proposal Number: PRN 1994-595.

Submit comments by December 21, 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. 16:28-1.158 to revise certain "speed limit" zones along Route N.J. 179 in the area of the West Amwell Elementary School in West Amwell Township in Hunterdon County, for the efficient flow of traffic, the enhancement of safety of the school children and the well-being of the populace.

Based upon the request of the local government and a subsequent meeting with William E. Anderson, Manager, Bureau of Traffic Engineering and Safety Programs on October 5, 1994, with municipal officials, Senators John H. Ewing and William E. Schluter and Assemblyman Leonard Lance, 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 concluded that revising certain "speed limit" zones along Route N.J. 179 were warranted.

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

Social Impact

The proposed amendment will establish a revised "speed limit" zone along Route N.J. 179 in West Amwell Township in 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 government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of the revised "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):

16:28-1.158 Route 179

(a) The rate of speed designated for the certain parts of State highway Route 179, described in this subsection, shall be established and adopted as the maximum legal rate of speed:

- 1. For both directions of traffic:
 - i. (No change.)
 - ii. In the Township of West Amwell, Hunterdon County:

(1) (No change.)
(2) Zone Two: 50 mph between Woodward Avenue and the southwesterly line of East Amwell Township (50 feet south of Cedar Crest Drive) (approximate mileposts 1.13 to 4.47) **except for 35 mph when passing through the West Amwell Elementary School Zone (approximate mileposts 2.18 to 2.31) while "35 MPH When Flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours.**

- iii. (No change.)
- 2.-3. (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Notice of Administrative Correction and Extension of Public Comment Period

Restricted Parking and Stopping Route 206

Princeton Township, Mercer County

Proposed Amendment: N.J.A.C. 16:28A-1.57

Take notice that the Department of Transportation has discovered an error in the text of the notice of proposal for an amendment to N.J.A.C. 16:28A-1.57 published in the September 19, 1994 New Jersey Register at 26 N.J.R. 3820(a). Through typographic error, the text proposed for addition establishing the new bus stop was omitted from the text. To correct this error, the full rule text as it should have appeared in the proposal notice is published below, in accordance with N.J.A.C. 1:30-2.7.

In addition, the comment period for the proposal is extended until December 21, 1994. Submit comment on or before that date 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

Full text of the corrected proposed amendment follows (addition indicated in boldface thus):

16:28A-1.57 Route U.S. 206

- (a) (No change.)
- (b) The certain parts of State highway Route 206 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
 - 1.-4. (No change.)
 - 5. Along the northbound side in Princeton Township, Mercer County:
 - i. (No change.)
 - ii. Near side bus stops:
 - (1)-(4) (No change.)
 - (5) Hutchinson Drive (105 feet)**
 - iii. (No change.)
 - 6.-12. (No change.)
 - (c)-(d) (No change.)

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Drawbridge Usage

Route N.J. 152

Somers Point City and Egg Harbor Township in Atlantic County

Proposed New Rule: N.J.A.C. 16:30-9.23

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

Authority: N.J.S.A. 27:7-17, 27:1A-5, 27:1A-6, 39:4-81 and 39:4-198.

Proposal Number: PRN 1994-594.

Submit comments by December 21, 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. 16:30-9.23 that will provide for no jumping, diving, crabbing, fishing or loitering restrictions along both sides of the bridges over the waterways on Route N.J. 152 in Somers Point City and Egg Harbor Township in Atlantic County. 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 at the request of the local governments of the City of Somers Point and Egg Harbor Township in Atlantic County during a meeting with a staff member of the Department's Bureau of Traffic Engineering and Safety Programs and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department concluded that the establishment of no jumping, diving, crabbing, fishing or loitering restrictions on the bridges over the waterways along Route N.J. 152 in Somers Point City and Egg Harbor Township were warranted. Signs are required to notify the public of the restrictions proposed herein.

Social Impact

The proposed new rule will establish no jumping, diving, crabbing, fishing or loitering restrictions on the bridges over the waterways along Route N.J. 152 in the City of Somers Point and Egg Harbor Township

in Atlantic County to improve traffic flow and enhance safety. Appropriate signs will be erected to advise the 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 appropriate regulatory signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size and method of procurement. Violators of the rules will be assessed the appropriate fine.

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 public and the governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rule follows:

16:30-9.23 Route 152

(a) The certain parts of State highway Route 152 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No jumping, diving, crabbing, fishing or loitering along both sides of the entire length of the bridges over the waterways listed:
i. In Atlantic County:

- (1) The bridge over Bass Harbor in Egg Harbor Township and Somers Point City (approximate milepost 0.17).
- (2) The bridge over Broad Thoroughfare in Egg Harbor Township (approximate mileposts 1.3 to 1.9).
- (3) The bridge over Doles Creek in Egg Harbor Township (approximate mileposts 2.45).

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Turn Prohibitions
Route N.J. 27
Metuchen Borough and Highland Park Borough in Middlesex County**

Proposed Amendment: N.J.A.C. 16:31-1.26

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, 39:4-124, 39:4-125, 39:4-183.6, 39:4-198 and 39:4-199.1.
Proposal Number: PRN 1994-593.

Submit comments by January 4, 1995 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. 16:31-1.26 concerning turning movements along Route N.J. 27 to effect "no left turns" in Metuchen Borough and Highland Park Borough in Middlesex County. This amendment has been further recodified in compliance with the Department's rulemaking format.

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

This amendment is being proposed at the request of the local governments of Metuchen Borough by Ordinance No. 94-5 adopted on February 25, 1994, and Highland Park Borough by Ordinance No. 1365

adopted on February 15, 1994, and as part of the Department's on-going review of current conditions. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of the turning movement restrictions along Route N.J. 27 were 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. 27 in Metuchen Borough and Highland Park Borough in Middlesex 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):

16:31-1.26 Route 27

(a) Turning movements of traffic on certain parts of State highway Route 27 described in this subsection are regulated as follows:

- 1. In the Borough of Metuchen, Middlesex County:
i.ii. (No change.)
iii. **No left turn from the driveway of 890 Route 27 (Middlesex Avenue) as measured to be 130 feet north of Bridge Street (eastbound) to (northbound) Route 27.**
- 2. (No change.)
- 3. **In the Borough of Highland Park, Middlesex County.**
i. **No left turn from the driveway of 75-85 Route 27 (Raritan Avenue) as measured to be 40 feet south of South First Avenue (eastbound) to (northbound) onto Route 27.**

(b)

**DIVISION OF AERONAUTICS AND FREIGHT SERVICES
BUREAU OF PORTS, TERMINALS AND FREIGHT SERVICES**

Transportation of Hazardous Materials

Proposed Readoption with Amendments: N.J.A.C. 16:49

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, Hazardous Materials Transportation Act, P.L. 93-633 (49 U.S.C. 1801 et seq.) and N.J.S.A. 39:5B-25 et seq. (P.L. 1983, c.401).
Proposal Number: PRN 1994-605.

Submit comments by December 21, 1994 to:
Renee Rapciewicz
Deputy 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), N.J.A.C. 16:49, Transportation of Hazardous Materials, will expire on February 8, 1995. These rules prescribe the requirements of the New Jersey Department of Transportation governing the transportation of hazardous materials in the State of New Jersey. They establish comprehensive regulation of the shipping, packaging, marking, labelling, placarding, handling, and transportation of hazardous materials, and are consistent with the regulations issued by the United States Department of Transportation. The rules were reviewed and analyzed by the Department's staff of the Bureau of Ports, Terminals, and Freight Services and were found to be necessary, reasonable, and proper for the purpose of which they were originally promulgated. The Department does, however, propose to readopt the rules with amendments.

The proposed amendments at N.J.A.C. 16:49-1.3(i) change the manner and method by which the Federal Motor Carrier Safety Regulations (FMCSR) and Appendices to the Federal Motor Carrier Safety Regulations (hereafter FMCSR shall mean both the FMCSR and Appendices thereto) are adopted and incorporated, by reference, in the State regulations.

Currently, the FMCSR are adopted and incorporated, by reference, when they appear in the published editions of the Code of Federal Regulations (C.F.R.), Title 49, revised as of October 1st of each year. The October 1st revised edition of the C.F.R. generally becomes available from the Superintendent of Documents of the United States Government Printing Office the following February.

The policy of adopting and incorporating, by reference, the FMCSR only as published in the latest revised edition of the C.F.R., Title 49, is identical to a policy that had been previously employed by the Division of State Police in regulations adopted at N.J.A.C. 13:60 and Appendix, Motor Carrier Safety Regulations.

Under the present regulatory system, changes to the FMCSR, adopted as a final rule action by the Federal Highway Administration (FHWA) and published in the Federal Register, can be delayed in their implementation and enforcement by a year or more. Delays of this type create a bifurcated regulatory system, which can promote confusion on the part of the regulated industry as well as on the part of the law enforcement agencies responsible for enforcement of the regulations.

In addition, recent actions by the FHWA, amending and supplementing the FMCSR, have necessitated a reevaluation of the policy of only adopting and incorporating, by reference, the FMCSR as of the most recent revised date of the Code of Federal Regulations, Title 49.

Accordingly, the Commissioner, with the proposed readoption with amendments herein, will hereafter adopt and incorporate, by reference, the FMCSR as, and when, they are adopted, amended, or supplemented by the FHWA. When the FHWA publishes a final rule action in the Federal Register, the State will contemporaneously adopt and incorporate, by reference, the same rule. By adopting and incorporating, by reference, FHWA final rule actions adopting, amending, or supplementing the FMCSR, there will be only one set of motor carrier safety rules and regulations to be followed by the regulated industry, and enforced by law enforcement agencies authorized to enforce these Federal regulations.

Since the FHWA is continuously proposing and adopting new rules, amendments and supplements to the FMCSR, the Appendix will only be capable of reflecting those FMCSR which had been adopted and incorporated, by reference, as of a specific date which will be set forth at N.J.A.C. 16:49-2.1(a). Final rule actions by the FHWA after the date set in the State regulations will be available to any interested persons or entities by examining the Federal Register, or by subscribing to a service which provides continuous updates on actions by the FHWA as reflected in the Federal Register.

Reliance on publication of final rule actions in the Federal Register is considered to be appropriate and adequate notice of actions proposed and taken by the FHWA on FMCSR. The Federal Register is published daily, and all proposals are open to public comment under the Federal Administrative Procedure Act, 5 U.S.C. §554 et seq.

A synopsis of the proposed amendments to N.J.A.C. 16:49 and its Appendix follows.

At N.J.A.C. 16:49-1.3(h), reference to the New Jersey Department of Environmental Protection has been changed to delete the words "and Energy."

Existing text in N.J.A.C. 16:49-1.3(i) has been amended to say that the FMCSR as, and when, adopted by the FHWA in a final rule action published in the Federal Register will be considered as adopted and incorporated, by reference, in the Department's regulations and Appendix. The proposed new text also explains that some Part(s), Subpart(s), or Section(s) of the FMCSR may be modified, revised, amended, delayed in their implementation and/or intentionally omitted. In those instances the Department will, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., propose amendments to N.J.A.C. 16:49 and Appendix.

At N.J.A.C. 16:49-1.5, Document availability, has been amended to reflect that the Federal Motor Carrier Safety Regulations (FMCSR) and its Appendices as found in 49 CFR and the Federal Register and all supplements and amendments thereto can be obtained, not only from U.S. Governmental sources, but also from non-governmental commercial vendors. The list of U.S. Government and non-governmental sources, is not considered to be all encompassing. Should other sources, not listed in this amendment, become known to the Department, upon verification of the service provided, they will be added with the next revision or supplementation of this rule.

The name of the Bureau of Freight Services has been changed consistently throughout to the Bureau of Ports, Terminals and Freight Services, along with a new telephone number.

At N.J.A.C. 16:49-1.6(b), the name of the Hazardous Materials Transportation office at the New Jersey State Police has been changed along with the address and telephone numbers.

The addition of Part 382—Controlled Substances and Alcohol Use and Testing is a new Part of the Federal Motor Carrier Safety Regulations which regulates the use and testing of controlled substances and alcohol with regard to motor carrier safety. The purpose of this rule is to establish employer-based alcohol and controlled substances testing programs to help prevent accidents and injuries resulting from the misuse of alcohol and controlled substances by drivers of commercial motor vehicles (CMV). This rule prohibits any alcohol misuse that could affect performance of driving a CMV, including: (1) use on the job; (2) use during the four hours before driving a CMV; (3) having prohibited concentrations of alcohol in the system while driving CMVs; (4) use during eight hours following an accident; and (5) refusal to take a required test. This rule prohibits any controlled substances use, without a licensed doctor of medicine or osteopathy's written prescription. In addition, Part 382 requires pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up testing using procedures specified in 49 CFR Part 40. These procedures use an evidential breath testing device for alcohol testing. For controlled substances testing, urine specimen collection and testing by a laboratory certified by the United States Department of Health and Human Services is required. The primary purpose of the testing provisions is to deter misuse of alcohol and controlled substances. The Department is adopting Part 382, as well as other Parts, by reference.

The following sections have been revised to conform with New Jersey statutes. In accordance with N.J.A.C. 16:49-1.3(h) and (i), the Department may revise any Section, Subpart, or Part of the Federal Motor Carrier Safety Regulations and Appendices, and all supplements and amendments thereto:

Section 390.21—The modification requires a commercial motor vehicle operating in intrastate commerce to comply with the provisions of N.J.S.A. 39:4-46 for the marking of vehicles.

Section 390.23—Certain commercial motor vehicles operated in intrastate commerce are exempt from this section, provided they are operating during an emergency affecting the citizens of the State of New Jersey. This section has been modified to reflect this.

Section 391.31—A driver who holds a valid New Jersey Commercial Driver License (CDL), as of February 6, 1995, and who is engaged in the operation of a motor vehicle in intrastate commerce, and transports hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Federal Hazardous Materials Regulations (49 C.F.R. §172.500), is exempt from the requirements of this Section.

Section 391.35—A driver who holds a valid New Jersey Commercial Driver License (CDL), as of February 6, 1995, and who is engaged in the operation of a motor vehicle in intrastate commerce, and transports hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Federal Hazardous Materials Regulations (49 C.F.R. §172.500), is exempt from the requirements of this Section.

Section 391.41—A driver who holds a valid New Jersey Commercial Driver License (CDL), as of September 20, 1993, and who is engaged in the operation of a motor vehicle in intrastate commerce, but not transporting hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Federal Hazardous Materials Regulations (49 C.F.R. §172.500), is exempt from the requirement of Section 391.41.

Section 391.71—This section has been modified to ensure that persons within the identified groups possess a valid New Jersey Commercial Driver's License (CDL) pursuant to N.J.S.A. 39:3-10.9 et seq.

Section 391.85—This section has been modified to correspond to the definition of commercial motor vehicle as found in the Commercial Driver License (CDL) Act (P.L. 1990, c.103) at N.J.S.A. 39:3-10.11.

Social Impact

The proposed readoption will continue the impact on shippers, motor carriers, and their personnel involved in interstate or intrastate commerce who transport hazardous materials in and between the State(s), in that they will be required to comply with and be knowledgeable of the provisions of the rules. Interstate operations will also continue to be subject to these provisions.

The proposed amendments pertaining to the new policy of concurrent adoption and incorporation, by reference, of final rule actions of the FHWA concerning the FMCSR will eliminate any potential for confusion on the part of the regulated industry. All motor carriers, motor carrier operators and persons operating commercial motor vehicles in this State will now be required to adhere to the FMCSR as, and when, they are adopted by the FHWA as a final rule action and published in the Federal Register. The former practice of only adopting and incorporating, by reference, the FMCSR as published in the Code of Federal Regulations, Title 49, revised as of October 1 of each year created a dual and delayed regulatory system.

Compliance with the most current FMCSR will benefit both the motor carrier industry and the general public. All commercial motor vehicles will be subject to the same uniform rules and regulations.

The impact on the general public will be beneficial in that the safe transportation of hazardous materials will be assured along the highway and rail system of New Jersey.

Economic Impact

The proposed readoption with amendments has an economic impact on shippers, motor carriers, and their personnel in interstate and intrastate commerce who transport hazardous materials in and between the State(s). The impact is the cost of compliance with the requirements of N.J.A.C. 16:49-1.3 and 2, and the imposition of penalties for non-compliance pursuant to N.J.A.C. 16:49-1.4. These costs will vary widely depending upon the materials shipped and the motor carriers' carrying capabilities. While compliance with these rules increases shipping costs, compliance is required under Federal law, and such increase is justified by the need to protect the public from the hazardous materials transported.

For the public-at-large, these rules reduce the danger posed by transportation of hazardous materials, and the possibility of economic loss due to spillage of such materials. Enforcement and administration of these rules by the Department are provided for in its operating budget.

The proposed amendments change the adoption and incorporation, by reference, in the Code of Federal Regulations, Title 49, to the adoption and effective dates of the FMCSR as supplemented and amended by the FHWA through a final rule action published in the Federal Register under the Federal Administrative Procedure Act (5 U.S.C. §554 et seq.) and the authority of the Secretary of Transportation to adopt rules and regulations governing motor carrier safety (49 U.S.C. App. §2505).

The proposed modifications to certain sections of the Federal Motor Carrier Safety Regulations to conform to State statutes are being made to reduce, to the extent permitted, any adverse economic impact which might befall industries situated in this State.

The adoption of Part 382—Controlled Substances and Alcohol Use and Testing, of the Federal Motor Carrier Safety Regulations will have a significant economic impact, although this impact cannot be differentiated at this time, since there has been no determination yet as to what types of testing devices will be used, or whether employers of employees will be liable for the costs. The Federal government has made no differentiation with regard to the costs; therefore, the State of New Jersey cannot do so either.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments impose numerous reporting, recordkeeping and compliance requirements on shippers, motor carriers, and their personnel involved in interstate or intrastate commerce who transport hazardous materials in and between the State(s), as applicable under the Federal regulations incorporated by reference in the chapter Appendix. An undetermined number of the entities affected may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Costs are as discussed in the Economic Impact above. No differentiation in requirements or exemptions can be afforded such businesses due to the Federally-mandated nature of FMCSR and their object to protect the health and safety of the public.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:49.

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

16:49-1.3 General requirements

(a)-(g) (No change.)

(h) This chapter establishes minimum standards which must be complied with in conjunction with the transportation of hazardous materials. Therefore, in the event of a conflict between this chapter and any other State regulation, the stricter, more stringent standard shall apply and govern. This chapter is intended to complement, and not to limit, those related statutory and regulatory provisions of the New Jersey Department of Environmental Protection [and Energy] regarding hazardous wastes, radioactive materials, spill compensation and control.

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation.

1. The Federal "Hazardous Materials Regulations" referenced herein, are adopted as revised as of [October 1, 1992] **September 26, 1994**. [The "Federal Motor Carrier Safety Regulations" as referenced in 49 CFR 177.804 are adopted as revised as of October 1, 1992. The New Jersey Department of Transportation intends to amend these rules as new Federal publications become available.]

2. The Federal Highway Administration, United States Department of Transportation, supplements and amends the Federal Motor Carrier Safety Regulations and the Appendices to the Federal Motor Carrier Safety Regulations on a continuing basis pursuant to the Federal Administrative Procedure Act (5 U.S.C. §554 et seq.) and authority granted to the Secretary, pursuant to 49 U.S.C. App. §2505. Supplements and amendments are published as a notice of proposed rulemaking in the Federal Register and are subject to a period of public comment prior to their adoption. Adoption of supplements and amendments by a final rule action, appear in the Federal Register and indicate an effective date for their implementation and enforcement. The Department will hereafter rely upon the notices of proposed rulemaking and final actions published in the Federal Register supplementing and amending the Federal Motor Carrier Safety Regulations and Appendices to the Federal Motor Carrier Safety Regulations as notice to all interested parties and all persons or entities affected by these regulations. Final rule actions supplementing and amending the Federal Motor Carrier Safety Regulations and Appendices to the Federal Motor Carrier Safety Regulations will hereafter be considered as adopted and incorporated, by reference, herein, upon their publication in the Federal Register, and will become effective on the effective date as published in the Federal Register. Any modification, revision, amendment, delay in implementation, or omission by the Department of any Section(s), Subpart(s), or Part(s) of the Federal Motor Carrier Safety Regulations and Appendices to the Federal Motor Carrier Safety Regulations, and all supplements and amendments thereto will be the subject to a separate notice of proposed rulemaking, pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(j)-(k) (No change.)

16:49-1.5 Document availability

(a) Copies of the Federal "Hazardous Materials Regulations," Title 49, Code of Federal Regulations, Parts 171, 172, 173, 174, 177,

178, 179, and 180 revised as of [October 1, 1992] **September 26, 1994**, and referenced herein, may be purchased from the places listed below. The "Federal Motor Carrier Safety Regulations," Title 49, Code of Federal Regulations, **Part 382 and Parts 390 through 397** [revised as of October 1, 1992], and the **Federal Register and all supplements and amendments thereto, as adopted and incorporated, by reference** [and adopted by reference in Section 177.804 of] in the Appendix to the Regulations Regarding the Transportation of Hazardous Materials, may also be purchased at the places listed below.

1. United States Government:

[1.i. Superintendent of Documents
U.S. Government Printing Office
Washington, [D.C.] DC 20402
(202) 783-3238

[2.ji. U.S. Government Printing Office Bookstore
Room 110, 26 Federal Plaza
New York, [New York] NY 10278-0081
(212) 264-3825

[3.iii. U.S. Government Printing Office Bookstore
[Room 1214, Federal Building
600 Arch Street]

Robert Morris Building
100 North 17th St.
Philadelphia, [Pennsylvania] PA [19106] 19103
(215) [597-0677] 636-1900

iv. **Federal Highway Administration
Research and Special Programs Administration
Hazardous Materials Information Exchange
Electronic Bulletin Board**
Toll Free: 1-800-752-6367
Dataline: (708) 972-3275

2. Non-governmental sources (Note: The inclusion of a non-governmental source in this paragraph does not constitute an endorsement or recommendation of the product or service offered, sold, or provided by that source or the accuracy of the information said to be contained therein. Non-governmental sources are listed solely as a convenience to interested parties.):

i. **American Trucking Associations**
2200 Mill Road
Alexandria, VA 22314-4677
Toll Free: 1-800-ATA-LINE (282-5463)

ii. **J.J. Keller & Associates**
3003 West Brezewood Lane
P.O. Box 368
Neenah, WI 54957-0368
Toll Free: 1-800-558-5011
(414) 722-2848

iii. **Regulations Management Corporation**
1505 Arlington Road
Bloomington, IN 47404-0809
(812) 333-7347

iv. **Regulation Scanning**
30 West Third St.
Williamsport, PA 17701
Toll Free: 1-800-326-9303

[b] Copies of the above, Title 49, CFR volumes are also available for review at the Newark Public Library, Social Science Division of the Main Library, 5 Washington Street, Newark, New Jersey, and the New Jersey State Library, Law Section, 185 West State Street, Trenton, New Jersey.]

(b) Copies of the Federal "Hazardous Materials Regulations" and the "Federal Motor Carrier Safety Regulations" are available for review at the following public libraries:

1. **New Jersey State Library**
185 West State Street
Trenton, NJ 08625
(609) 292-6220

2. **Newark Public Library**
5 Washington Street
Newark, NJ 07101
(201) 733-7782

3. **Jersey City Public Library**
U.S. Government Documents Section
472 Jersey Avenue
Jersey City, NJ 07304
(201) 547-4517

4. **New Brunswick Public Library**
60 Livingston Avenue
New Brunswick, NJ 08901
(908) 745-5108

5. **Trenton Public Library**
120 Academy Street
Trenton, NJ 08608
(609) 392-7188

6. **Camden County Public Library**
Laurel Road
Voorhees, NJ 08043
(609) 772-1636

7. **Cherry Hill Public Library**
1100 Kings Highway, North
Cherry Hill, NJ 08034
(609) 667-0300

(c) Copies of the [Title 49 CFR volumes] **Federal "Hazardous Materials Regulations" and the "Federal Motor Carrier Safety Regulations"** noted above are further available for review at the New Jersey Department of Transportation, Bureau of [Freight Services] **Ports, Terminals and Freight Services**, 1035 Parkway Avenue, Trenton, [New Jersey] NJ 08625. Hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. This office may be contacted at (609) [530-8026] **530-8031**.

16:49-1.6 Assistance

(a) For general assistance and procedural questions in matters related to New Jersey's Hazardous Materials Regulations, as adopted herein, contact:

Bureau of [Freight Services] **Ports, Terminals and Freight Services**
New Jersey Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, [New Jersey] NJ 08625
(609) [530-8026] **530-8031**

(b) For assistance in matters related to enforcement or interpretation of the Hazardous Materials Regulations, contact:

[Hazardous Materials Transportation Unit]
Office of Hazardous Materials Transportation, Compliance and Enforcement
New Jersey Division of State Police
Division Headquarters
River Road
P.O. Box [7608] 7068
West Trenton, [New Jersey] NJ [08625] **08628**
(609) 882-2000, extention [2581 or] 2582 or **2586**

(c) **Statements or opinions provided by the Bureau of Ports, Terminals and Freight Services or by the Division of State Police do not constitute legal advice.**

SUBCHAPTER 2. ADOPTION OF PORTIONS OF TITLE 49, CODE OF FEDERAL REGULATIONS, BY REFERENCE, AND ADOPTION AND INCORPORATION, BY REFERENCE, OF FEDERAL MOTOR CARRIER SAFETY REGULATIONS WHEN ADOPTED, AMENDED, OR SUPPLEMENTED BY THE FHWA.

16:49-2.1 Parts adopted by reference

(a) The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby incorporates by reference the

following portions of Title 49—Transportation, Code of Federal Regulations, revised as of [October 1, 1992] **September 26, 1994**. The parts adopted by reference are found in Chapter 1, referred to as “Research and Special Programs Administration, Department of Transportation.” These parts are detailed in the APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS. The portions adopted are summarized below.

1.-8. (No change.)

(b) **The Parts and Appendices of the Federal Motor Carrier Safety Regulations and all supplements and amendments thereto, adopted as a final rule action by the Federal Highway Administration, United States Department of Transportation, and adopted and incorporated, by reference, herein, by the Department, are summarized below.**

1. **Part 382—General.**
2. **Part 390—Federal Motor Carrier Safety Regulations: General.**
3. **Part 391—Qualification of Drivers.**
4. **Part 392—Driving of Motor Vehicles.**
5. **Part 393—Parts and Accessories Necessary for Safe Operation.**
6. **Part 394—(Removed and Reserved).**
7. **Part 395—Hours of Service of Drivers.**
8. **Part 396—Inspection, Repair, and Maintenance.**
9. **Part 397—Transportation of Hazardous Materials; Driving and Parking Rules.**
10. **Part 177—Carriage by Public Highway.**
11. **Part 178—Shipping Container.**
12. **Part 179—Specifications for Tank Cars.**
13. **Part 180—Continuing Qualification and Maintenance of Packagings.**

(c) **Supplements and amendments to the Federal Motor Carrier Safety Regulations and Appendices to the Federal Motor Carrier Safety Regulations which have been adopted as a final rule action by the Federal Highway Administration and become effective after September 26, 1994, are not listed in the appendix to this chapter. Those supplements and amendments are, pursuant to the above, adopted and incorporated, by reference, herein as if set forth in full. The full text of such supplements and amendments can be found by examining the Federal Register published after the above noted date. See also N.J.A.C. 16:49-1.5, Document availability, and N.J.A.C. 16:49-1.6, Assistance.**

APPENDIX TO THE REGULATIONS REGARDING THE TRANSPORTATION OF HAZARDOUS MATERIALS

This Appendix to the Regulations Regarding the Transportation of Hazardous Materials details the adopted portions of Title 49, C.F.R., by section. All sections are listed by number and title to identify content for the reader. Detailed modifications are stated within the appropriate section.

CHAPTER 1

**RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION**

(Subchapter B is not being incorporated upon adoption)

**SUBCHAPTER C—HAZARDOUS MATERIALS
REGULATIONS**

**PART 171—GENERAL INFORMATION, REGULATIONS,
AND DEFINITIONS**

...
Section 171.16 Detailed hazardous materials incident reports.
(New Jersey revision as noted below.)

Section 171.16 is revised to state the following: (Note: Paragraph (a) and (b) have been changed and paragraph (e) has been added.)

(a) Each carrier who transports hazardous materials shall report in writing in duplicate on DOT Form 5800.1 (Rev. 6/89) to the U.S. Department of Transportation within 30 days of the date of discovery, unless the requirements of paragraph (e) in this section are met, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which any

of the circumstances set forth in Section 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge—

(1) (No change.)

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any [unremoved] removed waste must be entered in Section IX of the report form (F 5800.1) (Rev. 6/89).

(b)-(c) (No change.)

...
Section 171.20 Submission of Examination Reports.
...

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

...
Subpart D—Marking.
...

Section 172.301 General marking requirements for [nonbulk] non-bulk packaging.

...
Section 172.322 Marine Pollutants.
...

Section 172.326 Portable tanks.
...

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

...
Subpart E—Non-bulk Packaging for Hazardous Materials Other Than Class I and Class 7
...

Section 173.181 Pyrophoric materials [(liquid)] (liquids).

...
Section 173.229 Chloric acid solution or [Chlorine] chlorine dioxide hydrate, frozen.
...

Subpart G—Gases; Preparation and Packaging.
Section 173.300 [Definitions.] (Reserved)
...

Section 173.305 Charging of cylinders with a mixture of compressed gas and other material[s].

...
Section 173.309 Fire extinguishers.
...

Subpart H—(Reserved)
Section 173.334 Organic phosphates mixed with compressed gas.
...

Section 173.336 Nitrogen dioxide, liquid; nitrogen peroxide, liquid; and nitrogen tetroxide, liquid.
Section 173.337 Nitric oxide.
...

Subpart I—Radioactive Materials.
...

Section 173.453 Fissile materials—[exceptins] exceptions
...

PART 174—CARRIAGE BY RAIL

...
Subpart B—General Operating Requirements
...

Section 174.47 Correction of violations.
...

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TRANSPORTATION

- Subpart D—Handling of Placarded Rail Cars, Transport Vehicles and Freight Containers
- Section 174.82 General requirements for the handling of placarded rail cars, transport vehicles, freight containers, and bulk [packages] packagings.
- ...
- Subpart E—Class I (Explosive) Materials
- ...
- Section 174.112 Loading Division 1.3 (Class B explosive) materials (Also see Section [174.102]174.101).
- ...
- Subpart L—Detailed Requirements for Class 8 (Corrosive) Materials
- ...
- Section 174.812 [Special handling requirements for nitric acid.] (Reserved)
- ...

PART 177—CARRIAGE BY PUBLIC HIGHWAY

Motor carriers and other persons subject to this part shall comply with 49 CFR Part 382 and Parts 390 through 397 (excluding section 391.69, 393.81, and 397.3) [revised as of October 1, 1992], and all supplements and amendments thereto, to the extent those rules apply. Carriers transporting hazardous materials, substances, or wastes as defined herein must comply with these parts as listed below.

(See N.J.A.C. 16:49-1.3(1) herein).

MOTOR CARRIER SAFETY REGULATIONS

SUBCHAPTER B—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Subpart A—General

- Section 382.101 Purpose.
- Section 382.103 Applicability.
- Section 382.105 Testing procedures.
- Section 382.107 Definitions.
- Section 382.109 Preemption of State and local laws.
- Section 382.111 Other requirements imposed by employers.
- Section 382.113 Requirement for notice.
- Section 382.115 Starting date for testing programs.

Subpart B—Prohibitions

- Section 382.201 Alcohol concentration.
- Section 382.204 Alcohol possession.
- Section 382.205 On-duty use.
- Section 382.207 Pre-duty use.
- Section 382.209 Use following an accident.
- Section 382.211 Refusal to submit to a required alcohol or controlled substances test.

- Section 382.213 Controlled substances use.
- Section 382.215 Controlled substances testing.

Subpart C—Tests Required

- Section 382.301 Pre-employment testing.
- Section 382.303 Post-accident testing.
- Section 382.305 Random testing.
- Section 382.307 Reasonable suspicion testing.
- Section 382.309 Return-to-duty testing.
- Section 382.311 Follow-up testing.

Subpart D—Handling of Test Results, Record Retention, and Confidentiality

- Section 382.401 Retention of records.
- Section 382.403 Reporting of results in a management information system.
- Section 382.405 Access to facilities and records.
- Section 382.407 Medical review officer notifications to the employer.
- Section 382.409 Medical review officer record retention for controlled substances.

- Section 382.411 Employer notifications.
- Section 382.413 Release of alcohol and controlled substances test information by previous employers.

Subpart E—Consequences for Drivers Engaging in Substance Use-Related Conduct

- Section 382.501 Removal from safety-sensitive function.
- Section 382.503 Required evaluation and testing.
- Section 382.505 Other alcohol-related conduct.
- Section 382.507 Penalties.

Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training, and Referral

- Section 382.601 Motor carrier obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.
- Section 382.603 Training for supervisors.
- Section 382.605 Referral, evaluation, and treatment.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS: GENERAL

Subpart B—General Requirements and Information

- Section 390.15 Assistance in investigations and special studies.
- Section 390.21 Marking of commercial motor vehicles. (Section 390.21 is modified to state the following:) A commercial motor vehicle operated in intrastate commerce shall be subject to the provisions of N.J.S.A. 39:4-46.
- Section 390.23 Relief from regulations. (Section 390.23 is modified to state the following:) The following commercial motor vehicles, operating in intrastate commerce, are exempt from this section when any emergency occurs that affects the citizens of New Jersey:

(a) Commercial motor vehicles which are owned, operated, or leased by a public or quasi-public or private entity in this State, said entity being subject to the jurisdiction of the Board of Regulatory Commissioners; or

(b) Commercial motor vehicles which are owned, operated or leased by a public or quasi-public or private entity in this State and which is or will be operated under a contract to the State of New Jersey or a governmental or quasi-governmental entity thereof.

Such emergencies include, but are not limited to, weather and other acts of nature (e.g., snow, flooding, earthquake, power/telephone outages, disruptions to power or telephone transmission lines or facilities, supply lines or facilities for steam, water, or gas) and other emergencies (e.g., motor vehicle accidents, industrial accidents, fires, etc.)

PART 391—QUALIFICATION OF DRIVERS

Subpart C—Background and character

- Section 391.21 Application for employment as specified in this Section 391.21 [are] is not required for persons already employed by the same carrier as of March 4, 1985.

Subpart D—Examinations and Tests

- Section 391.31 Road test. (Section 391.31 is modified to state the following:) The provisions of Section 391.31 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of February 6, 1995, and transports hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or operates a vehicle displaying a hazardous material(s) placard.

Section 391.35 Written examination.
 (Section 391.35 is modified to state the following):
 The provisions of Section 391.35 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of February 6, 1995, and transports hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or operates a vehicle displaying a hazardous material(s) placard.

Subpart E—Physical Qualifications and Examinations
 Section 391.41 Physical qualifications for drivers.
 (Section 391.41 is modified to state the following):
 A driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, but who is not physically qualified to drive under Section 391.41(b) of the Subchapter may continue to drive a motor vehicle, unless the driver is transporting hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or is operating a vehicle displaying a hazardous material(s) placard.

Subpart G—Limited Exemptions
 Section 391.71 Intrastate drivers of vehicles transporting combustible liquids
 (Section 391.71(a) and (b) are revised to state the following):
 (a) The provisions of Section 391.11(b) (relating to minimum age), Section 391.21 (relating to application for employment), Section 391.23 (relating to investigations and inquiries), Section 391.31 (relating to road test), and Section 391.35 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in Section 390.5 of [this subchapter]) these regulations) as of January 1, 1991, who possesses a valid New Jersey Commercial Driver License (CDL), and continues to be a regularly employed driver of that motor carrier and drives a motor vehicle that:
 1.-2. (No change.)
 (b) (No change.)

Subpart H—Controlled Substances Testing
 Section 391.85 Definitions.
 (Section 391.85 is revised to state the following):
 “Commercial Motor Vehicle—Intrastate Commerce” means a motor vehicle or combination of motor vehicles used or designed to transport passengers or property in intrastate comment:
 (a) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds or displays a gross vehicle weight rating of 26,001 or more pounds;
 (b) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 (c) If the vehicle is designed to transport 16 or more passengers including the driver;
 (d) If the vehicle is designed to transport 8 or more but less than 16 persons, including the driver, and is used to transport such persons for hire on a daily basis to and from places of employment; or
 (e) If the vehicle is transporting or used in the transportation of hazardous material(s) and is required to be placarded in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §172.500 et seq.), or the vehicle displays a hazardous material(s) placard.

Section 391.125 Termination schedule of this subpart.

PART 392—DRIVING OF MOTOR VEHICLES
 Subpart G—Prohibited practices

Section 392.71 Radar detectors; use and/or possession.
 PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION
 Subpart B—Lighting Devices, Reflectors, and Electrical Equipment
 Section 393.17 Lamps and reflectors—combinations in driveaway-towaway operation.
 Subpart D—Glazing and Window Construction
 Section 393.62 Window obstruction(s).
 Subpart G—Miscellaneous Parts and Accessories
 Section 393.79 Defrosting device[s].
 Section 393.83 [Exhausts system location.] Exhaust systems.
 PART 394—[NOTIFICATION AND REPORTING OF ACCIDENTS] (RESERVED)
 PART 395—HOURS OF SERVICE OF DRIVERS
 Section 395.7 [Travel time.] (Reserved)
 Section 395.10 [Adverse driving conditions.] (Reserved)
 Section 395.11 [Emergency conditions.] (Reserved)
 Section 395.12 [Relief from regulations.] (Reserved)
 PART 396—INSPECTION, REPAIR, AND MAINTENANCE
 [Appendix G to Subchapter B—Minimum Periodic Inspection Standards]
 PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES
 APPENDIX D TO SUBCHAPTER B—TABLE OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULE I.
 APPENDIX E TO SUBCHAPTER B—TABLES OF DISQUALIFYING DRUGS AND OTHER SUBSTANCES, SCHEDULES II THROUGH V.
 APPENDIX F TO SUBCHAPTER B—COMMERCIAL ZONES
 Section 1 New York, NY
 Section 6 Philadelphia, PA
 Section 11 Commercial zones of municipalities in New Jersey within 5 miles of New York, NY
 Section 12 Commercial zones of municipalities in Westchester and Nassau Counties, NY
 Section 43 Definitions.
 Section 44 Commercial zones determined generally, with exceptions.
 Section 45 Controlling distances and population data.
 APPENDIX G TO SUBCHAPTER B—MINIMUM PERIODIC INSPECTION STANDARDS.
 PART 178—[SPECIFICATIONS FOR PACKAGINGS] SHIPPING CONTAINER SPECIFICATIONS
 Section 178.1 [Specification 1A; boxed carboys.] Purpose and scope.
 Subpart B—Specifications for Inside Containers, and Linings
 Section 178.33 Specification 2P; inner nonrefillable metal receptacles.
 Section 178.33-1 Compliance.
 Section 178.33-2 Type and size.

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- Section 178.33-3 **Inspection.**
 Section 178.33-4 **Duties of inspector.**
 Section 178.33-5 **Material.**
 Section 178.33-6 **Manufacture.**
 Section 178.33-7 **Wall thickness.**
 Section 178.33-8 **Tests.**
 Section 178.33-9 **Marking.**
 Section 178.33a Specification 2Q[;] [inner nonrefillable metal receptacles].
 Section 178.33a-2 **Type and size.**
 Section 178.33a-3 **Inspection.**
 Section 178.33a-4 **Duties of inspector.**
 Section 178.33a-5 **Material.**
 Section 178.33a-6 **Manufacture.**
 Section 178.33a-7 **Wall thickness.**
 Section 178.33a-8 **Tests.**
 Section 178.33a-9 **Marking.**
 Subpart C—Specifications for Cylinders
 Section 178.36 Specification 3A; seamless steel cylinders or 3AX; seamless steel cylinders of capacity over 1,000 pounds water volume.
 Section 178.36-1 **Compliance.**
 Section 178.36-2 **Type, size and service pressure.**
 Section 178.36-3 **Inspection by whom and where.**
 Section 178.36-4 **Duties of inspector.**
 Section 178.36-5 **Steel.**
 Section 178.36-6 **Identification of material.**
 Section 178.36-7 **Defects.**
 Section 178.36-8 **Manufacture.**
 Section 178.36-9 **Welding or brazing.**
 Section 178.36-10 **Wall thickness.**
 Section 178.36-11 **Heat treatment.**
 Section 178.36-12 **Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.**
 Section 178.36-13 **Safety devices and protection for valves, safety devices, and other connections, if applied.**
 Section 178.36-14 **Hydrostatic test.**
 Section 178.36-15 **Flattening test.**
 Section 178.36-16 **Physical test.**
 Section 178.36-17 **Acceptable results for physical and flattening tests.**
 Section 178.36-18 **Leakage test.**
 Section 178.36-19 **Rejected cylinders.**
 Section 178.36-20 **Marking.**
 Section 178.36-21 **Size of marks.**
 Section 178.36-22 **Inspector's report.**
 Section 178.36-23 **Report retention.**
 Section 178.37 Specification 3AA; seamless steel cylinders made of definitely prescribed steels or 3AAX; seamless steel cylinders made of definitely prescribed steels of capacity over 1,000 pounds water volume.
 Section 178.37-1 **Compliance.**
 Section 178.37-2 **Type, size and service pressure.**
 Section 178.37-3 **Inspection by whom and where.**
 Section 178.37-4 **Duties of inspector.**
 Section 178.37-5 **Authorized steel.**
 Section 178.37-6 **Identification of material.**
 Section 178.37-7 **Defects.**
 Section 178.37-8 **Manufacture.**
 Section 178.37-9 **Welding or brazing.**
 Section 178.37-10 **Wall thickness.**
 Section 178.37-11 **Heat treatment.**
 Section 178.37-12 **Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.**
 Section 178.37-13 **Safety devices and protection for valves, safety devices, and other connections, if applied.**
 Section 178.37-14 **Hydrostatic test.**
 Section 178.37-15 **Flattening test.**
 Section 178.37-16 **Physical test.**
 Section 178.37-17 **Physical and flattening tests.**
 Section 178.37-18 **Leakage test.**
 Section 178.37-19 **Rejected cylinders.**
 Section 178.37-20 **Marking.**
 Section 178.37-21 **Size of marks.**
 Section 178.37-22 **Inspector's report.**
 Section 178.37-23 **Report retention.**
 Section 178.38 Specification 3B; seamless steel cylinders.
 Section 178.38-1 **Compliance.**
 Section 178.38-2 **Type, size and service pressure.**
 Section 178.38-3 **Inspection by whom and where.**
 Section 178.38-4 **Duties of inspector.**
 Section 178.38-5 **Steel.**
 Section 178.38-6 **Identification of material.**
 Section 178.38-7 **Defects.**
 Section 178.38-8 **Manufacture.**
 Section 178.38-9 **Welding or brazing.**
 Section 178.38-10 **Wall thickness.**
 Section 178.38-11 **Heat treatment.**
 Section 178.38-12 **Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.**
 Section 178.38-13 **Safety devices and protection for valves, safety devices, and other connections, if applied.**
 Section 178.38-14 **Hydrostatic test.**
 Section 178.38-15 **Flattening test.**
 Section 178.38-16 **Physical test.**
 Section 178.38-17 **Acceptable results for physical and flattening tests.**
 Section 178.38-18 **Leakage test.**
 Section 178.38-19 **Rejected cylinders.**
 Section 178.38-20 **Marking.**
 Section 178.38-21 **Size of marks.**
 Section 178.38-22 **Inspector's report.**
 Section 178.38-23 **Report retention.**
 Section 178.39 Specification 3BN; seamless nickel cylinders.
 Section 178.39-1 **Compliance.**
 Section 178.39-2 **Type, size and service pressure.**
 Section 178.39-3 **Inspection by whom and where.**
 Section 178.39-4 **Duties of inspector.**
 Section 178.39-5 **Nickel.**
 Section 178.39-6 **Identification of material.**
 Section 178.39-7 **Defects.**
 Section 178.39-8 **Manufacture.**
 Section 178.39-9 **Welding or brazing.**
 Section 178.39-10 **Wall thickness.**
 Section 178.39-11 **Heat treatment.**
 Section 178.39-12 **Openings in cylinders and connections (valves, fuse plugs, etc.) for those openings.**
 Section 178.39-13 **Safety devices and protection for valves, safety devices, and other connections, if applied.**
 Section 178.39-14 **Hydrostatic test.**
 Section 178.39-15 **Flattening test.**
 Section 178.39-16 **Physical test.**
 Section 178.39-17 **Acceptable results for physical and flattening tests.**
 Section 178.39-18 **Rejected cylinders.**
 Section 178.39-19 **Marking.**
 Section 178.39-20 **Size of marks.**
 Section 178.39-21 **Inspector's report.**
 Section 178.39-22 **Report retention.**
 Section 178.42 Specification 3E; seamless steel cylinders.
 Section 178.42-1 **Compliance.**
 Section 178.42-2 **Type, size and service pressure.**
 Section 178.42-3 **Inspection by whom and where.**
 Section 178.42-4 **Duties of inspector.**
 Section 178.42-5 **Steel.**
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Section 178.356-3 Tests.
Section 178.356-4 Required markings.
Section 178.356-5 Typical assembly detail.
Section 178.358 Specification 21PF fire and shock resistant, phenolic-foam insulated, metal overpack.
Section 178.358-1 General requirements.

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Section 178.358-5 Required markings.
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Section 178.362-7 Typical assembly sketches.
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Section 178.364-6 Typical assembly detail.

PART 179—SPECIFICATIONS FOR TANK CARS

Subpart A—Introduction, Approvals and Reports

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Section 179.3 Procedure for securing approval.
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...

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Subparts C—Specifications for Pressure Tank Car Tanks (Classes DOT—105, 109, 112, and 114)

Section 179.100 General specification applicable to pressure tank car tanks.
Section 179.100-1 Tanks built under these specifications shall comply with the requirements of §§ 179.100, 179.101 and when applicable, §§ 179.102, 179.103, and 179.104.
Section 179.100-2 Approval.
Section 179.100-3 Type.
Section 179.100-4 Insulation.
Section 179.100-5 Bursting pressure.
Section 179.100-6 Thickness of plates.
Section 179.100-7 Materials.
Section 179.100-8 Tank heads.
Section 179.100-9 Welding.
Section 179.100-10 Postweld heat treatment.
Section 179.100-11 Tank mounting.
Section 179.100-12 Manway nozzle, cover and protective housing.
Section 179.100-13 Venting, loading and unloading valves, measuring and sampling devices.
Section 179.100-14 Bottom outlets.
Section 179.100-15 Safety relief valves.
Section 179.100-16 Attachments.

PROPOSALS

Interested Persons see Inside Front Cover

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- Section 179.100-17** Closures for openings.
- Section 179.100-18** Test of tanks.
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- Section 179.100-20** Stamping.
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- Section 179.100-23** Alternative requirements for tank head puncture resistance systems.
- Section 179.101** Individual specification requirements applicable to pressure tank cars.
- Section 179.101-1** Individual specification requirements.
- Section 179.102** Special commodity requirements for pressure tank car tanks.
- Section 179.102-1** Carbon dioxide, refrigerated liquid.
- Section 179.102-2** Chlorine.
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- Section 179.103** Special requirements for class 114A*** tank car tanks.
- Section 179.103-1** Type.
- Section 179.103-2** Manway cover.
- Section 179.103-3** Venting, loading and unloading valves, measuring and sampling devices.
- Section 179.103-4** Safety relief devices and pressure regulators.
- Section 179.103-5** Bottom outlets.
- Section 179.104** Special requirements for spec. 105 A200-F tank car tanks.
- Section 179.104-1** Tanks built under these specifications must meet the requirements of §§ 179.100, and 179.101, and when applicable, §§ 179.102 and 179.104.
- Section 179.104-2** Type.
- Section 179.104-3** Tank mounting.
- Section 179.104-4** Welding.
- Section 179.105** Special requirements for Specifications 112 and 14 tank cars.
- Section 179.105-1** General.
- Section 179.105-4** Thermal protection.
- Section 179.105-5** Tank head puncture resistance.
- Section 179.105-7** Safety relief valves.
- Section 179.105-8** Stenciling.
- [**Section 179.106** Special requirements for Specification 105 tank cars.]
- Subpart D—Specifications for Nonpressure Tank Car Tanks (Classes DOT—103, 104, 111AF, 111AW, and 115AW)
- Section 179.200** General specifications applicable to non-pressure tank car tanks (Classes DOT—103, 104, and 111).
- Section 179.200-1** Tanks built under these specifications must meet the requirements of §§ 179.200, 179.201 and when applicable § 179.202.
- Section 179.200-2** Approval.
- Section 179.200-3** Type.
- Section 179.200-4** Insulation.
- Section 179.200-5** Bursting pressure.
- Section 179.200-6** Thickness of plates.
- Section 179.200-7** Materials.
- Section 179.200-8** Tank heads.
- Section 179.200-9** Compartment tanks.
- Section 179.200-10** Welding.
- Section 179.200-11** Postweld heat treatment.
- Section 179.200-12** Tank mounting.
- Section 179.200-13** Manway ring or flange, safety relief device flange, bottom outlet nozzle flange, bottom washout nozzle flange and other attachments and openings.
- Section 179.200-14** Expansion capacity.
- Section 179.200-15** Closures for manways.
- Section 179.200-16** Gauging devices, top loading and unloading devices, venting and air inlet devices.

- Section 179.200-17** Bottom outlets.
- Section 179.200-18** Safety relief devices.
- Section 179.200-19** Reinforcements, when used, and appurtenances not otherwise specified.
- Section 179.200-20** Interior heater systems.
- Section 179.200-21** Closures for openings.
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- Section 179.200-23** Tests of safety relief devices.
- Section 179.200-24** Stamping.
- Section 179.200-25** Stenciling.
- Section 179.200-26** Certificate of construction.
- Section 179.200-27** Alternative requirements for tank head puncture resistance systems.
- Section 179.201** Individual specification requirements applicable to non-pressure tank car tanks.
- Section 179.201-1** Individual specification requirements.
- Section 179.201-2** Minimum plate thickness.
- Section 179.201-3** Lined tanks.
- Section 179.201-4** Material.
- Section 179.201-5** Postweld heat treatment and corrosion resistance.
- Section 179.201-6** Manways and manway closures.
- Section 179.201-7** Safety relief devices.
- Section 179.201-8** Sampling device and thermometer well.
- Section 179.201-9** Gauging device.
- Section 179.201-10** Water capacity marking.
- Section 179.201-11** Insulation.
- Section 179.203** Special requirements for specification 111 tank cars.
- Section 179.203-1** General.
- Section 179.203-2** Previously built cars.
- Section 179.203-3** Stenciling.
- Section 179.220** General specifications applicable to non-pressure tank car tanks consisting of an inner container supported within an outer shell (class DOT—115).
- Section 179.220-1** Tanks built under these specifications must meet the requirements §§ 179.220, 179.221, and 179.222.
- Section 179.220-2** Approval.
- Section 179.220-3** Type.
- Section 179.220-4** Insulation.
- Section 179.220-5** Bursting pressure.
- Section 179.220-6** Thickness of plates.
- Section 179.220-7** Materials.
- Section 179.220-8** Tank heads.
- Section 179.220-9** Compartment tanks.
- Section 179.220-10** Welding.
- Section 179.220-11** Postweld heat treatment.
- Section 179.220-12** Tank mounting.
- Section 179.220-13** Inner container manway nozzle and cover.
- Section 179.220-14** Openings in the tank.
- Section 179.220-15** Support system for inner container.
- Section 179.220-16** Expansion capacity.
- Section 179.220-17** Gauging devices, top loading and unloading devices, venting and air inlet devices.
- Section 179.220-18** Bottom outlets.
- Section 179.220-19** Safety relief devices.
- Section 179.220-20** Reinforcements, when used, and appurtenances not otherwise specified.
- Section 179.220-21** Interior heating system.
- Section 179.220-22** Closure for openings.
- Section 179.220-23** Test of tanks.
- Section 179.220-24** Tests of safety relief valves.
- Section 179.220-25** Stamping.
- Section 179.220-26** Stenciling.
- Section 179.220-27** Certificate of construction.
- Section 179.221** Individual specification requirements applicable to tank car tanks consisting of an inner container supported within an outer shell.
- Section 179.221-1** Individual specification requirements.

- Section 179.222 Special commodity requirements for DOT—115A tank car tanks.
- Section 179.222-1 Chloroprene.**
- Subpart E—Specifications for Multi-Unit Tank Car Tanks (Classes DOT—106A and 110AW)
- Section 179.300 General specifications applicable to multi-unit tank car tanks designed to be removed from car structure for filling and emptying (classes DOT—106A and 110AW)
- Section 179.300-1 Tanks built under these specifications shall meet the requirements of §179.300, §179.301 and when applicable, §179.302.**
- Section 179.300-2 Approval.**
- Section 179.300-3 Type and general requirements.**
- Section 179.300-4 Insulation.**
- Section 179.300-5 Bursting pressure.**
- Section 179.300-6 Thickness of plates.**
- Section 179.300-7 Materials.**
- Section 179.300-8 Tank heads.**
- Section 179.300-9 Welding.**
- Section 179.300-10 Postweld heat treatment.**
- Section 179.300-11 Tank mounting.**
- Section 179.300-12 Protection of fittings.**
- Section 179.300-13 Venting, loading and unloading valves.**
- Section 179.300-14 Attachments not otherwise specified.**
- Section 179.300-15 Safety relief devices.**
- Section 179.300-16 Tests of tanks.**
- Section 179.300-17 Tests of safety relief devices.**
- Section 179.300-18 Stamping.**
- Section 179.300-19 Inspection.**
- Section 179.300-20 Reports.**
- ...
- Subpart F—Specification for Cryogenic Liquid Tank Car Tanks and Seamless Steel Tanks (Classes DOT—113 and 107A).
- Section 179.400 General specification applicable to cryogenic liquid tank car tanks.
- Section 179.400-1 General.**
- Section 179.400-2 Approval.**
- Section 179.400-3 Type.**
- Section 179.400-4 Insulation system and performance standard.**
- Section 179.400-5 Materials.**
- Section 179.400-6 Bursting and buckling pressure.**
- Section 179.400-7 Tank heads.**
- Section 179.400-8 Thickness of plates.**
- Section 179.400-9 Stiffening rings.**
- Section 179.400-10 Sump of siphon bowl.**
- Section 179.400-11 Welding**
- Section 179.400-12 Postweld heat treatment.**
- Section 179.400-13 Support system for inner tank.**
- Section 179.400-14 Cleaning of inner tank.**
- Section 179.400-15 Radioscopy.**
- Section 179.400-16 Access to inner tank.**
- Section 179.400-17 Inner tank piping.**
- Section 179.400-18 Test of inner tank.**
- Section 179.400-19 Valves and gages.**
- Section 179.400-20 Pressure relief devices.**
- Section 179.400-21 Test of pressure relief valves.**
- Section 179.400-22 Protective housings.**
- Section 179.400-23 Operating instructions.**
- Section 179.400-24 Stamping.**
- Section 179.400-25 Stenciling.**
- Section 179.400-26 Certificate of construction.**
- Section 179.401 Individual specification requirements applicable to inner tanks for cryogenic liquid tank car tanks.
- Section 179.401-1 Individual specification requirements.**
- Section 179.500 Specification DOT—107A**** seamless steel tank car tanks.
- Section 179.500-1 Tanks built under these specifications shall meet the requirements of §179.500.**
- Section 179.500-2 Approval.**

- Section 179.500-3 Type and general requirements.**
- Section 179.500-4 Thickness of wall.**
- Section 179.500-5 Material.**
- Section 179.500-6 Heat treatment.**
- Section 179.500-7 Physical tests.**
- Section 179.500-8 Openings in tanks.**
- Section 179.500-9 Tank mounting.**
- Section 179.500-10 Protective housing.**
- Section 179.500-11 Loading and unloading valves.**
- Section 179.500-12 Safety relief devices.**
- Section 179.500-13 Fixtures.**
- Section 179.500-14 Test of tanks.**
- Section 179.500-15 Handling of tanks failing in tests.**
- Section 179.500-16 Tests of safety relief devices.**
- Section 179.500-17 Marking.**
- Section 179.500-18 Inspection and reports.**

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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- Subpart E—Qualification and Maintenance of Cargo Tanks
- ...
- Section 180.407 Requirements for test and inspection of specification cargo tanks.
- ...

(a)

DIVISION OF AERONAUTICS

Air Safety and Zoning

Proposed Readoption with Amendments: N.J.A.C. 16:62

Authorized By: W. Dennis Keck, Acting Assistant Commissioner for Planning.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-32 and the Air Safety and Hazardous Zoning Act of 1983, P.L. 1983, c.260.

Proposal Number: PRN 1994-606.

Submit comments by December 21, 1994 to:

Renee Rapciewicz
Deputy 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 "sun set" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:62, Air Safety and Hazardous Zoning, will expire on February 26, 1995. This chapter establishes minimum standards for the control of airport and aeronautical hazards and standards for land use adjacent to airports, which the municipalities of this State shall implement.

The rules were reviewed and analyzed by the Department's staff of the Division of Aeronautics and were found to be necessary, reasonable and proper for the purpose of which they were originally promulgated. The Department does, however, wish to propose amendments during the readoption process.

The proposed amendments are summarized as follows.

The Air Safety and Hazardous Zoning Act of 1983 was amended by P.L. 1991, c.445 on January 18, 1992, requiring the following changes to the regulations:

1. The name of the regulation has been changed to Air Safety and Zoning, and reference to the name of the Act has been changed to the Air Safety and Zoning Act of 1983, as amended.
2. Changes and/or clarifications to the definitions of airport, airport hazard, commissioner, and tree have been made at N.J.A.C. 16:62-1.1.
3. The term airport hazard areas has been changed throughout to airport safety zones.

In addition to the above required changes, the Department proposes the following amendments:

1. Deletion of the definition of "fast track" at N.J.A.C. 16:62-1.1 and the provision at N.J.A.C. 16:62-1.2(h), since the Department no longer controls the items once considered as routine applications (porches, decks, fences, planting of trees or shrubbery, etc.).

2. Deletion of the requirement to maintain a list of applicable airports contained in Appendix A as part of the rules at N.J.A.C. 16:62-1.2(f).

3. Recodified N.J.A.C. 16:62-1.2(m) has been amended to refer to May 15, 1989, instead of using the language "as the adoption date of the latest amendments to this chapter."

4. The Administrative Code reference has been corrected at N.J.A.C. 16:62-4.2(c)1.

5. N.J.A.C. 16:62-6.3(a)1 has been amended for editorial purposes.

6. N.J.A.C. 16:62-10.1(a) has been amended to reference an implementation deadline of May 15, 1989 for clear zones.

The chapter is summarized as follows:

N.J.A.C. 16:62-1 provides the definitions, general requirements and provisions of the rules and their applicability.

N.J.A.C. 16:62-2 outlines requirements for municipalities to follow.

N.J.A.C. 16:62-3 describes the methodology to be used in delineating airport safety zones, runway subzones, runway end subzones and clear zones.

N.J.A.C. 16:62-4 defines the minimum obstruction ordinance standards which a municipality must enact and describes the methodology used to define vertical development allowed within an airport safety zone.

N.J.A.C. 16:62-5 outlines the minimum land use standards to be used around airports.

N.J.A.C. 16:62-6 describes the procedures to be followed in the acquisition of a permit for creation or establishment of a prohibitive land use or vertical height development.

N.J.A.C. 16:62-7 outlines the provisions for amended and special airport standards.

N.J.A.C. 16:62-8 prescribes the general provisions for a permit for development immune to local ordinance.

N.J.A.C. 16:62-9 depicts the general provisions for existing land uses not conforming to the standards of this chapter.

N.J.A.C. 16:62-10 establishes deadlines for the implementation of the provisions of this chapter.

N.J.A.C. 16:62-11 outlines the penalty for violations of any provision of the chapter.

Social Impact

The proposed readoption with amendments will continue the minimum standards for the control of airport and aeronautical hazards, and standards for land use adjacent to airports, which the municipalities are required to implement. These standards are minimum State standards, and municipalities may adopt more rigorous standards for control of the areas and condition under the provisions of the Municipal Land Use Law. Municipalities are required to implement and maintain land use and aeronautical safety zone control ordinances as required by this chapter. The rules do not apply to airports not licensed by this State or airports located within the Port of New York District. Although the specific provisions of this chapter may not apply to areas surrounding non-State licensed airports open to the public, this does not limit the power of municipalities to enact similar ordinances governing the areas in accordance with the Municipal Land Use Law.

Economic Impact

The proposed readoption with amendments will have an economic impact on a developer when a project requires establishment of a prohibited land use or vertical height development. The economic impact experienced will be through the application and permit fees and the costs of site plans, specifications and construction drawings in compliance with the requirements of N.J.A.C. 16:62-6. Municipalities and developers have been operating under the fees established and will benefit because the fees have not been increased by this readoption. Additionally, municipalities are impacted since they are required to adopt ordinances. Any violation of any provision of this chapter will be grounds for fine, modifications, suspension or revocation of any license issued under N.J.S.A. 6. There is no direct impact on the public. The Department processing expenses are part of its administrative budget.

Regulatory Flexibility Analysis

The proposed readoption with amendments will continue to impose bookkeeping, recordkeeping, and compliance requirements. These requirements are imposed on municipalities and developers in compliance

with established standards for land use adjacent to airports. Municipalities must enact ordinance(s) incorporating the standards promulgated under this chapter. Some developers may be classified as small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any developer proposing a project requiring the establishment of a prohibited land use or vertical height development must follow the standards established by the ordinances instituted by the municipalities. In addition, application and permit requirements, including fees, and the application and permit conditions outlined in N.J.A.C. 16:62-6 are requirements that must be followed. The submission of site plans, specifications, and construction drawings necessary for the permit process shall bear the raised seal of a New Jersey licensed professional engineer, professional planner, land surveyor, or architect. For any new developers, these requirements may increase their start-up capital costs; for established businesses, the compliance costs will have no impact. As the rules effectuate a statutory scheme and serve to promote the benefit of the general populace, no differentiation in requirements is provided based upon business size.

Full text of the rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:62.

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

SUBCHAPTER 1. [AIRPORT HAZARDS] AIR SAFETY AND ZONING

16:62-1.1 Definitions

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

...

"Airport" means any area of land or water, or both, designed and set aside for the landing and taking-off of fixed wing aircraft, utilized or to be utilized by the general public for such purposes, publicly or privately owned, and licensed by the Commissioner as a public use airport or landing strip, or [an area] a **proposed facility for which an application for a license has been submitted in complete form pursuant to N.J.A.C. 16:54** and which has been determined by the Commissioner [to be] as likely to be so licensed within one year of the determination.

"Airport hazard" means:

1. Any use of land or water, or both, which [may] creates a dangerous condition for persons or property in or about an airport or aircraft during landing or taking-off at an airport; or

2. Any structure or tree which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport.

"Airport [Hazard Area] **safety zone**" means any area of land or water, or both, upon which an airport hazard might be created or established, if not prevented by this chapter.

...

["Fast-track" means an accelerated system of application review procedures.]

...

"Tree" means an object of natural **vegetative** growth.

...

16:62-1.2 General requirements and provisions

(a) Under the Air Safety and [Hazardous] Zoning Act of 1983, as amended, this chapter establishes minimum standards for the control of airport and aeronautical hazards, and standards for land use adjacent to airports, which the municipalities of this State shall implement. These standards are minimum State standards, and municipalities may adopt more rigorous standards for control of the areas and condition under the provisions of the Municipal Land Use Law. The Commissioner may adopt under N.J.A.C. 16:62-7 a special or amended standard for an airport when it is determined that local conditions require it.

(b) No person shall build, rebuild, create or cause to be built, rebuilt or created any object or structure, or plant, or cause to be planted or permit to grow any tree or vegetation, which will interfere with, diminish, change or obstruct the airspace or landing and take-off area available for the landing and take-off of aircraft at [public use] airports covered under this chapter.

(c) (No change.)

(d) Municipalities of this State are required to implement and maintain land use [and aeronautical hazard control] ordinances in accordance with the provisions of this chapter. These ordinances are subject to review by the Commissioner [of Transportation].

(e) (No change.)

(f) Airport [hazard areas] **safety zones** adjacent to airports not licensed by the State of New Jersey or airports which are located within the Port of New York District as defined in N.J.S.A. 32:1-3 are not subject to the specific provisions of this chapter. Although the specific provisions of this chapter may not apply to areas surrounding non-State licensed airports open to the public, this in no way limits the power of municipalities to enact substantially similar ordinances governing the areas in accordance with the purposes of the Municipal Land Use Law. [To clarify the airports involved, please refer to Appendix A, incorporated herein by reference, which lists the licensed public use airports subject to the rules.]

(g) All persons are hereby put on notice that the standards of this chapter are minimum Statewide standards. Implementations of these standards does not necessarily guarantee a prudent and comprehensive land use and [hazard] **safety** program suitable for all airports.

(h) In order to expedite the handling of routine applications for permits where the resulting development would have negligible adverse impact under the purposes of this chapter, the Commissioner may institute by written order, fast-track or five day application review procedures. The Commissioner may also establish by written order, classification of permit applications, and for certain routine applications, a permit application fee of \$25.00.]

(i)(h) The mechanisms provided for control of aeronautical hazards within the "Air Safety and [Hazardous] Zoning Act" rely substantially upon local zoning regulations. The powers to enact traditional zoning ordinances upon navigable waters are constrained; and the operational characteristics and jurisdictions of water facilities may differ substantially from many land facilities; the provisions of this chapter do not apply to seaplane or water facilities unless otherwise provided for by the Commissioner in N.J.A.C. 16:62-7.1 [of this chapter]. Any interested person may petition the Commissioner for review of Air Safety and [Hazardous] Zoning issues under the operation of any Public Use Seaplane Facility.

Recodify existing (j)-(m) as (i)-(l) (No change in text.)

(n)(m) This chapter shall not apply to:

1. Any person who has submitted a complete application, as defined and required by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., for approval of the proposed development as of April 15, 1985 or as of [the adoption date of the latest amendments to this chapter] **May 15, 1989** for commercial and industrial development proposed to be located in the clear zone.

2. Any person immune to local ordinance, whose proposed development has progressed beyond the preliminary engineering stage, as of April 15, 1985 or [at the time of the adoption of the latest amendments to this chapter] **as of May 15, 1989** for commercial and industrial development proposed to be located in the clear zone.

16:62-2.1 Municipal requirements

(a) Each municipality which contains within its boundaries any part of a delineated airport [hazard area] **safety zone**, as defined by N.J.A.C. 16:62-3.1, shall enact an ordinance or ordinances incorporating the standards promulgated under this chapter. These standards shall also become a part of the masterplan of development for each affected municipality which has a masterplan.

(b) Each municipality affected under this chapter shall transmit to the Division at time of adoption, amendment, or when requested, a valid copy of the ordinance(s) and a local development masterplan shall be transmitted to the following address:

New Jersey Department of Transportation
Division of Aeronautics
Air Safety and [Hazardous] Zoning Permits
1035 Parkway Avenue
CN [600] 610
Trenton, New Jersey 08625

(c)-(e) (No change.)

SUBCHAPTER 3. DELINEATION OF AIRPORT [HAZARD AREAS] SAFETY ZONES

16:62-3.1 Delineation of Airport [Hazard Areas] Safety Zones

(a) This subchapter describes the methodology to be used in delineating Airport [Hazard Areas] **Safety Zones**.

(b) (No change.)

16:62-3.2 Methodology used to delineate Airport [Hazard Areas] Safety Zones

(a) An Airport [Hazard Area] **Safety Zone** shall be established for each runway at an airport.

(b) Each Airport [Hazard Area] **Safety Zone** shall consist of a RUNWAY SUBZONE, two RUNWAY END SUBZONES and two CLEAR ZONES.

(c) The overall Airport [Hazard Area] **Safety Zone** for an airport is geometrically constructed by defining and locating the RUNWAY SUBZONE and RUNWAY END SUBZONES for each runway open to the public on an airport open to the public. The outermost borders of the subzones comprise the outermost boundary of the Airport [Hazard Area] **Safety Zone**. The area within those outermost boundaries is that area regulated by the provisions of this chapter [and is the Airport Hazard Area for an airport].

(d) The methodology used to delineate the overall construction and outermost boundaries of the Airport [Hazard Area] **Safety Zone** for an airport is further graphically depicted in Figure 3.

16:62-3.3 Delineation of the RUNWAY SUBZONE

(a) The RUNWAY SUBZONE of an Airport [Hazard Area] **Safety Zone** shall consist of a rectangle having the same centerline and length as the runway, unless a shorter length is necessitated by limited property ownership at the airport.

(b)-(c) (No change.)

(d) The methodology used to delineate the RUNWAY SUBZONE of an Airport [Hazard Area] **Safety Zone** is illustrated in Figure 1.

16:62-3.4 Delineation of the RUNWAY END SUBZONES

(a) The RUNWAY END SUBZONES of an Airport [Hazard Area] **Safety Zone** shall consist of trapezoids located at either end of the RUNWAY SUBZONE along the flight approach and departure path.

(b)-(c) (No change.)

(d) The methodology used to delineate the RUNWAY END SUBZONE of an Airport [Hazard Area] **Safety Zone** is illustrated in Figure 2.

16:62-3.5 Delineation of the CLEAR ZONES

(a) The CLEAR ZONES of an Airport [Hazard Area] **Safety Zone** shall consist of trapezoids located within the RUNWAY END SUBZONE along the flight approach and departure path.

(b)-(c) (No change.)

(d) The methodology used to delineate the CLEAR ZONE of an Airport [Hazard Area] **Safety Zone** is illustrated in Figure 7.

16:62-4.1 Minimum obstruction ordinance standards

(a) This subchapter defines the minimum obstruction ordinance standards which a municipality must enact pursuant to the provisions of this chapter, and describes the methodology used to define vertical development allowed within an Airport [Hazard Area] **Safety Zone**.

(b) (No change.)

16:62-4.2 Methodology used to define vertical development allowed within an Airport [Hazard Area] Safety Zone

(a) Minimum obstruction ordinance standards establish the vertical limits up to which structures or trees may be allowed to be developed or grow [within an Airport Hazard Area].

(b) Minimum obstruction ordinance standards are vertical standards measured in respect to elevations whose datum is the horizontal plane established by runway elevations. For example, if a point in an Airport [Hazard Area] **Safety Zone** permits at a specific point development up to "X" feet, that means "X" feet above the runway horizontal plane and not "X" feet above the natural grade of the land at that point in the Airport [Hazard Area] **Safety Zone**. This provision is further graphically depicted in Figure 4.

(c) The vertical standards within the RUNWAY SUBZONE of an Airport [Hazard Area] **Safety Zone** are determined first by establishing the elevations at the runway centerlines at the ends of the RUNWAY SUBZONE [of the Airport Hazard Area]. From those elevations at the RUNWAY SUBZONE ends, a line is run 90 degrees outward from each side of the runway centerline for a distance of 125 feet. Within the area defined by these four points, no development is allowed above the natural grade of the soil except for runway and flight safety equipment.

1. The vertical standards within the remainder of the RUNWAY SUBZONE of an Airport [Hazard Area] **Safety Zone** are determined by establishing planes from the edges of the longitudinal 0 foot development restriction line established in N.J.A.C. 16:62-[3.2(b)1ii] 4.2c which slope upward and outward at a rate of seven feet horizontally to one foot vertically. This upward plane ceases when it reaches the outer longitudinal borders of the RUNWAY SUBZONE of any Airport [Hazard Area] **Safety Zone** at the elevation of 150 feet above its starting point at the longitudinal zero foot development line.

2. The methodology used to establish the vertical standards within the RUNWAY SUBZONE of an Airport [Hazard Area] **Safety Zone** is further graphically depicted in Figure 5.

(d) The vertical standards within the RUNWAY ENDS SUBZONE of an Airport [Hazard Area] **Safety Zone** are determined by first establishing a plane with a rising slope of one foot upward to 20 feet outward from the end of the RUNWAY SUBZONE to the outermost end of the RUNWAY END SUBZONE. This plane is bisected by the extended runway centerline and is 250 feet in total width at its innermost dimension and widens uniformly along its 3,000 feet length so as to have a total width of 850 feet at its outermost dimension where it intersects with the outermost portion of the RUNWAY END SUBZONE at the elevation of 150 feet above its starting point at the zero foot development line.

1. The vertical standards within the remainder of the RUNWAY END SUBZONE of an Airport [Hazard Area] **Safety Zone** are determined by establishing sloping planes from the outermost longitudinal edges of the plane established in (d) above. These planes rise upward at a rate of one foot upward to seven feet outward from the plane established in (d) above to where they meet the outermost longitudinal boundaries of the RUNWAY END SUBZONE at the elevation of 150 feet.

[ii].i. The methodology used to establish the vertical standards with the RUNWAY END SUBZONE of an Airport [Hazard Area] **Safety Zone** is further graphically depicted in Figure 6.

16:62-5.1 Minimum land use standards

(a) Within the [hazard areas] **safety zones** delineated in N.J.A.C. 16:62-3.1, each municipality shall implement under N.J.A.C. 16:62-2.1, ordinances which implement the following standards for land use around airports. Prohibited land uses are specifically prohibited without the written approval of the Commissioner. Prohibited land uses may be allowed by the Commissioner on airport property when they are determined necessary by the Director for air commerce purposes or for the operation of the airport and its vendors directly serving air commerce needs. An example of this is a flight school.

1.-2. (No change.)

(b) (No change.)

(c) Municipalities shall, when developing land use ordinances to conform with the provisions of this chapter, adopt general land use provisions within the ordinance to minimize unwarranted concentrations of persons within Airport [Hazard Areas] **Safety Zones**, especially along the extended runway centerlines within RUNWAY END SUBZONES.

SUBCHAPTER 6. PERMIT FOR CREATION OR EXPANSION OF A PROHIBITED LAND USE OR VERTICAL HEIGHT DEVELOPMENT WITHIN AN AIRPORT [HAZARD AREA] SAFETY ZONE

16:62-6.1 General provisions

(a) The Commissioner may issue a permit for creation or establishment of a nonconforming use or vertical height development

within an airport [hazard area] **safety zone** upon determination that:

1.-4. (No change.)

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

16:62-6.2 Municipal approval

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

(c) Any person proposing to create or establish a prohibited land use or vertical height development in a designated airport [hazard area] **safety zone** not subject to municipal ordinances established in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D), shall present the proposed development to the municipal governing body, which shall be considered the municipal agency for purposes of these rules.

16:62-6.3 Permit application requirements

(a) To be considered complete, an application for a permit for creation of a prohibited land use or vertical height development within an airport [hazard area] **safety zone** must include the following:

1. [Copies of a] A completed [airport hazard] permit application form;

2.-5 (No change.)

6. Submission of site plans, specifications and construction drawings detailing the substance of the proposed development for which a permit is sought. Site plans shall bear the raised seal of a New Jersey licensed Professional Engineer, Professional Planner, Land Surveyor, or Architect and shall show the location of property lines, the location of runways, the boundaries of the airport [hazard area] **safety zone**, and elevations of proposed development showing where and by what amount the development exceeds the minimum standards for vertical development adopted under this chapter; and

7. (No change.)

(b) Applications for permits issued under the provisions of this chapter and correspondence to the Department relating to the provisions of this chapter should be forwarded to the following address:

New Jersey Department of Transportation
Division of Aeronautics
Air Safety and [Hazardous] Zoning Permits
1035 Parkway Avenue
CN [600] 610
Trenton, New Jersey 08625

16:62-7.1 General provisions

(a) Under Section 5 of the [Airport] **Air Safety and Zoning Act** of 1983, the Commissioner may, notwithstanding any other provisions of this chapter, adopt an amended or special standard for an airport when he determines that local conditions require it. Those standards shall be adopted under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

16:62-8.1 General provisions

(a) In the event of a proposed development within an Airport [Hazard Area] **Safety Zone** which is immune to local ordinance, the standards of this chapter still apply to such proposed development.

(b) Any persons proposing a development immune to local ordinance within an Airport [Hazard Area] **Safety Zone** shall make application to the Department in accordance with N.J.A.C. 16:62-6.1 and 16:62-6.3. The requirement for local approval under N.J.A.C. 16:62-6.2 and 6.3(a)2 is waived, and the permit application fee under N.J.A.C. 16:62-6.3(a)5 is waived.

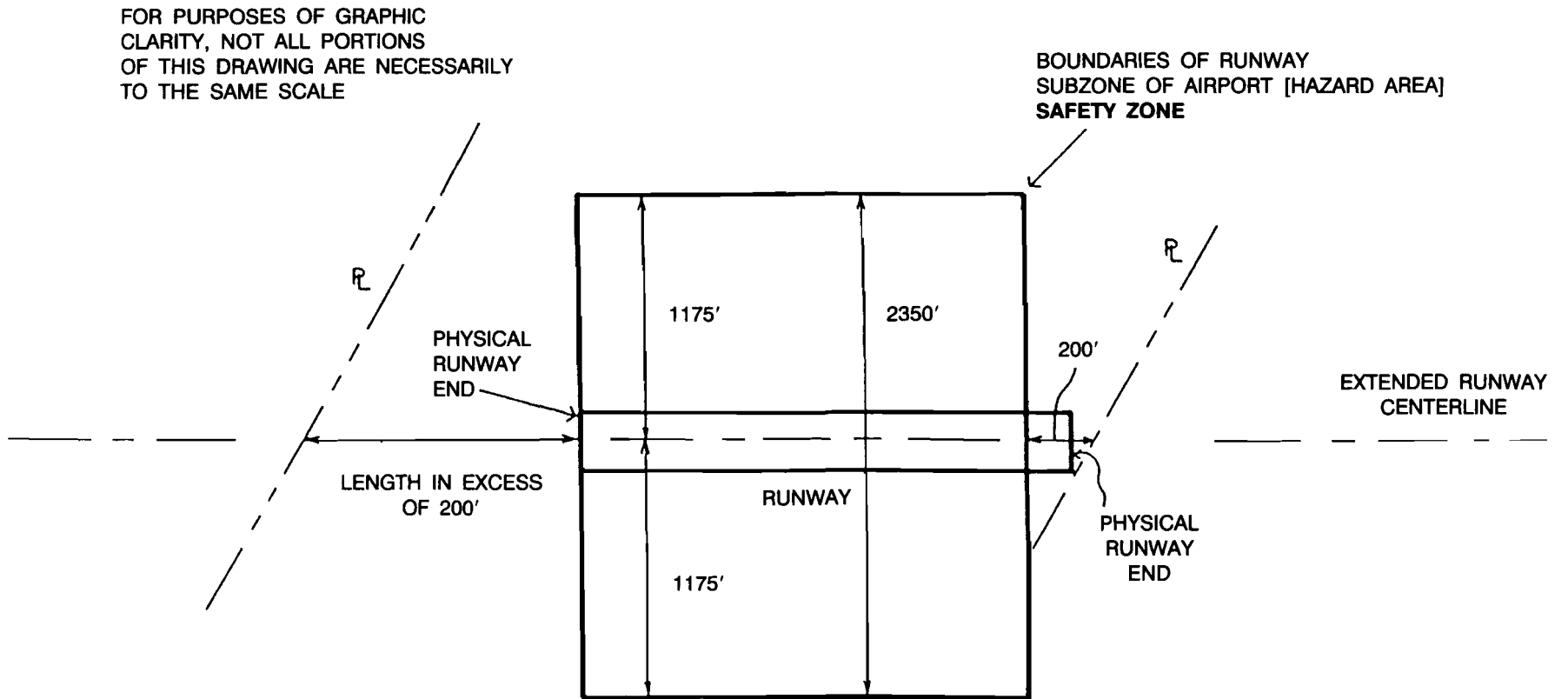
(c) (No change.)

16:62-10.1 General provisions

(a) Municipalities affected by the provisions of this chapter shall implement the standards of this chapter as of April 15, 1985, [or at a later date as provided for in this chapter] **or in the case of clear zones, May 15, 1989.** [Affected municipalities shall adopt the required ordinances within 12 months of the amendment to this subchapter.]

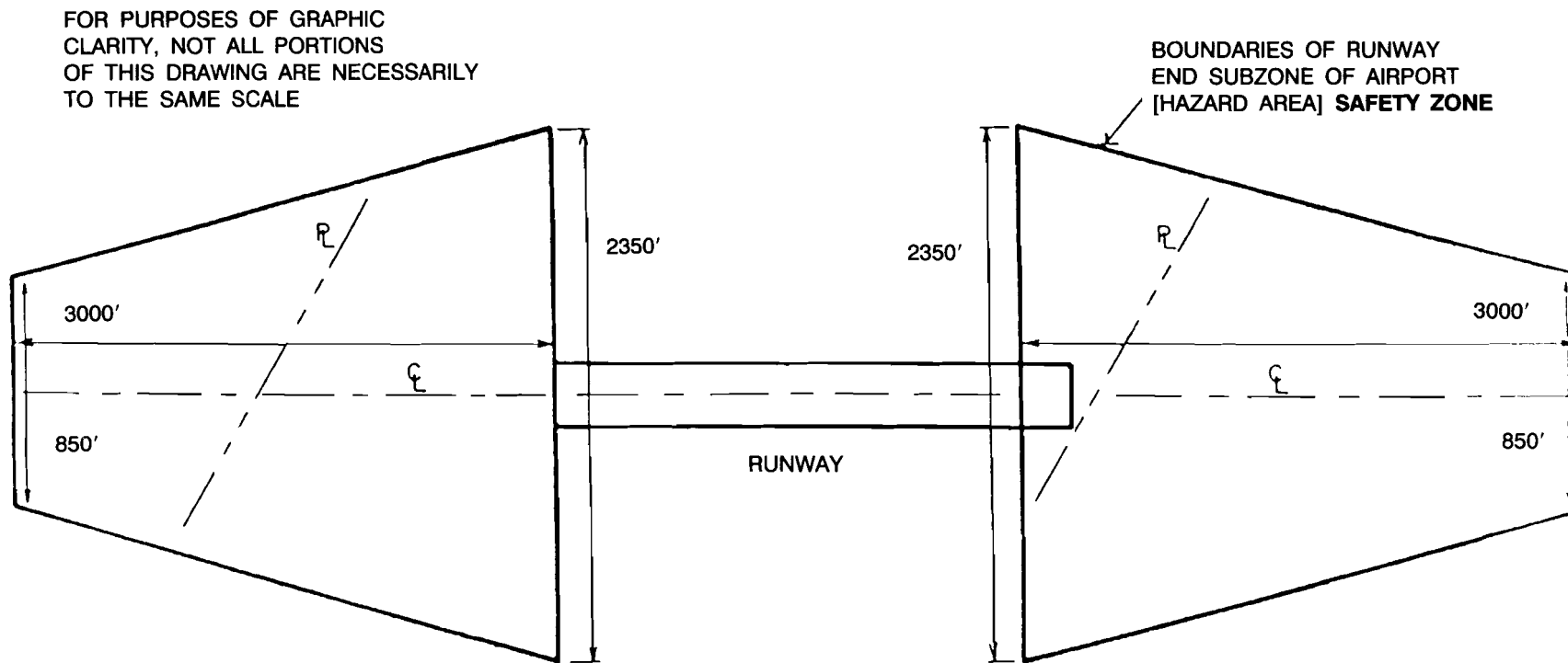
(b) No municipal body may grant variances or subdivisions in an Airport [Hazard Area] **Safety Zone** under their existing ordinances whose purpose would be contrary to the standards of this chapter.

FIGURE 1.



GRAPHIC DEPICTION OF THE GENERAL CONSTRUCTION OF THE RUNWAY SUBZONE OF AN AIRPORT [HAZARD AREA] SAFETY ZONE

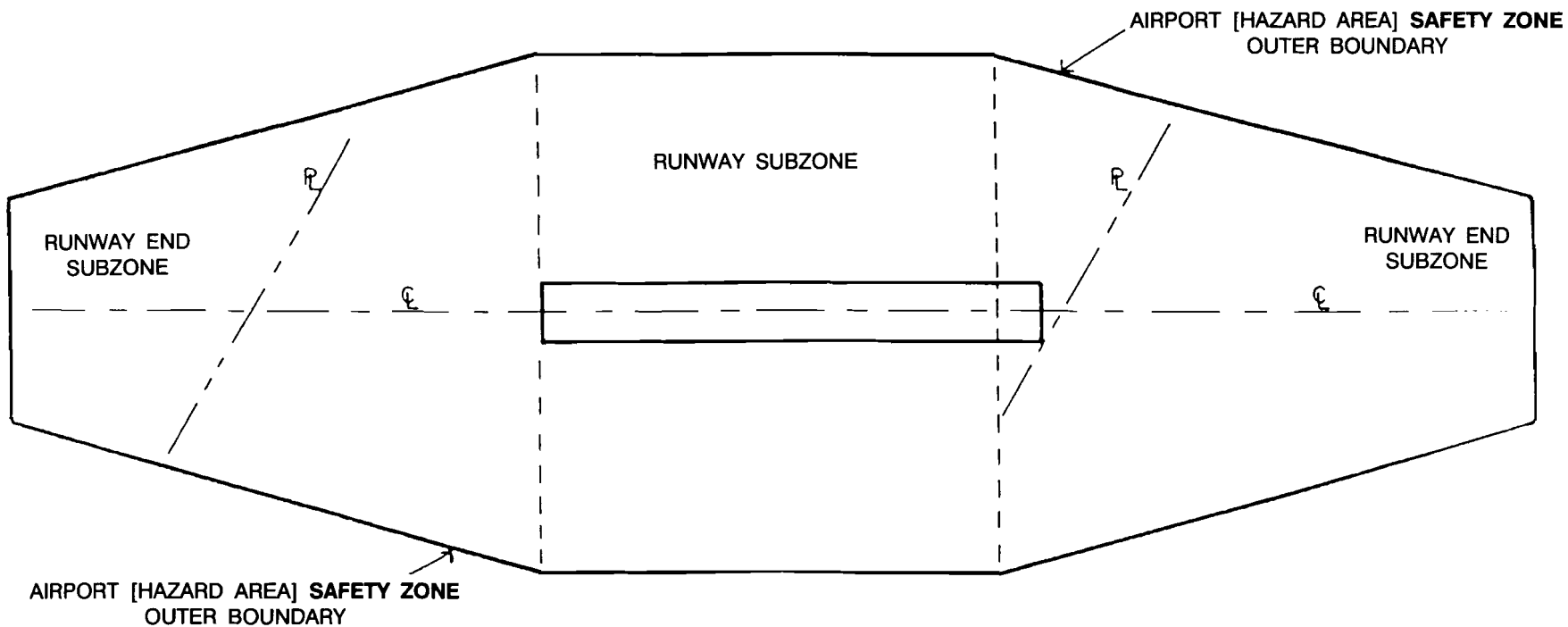
FIGURE 2.



GRAPHIC DEPICTION OF THE GENERAL CONSTRUCTION OF THE RUNWAY END SUBZONE(S) OF AN AIRPORT [HAZARD AREA] SAFETY ZONE

FIGURE 3.

FOR PURPOSES OF GRAPHIC CLARITY, NOT ALL PORTIONS OF THIS DRAWING ARE NECESSARILY TO THE SAME SCALE



GRAPHIC DEPICTION OF THE GENERAL OVERALL CONSTRUCTION AND OUTERMOST BOUNDARIES OF AN AIRPORT [HAZARD AREA] SAFETY ZONE

FIGURE 4. (No change.)

FIGURE 5.

VERTICAL AND HORIZONTAL PLANES OF RUNWAY
SUBZONE OF AIRPORT [HAZARD AREA] SAFETY ZONE

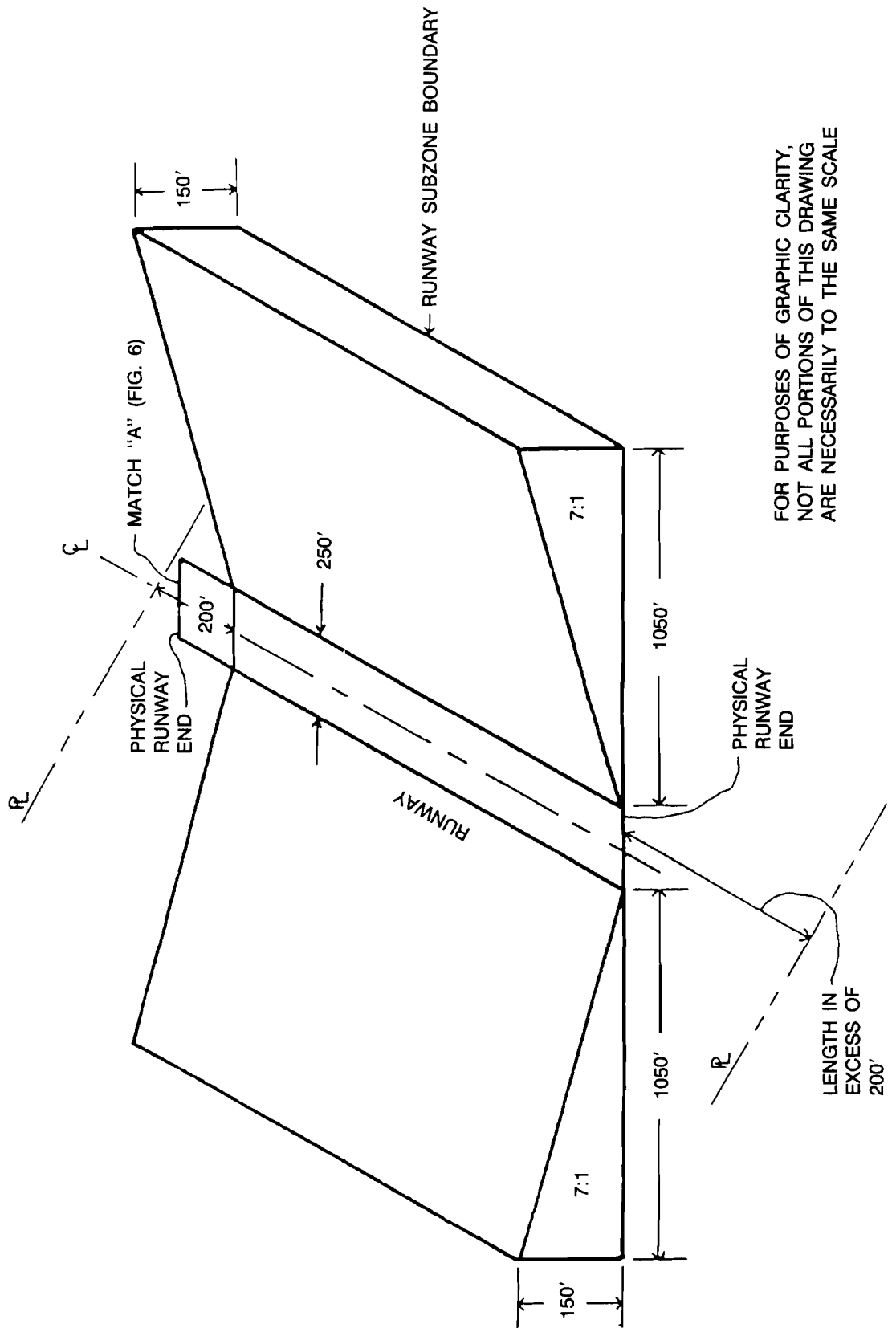


FIGURE 6.

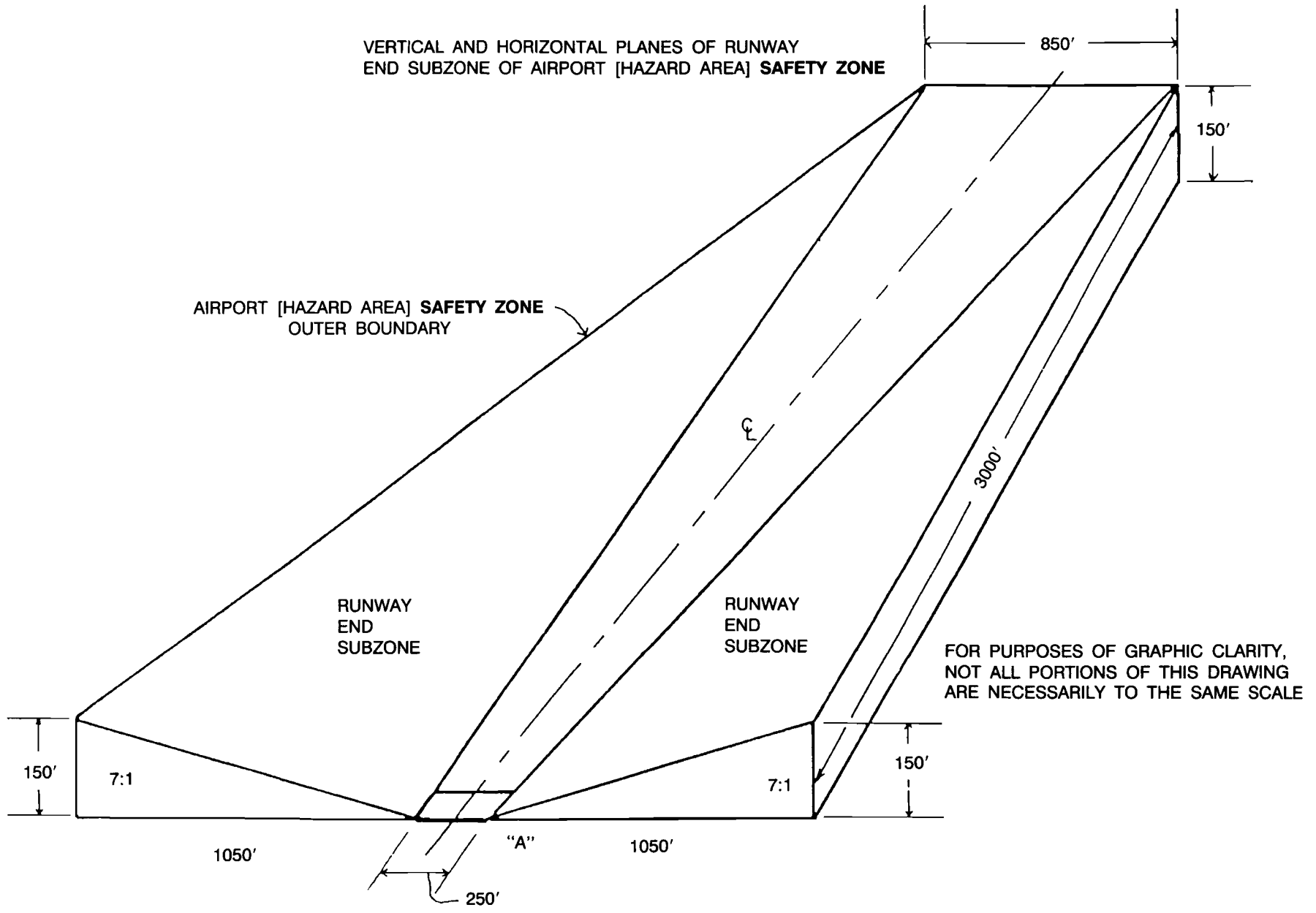
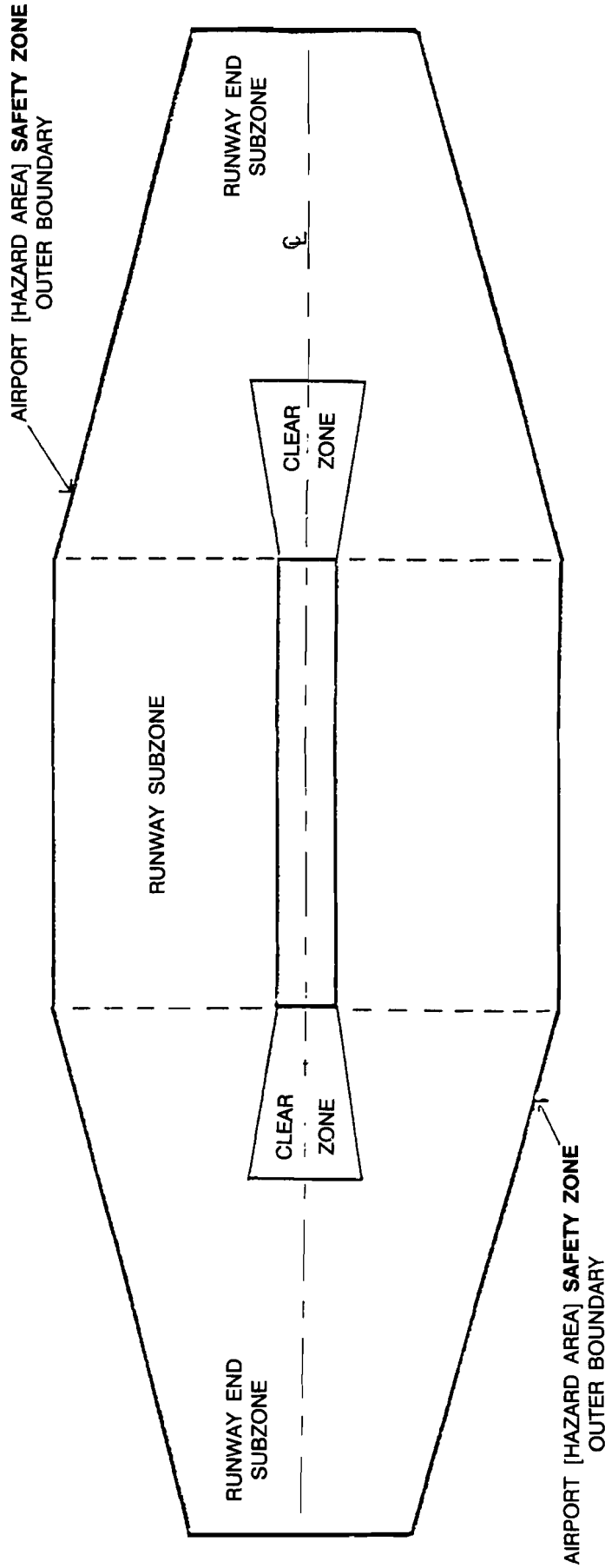


FIGURE 7.

FOR PURPOSES OF GRAPHIC CLARITY, NOT ALL PORTIONS OF THIS DRAWING ARE NECESSARILY TO THE SAME SCALE



GRAPHIC DEPICTION OF THE CLEAR ZONE DIMENSIONS:

| | |
|-------------|------------|
| INNER WIDTH | 250 FEET |
| OUTER WIDTH | 450 FEET |
| LENGTH | 1,000 FEET |

[APPENDIX A
LICENSED PUBLIC USE AIRPORTS

| | |
|------------------|----------------------|
| Aeroflex-Andover | Newton |
| Alexandria | Nordheim Fly. "K" |
| Allaire | Oakland Farms |
| Bader Field | Ocean City |
| Blairstown | Old Bridge |
| Bucks | Oldman |
| Camden County | Pemberton |
| Cape May County | Piney Hollow |
| Colts Neck | Princeton |
| Cross Keys | Red Lion |
| Eagles Nest | Red Wing |
| Flying W | R.J. Miller |
| Greenwood | Rudys |
| Hackettstown | Sky Manor |
| Hammonton | Solberg-Hunterdon |
| Kroelinger | Somerset |
| Kupper | Southern Cross |
| Lakewood | South Jersey Reg. |
| Licalzi | Sussex |
| Lincoln | Trenton-Robbinsville |
| Manahawkin | Trinca |
| Marlboro | Twin Pine |
| Mercer County | Vineland-Downstown |
| Millville | Woodbine] |
| Morristown | |

The agency proposal follows:

Summary

This proposal makes significant major revisions and updates to the current rules concerning administration of motor fuels taxes in New Jersey and in the rules concerning retail sales of motor fuels in New Jersey. The proposal is designed to implement P.L. 1992, c.23, which took effect on July 1, 1992. The proposal also makes amendments reflecting statutory changes brought about by the taxpayer bill of rights, P.L. 1992, c.175, effective July 1, 1993.

The proposal reflects the separate and independent administrative treatment for motor fuels tax purposes of gasoline on the one track and special fuels on the other. In general, special fuels, including diesel fuel, are taxed at the bottom of the distribution chain at the sale or use by the ultimate consumer, whereas gasoline is taxed at the top of the distribution chain at the distributor, importer or jobber level.

The proposal also revises the current rules by eliminating references to special license A and special license B which no longer exist under the statutory amendments. Provisions have been made reflecting new licenses for storage facility operators, exporters, and seller/users. The latter seller/user license is designed for the payment of applicable tax and monitoring of transactions in the area of special fuels. Recordkeeping requirements have been lengthened to four years and certain *de minimis* rules have been proposed to attempt to accommodate small users. See N.J.A.C. 18:19-4.2(c). In addition, the proposal includes references to totalizers which are now required of retail dealers as an enforcement measure.

The taxpayer bill of rights provides for a four year statute of limitations on assessments by the Director and for a four year statute of limitations on refund claims unless a particular tax law provides for a different limitation period. N.J.S.A. 54:39-67 does provide for a six month limitation period applicable to certain enumerated refundable uses (N.J.S.A. 54:39-66) as the proposal continues to reflect. N.J.A.C. 18:18-15.4(b). The proposal also sets forth the recognition of the postmark date for filing purposes, a further provision which was contained in the taxpayer bill of rights effective July 1, 1993.

Other technical references contained in the present rules have been updated to reflect changes in the court system and in the area of administrative procedure. Enforcement measures such as bonding requirements, trust accounts and personal liability in the case of certain deficiencies are also set forth in the proposal.

The proposal also includes changes to the sign posting rules at N.J.A.C. 18:19-2.1, 2.2 and 2.7 allowing variations in pump topper signs. The information on the signs would afford the motorist with clear notice concerning prices and as such is in the public interest. The amendment would allow the Director to approve signs a few inches larger than the dimensions in the current rule and of different composition, if the dealer wished to use them.

Social Impact

P.L. 1992, c.23 had significant social impact. The revised method of collection of taxes on diesel fuels was in part directed at eliminating tax fraud through the use of daisy chains by dishonest sellers. See the report entitled *Motor Fuel Tax Evasion*, February 1992 of the State Commission of Investigation. The rules implement the statutory changes which were enacted following the publication of this report. The statutory and regulatory scheme is intended to enable the State more closely to monitor and document the flows of fuels and thereby reduce the opportunities of fraud and evasion by sellers and users of motor fuels.

As a result of reducing tax fraud the economic position of honest dealers has been made more secure because competition against dishonest sellers substituting untaxed No. 2 heating oil for diesel fuel has been reduced. The tax regime in this regard is now similar to that prevailing in certain neighboring states.

Economic Impact

P.L. 1992, c.23 does not change any rates of tax but does provide for better enforcement of the tax laws dealing with motor fuels and for expanded reporting and licensing requirements. For the period reflecting tax collected July 1, 1992 through December 31, 1992 a revenue increase of 6.5 percent was observed by the Division over the period July 1, 1991 through December 31, 1991, amounting to \$12,971,016. Since the main purpose and effect of proposed amendments and new rules is to update and clarify the present law and to eliminate rules made obsolete through legislative change, the direct economic impact of the proposal itself should be small. However, the rules are intended to enable taxpayers to report more accurately, and when fully implemented they may increase

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Motor Fuels Tax

Motor Fuels Retail Sales

Proposed Amendments: N.J.A.C. 18:18-1.1, 2.1, 2.4, 2.5, 2.6, 2.7, 2.8, 2.10, 3.1 through 3.19, 4.1 through 4.10, 5.1, 5.3, 5.4, 5.6, 5.7, 5.8, 6.1, 6.2, 6.3, 7.1, 7.2, 7.4, 7.5, 7.8, 7.9, 7.11, 8.1 through 8.9, 8.19, 9.1, 9.2, 9.3, 10.1, 11.1, 11.2, 11.3, 12.1, 12.2, 12.3, 12.4, 12.6, 12.8, 12.10, 13.1, 13.2, 13.3, 14.1, 14.2, 15.1, 15.2, 15.4, 15.5, 15.9 and 15.10; 18:19-1.1, 2.1, 2.2, 2.7, 3.1, 3.2, 4.1 and 5.5

Proposed Repeals: N.J.A.C. 18:18-2.9, 5.2, 5.3, 5.5, 5.11 through 5.17, 5.19, 5.20, 7.3, 12.9, 15.9 and 15.20

Proposed Repeal and New Rule: N.J.A.C. 18:18-7.10

Proposed New Rules: N.J.A.C. 18:18-3.24, 5.1 through 5.7, 12.16 through 12.20, 14.3; 18:19-4.2, 5.6, 6.1

Proposed Recodification with Amendments: N.J.A.C. 18:18-5.1 as 3.20; 18:18-5.4 as 3.21; 18:18-5.6 as 3.22; and 18:18-5.7 as 3.23

Authorized By: Richard D. Gardiner, Director, Division of Taxation.

Authority: N.J.S.A. 54:39-10, 54:50-1, 56:6-6.

Proposal Number: PRN 1994-599.

Submit comments by December 21, 1994 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

State revenue slightly over what it otherwise would have been. Clarification of certain provisions should enable taxpayers and their advisors to understand more readily the law and prepare reports more efficiently.

Regulatory Flexibility Analysis

The proposed amendments and new rules implement and parallel underlying statutory requirements. The amendments and new rules apply to small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as to large businesses. Where appropriate the Division has attempted to lighten the financial impact of the statute on small businesses through the principle of *de minimis*. This is intended to ease the costs of compliance for small taxpayers while at the same time not significantly compromising the overall impact of the legislation. The potential increase of administrative costs without these limitations together with the burdens on smaller taxpayers were not deemed to be offset by positive effects or benefits had the *de minimis* provisions not been proposed. The Division will monitor the operation of these provisions, and if modifications in them are deemed necessary based upon administrative experience, appropriate changes will be proposed in the rules.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 18:18-2.9, 5.2, 5.3, 5.5, 5.11 through 5.17, 5.19, 5.20, 7.3, 7.10, 12.9, 15.9 and 15.20

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

18:18-1.1 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:

“Blender” means and includes any person that produces blended fuel within the terminal system. As used in this definition the term “terminal system” means and consists of refineries, pipelines, and bulk terminals. Motor fuel in any supply tank or any tank car, tanker, or other equipment suitable for ground transportation is not considered to be within the terminal system. A person that engages in “splash blending” is not considered to be a blender within the meaning of this rule.

Example: S heating oil company drives its tank truck to a terminal in Linden. The truck contains No. 2 heating oil. At the terminal a quantity of kerosene is added to the load. The truck drives away, and as it travels over bumps in the road, the two products mix in the tank. Based on this activity the heating oil company does not qualify as a blender within the meaning of the term.

“Distributor” means and includes every person, wherever resident or located, [who imports into this State fuels for use, distribution, storage or sale in this State after the same shall reach this State; and also every person] who produces, refines, manufactures, blends or compounds fuels and sells, uses, stores or distributes the same within this State.

“Fuels” means:

1. (No change.)
2. Any liquid or gaseous substance used, offered for sale or sold for use, either alone or when mixed, blended, or compounded, [for the purpose] **which is capable** of generating power for the propulsion of motor vehicles upon the public highways;
3. It includes:
 - i.-ii. (No change.)
 - iii. All combustible gases which exist in a gaseous state at 60° Fahrenheit and at 14.7 pounds per square inch absolute pressure, industrial naphthas and solvents, aromatic distillages, diesel fuel, additives, and all other products not included within the foregoing provisions of this section, **including any other liquids that are used or sold for use as a quantity extender to motor gasoline.**

[4. Provided, however, that only those quantities of said combustible gases and said other products which are used, offered for sale or sold for use to propel motor vehicles upon the public highways are to be subject to these regulations; and]

[5.]4. Provided [further], **however**, that any person dealing therein shall, at any time, and from time to time, upon written request of

the Director, report his receipts, sales, use and distribution of said combustible gases and other products in a manner prescribed by the Director.

“Gasoline jobber” means a [motor fuels wholesale dealer] **person** who engages in the purchase and sale of gasoline for resale and who regularly makes 95 percent or more of his gasoline sales to not less than 25 retail dealers, fleet operators or other large consumers, including farm accounts [and who maintain fixed gasoline storage facilities having a capacity of 50,000 gallons or more either owned or rented under lease for a term of not less than one year].

1. [Gasoline storage facilities holding gasoline for the jobber’s exclusive consumption are not to be included in determining the 50,000 gallons or more requirement for storage;] **(Reserved)**

2. A gasoline jobber must qualify in every respect with all the terms and conditions prescribed for a [wholesale dealer] **gasoline jobber** under these rulings. There is no requirement that a gasoline jobber possess a wholesale dealer’s license in order to qualify for a gasoline jobber’s license;

3. [The] 95 percent of **total wholesale** sales [requirement,] as specified means 95 percent or more of the total gasoline sales expressed in gallons made in this State by a gasoline jobber. Such sales must consist of gasoline sales made at wholesale only; retail sales may not be included;

4.-9. (No change.)

10. [Gasoline storage facilities:

i. A gasoline jobber must maintain in this State, at all times through the year, fixed storage facilities for gasoline having a minimum capacity of 50,000 gallons;

ii. In determining the 50,000 gallons or more requirement, the storage tank facilities owned or leased for a term of not less than one year, and maintained by a gasoline jobber located on premises used for the making of retail gasoline sales may be included; provided, the jobber can furnish, upon request, proof that such ownership or lease arrangement is bona fide, the result of an arm’s length transaction, and that such facilities are used primarily and directly for the furtherance of the gasoline jobber’s business;

iii. Gasoline storage facilities used or segregated for a gasoline jobber’s exclusive use, shall not be included in determining the 50,000 gallons or more requirement.] **(Reserved)**

11. Gasoline jobber.

i. (No change.)

[ii. If desired, a gasoline jobber may, in addition, obtain a wholesale dealer’s license;]

[iii.]ii. In order to engage in wholesale sales of motor fuels other than gasoline, a gasoline jobber must obtain a [Wholesale Dealer’s License,] **special fuels seller/user license** in addition to a gasoline jobber’s license.

12. (No change.)

13. Revocation of license.

i. (No change.)

ii. In the event there is evidence that a gasoline jobber has failed to meet the requirements for the holding of a Gasoline Jobber’s License, [the Division of Taxation shall schedule a hearing upon not less than 10 days’ notice, to determine the qualifications of a gasoline jobber] **a hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.**

iii.-iv. (No change.)

“Importer” means:

1. A person **wherever resident or located** who brings [fuels] **gasoline** into this State, from a point outside this State, [in his own vehicle] **for use, distribution, storage or sale in this State;** or

2. (No change.)

“Sale for export” means a sale of fuels in New Jersey by any person to another person not a New Jersey distributor or gasoline jobber, who sends or carries the fuels so purchased out of New Jersey to another State or foreign country in the flow of commerce.]

[“Special “A” Licensee” means any person who imports fuels into this State for the purpose of selling same incidental to his principal business of buying and selling fuels in this State or for the purpose

of consuming same or for the purpose of blending same with other fuels on which the tax had been paid or is properly owing to the State and who does not hold a Distributor's License.

1. "Special "B" Licensee" means any person who obtains fuel free of the New Jersey State Tax and sells same for ultimate use or uses same to propel a motor vehicle upon the public highways;

2. Any person having both taxable and non-taxable uses and/or sales of such fuels shall hold a Special License "B".]

"Seller of special fuels" means any person who sells any fuel capable of generating power in a diesel type engine which will include, without limitation, diesel fuel, No. 2 fuel oil, and kerosene.

"Special fuels" means [all motor fuels other than that commonly known as gasoline (see definition of gasoline in this section)] any fuel capable of generating power in a diesel type engine which will include, without limitation, diesel fuel, No. 2 fuel oil and kerosene.

"Storage facility operator" means a person owning, renting or leasing a bulk storage facility in this State with a capacity of 100,000 gallons or more and any person leasing or subleasing space in such facility and storing fuels therein. A particular facility may have multiple tanks which together make up the 100,000 gallon capacity.

"Use" means and includes, in addition to its ordinary meaning, the transfer of fuel by a distributor, importer, or gasoline jobber into a motor vehicle or into a receptacle from which fuel is supplied by him to his own or other motor vehicles.

"User of special fuels" means any person, except the State of New Jersey and any political subdivision thereof, who maintains a storage tank or tanks of any type, including a conveyance, equipped with a dispensing device, and being used for storage and dispensing any fuel capable of generating power in a diesel type engine for his own use. "Storage tanks" as used in this definition shall not apply to a vehicle service tank used to carry motor fuels for use exclusively in propelling the vehicle carrying the tank.

"Wholesale dealer" means any person not qualified as a gasoline jobber or distributor who engages in the business of [selling motor fuels] the sale and/or purchase of tax-included gasoline to other persons who resell the [motor fuel] gasoline or who place or have the [fuel] gasoline placed into their containers or storage tanks for future consumption.

The word "containers" or "storage tanks" as used herein shall not apply to vehicle service tanks used only to carry motor fuels for use in propelling only the vehicle carrying such tanks.

SUBCHAPTER 2. LICENSING

18:18-2.1 General powers

(a) The Director is authorized and empowered to carry into effect and execute the provisions of the Act, and may make and enforce such rules and regulations as may be deemed necessary for the administration and enforcement of the same.

(b) The Director is authorized to conduct joint audits, subject to specific agreements with any agency of the United States of America, with another state, or through national or regional tax associations, of the obligations of any distributor, importer, gasoline jobber, retail dealer, wholesale dealer, seller of special fuels, user of special fuels, carrier or storage facility operator arising out of the Motor Fuels Tax Act. Notwithstanding the provisions of R.S. 54:50-8 (dealing with the confidentiality of tax records) to the contrary, such agreements may provide for the exchange of the records and files of the Director respecting the administration of the Motor Fuels Tax Act or of any other state tax law.

(c) The Director is authorized to arrange for the institution of programs of cooperation with other departments, divisions, and agencies of the State of New Jersey, such as but not limited to Weights and Measures, the Energy Office, Motor Carriers and the Board of Regulatory Commissioners, where a program may be necessary to ensure effective and efficient administration and enforcement of the Motor Fuels Tax Act.

(d) The Director or his or her designated assistant, and such members of his staff as may be necessary and convenient, shall meet at the offices of the Director in Trenton not less than once annually with a council of advisors composed of not more than 10 persons representing various segments of the petroleum industry in New

Jersey. The industry delegates to the council meeting shall be chosen by agreement of the representatives of the industry itself. The purpose of the meeting shall be to review and monitor the processes of collection and enforcement of all excise taxes dealing with motor fuels or petroleum products in this State.

18:18-2.4 Request for hearing upon refusal to grant license

(a) Any person who makes application for license or the renewal thereof may:

1. Within 10 days after refusal by the Director make a written request for a hearing; and

2. [Appear at a time and place designated by the Director and show cause why his application should not be refused] Shall then appear for a hearing conducted pursuant to the terms of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

18:18-2.5 Revocation and cancellation of license

(a) The license held by any distributor, importer, gasoline jobber, retail dealer, wholesale dealer [or special licensee], seller of special fuels, user of special fuels, or storage facility operator may be suspended or revoked by the Director for a violation of any of the provisions of these rules, or on other reasonable grounds, after five days' notice of and hearing on such proposed revocation or suspension conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

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

18:18-2.6 Hearings

(a) The Director may personally or by delegate conduct informal or formal hearings, administer oaths and examine any person engaged in the business of dealing in fuels as a distributor, importer, gasoline jobber, [special licensee,] wholesale dealer, retailer, storage facility operator, seller of special fuels, user of special fuels or otherwise, and the directors, officers, agents and employees of such person and all other witnesses, relative to the motor fuel business of such person, in respect to any matter incident to the administration of the Act.

(b) Where required by law, hearings shall be held pursuant to the terms of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

18:18-2.7 Subpoenas for witness; records

(No change in text.)

Statutory Reference N.J.S.A. [18:18-2.7] 54:39-14

18:18-2.8 Disobedience of subpoena

If any person subpoenaed to attend any hearing fails to appear, to be examined or to answer any question, or to produce any books or papers when ordered to do so by the Director or his assistants designated by him to conduct such hearing, the Director or such assistant or other official properly designated by law to do so may apply to the Superior Court for an order to compel him to do so.

18:18-2.9 (Repealed)

18:18-2.10 Nature of hearings

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

(c) Where required by law, hearings shall be held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 3. DISTRIBUTOR'S, IMPORTER'S AND JOBBER'S LICENSE; BONDS REQUIRED; RECORDS

18:18-3.1 Distributor's license; application

(a) Obtaining.

1. (No change.)

2. [Such license to be issued without change.] Such application shall be accompanied by payment of a license fee of \$450.00 for a three year period or part thereof and the filing of a bond in such form as the Director shall require.

(b) (No change.)

(c) A distributor licensed pursuant to this section is required to obtain a seller/user license to engage in the sale of special fuels. Such license shall be issued at no additional cost.

18:18-3.2 Refusal in certain cases

In the event that any application for a license is filed by any person whose license has at any time been revoked, or if it is determined that such application is filed by some person as a subterfuge for the real person in interest whose license has been revoked, the Director, after a hearing held pursuant to N.J.A.C. 18:18-2.6(b) (Hearings) may refuse such person a license.

18:18-3.3 Gasoline [Jobber's License] **jobber's license**

(a) Any gasoline jobber (see N.J.A.C. 18:18-1.1) in lieu of [or in addition to] obtaining a wholesale license pursuant to N.J.S.A. 54:39-31, may apply for and obtain a Gasoline jobber's license on proper forms approved by the Director, by payment of [an annual] a license fee of [\$50.00] **\$450.00 for a three year period or part thereof** and the filing of a bond in such form and amount as provided in N.J.A.C. 18:18-3.6.

(b) (No change.)

(c) As gasoline jobber licensed pursuant to this section is **not** also required to be licensed as a wholesale dealer to engage in the sale at wholesale of [motor fuels other than] gasoline, **but is required to obtain a seller/user license to engage in the sale of special fuels.**

18:18-3.4 Qualifications for license

Any person applying for a Distributor's, **Importer's** or Gasoline Jobber's License must meet the qualifications for such license [as set forth in and governed by]. See N.J.A.C. 18:18-2.3 **concerning issuance** of licenses.

18:18-3.5 Bond requirements

Before granting a license authorizing any person to engage in business as a distributor, gasoline jobber or as an importer, [required to obtain a Special License "A"], the Director shall require such person to file a bond, duly executed by such person as principal, and by a corporation, approved by the Director and authorized to engage in business as a surety by the Commissioner of [Banking and] Insurance of this State, as surety; payable to the State of New Jersey, conditioned upon the faithful performance of all the requirements of these [regulations] **rules** and expressly providing for the payment of all taxes, penalties, and other obligations of such person arising out of the Act.

18:18-3.6 Amount of bond required

(a) (No change.)

(b) In fixing the total amount of the bond or bonds required to be filed by any distributor, **importer** or gasoline jobber, the Director may require a bond or bonds equivalent to an amount no greater than three times the tax on the greatest amount of motor fuels handled during a monthly period of the previous 12-month period in such manner as he may deem proper. The Director shall take into account the applicant's prior record as a New Jersey taxpayer and all other information as may be available to him **or her** which would establish the applicant's financial responsibility.

1. Where the application is made by any person who has theretofore never engaged in business in this State as a distributor, **importer** or gasoline jobber, prior to the filing of such application, the Director, after investigation, shall fix the total amount of such bond or bonds from such information as he **or she** may obtain after such investigation;

2. The total amount of any bond or bonds required to be filed by any distributor or gasoline jobber can never be less than [\$5,000] **\$25,000** nor more than [\$500,000;] **\$1,000,000**. **The total amount of the bond or bonds required to be filed by any importer shall never be less than \$50,000 nor more than \$1,000,000.**

3. (No change.)

18:18-3.7 Bond duration

(a) Every bond filed with and approved by the Director shall, without the necessity of periodic renewal, remain in force and effect until such time as the Distributor's License, **Importer's License** or Gasoline Jobber's License [or Special License "A"], of which it is a part, is revoked for cause or otherwise cancelled[, or in the case of a Gasoline Jobber's License, has expired].

1. (No change.)

(b) Release **and substitution** of surety.

1.-4. (No change.)

18:18-3.8 Deposit in lieu of bond

In lieu of any bond or bonds required under [sections] N.J.A.C. **18:18-3.5** through 3.7 [of this chapter], a distributor, **importer** or gasoline jobber may deposit with the State Treasurer, under such terms and conditions as the Director may prescribe, a like amount of lawful money of the United States, or bonds or other obligations of the United States, or the State of New Jersey, of an actual market value not less than the amount fixed by the Director.

18:18-3.9 License issued when bond approved

Upon the acceptance and approval of the application and bond, the Director shall issue a license permitting the conduct of business as a distributor, **importer** or gasoline jobber in this State, subject to cancellation as provided by law.

18:18-3.10 License not assignable

Any license so issued by the Director is not assignable, and is valid only for the distributor, **importer** or gasoline jobber in whose name the license is issued.

18:18-3.11 Violations for acting as a distributor, **importer** or gasoline jobber without a license

Any person conducting business in this State as a distributor, **importer** or gasoline jobber without first securing a license from the Director, is deemed guilty of a [misdemeanor] **crime of the fourth degree** and subject to the penalties provided by law.

18:18-3.12 Records

Every distributor, **importer** and gasoline jobber is required to keep a record **for a four year period** of all fuels sold or used, including the name of the purchaser, the number of gallons used or sold and the date of the sale or use.

18:18-3.13 Statements with consignment

(a) Every distributor, **importer** and gasoline jobber must also delivery with every consignment of such fuel to a purchaser within this State, a written statement containing the date and number of gallons delivered, the kind and grade of fuel involved, [including special fuels,] and the names of the purchaser and seller, showing a separate charge for the tax on every gallon.

1. (No change.)

2. Such records and written statements are to be preserved by the distributor, **importer**, gasoline jobber and purchaser respectively for a period of [one year] **four years** and are to be offered for inspection upon the verbal or written demand of the Director or any of his duly authorized assistants.

18:18-3.14 Physical inventory required

Every distributor, **importer** and gasoline jobber is to take a physical inventory of the fuels on hand on the first or last day of every calendar month and is to keep the record of such inventory **for a four year period** and all other information required in these [regulations] **rules** available at all times for the inspection of the Director or his assistants.

18:18-3.15 Furnishing of statement

Whenever demanded by the Director or his **or her** assistants every distributor, **importer** and gasoline jobber is required to furnish a statement, under oath, reflecting the contents of any records required to be kept under these [regulations] **rules**.

18:18-3.17 Segregated gasoline not in inventory

Gasoline which is segregated for the exclusive use of a distributor, **importer** or gasoline jobber is not to be included in the physical inventory on hand at the beginning or end of the month, but is to be dealt with as sales for company use at time of delivery or storage.

18:18-3.18 Disposals and receipts

(a) (No change.)

(b) Any gasoline held in common storage with another person or persons:

1. Is deemed to have been purchased by that association and "is not to be included as a receipt or held in inventory"; **therefore**

2. Such fuels, when subsequently delivered by such an association, [licensed as a wholesale dealer,] **properly licensed**, are deemed to be purchased at the time all such fuels are received.

(c) (No change.)

18:18-3.19 Terms of licenses

(a) Every license and permit required by the Act, except a [Distributor's License, a Special License "A" and a Special License "B"] **transporter's and storage facility license** is issued for a [fiscal year] **three year period**, or unexpired portion thereof, commencing on April 1 and ending the **third** succeeding March 31 and is void thereafter.

1. Any such license or permit may be suspended or revoked by the Director in accordance with these [regulations] **rules**.

2. Every [Distributor's License, Special License "A" and Special License "B"] **transporter's and storage facility license**, once issued, remains in force until **March 31 of the year following issuance and shall be void thereafter unless renewed. A license, once issued, shall remain in force during the period of issuance unless suspended or revoked for cause or otherwise cancelled.**

18:18-[5.1]3.20 [Special license "A" required] **Importer license; tax reports and payments**

[(a)] Any person [importing fuels, into this State, for the purpose of selling same incidental to his principal business of buying and selling fuels in this State or for the purpose of consuming same, or for the purpose of blending the same with other fuels upon which the tax provided for in these regulations has been prepaid, or is properly owing to the State] **(other than a properly licensed distributor who brings gasoline into this State from a point outside this State, for use, distribution, storage, or sale in this State** is required to obtain [a special permit (Special License "A")] **an importer's license** from the Director and must furnish bond as required in these [regulations] **rules. See N.J.A.C. 18:18-7 for reporting requirements.**

[(b)] Such person is required to file a report with the Director disclosing the amount of fuel so imported and such additional information as the Director may require for the proper administration of these regulations within five days from the receipt of such fuels.

(c) Upon application to the Director, the period within which such reports are to be filed may be extended to a period of 60 days, if it is deemed advisable by the Director.

(d) A tax, at the current rate per gallon (refer N.J.S.A. 54:39-27), on the total number of gallons so imported, together with any unpaid tax on such other fuels, shall be paid to the Director and accompany the report.]

18:18-[5.4]3.21 Records on transactions and invoices

(a) Records on all transactions must be kept for examination by the Director or his or her assistants. See N.J.A.C. 18:18-3.12 through 3.15.

(b) (No change.)

(c) Invoice.

1. (No change.)

i. (No change.)

ii. Kind and grade of the product involved [including special fuels];

iii-iv. (No change.)

2.-3. (No change.)

18:18-[5.6]3.22 Distributors are not required to have [a Special License "A"] **an importer's license to import gasoline**

New Jersey Licensed Distributors are not required to hold [a Special License "A"] **an importer's license to import [motor fuels] gasoline**, but must report all fuels imported in their tax returns.

18:18-[5.7]3.23 Jobbers importing fuels

Gasoline jobbers are required to have [a Special License "A"] **an importer's license to import gasolines into New Jersey.**

18:18-3.24 **Seller and user importing special fuels**

Sellers of special fuels or users of special fuels are required to have a seller/user license to import special fuels into New Jersey.

SUBCHAPTER 4. WHOLESALE AND RETAIL DEALERS AND TRANSPORT LICENSES

18:18-4.1 Retail dealer license; fee; display of license

(a) (No change.)

(b) Upon receipt of the application together with a fee of [\$10.00] **\$150.00 for a three year period** for each license desired, the Director shall issue a license plate or suitable substitute containing the number assigned the licensee and words denoting the type of license, which the licensee is required to display at each establishment as regulated by the Director.

(c) (No change.)

18:18-4.2 Wholesale dealer license; fee

(a) Every wholesale dealer must before engaging in [said] **the business of making wholesale sales of gasoline (that is, tax-paid sales)** procure from the Director a license for each establishment, wherever located, operated by such person out of which wholesale sales in New Jersey are made.

(b) Out-of-state or no establishment.

1.-2. (No change.)

3. A fee of [\$5.00] **\$450.00** is required for the issuance of each license for a three year period.

18:18-4.3 Restrictions on retail and wholesale sales

(a) (No change.)

(b) Wholesale sales are sales made for resale or into the containers or storage tanks of consuming customers for future consumption.

1.-3. (No change.)

4. Any number of trucks may be operated by **the licensed wholesale dealer** in the conduct of such business [with no other license issued by the Division of Taxation than] **provided that the required Motor Fuel Transport License on each [required by Law] vehicle has been obtained;**

5. All requests for licenses, by mail or otherwise, are to include the name and mailing address of the applicant and the exact location of the establishment to be licensed[.];

6. **No sales of special fuels may be made without obtaining a seller/user license, which may be issued to a licensee without additional charge.**

(c)-(d) (No change.)

(e) Fuel for diesel engines used in propelling diesel-operated boats may be sold [in any manner, since only diesel] **by a licensed seller/user but only fuel used to propel a vehicle over the land highways of the State is taxable. N.J.A.C. 18:18-5.1.**

18:18-4.4 Wholesale or retail dealer license

[(a)] Except for those licenses provided for in subsection (b) of this section, every license and permit] **A wholesale or retail dealer's license** issued under the Act remains in force from the date of issue until **the third succeeding** March 31, [following,] unless sooner revoked or suspended.

[(b)] Every distributor's license, special license "A" and special license "B" once issued, remains in force until suspended or revoked for cause or otherwise cancelled.]

18:18-4.5 Records required for a wholesale audit

(a) Every wholesale dealer and retail dealer purchasing [fuels] **gasoline**, taxable under these rules, is required to maintain and keep for a period of [two] **four** years, a record of [fuels] **gasoline** received and sold, the amount of tax paid to the distributor, **importer** or gasoline jobber, as part of the purchase price together with delivery tickets, totalizer readings, invoices, [and] bills of lading, **monthly physical inventories**, and such other records as the Director may require. **Such records shall be offered for inspection upon the verbal or written demand of the Director or any of his or her duly authorized assistants.**

(b) Every wholesale dealer must keep the following records of transactions in [motor fuel products including kerosene and diesel

oils whenever they are sold for use or used in a motor vehicle upon the public highways] **gasoline**:

1. A receipt [Book Record] **book record** which is to be supported by or be composed of a file of all invoices or delivery tickets (both of which shall be identified for reference purposes by number or code) covering all kinds of [such] **gasoline** products purchased by the dealer.

i. Every such invoice or delivery ticket is to show, on its face, the kind of **gasoline** product, the unit price, the amount of New Jersey [Motor Fuel Tax] **motor fuel tax**, if any, and the total amount of the invoice;

ii. (No change.)

2. A Daily Sales Record which is to show the quantity of each [such] **gasoline** product sold each day, including both cash and charge or credit sales;

3. A Monthly Physical Inventory Record which is to show a record of the quantity of each [such] **gasoline** product on hand at the close of each month's business, which is to be the result of actual measurements taken physically on the date.

(c) All records kept by wholesale dealers are to be safely preserved for a period of [two] **four** years in such a manner as to ensure their security and accessibility for inspection by the Director, or any employee of the Division of Taxation engaged in the administration of the New Jersey Motor Fuels Tax Law.

18:18-4.6 Retail dealer records required

(a) Every retail dealer purchasing fuels, taxable under the Act, is required to maintain and keep for a period of [two] **four** years, a record of fuels received and sold which shall include pump meter readings, the amount of tax paid to the distributor, **importer** or gasoline jobber as part of the purchase price, together with delivery tickets, **totalizer readings**, invoices, [and] bills of lading, **monthly** physical inventories and such other records as the Director may require.

(b) Daily record; preserving

1. [In addition, every] **Every** retail dealer is required to keep a daily record which shall include pump meter readings showing the total amount of fuels sold on each business day;

2. Such records **are** to be preserved for a period of [one year] **four** years and to be open for inspection by the Director or any of his assistants at all times. (See [Reg. 18:19-37 and Regulation RC-3 of N.J.S.A. 56:6-1 et seq.] N.J.A.C. 18:19-4.1 for additional required records.)

18:18-4.7 Wholesale license required when sales are made by a commissioned agent

(a) Any person selling [fuels] **tax-included gasoline** at wholesale, from a location in New Jersey, through a commissioned agent, is required to hold a Wholesale Dealer's License for that specific plant.

(b) The commissioned agent, on this arrangement, is not required to hold a Wholesale Dealer's License for this location unless he sells [motor fuels] **tax-included gasoline** in his own name.

18:18-4.8 Invoice on sales

(a) On all sales of [motor fuels] **gasoline and special fuels (except as noted in (c) below)** except deliveries into the service tank of a vehicle, every licensed motor fuel dealer in this State is required to give the purchaser an invoice showing:

1. (No change.)

2. The kind and grade of the product [involved including special fuels];

3.-4. (No change.)

(b) **In the case of sales of kerosene by retail dealers, the dealer may maintain a daily log of sales transactions in lieu of issuing invoices to customers.**

18:18-4.9 Wholesale and [Retail Dealer Licenses needed] **retail sales require seller/user license** for special fuel sales

Every person making sales of taxable special fuels at wholesale or retail must obtain a [wholesale or retail dealer's license.] **seller/user license. Such license will be issued at no charge to a person holding a wholesale or retail dealer's license. See N.J.A.C. 18:18-5.1.**

18:18-4.10 Transport licenses

(a) (No change.)

(b) License[s] certificates and plates. Upon receipt of an application, **properly completed**, the Director **shall issue[s]** a license certificate and license plate for each conveyance which indicates the license number assigned and which must be displayed on the conveyance at all times and in such manner as the Director may regulate.

(c) Expiration and fee.

1. (No change.)

2. [An annual] A fee of [\$5.00] **\$50.00** is required for the licensing of each conveyance.

(d) Licensee not relieved of obligation. Nothing contained in this [regulation] **rule** in any manner relieves or discharges any person obtaining a license hereunder from complying with any of the provisions of any other laws.

SUBCHAPTER 5. [SPECIAL LICENSING] **SELLER OF SPECIAL FUELS LICENSE, USER OF SPECIAL FUELS LICENSE (I.E., SELLER/USER), STORAGE FACILITY LICENSE**

Agency Note: N.J.A.C. 18:18-5.1, 5.4, 5.6 and 5.7 are proposed for amendment recodified as N.J.A.C. 18:18-3.20, 3.21, 3.22, and 3.23, respectively.

18:18-5.1 Seller/user license

(a) Every seller of special fuels and every user of special fuels shall apply for and obtain a seller of special fuels license or a user of special fuels license (herein sometimes referred to as a seller/user license) on forms to be prescribed by the Director. **Primary points to be included in the seller/user license application form include in addition the usual name, address, name of person responsible for filing reports, ID number, business name, and names of officers, the following information: a list of the applicant's suppliers of special fuels, any and all transporters utilized to deliver product, an estimated average of taxable sales for a 12 month period. The license, unless cancelled or revoked, shall remain in effect for three years and may be renewed at that time.**

(b) A licensed distributor, importer, gasoline jobber, wholesale dealer, and retail dealer who sells and/or uses any fuel capable of generating power in a diesel type engine shall register as such with the Director, Division of Taxation at such time as such licensee applies for any other applicable license. No separate charge shall be made for this registration. Reporting requirements will be included in connection with reports required for such primary license.

(c) A person, not otherwise excluded by these rules, who acquires kerojet (turbine) fuel and/or kerosene for commercial use is subject to the licensing requirement under (a) above.

18:18-5.2 Reporting; tax payment

(a) Every seller of special fuels and every user of special fuels upon whom a tax is imposed by the Motor Fuels Act shall, on or before the 20th day of each month render a report to the Director on forms prescribed by the Director showing such information as the Director may require. The report form for sellers/users of special fuels shall include the items set forth at N.J.S.A. 54:39-64.4.

(b) A tax is imposed at the current rate per gallon on the total number of gallons of special fuels:

1. Delivered or placed into the fuel supply tank or other fueling receptacle or device of a motor vehicle for use to propel the vehicle over the public highways; or

2. Used within the meaning assigned by this chapter; or

3. Sold to unlicensed buyers.

(c) The tax under (b) above shall be paid to the State but once in respect to any fuels used within the State.

18:18-5.3 Sales not subject to tax

(a) The tax imposed shall not apply to the following:

1. Fuels not within the taxing power of this State under the Constitution of the United States;

2. Fuel that is used by or sold and delivered to the United States government, when such sales and deliveries are supported by documentary evidence satisfactory to the Division;

3. Fuels not in excess of 150 gallons brought into this State in the fuel supply tanks of other fueling receptacles or devices of a motor vehicle;

4. Fuels used by, or sold or delivered to, the State of New Jersey or its political subdivisions when such sales and deliveries are supported by documentary evidence satisfactory to the Division; or

5. Fuel sold to diplomatic missions and diplomatic personnel under a program administered by the Director and predicated upon the United States Department of State, Office of Foreign Missions or successor office's national tax exemption program.

18:18-5.4 Separate account; personal liability

(a) The user or seller of special fuels shall maintain a separate trustee account to be credited daily with taxes due on amounts of fuels used on that day.

(b) The tax to be paid to the seller of special fuels is paid as a trustee for an on account of the State. The account shall be maintained for and on account of the State.

(c) Every person required to collect any tax imposed by this chapter shall be personally liable for the tax imposed, collected, or required to be paid, collected or remitted under the Motor Fuels Tax Act.

18:18-5.5 Bonds; form; amount

(a) The Director may require a seller of special fuels or a user of special fuels to file a bond with the Director. Whether or not the Director shall require a bond in a particular instance shall depend upon the taxpayer's prior filing history, if any, with the Division; whether the taxpayer holds motor fuels licenses or has other motor fuels surety bonds, such as a distributor bond, jobber or importer; the amount of the taxpayer's monthly motor fuels tax liability; and such other factors as the Director shall consider.

(b) The amount of the bond required to be filed with the Director shall be in an amount not greater than three times the tax on the greatest amount of motor fuels handled during any one month of the previous 12 months, provided that in no case shall the bond be less than \$1,000 nor greater than \$1 million.

(c) Such bond shall be in such form as approved by the Director, shall be executed by a surety company duly licensed to do business under the laws of the State of New Jersey, and be conditioned upon the prompt filing of true reports and the payment by the licensee to the Director of all motor fuels taxes which are now or which hereafter may be levied or imposed by the State of New Jersey, together with any and all penalties and interest thereon, and generally upon faithful compliance with the provisions of this chapter.

(d) Bonds of the United States or the State of New Jersey, having an actual market value not less than the amount fixed by the Director, may be filed with the State Treasurer as security in lieu of the surety bond as required by this rule.

(e) Bond requirements for seller/users (retail dealer license holders are as follows):

1. For owned retail operations:

i. The bond required will be three times the tax on the monthly handle of the previous owner (per return), or three times the estimated sales per application.

ii. Any prior negative filing history for any State tax, including, but not limited to, corporation, partnership, sales, or individual taxes, will be considered in determining the amount of the bond which will be required.

iii. Retailers must file a bond if they sell as an average 3,000 or more gallons of taxable fuel per month. The bond required will be three times the tax amount on the established or projected monthly handle, but not less than \$1,000.

Example: 20,000 gallons highest monthly taxable sales \times 13½ cents (tax rate) \times three = \$8,100 amount of bond required

iv. A minimum bond of \$1,000 will be required.

2. For leased retail operations:

i. The bond required will be three times the handle of the previous lessee (per return), or three times the estimated sales per application.

ii. Any prior negative filing history for any State tax, including but not limited to corporation, partnership, sales or individual taxes, will be considered in determining the amount of the bond.

iii. A minimum bond of \$5,000 will be required.

(f) Bond requirements for users of special fuels:

1. For use in excess of 7,500 gallons per month a bond will be required in the amount of three times the handle.

2. Any negative prior filing history will be considered in determining the amount of the bond.

(g) If upon review of a taxpayer's filing history, the Director finds that there is an increase in business activity, including, but not limited to, an increased handle of special fuel, then it may be adjusted. The taxpayer may request a review, and must provide documentation.

(h) A taxpayer may apply for, and receive, a waiver of the bonding requirement if the taxpayer has held a motor fuels license for three or more years, has no delinquent returns or deficiencies outstanding, and has an 80 percent timely filing history.

(i) If the taxpayer fails to provide a bond, a complaint will be signed under N.J.S.A. 54:52-6(d).

(j) All distributors, jobbers and importers who presently have bonds will not be required to post additional bond, or a higher amount pending review of seller/user liability.

18:18-5.6 Farmers

(a) A farmer who has a tank and uses special fuels for powering vehicles over the public highways shall apply to the Director for a seller/user of special fuels license.

(b) Such farmer shall assess and remit tax to the Director on applicable forms in accordance with these rules.

(c) In calculating taxable gallonage, special fuel used for powering agricultural tractors not operated on a public highway, farm machinery, vehicles and other equipment operated exclusively on private property shall result in no increased liability otherwise due and payable to the Division. See N.J.S.A. 54:39-66(1)(c)(d) and (i).

(d) This shall not affect tax liability or exempt status under any other statute such as a road use tax. See N.J.S.A. 54:39A-1 et seq.

18:18-5.7 Storage facility operators

(a) Upon receipt of a satisfactory application, the Director shall issue a license certificate for each storage facility operator with an assigned license number printed thereon, which license certificate shall be displayed at the facility in such manner as the director may direct. A license fee of \$150.00 shall be paid for each license. The license, unless cancelled or revoked, shall remain in effect for one year and is subject to renewal. Nothing contained herein shall in any manner relieve or discharge a licensed storage facility operator from complying with the provisions of other laws.

(b) A storage facility operator shall, on or before the 20th day of each month, render a report to the Director, on forms prescribed by him, or her stating the quantities of fuel received at the storage facility in the State or sold from it during the preceding month. The report shall include the name and address of any person leasing or subleasing storage in the facility and the quantities of fuel stored by each such person.

(c) The Director or his or her authorized agents shall have the right at any time during normal business hours to inspect the books of a storage facility operator to determine if the requirements of this rule are being properly observed.

(d) Service stations are not storage facilities within the meaning of the term "storage facility."

(e) Licensed New Jersey distributors, seller/users, or jobbers who are not lessors of storage facilities or have throughput agreements (including without limitation agreements involving the right to use stored products) are not storage facility operators within the meaning of the term.

(f) A person storing or keeping fuel within a storage facility shall, before receiving fuel, apply to the Director for a storage facility operator's license for each storage facility location on forms prescribed by the Director.

(g) In addition to identifying information, such as name, address, identifying number, affiliated companies, the license application

shall include identifying information concerning the person who files reports, agents of applicant, products stored, name and address of any location owned leased or subleased, where any fuels are stored, a list of tank capacity and location owned, data concerning leased, subleased and terminalling or throughput agreement and whether applicant has ever had a license cancelled.

SUBCHAPTER 6. CORPORATIONS

18:18-6.1 Persons subject to the Act

The terms "distributor," "gasoline jobber," "retail dealer," "wholesale dealer," "importer," "seller/user of special fuels," "storage facility operator," and "person," as used in these [regulations] rules, include[s] an officer, director, stockholder or employee of a corporation, or a member of a partnership, who as such officer, director, stockholder, employee or member is under the duty to perform the act in respect to which the violation occurs.

18:18-6.2 Corporations formed to evade the law

(a) Where the Director has reason to believe that any corporation has been formed for the purpose of evading these [regulations] rules, he or she may require such corporation to show cause [before him or any of his assistants authorized to conduct hearings pursuant to these regulations,] why an application for a license by such corporation should not be denied, or why the license of such corporation should not be revoked.

(b) (No change.)

18:18-6.3 Previous violations preclude corporation from getting license

(a) No corporation will be entitled to hold a license as a distributor, importer, seller/user of special fuels, storage facility operator, gasoline jobber, wholesale dealer, or retail dealer, [or special licensee,] when it appears that:

1. Any officer, director or employee of such corporation has heretofore been convicted of violating any of these [regulations] rules; or

2. Where a license issued pursuant to these [regulations] rules and held by such officer, director or employee has been heretofore revoked by the Director for cause.

SUBCHAPTER 7. IMPOSITION OF TAX AND TAX REPORTING

18:18-7.1 Distributors, importers and gasoline jobbers monthly tax reporting and payments; penalties

(a) Every distributor, importer and gasoline jobber must, on or before the [next to the last business] 20th day of each month, file a report with the Director, on forms prescribed, prepared and furnished by the Director, stating the number of gallons of fuel sold or used in this State by him during the preceding calendar month.

1. A tax at the current rate per gallon on each gallon reported must be paid by each distributor, importer and gasoline jobber and payment is to accompany the monthly report;

2. (No change.)

3. Sales of fuels may be made by one licensed distributor, importer or gasoline jobber to another licensed distributor or gasoline jobber free of such tax pursuant to the provisions of [section] N.J.A.C. 18:18-7.2 [(Special conditions) of this chapter].

(b) If any distributor, importer or gasoline jobber fails, neglects or refuses to file the report within the time prescribed by this [regulation] rule, the Director:

1. (No change.)

2. Will estimate the sales, distribution and use of said distributors, importer or gasoline jobber, assessing the tax thereon, adding to said tax a penalty of 20 percent for the failure, neglect or refusal to report; and

3. Such estimate is prima facie evidence of the true amount of tax due from such distributor, importer or gasoline jobber.

(c) Waiver, public inspection of records.

1. If good and sufficient cause or reason is shown for such delinquency, the Director may remit or waive the payment of the whole or any part of the penalty. See N.J.A.C. 18:2-2.7.

2. (No change.)

18:18-7.2 Special conditions on reporting by distributors, importers and gasoline jobbers

(a) Reporting tax-free sales in New Jersey [between] by distributors, importers, and/or gasoline jobbers.

1. Tax free sales in New Jersey [between] by distributors, importers, and/or gasoline jobbers may be made provided:

i. The selling distributor, importer, and/or gasoline jobber enters the gallonage involved on [Line 11] the applicable line of the Tax Report for the month of sale, with supporting entry on [Schedule 11] the appropriate schedule; and

ii. The purchasing distributor or gasoline jobber enters[,] the gallonage on appropriate receipt line of the Tax Report[,] for the month of purchase, with supporting entry on the proper schedule.

2. [In view of the fact that the regulations] Because rules pertaining to tax-free sales [between] by distributors and gasoline jobbers in New Jersey [is] are elective and not mandatory, tax-paid sales of [fuels] gasoline in New Jersey [between] by distributors and jobbers may be made provided:

i. The seller enters the gallonage on [Line 16 (Distributor Report) or Line 16C (Gasoline Jobber Report),] the applicable line of the Tax Report with supporting entry on the proper schedule; and

ii. (No change.)

iii. The purchasing distributor or gasoline jobber, in addition, will take credit for the tax paid at the time of purchase on [Line 21] the appropriate line of the report.

3. For more detailed information on reporting tax-free sales [between] by distributors, importers, and gasoline jobbers, refer to the reporting instructions for distributors, importers, and [for] gasoline jobbers.

(b) Reporting on sales by distributors, importers and gasoline jobbers to U.S. Government, State of New Jersey, any political subdivision of this State or to department or agency of either.

1. Where tax-free sales of fuels are made directly by a licensed distributor, importer or gasoline jobber to the United States Government, State of New Jersey, any political subdivision of this State or to a department or agency of either and billings for the fuels are on invoices of the licensed distributor, importer or gasoline jobber, such tax-free sales must be entered on [Line 12] the appropriate line of the distributor, importer or gasoline jobber Monthly Tax Report, with supporting entry on [Schedule 12-22] the appropriate schedule;

2. These sales include deliveries of fuels to the United States Government, State of New Jersey, any political subdivision of this State or to a department or agency of either for the account of the licensed distributor, importer or gasoline jobber through the recognition of the licensed distributor's courtesy cards;

3. Licensed distributors, importers or gasoline jobbers are required, during the periodic audit of their records by the Director or any authorized assistants, to establish by means of delivery tickets, invoices, ledger cards, open orders, contracts or otherwise, satisfactory evidence of sales to the United States Government, State of New Jersey, any political subdivision of this State or to a department or agency of either by the licensed distributor, importer or gasoline jobber or for his account by a licensed dealer;

4. Where tax-free sales of fuels are made by licensed dealers or importers out of New Jersey tax-paid fuels inventory and a licensed distributor or gasoline jobber has refunded the New Jersey motor fuels tax to the licensed dealer or importer, such tax-free sales must be entered on [Line 22] the appropriate line of the Monthly Tax Report, with supporting entry on [Schedule 12-22] the appropriate schedule;

i. In further support of the entries [on Line 22] referred to above, a properly completed Federal Exemption Certificate, Form 1094, or New Jersey Exemption Certificate, Form C-6060MF, covering the gallonage entered must be attached to the report;

ii. (No change.)

5. [It is to be remembered these regulations provide that no] No claims for exemption from the New Jersey state tax can be recognized by the State after the expiration of two years from the date of sale.

(c) Reporting on sales agreements. Arrangements for the transfer of ownership of fuels by New Jersey licensed motor fuel distributors, importers, or gasoline jobbers for future delivery, whether called sales, loans exchanges or otherwise, are not to be reported as sales on Tax Reports, but shall be known only as sales agreements or contracts. They must be reported as sales only when:

1.-2. (No change.)

(d) Reporting exports [and sales for export] made by distributors, importers, and gasoline jobbers.

1. Export. New Jersey licensed motor fuel distributors, importers, and gasoline jobbers must report all exports (sales, transfers or other disposals) on [Line 10] the appropriate line and schedule of the New Jersey Tax Report[, and Schedule 10] of the month during which such exports were made;

2. Sales for exports. New Jersey licensed motor fuel distributors, importers, and gasoline jobbers must report all sales for export on [Line 10A] the appropriate line and schedule of the New Jersey Tax Report [and Schedule 10A,] of the month during which such sales for export were made;

[3. If a] **Example:** A tax-free sale in New Jersey between licensed distributors and gasoline jobbers has been completed before any export takes place [sales for export will be made by such persons only when]. **When the purchaser taking the fuel out of New Jersey does not hold a distributor or gasoline jobbers or other New Jersey motor fuels license and required periodically to file a return as such, such exporter shall obtain an exporter license at least seven days before the day of exportation and report the export on or before the 20th day of the month following the month in which the exportation occurred to the Director on forms supplied by the Director.**

[4.]3. If the transaction is made between distributors and/or gasoline jobbers only, such dispositions will be handled as a tax-free sale between the seller followed by an export by the purchasing distributor or gasoline jobber;

i. The seller will report such sales on [Line 11 and Schedule 11] the appropriate line and schedule of the Tax Report for the month of sale;

ii. The purchaser will enter the gallonage on the proper receipt line and schedule and the export on [Line 10 and Schedule 10] the appropriate line and schedule of the Tax Report.

4. See also N.J.A.C. 18:18-9.

(e) Reporting sales and/or use of special fuels by New Jersey licensed distributors [and], gasoline jobbers and importers.

1. Distributors [and], gasoline jobbers and importers are [not] required to have a [Special License "B" for taxable] seller/user license to report sales and uses of special fuels;

[i. New Jersey Motor Fuel Distributors and Gasoline Jobbers may sell or use such fuels under the authority of their license;

ii. Sales to other Licensed Distributors and Gasoline Jobbers will be made tax-free;

iii. They will enter their receipts of all such fuels on Line 6, "Other Receipts" of the Monthly Tax Report, with supporting entry on Schedule 6;

iv. Disposition will be entered on Line 11, "Tax-Free Sales to Licensed Distributors or Gasoline Jobbers in this State", or Line 16A, "Taxable Sales of Special Fuels", of their monthly Tax Report, with supporting entry on Schedule 11, or Schedule 16A.]

2. See N.J.A.C. 18:18-5.1(b) for reporting requirements for seller/user; and see N.J.A.C. 18:18-7.4 for payment requirements.

(f) Refundable uses by Licensed Distributors. The Director may, in his discretion, permit a Distributor entitled to a refund under the provisions listed in [section 15.1 (Refund claims) of this chapter] N.J.A.C. 18:18-15.1 to take credit therefor in lieu of such refund in such manner as the Director may require, on a report filed pursuant to these regulations.

1. Subject to investigation, such gallonage[,] on which the tax had been paid[,] may be listed on [Line 22A] the appropriate line of the Distributor's Monthly Tax Report supported by [Schedule 22A] entries on the appropriate schedule.

2. (No change.)

(g) A tax-free sale by an importer may be made to a licensed distributor or gasoline jobber. An importer may not purchase tax free gasoline in New Jersey.

(h) An importer is not required to have an export license to export gasoline. All exports will be reported on the appropriate line of the importer return.

18:18-7.4 [Special License "B"] Seller/user tax reports and payments

(a) Persons required to obtain [Special License "B"] a seller/user license pursuant to [section 5.11 (Special License "B" of this chapter] N.J.A.C. 18:18-5.1 must file Tax Report, accompanied by tax payment at the current rate on or before the [15th] 20th day of the month following the month of sales or uses. [(See section 5.15 (Penalties) of this chapter for penalties.)]

(b) The current rate of tax per gallon on each gallon of liquefied petroleum gas and liquefied or compressed natural gas sold or used to propel motor vehicles upon the public highways shall be one-half the rate applicable and paid on the sale or use of gasoline under N.J.S.A. 54:39-27.

18:18-7.5 Taxable sales by U.S. Government, State of New Jersey, any political subdivision of this State or department or agency or either

(a) The provisions of these [regulations] rules requiring the payment of taxes are not to be construed to apply to fuel sold to the U.S. Government, State of New Jersey, any political subdivision of this State or any department or agency thereof for their official use. (See also N.J.A.C. 18:18-14.3 for diplomatic missions and personnel provision.)

(b)-(c) (No change.)

18:18-7.8 Losses listed on tax reports by licensed distributors, importers, and gasoline jobbers

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

18:18-7.9 Invoices delivered with sales; information required

(a) All licensed distributors, importers and gasoline jobbers in this State, on all sales of [motor fuels] gasoline except deliveries into the service tank of a vehicle, must give each purchaser an invoice showing:

1. (No change.)

2. Kind and grade of the fuel involved [including special fuels];

3.-4. (No change.)

(b) (No change.)

18:18-7.10 Proper filing of reports

(a) A tax report which is submitted to the Director and which does not fully set forth the information required to be included in the report will not be considered a proper filing by the taxpayer, and will be returned to the taxpayer.

(b) A tax return, report, notice, petition, protest, claim or other document to be filed or remittance containing payment of tax, required to be filed within a prescribed period, or on or before a prescribed date, under the provisions of these rules that is delivered after the period or the date by the United States mail to the Division of Taxation, the Director, or other person with whom the document is required to be filed shall be deemed to be delivered on the date of the United States postmark stamped on the envelope.

(c) This provision shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of the document, determined with regard to any extension granted for filing, and the document was deposited in the mail, postage prepaid, properly addressed to the Division of Taxation, the Director, or other person or office with which or with whom the document is required to be filed.

(d) If any document is sent by United States registered or certified mail, such registration or certification shall be prima facie evidence that the document was delivered to the Director, bureau, office, officer or person to which or to whom addressed.

(e)1. If the postmark on the envelope or wrapper containing the document or payment is made by other than the United States Postal Service (that is, metered mail): the postmark so made must bear

a date which falls within the prescribed period on or before the prescribed date for filing or paying (including any extensions of time granted for filing or paying); and the document or payment must be received by the Division not later than the time when an envelope or other appropriate wrapper which has sufficient postage prepaid and is properly addressed, mailed and sent by the same class of mail would ordinarily be received at the address designated by the Division if it were postmarked at the same point of origin by the United States Postal Service within the prescribed period or on or before such prescribed date for filing or paying (including any extensions of time granted for filing or paying).

2. In a case where the document or payment is received after the time when a document or payment so mailed and so postmarked by the United States Postal Service would ordinarily be received at the address designated by the Division, such document or payment will be treated as having been received at a time when a document or payment so mailed and postmarked would ordinarily have been received, if the person who or which is required to file or pay establishes: that it was actually deposited in the mail before the last collection of the mail from the place of deposit which was postmarked (except for metered mail) by the United States Postal Service within the prescribed period or on or before the prescribed date for filing or paying; that the delay in receiving the document or payment was due to a delay in the transmission of the mail; and the cause of such delay.

3. If the envelope or wrapper containing the document or payment has a postmark made by the United States Postal Service in addition to the postmark not so made, the postmark which was not made by the United States Postal Service will be disregarded, and whether the envelope or wrapper was mailed in accordance with this section will be determined solely by applying the provisions of subsection (b) of this section.

18:18-7.11 Audit

(a) (No change.)

(b) [Under certain conditions, auditors will travel to the taxpayers office, providing all travel expenses are paid by the company being audited.] The examination of returns and the assessment of additional taxes, penalties and interest shall be as provided by the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq.

(c) No assessment of additional tax shall be made after the expiration of more than four years from the date of the filing of a return; provided, that in the case of a false or fraudulent return with intent to evade tax, or failure to file a return, the tax may be assessed at any time. If, before the expiration of the period prescribed herein for the assessment of additional tax, a taxpayer consents in writing that such period may be extended, the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by subsequent consents in writing made before the expiration of the extended period.

(d) For purposes of this subsection, a return filed before the last day prescribed by law or by rules promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

SUBCHAPTER 8. FUEL CARRIERS

18:18-8.1 Reports by fuel carriers

Every railway or railroad company, water transportation company, [carrier] and person transporting fuels as herein defined, in bulk, between points within the State, and every water transportation company and [carrier] person transporting fuel in bulk to a point outside the State from any point within the State, or to a point within the State from a point outside of the State, must at any time, upon written request of the Director, report, in a manner prescribed by the Director, all deliveries of fuel so made to points within or without the State.

18:18-8.2 Monthly report; contents

(a) (No change.)

(b) The monthly report must show:

1.-9. (No change.)

10. Kind of product and the quantity of gallons in each shipment[.];

11. The name of account requesting pick up;

12. Bill of lading number.

(c) A qualifying company transporting only company owned fuel and having an exemption opinion letter from the Director is relieved of filing such monthly reports.

18:18-8.3 Inspection of [carrier's] transporter's records

The Director or his authorized agents have the right at any time during the normal business hours to inspect the books of any [carrier] transporter determine if the requirement of these [regulations] rules are being properly [complied with] observed.

18:18-8.4 Registration of conveyances; license plates

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

(c) An [annual] A license fee of [\$5.00] **\$50.00** must be paid for the licensing of each conveyance.

(d) (No change.)

(e) Nothing contained in these [regulations] rules will in any manner relieve or discharge persons obtaining licenses thereunder from complying with any or all provisions of other laws.

18:18-8.5 Delivery tickets required; Director or police may inspect

(a) Possession.

1. (No change.)

2. Any agent of the Director or police officer may stop any conveyance in order to determine whether or not the provisions of this [regulation] rule are being [complied with] observed.

(b) (No change.)

1.-4. (No change.)

5. A statement of the assumption of tax if a New Jersey licensed distributor, **importer** or gasoline jobber, give the name and distributor's, **importer's** or gasoline jobber's license number. If not, besides the name of the company, give the name and address of the responsible individual who is assuming the responsibility for accounting that the tax has been or will be paid;

6.-8. (No change.)

(c) (No change.)

18:18-8.6 Fuel limit importation

Every person coming into this State in a motor vehicle may transport in the fuel tanks of such vehicle, for the propulsion thereof, not more than [thirty] **150** gallons of fuel without paying the tax, securing the license or making any report herein provided.

18:18-8.7 Vessel and vehicle carrier regulations

(a) The master or other person in charge of any barge, tanker or other vessel in which fuel is being transported, or of a **tank truck, truck tractor, semitrailer, trailer, or other vehicle used in transporting fuels**, other than fuels being transported for use in operating the engine which propels the vessel or vehicle, or for the purpose of generating power in stationary engines to operate pumps for discharge of liquid cargo, must have in his possession an invoice, bill of sale or other evidence showing:

1.-3. (No change.)

(b) (No change.)

1. (No change.)

i. Where a New Jersey licensed distributor, **importer** or gasoline jobber is assuming it, the name and address and license number of that person will be sufficient;

ii. (No change.)

2. Whenever the fuel is being transported to a point outside of New Jersey, there must be included on the invoice, bill of sale or other record evidence, a statement that the New Jersey seller or consignee is exporting [or has sold] the fuel [for export].

(c) Any person violating any of the provisions of this section shall be guilty of a [misdemeanor] **crime of the fourth degree**.

18:18-8.9 Water carrier's requirements

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

(f) Registration. Every person operating a water carrier transporting or delivering motor fuels must apply for its registration to the

Division of Taxation and shall display the license card and plate as required by the instruction of the Division of Taxation. [(See license card and envelope containing license plate when issued.)]

18:18-8.10 Suspension of license

The license cards issued for the operation over the public highways or waterways of this State of any conveyance used for the transporting or hauling of fuels may be suspended or revoked upon reasonable grounds by the Director in the same manner as other licenses may be suspended or revoked by the Director under these [regulations] rules.

18:18-9.1 Exported fuels exempt; proof required and must be reported

(a) Neither these [regulations] rules nor any of the provisions hereof apply to fuels when exported [or sold for exportation] by a distributor, importer or gasoline jobber from the State of New Jersey into any other state or country.

(b) Any person not otherwise licensed pursuant to N.J.S.A. 54:39-1 et seq., who acquires title or takes delivery of any fuels within New Jersey and subsequently exports such fuels from the State of New Jersey into any other state or country, shall apply for an exporter's license on forms prescribed by the Director and pay a \$450.00 fee seven days or more before the day of exportation. The items to be included in the exporters application form includes, in addition to the usual identifying items, the name of parent company and corporate affiliates of applicant, the person charged with the duty of filing reports, an enumeration of related licenses held in foreign states or countries, an estimate of expected gallons exported, information about other registrations applicant may have with the Division of Taxation, the manner in which applicant expects to export motor fuels from New Jersey, and any outstanding liability or litigation applicant may have. The license shall have a three year duration. The exportation of untaxed fuels in an amount in excess of 100 gallons per day without first obtaining a license pursuant to N.J.S.A. 54:39-1 et seq. shall be a crime of the fourth degree.

[(b)](c) Every person exporting [or selling for export] is required to report such exports [and sales] to the Director on or before the 20th day of each month in such detail as the Director may require, and including the number of gallons of fuel exported or used by the exporter during the preceding calendar month. Unless such return is properly filed, [otherwise] the exemption herein granted will be null and void, and it is prima facie evidence that all such fuel was distributed in this State subject to the tax provided for in these [regulations] rules.

1. Licensed distributors [and], importers, gasoline jobbers and seller-users must report such transactions as tax-free disposals. For procedure in reporting see [sections 7.2(d) and 15.9 (Reporting export) of this chapter] N.J.A.C. 18:18-7.2(d).

2. [Persons] A person not licensed as a distributor [or], importer, gasoline jobber, or seller/user who [have] has paid the State tax on the fuel involved, may apply for a refund of the State tax by filing a refund claim (see [section] N.J.A.C. 18:18-15.10 (Refund procedure) [of this chapter]).

(d) The filing of an erroneous report by an exporter with intent to evade tax shall be a crime of the fourth degree.

18:18-9.2 Export must be fully completed

(a) If the person to whom the fuels are sold in New Jersey refuses to divulge the final destination of the fuels in another state or foreign country, thereby not permitting the proper reporting as required by these [regulations] rules, the New Jersey tax will be collected by the seller at the time of the sale in New Jersey.

(b) (No change.)

18:18-9.3 Falsely obtaining fuel for export; [misdemeanor] crime of the fourth degree

(a) Any person, firm, partnership, association or corporation or any officer or agent thereof who:

1. [Who through false statement, trick or device, or otherwise, obtains] Obtains fuel for export and fails to export the same or any portion thereof; or

2. Causes the fuel or any portion thereof not to be exported; or [who]

3. Diverts said fuel or any portion thereof; or [who]

4. Causes to be diverted from interstate or foreign transit begun in this State or who unlawfully returns said fuel or any part thereof to this State and sells or uses said fuel or any part thereof in this State; or

5. Causes said fuel or any part thereof to be used or sold in this State, and fails to forthwith notify the Director[.] of such act; and

[(b)]6. Any distributor, gasoline jobber or other person who conspires with any person, firm, partnership, association or corporation or any officer or agent thereof to do the things mentioned in [subsections] (a) 1 through 5 [of this section] above with intent to avoid any taxes imposed by these [regulations] rules, shall be guilty of a [misdemeanor] crime of the fourth degree.

SUBCHAPTER 10. TAX PAID IN ERROR—REFUND AND APPEALS

18:18-10.1 Refunds paid out of escrow

(a) When the Director determines that any moneys received under these [regulations] rules were paid in error he [may] or she shall cause the same to be refunded, but [may] shall refuse to authorize a refund [in case] if more than [one year] four years has elapsed from the time the erroneous payment was made.

(b) (No change.)

SUBCHAPTER 11. COLLECTION OF TAXES

18:18-11.1 Suits by the Attorney General for taxes and penalties

The Attorney General will commence an action at law in any court of competent jurisdiction for the collection of all delinquent taxes, together [will] with all penalties which may accrue for failure to pay such taxes within the time prescribed by these [regulations] rules or for failure to comply with all of these [regulations] rules.

18:18-11.2 Debt docketed; licensee deemed to accept procedure; appeal

(a) Certificate of indebtedness; effect.

1. As an additional or alternative remedy, the Director may issue a certificate to the clerk of the Superior Court or to any county clerk that any person is indebted under [this regulation] these rules in an amount named in such certificate [and thereupon]. Thereupon the clerk to whom such certificate has been issued will immediately enter upon his record of docketed judgments:

i. The name of such person; and

ii. The amount of the debt so certified and the date of making such entries[; and].

2. The making of such entries has the same force and effect as the entry of a docketed judgment in the office of such clerk[; and].

3. (No change.)

(b) Every person who is licensed under these [regulations] rules, and every refund claimant who has applied for and received benefits under [section 15.1 (Refund uses) of this chapter] N.J.A.C. 18:18-15.1 shall, by the acceptance of such license and benefits, be deemed to have consented to the procedure set forth in these [regulations] rules.

(c) Such person may within a period of [six months] 90 days from the date of issuance of such certificate appeal to the [Division of Tax Appeals] Tax Court for a review of the assessment included in such certificate[, and all proceedings taken for the collection of such judgment will be stayed during the time that the appeal shall be pending].

(d) Every person required to collect any tax imposed by these rules shall be personally liable for the tax imposed, collected or required to be paid, collected or remitted under these rules and be the subject of a certificate issued under this rule.

18:18-11.3 Release of liens; payment or deposit

(a) The Director, upon application made to him and upon the payment of a fee of [\$1.00] \$25.00, may release any property from the lien of any judgment or levy procured by him, provided:

1-2. (No change.)

SUBCHAPTER 12. OFFENSES, FINES AND PENALTIES

18:18-12.1 Failure to procure licenses; penalty

Every person who engages in business as a wholesale dealer without first procuring a license from the Director and every person who engages in business as a retail dealer without first applying to the Director for a license, as required by these [regulations] **rules**, or continues in business as a retailer after the end of the fourteenth day following the date of such application without having procured the license and displayed it at the establishment being operated, will be subject for the first offense, to a penalty of [\$25.00] **\$250.00** and, for the second offense and thereafter, will be subject to a penalty of [\$200.00] **\$500.00**, and for failure to forthwith pay such penalty after conviction, he may be imprisoned for a period of not less than five nor more than 30 days.

18:18-12.2 Failure to keep records

(a) [Every retail dealer or wholesale dealer] **Any person** who fails to **furnish an invoice**, keep the records required to be kept by virtue of [these regulations] N.J.S.A. 54:39-33 and 54:39-34, or who refuses or fails to permit inspection of such records by the Director or any of his agents will be subject:

1. For the first offense to a penalty of [\$25.00] **\$250.00**; and
2. For the second offense and thereafter, [shall be subject] to a penalty of [\$200.00] **\$500.00**.

(b) (No change.)

18:18-12.3 Failure to register conveyance; penalty imposed

(a) Any person engaged in the business of hauling, transporting or delivering fuel who causes to be operated any conveyance without having a license certificate and license plate displayed thereon as provided by [these regulations] N.J.S.A. 54:39-41 will be subject:

1. For the first offense to a penalty of [\$25.00] **\$250.00**; and
2. For the second offense and thereafter [will be subject] to a penalty of [\$200.00] **\$500.00**.

(b) (No change.)

18:18-12.4 Failure to have delivery tickets; penalty imposed

(a) The driver of any conveyance used for the transportation or hauling of fuels who fails to have and possess at all times while hauling or transporting fuels a delivery ticket containing the information provided [by these regulations] **for by** N.J.S.A. 54:39-42 and 54:39-44 will be subject:

1. For the first offense to a penalty of [\$25.00] **\$100.00**; and
2. For the second offense and thereafter, **to a penalty of [\$200.00] \$500.00**.

(b) (No change.)

18:18-12.6 False export claims; [misdemeanor] crime of the fourth degree

(a) Any person, firm, partnership, association or corporation or any officer or agent thereof who:

1. [Through false statement, trick or device, or otherwise obtains] **Obtains** fuel for export and fails to export the same or any portion thereof; or
2. (No change.)
3. Diverts said fuel or any portion thereof; or [who]
4. Causes to be diverted from interstate or foreign transit begun in this State; or [who]
- 5-7. (No change.)

[(b)]**8. Any distributor or other person who conspires with any person, firm, partnership, association or corporation or any officer or agent thereof to do the things mentioned in this section with intent to avoid any taxes imposed by these [regulations] rules shall be guilty of a [misdemeanor] crime of the fourth degree.**

18:18-12.8 Acting as a distributor or gasoline jobber without license; [misdemeanor] crime of the fourth degree

(a) No person shall be a distributor, importer or gasoline jobber without first securing a license from the Director.

(b) Any person who violates this [regulation] **rule shall be deemed guilty of a [misdemeanor] crime of the fourth degree.**

18:18-12.10 False refund claims; failure to keep records on refund claims

(a) Any person who:

1. (No change.)
2. Collects or causes to be repaid to him or to any other person any such reimbursement or refund without being entitled to the same shall be guilty of a [misdemeanor] **crime**. (See [section] N.J.A.C. 18:18-15.4 (Payment of refunds) [of this chapter]).

(b) (No change.)

18:18-12.16 Seller or user of special fuels without license; penalties

Every person who engages in business as a seller of special fuels or as a user of special fuels without first procuring a license from the Director shall be subject for the first offense to a penalty of **\$250.00** and for the second offense and thereafter to a penalty of **\$500.00**, and for failure forthwith to pay such penalty after conviction, he shall be imprisoned for a period of not less than five nor more than 30 days.

18:18-12.17 Storage facility operator without license; penalties

A person who engages in the operation of a storage facility or stores fuel in a storage facility without first obtaining a storage facility operator's license from the Director as required by law, shall be subject to a penalty of **\$250.00** and for the second offense and thereafter shall be subject to a penalty of **\$500.00**, and for failure to pay such penalty forthwith after conviction, he shall be imprisoned for a period of not less than five nor more than 30 days.

18:18-12.18 Failure of storage facility operator to keep records; penalties

A storage facility operator who fails to keep the records required to be kept, or refuses or fails to permit inspection of such records by the director or any of his assistants shall be subject for the first offense to a penalty of **\$250.00** and for the second offense and thereafter shall be subject to a penalty of **\$500.00**, and for failure to pay such penalty forthwith after conviction, he shall be imprisoned for a period of not less than five nor more than 30 days.

18:18-12.19 Failure of retail dealer, wholesale dealer, seller or user of special fuels to keep records; penalties

Every retail dealer or wholesale dealer or any seller or user of special fuels who shall fail to furnish an invoice or who shall fail to keep the records required to be kept by virtue of N.J.S.A. 54:39-33 or 54:39-34 or these rules, or who shall refuse or fail to permit inspection of such records by the Director or any of his agents shall be subject for the first offense to a penalty of **\$250.00** and for the second offense and thereafter shall be subject to a penalty of **\$500.00**, and for failure to forthwith pay such penalty after conviction, he shall be imprisoned for a period of not less than five nor more than 30 days.

18:18-12.20 Certain untaxed special fuel subject to forfeiture

N.J.S.A. 2C:64-1 provides that any interest in untaxed special fuel shall be subject to forfeiture under certain circumstances.

SUBCHAPTER 13. PROCEDURES FOR COLLECTION OF FINES AND PENALTIES

18:18-13.1 Law applicable except to [misdemeanors] crimes

The procedure to be followed in actions for the collection of penalties and fines set forth in the [regulations of subchapter 12 (Fines and Penalties) of this chapter] N.J.A.C. 18:18-12 shall, except where the offense is punishable as a [misdemeanor] **crime**, be as hereinafter provided.

18:18-13.2 Suit by Director; jurisdiction; process

(a) The penalty or fine imposed because of violation of any provision of these [regulations] **rules** as noted in [section 13.1 (Law applicable except to misdemeanors) of this chapter] N.J.A.C. 18:18-13.1, will be sued for in the name of the Director.

(b) [Every] **The Superior Court and any municipal court**, [and county district court,] if the violation occurs within the territorial jurisdiction of such court will have jurisdiction over proceedings to enforce and collect the penalty or fine.

(c) (No change.)

18:18-13.3 Judgment; commitment for nonpayment

If judgment be rendered for the plaintiff the court will cause any defendant who may refuse or fail to pay forthwith the amount or the judgment rendered against him and all costs and charges incident thereto, to be committed to the county jail for any period not exceeding the period mentioned in these [regulations] rules.

SUBCHAPTER 14. EXEMPTIONS

18:18-14.1 Sales to Federal Government, State of New Jersey, any political subdivision of this State, or to department or agency of either exempt; time limit for tax credit

(a) The provisions of these [regulations] rules requiring the payment of taxes are not to be construed to apply to fuel sold to the government of the United States, to the State of New Jersey, any political subdivision of this State, or to any department or agency of either for official use in motor vehicles, motor boats, other implements owned or leased by the State of New Jersey or any political subdivision or agency of this State, but every distributor, [and] gasoline jobber, **importer and seller/user** must report such sales to the Director at such times and in such detail as the Director may require.

(b) Any claim for exemption under these [regulations] rules may be made by the distributor, [and] gasoline jobber, **importer and seller/user** at any time within two years after the date of sale, but no claim made after the expiration of said two years will be recognized for any purpose by the State or any agency thereof.

(c)-(d) (No change.)

18:18-14.2 Reporting tax-free sales to United States Government, State of New Jersey, any political subdivision of this State or to department or agency of either

(a) Direct sales.

1. Where tax-free sales of fuels are made directly by a licensed distributor [or], gasoline jobber, **licensed importer, or licensed seller/user** to the United States Government, State of New Jersey, any political subdivision of this State or to a department or agency of either and billings for the fuels are on invoices of the licensed distributor [or], gasoline jobber, **licensed importer, or licensed seller/user**, such tax-free sales are to be entered on [Line 12] **the applicable line of the Monthly Tax Report**, with supporting entry on [Schedule 12-22] **the appropriate schedule**;

2. These sales include deliveries of fuels to the United States Government, State of New Jersey, any political subdivision of this State or to a department or agency of either for the account of the licensed distributor [or], gasoline jobber, **licensed importer or licensed seller/user** through the recognition of their Courtesy Cards;

3. The licensed distributor [or], gasoline jobber, **licensed importer, or licensed seller/user** is required, during the periodical audit of his records by the Director or any authorized assistants, to establish by means of delivery tickets, invoices, ledger cards, open orders, contracts or otherwise, satisfactory evidence of sales to the United States Government, State of New Jersey, any political subdivision of this State or to a department or agency of either by the licensed distributor [or], gasoline jobber, **licensed importer, or licensed seller/user** or for his account by a licensed dealer.

(b) Where tax-free sales of fuels are made by licensed dealers or **importers** out of New Jersey tax-paid fuels inventory and the licensed distributor, **importer** or gasoline jobber has refunded the New Jersey motor fuels tax to the licensed dealer or **importer**, the tax-free sales are to be entered on [Line 22] **the appropriate line of the Monthly Tax Report**, with supporting entry on [Schedule 12-22] **the appropriate schedule**.

1. In further support of the entries on [Line 22] **the appropriate line**, properly completed Federal Exemption Certificates, Form 1094, or New Jersey Exemption Certificates, Form C-6060MF, covering the gallonage entered must be attached to the Report;

2. (No change.)

(c) (No change.)

18:18-14.3 [(Reserved)] Diplomatic missions and diplomatic personnel

(a) Diplomatic missions and diplomatic personnel, as retail purchasers of motor fuel, are exempt from the motor fuels tax imposed pursuant to Chapter 39 of Title 54 of the New Jersey Revised Statutes only to the extent provided for in this section. Such provisions are predicated on the United States Department of State, Office of Foreign Missions' national tax exemption program.

1. "Diplomatic missions" as used in this section means permanent missions to the United Nations and foreign embassies and consulates.

2. "Diplomatic personnel" as used in this section means foreign embassy and consular officials, certain foreign embassy and consular employees, certain officers and employees of the United Nations, of international organizations and of permanent missions to the United Nations, and certain employees of the Coordination Council for North American Affairs.

(b) In order for diplomatic missions and diplomatic personnel to receive an exemption from the motor fuels tax, such mission or personnel must establish its exempt tax status with the United States Department of State or, in the case of employees of the Coordination Council for North American Affairs, with the American Institute in Taiwan. The United States Department of State or the American Institute in Taiwan must then certify to an oil company which issues credit cards, that such mission or personnel is exempt from the motor fuels tax. Diplomatic mission or diplomatic personnel seeking exemption from tax must then obtain credit cards from such an oil company. Although no exemption from tax is allowed at the time of the retail sale of the fuel, purchases of motor fuel charged to authorized credit cards will be billed exclusive of the tax from which the purchaser is exempt. Retail sellers of motor fuel may not sell such fuel to diplomatic missions or personnel without passing through the motor fuels tax at the time of the sale.

1. Oil companies, which in agreement with the United States Department of State or the American Institute in Taiwan have issued authorized credit cards to diplomatic missions and diplomatic personnel, may bill such missions and personnel for credit card purchases of motor fuel, exclusive of the motor fuels tax. Such oil companies are entitled to a refund or credit of such tax in the amount which they have reimbursed directly or indirectly the retail seller of such fuel or the amount they themselves may be liable to remit directly to the Division of Taxation. Sufficient records must be maintained to verify the amounts of all refunds and credits claimed on the basis of credit card sales to diplomatic missions and diplomatic personnel.

(c) Tax exemption cards issued to diplomatic missions and diplomatic personnel by the United States Department of State or the American Institute in Taiwan may not be used to purchase motor fuel upon which the seller has not passed through the motor fuels tax.

(d) Notwithstanding any other provision in this chapter, no tax exemption will be provided nor will a refund, credit or reimbursement be granted where diplomatic missions or diplomatic personnel purchase motor fuel by any means other than through the use of an authorized oil company credit card.

(e) The provisions of this section are also applicable to the administration of the tax imposed on diesel fuel pursuant to Chapter 39 of Title 54 of the New Jersey Revised Statutes.

SUBCHAPTER 15. REFUNDS

18:18-15.1 [Refund] Refundable uses; application for refund; supporting tax-paid invoices; distributor procedure

(a) Any person who uses any [motor] fuels for any of the purposes listed in [subsection] (d) below and who has paid the tax for such fuels hereby required to be paid, will be reimbursed and repaid the amount of tax so paid upon presenting to the director an application for reimbursement or repayment, which application must be verified by a declaration of the applicant that the statements contained therein are true.

(b)-(c) (No change.)

(d) For the purposes of this section, the following uses of motor fuel may entitle the taxpayer to a refund provided all of the requirements of this section are met:

1. (No change.)
2. Buses while being operated over the highways of this State [to provide regular route passenger service] in a **regular route bus operation as defined in N.J.S.A. 48:4-1** and under operating authority conferred pursuant to [Revised Statutes] N.J.S.A. 48:4-3 (Certificate of public convenience and necessity).
3. Buses while providing bus service under a contract with the New Jersey Transit Corporation or under a contract with a county for special or rural transportation bus service subject to the jurisdiction of the New Jersey Transit Corporation pursuant to P.L. 1979, c.150 (C.27:25-1 et seq.), and buses providing commuter bus service which receive or discharge passengers in New Jersey. For the purpose of this paragraph "commuter bus service" means regularly scheduled passenger service provided by motor vehicles whether within or across the geographical boundaries of New Jersey and utilized by passengers using reduced fare, multiple ride or commutation tickets and shall not include charter bus operations or special bus operations as defined in N.J.S.A. 48:4-1. Buses operated for the transportation of enrolled children and adults only when serving as chaperones to or from a school, school connected activity, day camp, summer day camp, nursery school, child care center, pre-school center or other similar places of education, including "School Vehicle Type I" and "School Vehicle Type II" as defined in N.J.S.A. 39:1-1 do not qualify for refund under this subsection. (Recodify existing 3.-19. as 4.-20. (No change in text.)

21. The \$0.30 per gallon increase in the tax on diesel fuel imposed by P.L. 1984, c.73, sec. 35 as such special fuel is used by passenger automobiles and motor vehicles of less than 5,000 pounds gross weight.

18:18-15.2 Distributor may take credit in lieu of refund; seller/user report of refundable use

- (a) (No change.)
- (b) A licensed seller/user of special fuels shall report and explain on its return, or a rider attached to its return, otherwise refundable uses as "nontaxable use" on the appropriate line and schedule of its seller/user return. The taxpayer will not report the gallonage qualified for refund by virtue of such refundable uses as taxable gallonage on the return and shall not remit tax on such gallonage.

18:18-15.4 Payment of refunds; time limit; false statements and/or fraudulent payments; [misdemeanors] crimes

- (a)-(b) (No change.)
- (c) Any person or member of any firm or the officer or agent of any corporation who makes any false statement in any application required for the reimbursement and repayment of any taxes, or who collects or causes to be repaid to him or to any other person any such reimbursement or refund without being entitled to the same shall be guilty of a [misdemeanor] crime. See [section] N.J.A.C. 18:18-12.10 (False refund claims) of this chapter.]

18:18-15.5 Records establishing claims

- (a) (No change.)
- (b) In order to establish the validity of claims filed, the claimant must maintain and preserve for a period of at least [two] **four** years such fuel consumption records as may be prescribed by the Director.
- (c) (No change.)
- (d) Failure of the claimant to maintain and preserve such records, furnish such additional proof or to accede to the demand for such examination by the Director, or any of his representatives, constitutes a waiver of all rights to the claim or claims questioned and such subsequent claims as the Director may determine. [(See section 12.10 (False refund claims) of this chapter.)]

18:18-15.10 Refund procedure for [other than distributors or gasoline jobbers] **licensed exporters** on export or sales for export

All persons, not motor fuel distributors [or], gasoline jobbers or importers, exporting or selling for export fuels may secure refund of any New Jersey State [Motor Fuel Tax] motor fuel tax previously

paid on same by writing to the New Jersey Division of Taxation, Trenton, New Jersey 08646.

1.-2. (No change.)

18:19-1.1 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:

"Seller of special fuels" means any person who sells any fuel capable of generating power in a diesel type engine which will include, without limitation, diesel fuel, No. 2 fuel oil, and kerosene.

"Special fuels" means any fuel capable of generating power in a diesel type engine which will include, without limitation thereto, diesel fuel, No. 2 fuel oil, and kerosene.

"User of special fuels" means any person, except the State of New Jersey and any political subdivision thereof, who maintains a storage tank or tanks of any type, including a conveyance, equipped with a dispensing device and being used for storage and dispensing diesel fuel, No. 2 fuel oil, or kerosene, for his own use. "Storage tanks" as used in this section shall not apply to a vehicle service tank used to carry motor fuels for use exclusively in propelling the vehicle carrying the tank.

18:19-2.1 Posted price signs

- (a)-(b) (No change.)
- (c) No retail dealer shall sell or offer for sale any motor fuel without having attached by a suitable bracket or slot arrangement to each pump or other dispensing equipment from which motor fuel is sold or offered for sale a weather-proof case not less than 5½ inches by eight inches and not more than 12 inches by 12 inches, on both sides of which will be displayed a card insert price sign not less than five inches by 7½ inches and not more than 11½ inches by 11½ inches, stating the price per gallon if sold by the gallon, and per gallon and per liter if sold by the liter at which motor fuel may be purchased from such pumps or other dispensing equipment.
 1. Data to be shown on price signs:
 - i.-ii. (No change.)
 - iii. If the credit price is the same as the cash price a statement in words to that effect may be included in the signage, in lieu of repeating the unit price in digits for both cash and credit prices. Such signs shall show no other data than the data required by [(c) of this section] **this subsection.**
 - 2.-6. (No change.)
- (d) Upon application by an interested party, the Division may specifically find and approve for use in a particular case that a proposed pump topper sign meets the intention and spirit of the price disclosure law although the dimensions and physical composition of the proposed signage vary slightly from that noted in this rule.

18:19-2.2 Special conditions for price signs

- (a)-(d) (No change.)
- (e) See N.J.A.C. 18:19-2.1(d).

18:19-2.7 Posted prices and brand names, cash discounts, of diesel fuel

- (a) (No change.)
- (b) A retail dealer may sell similar fuels [as] at different prices to cash and credit customers, and the price posted on top of the pump and on the pump meter shall be the credit purchase price. A conspicuous sign shall also be displayed at the pump or at the island posting the price per gallon (or per gallon and per liter) reduction for cash purchases of fuels. At his option, a dealer may also meet the cash/credit price posting requirement with a pump top split sign pursuant to N.J.A.C. 18:19-2.1(c) showing the cash price per gallon on the top half of the sign and the credit price per gallon on the bottom half of the sign having the same background colors (compare N.J.A.C. 18:19-2.1(c)1ii). **If the dealer offers the same price for cash and credit customers, the dealer may substitute a message in words for one row of digits. The message would state that the same price applies for cash and credit sales.** If the dealer

elects to offer an island dedicated exclusively to cash sales, the price posted on top of the pumps and the pump meters at the dedicated island shall be the cash purchase price.

(c)-(e) (No change.)

18:19-3.1 Violations and penalties

(a) Rules concerning violations and penalties follow:

1. (No change.)
2. Who sells motor fuel at a price other than the per gallon or per gallon and per liter price, as provided by [this chapter] **N.J.S.A. 56:6-2**; or
3. Who violates any other provisions of [this chapter] **N.J.S.A. 56:6-2**, shall, upon conviction:
 - i-iii. (No change.)
 4. (No change.)

18:19-3.2 Procedure for collection of penalties

The following procedure will be followed in actions for the enforcement of penalties set forth in N.J.A.C. 18:19-3.1.

- (a) (No change.)
1. (No change.)
 2. [Every court of this State] **The Superior Court and every municipal court** is authorized, upon the filing of a complaint in writing, duly verified by the Director, or by any assistant or employee of the Director, which may be made upon information or belief, that any retail dealer has violated any of the requirements of N.J.A.C. 18:19-2 to issue process at the suit of the Director as plaintiff;

3.-6. (No change.)

(b) (No change.)

1. (No change.)
2. [The district court, police justice, recorder, justice of the peace or other police magistrate] **The court** has the power to adjourn the hearing or trial in any case from time to time, but in such case, except in case where the first process was a summons, it is the duty of the judge of such court, to detail the defendant in safe custody, unless he enters into a bond to the Director with at least one sufficient surety, in a sum fixed by the court which will not be less than \$50.00 nor more than \$200.00, conditioned on:

i-iv. (No change.)

(c) (No change.)

1. The clerk of [any district court or the clerk of any recorder's or police] court may sign and seal any process required to [be issued] **issue** under the Act, except a warrant of commitment;

2. (No change.)

3. Any judgment recovered for a penalty under the provisions of the Act in any [district] **municipal court** may be docketed **with the Superior Court** as other judgments [in] of said court are docketed; **cf. N.J.S.A. 56:6-4.1c.**

4. (No change.)

(d) Injunction.

1. The Director may file a bill in the Superior Court for an injunction to prohibit any habitual violation of the Act, or any of the orders[,] or rules[, or regulations] made by the Director, and every such action will proceed in the Superior Court according to the rules and practice of that court;

2. (No change.)

SUBCHAPTER 4. RECORDS REQUIRED; TOTALIZERS

18:19-4.1 Records required to be kept by retail dealer, and seller and user of special fuels

(a) Every retail dealer must keep records as described [below] **in this section** and as are necessary to the determination of whether or not such retail dealer has observed the provisions of this chapter.

1. All records must be safely preserved for a period of [one year] **four years** in such manner as to insure their security and accessibility for inspection by the Director or any employee of the Division of Taxation engaged in the administration of these [regulations] **rules**;

2. (No change.)

- (b) Every retail dealer, **seller of special fuels and user of special fuels** must keep the following records:

1. (No change.)

i-ii. (No change.)

iii. [If] **Since** motor fuels sales **and/or use** are recorded by meter **(that is, totalizer)**, allowance must be made for pump priming and meter testing. Pump [meter] **totalizer** readings, as part of the sales records, shall be kept on a daily basis.

2. (No change.)

3. If monthly statements are received in place of daily invoices or delivery tickets, every such statement must show [in] **on** its face the same detail as required herein with respect to invoices and delivery tickets;

i. (No change.)

ii. Cancelled checks and stubs must be retained as receipts for payment of merchandise[.];

iii. **Daily invoices and delivery tickets shall be maintained for a period of four years unless the Director consents to a destruction of such records at any time within such period.**

4. (No change.)

i-ii. (No change.)

iii. Gasoline or **special fuels** drawn from the dealer's pumps and used in the conduct of his business (operating delivery or towing vehicles, cleaning equipment, etc.) is to be charged to an expense and not included in sales.

5. (No change.)

6. All records kept by retail dealers, **sellers or users of special fuels** must be safely preserved for a period of [two] **four** years in such a manner as to insure their security and accessibility for inspection by the Director or any employee of the Division of Taxation engaged in the administration of the motor fuels tax [regulations] **rules** provided in N.J.A.C. 18:18-1.1 et seq.

18:19-4.2 Totalizers

(a) **All above ground pumps connected to storage tanks which are used to dispense fuels by a retail dealer or a seller of special fuels or a user of special fuels, as defined in chapter 39 of Title 54 of the Revised Statutes who delivers or places fuels into the fuel supply tank or other fueling receptacles or devices of a motor vehicle, or who uses fuels within the meaning of the word "use" as defined in that chapter, or who makes sales to unlicensed buyers, shall have in operation at all times the pump is in use, a working, sealed, gallons totalizer of at least six digits.**

(b) **The six digits are measured from the left of the decimal point and do not represent tenths or fractions of a gallon.**

(c) **Users of special fuels whose monthly usage does not exceed 7,500 gallons are not required to have sealed totalizers.**

18:19-5.5 Suspension and revocation of license

(a) The Director may suspend or revoke the license held by any retail dealer for a violation of any of the provisions of these [regulations] **rules** or on other reasonable ground or grounds, after five days' notice of such proposed revocation or suspension, and the ground or grounds thereof to such retail dealer.

(b) Said notice will be served personally or by registered mail upon the retail dealer and will set forth the date, time, and place of hearing to be conducted [by the Director, or his designated agent] **under the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., for that purpose.**

18:19-5.6 Power to seal totalizers

The Director or his or her assistants may, by the use of seals or sealing devices, ensure that totalizers or seals cannot be removed, altered, or manipulated.

SUBCHAPTER 6. CRIME

18:19-6.1 Altering totalizer

Any person who, without permission or authority and for the purpose of evading or circumventing any law of this State, alters, manipulates, replaces, or in any other manner tampers or interferes with or causes to be altered, manipulated, replaced, tampered or interfered with, a totalizer, or who operates a pump not equipped with a sealed totalizer required by these rules, is guilty of a crime of the fourth degree.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

All Health Care Facilities

Enforcement of Licensure Regulations

Proposed New Rules: N.J.A.C. 8:43E

Authorized By: Leonard Fishman, 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 1994-613.

Submit comments by January 4, 1995, to:

Robert J. Fogg, J.D., M.P.A.
Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department is proposing new rules governing the enforcement of licensure regulations for health care facilities, N.J.A.C. 8:43E. This new chapter would apply to all licensed facilities, including long-term care, residential health care, hospital, comprehensive rehabilitation hospital, ambulatory care, residential drug treatment, residential alcoholism treatment, and adult day health care facilities, assisted living residences, comprehensive personal care homes, home health agencies, and maternal and child health consortia, as each of these licensure categories is the subject of a chapter in the New Jersey Administrative Code specifying standards intended to protect the health and safety of facility patients or residents. The new rules would establish formal procedures for implementing the Department's statutory mandate at N.J.S.A. 26:2H-1 et seq. to enforce these various licensure rules.

In addition to setting forth the procedures through which the Department would impose penalties or take other enforcement actions, N.J.A.C. 8:43E addresses the conduct of surveys of health care facilities by representatives of the Department and the rights of facilities when presented with a finding of a violation or with an enforcement action, including the right of the facility to request a hearing. The proposed rules are intended to assist the Department in protecting the health, safety, and welfare of patients or residents, while preserving the regulated public's right to due process.

A summary of the rules follows:

Key terms which appear throughout the rules and which require a particular understanding of their usage in this context are defined at N.J.A.C. 8:43E-1. These include, for example, "curtailment," "deficiency," "immediate and serious threat," "plan of correction" and "survey." Such definitions should reduce the potential for misinterpretation of the meaning and import of the rules in the subsequent subchapters.

Proposed N.J.A.C. 8:43E-2 addresses the procedures followed by the Department in the survey of facilities for the purpose of evaluating the fitness and adequacy of the premises, equipment, personnel, policies and procedures, and finances and the facility's compliance with applicable state and Federal licensure regulations and statutes. Some of the specific elements of a survey are listed at proposed N.J.A.C. 8:43E-2.1(c), including inspection of medical records and the physical plant and interviews with patients or residents. The use of other facility-specific information, such as statistical data, for the purpose of evaluating quality of care is addressed at proposed N.J.A.C. 8:43E-2.1(f).

In the event that a survey leads to a determination that a violation has occurred, proposed N.J.A.C. 8:43E-2.2(b) would require the Department to provide the facility with a written summary of any factual findings used in that determination and with a statement of each regulation to which the finding of a deficiency relates. Proposed N.J.A.C. 8:43E-2.3 describes the mechanisms by which a facility may request an opportunity to discuss the accuracy of survey findings with representatives of the Department or a post-survey informal review of deficiencies cited. If the

conference or review does not lead to removal of the citation from the record, a plan of correction would need to be submitted in accordance with proposed N.J.A.C. 8:43E-2.3(d). Requirements concerning the plan of correction are specified at N.J.A.C. 8:43E-2.4.

Proposed subchapter 3 treats the various enforcement remedies available to the Department pursuant to N.J.S.A. 26:2H-13 et seq. The mechanism for serving the facility with notice and the restrictions on the effective date of certain types of enforcement actions are described at proposed N.J.A.C. 8:43E-3.2 and 3.3, respectively. Proposed N.J.A.C. 8:43E-3.4 specifically lists 12 classes of violations which may result in the assessment of monetary penalty. Among these classes are such violations as operation of a health care facility without a license, failure to comply with an order to curtail admissions, admission of more patients or residents to a facility than permitted by license, violation of patient care or physical plant standards, and failure to implement a Certificate of Need condition. The rule associates penalties of specific amounts with the various classes of violation identified. Proposed N.J.A.C. 8:43E-3.4(c) and (d) give the Department the flexibility to adjust the magnitude of the monetary penalties on the basis of a number of factors, such as the compliance history of the facility, the number or frequency of the violations, and the economic benefit realized by the facility for non-compliance.

Actions which the Department may take in the event that a facility fails to pay an assessed penalty are listed at proposed N.J.A.C. 8:43E-3.5(c). These include initiation of a summary civil proceeding by the State, placement of the facility on provisional licensure status, and imposition of additional penalties. The circumstances under which an order to curtail admissions may be issued are enumerated at N.J.A.C. 8:43E-3.6(a). Events which could lead to withdrawal of an order to curtail admissions are noted at N.J.A.C. 8:43E-3.6(b). Regulations governing cases in which the Department identifies a need to appoint a receiver for the purpose of remedying a condition in a residential health care facility, assisted living facility, or long-term facility which represents a substantial or habitual violation of standards are found at N.J.A.C. 8:43E-3.7.

Proposed N.J.A.C. 8:43E-3.8 concerns the suspension of a facility's license by the Department. The rule clarifies the methods by which the facility is notified, the time period granted to the facility to correct the violations, and the role of the Department in the evacuation of the facility pursuant to an order of suspension. Procedures to be followed if the facility requests a hearing following receipt of a notice of suspension are delineated at proposed N.J.A.C. 8:43E-3.8(e).

The circumstances under which a notice of proposed revocation of a facility license may be issued are listed at N.J.A.C. 8:43E-3.9(a). Among these circumstances is the continuance of provisional licensure status for a period of 12 months or more. N.J.A.C. 8:43E-3.10 enumerates both the circumstances which may result in a facility being placed on provisional licensure status and the consequences of being so placed, including possible implications for pending licensing and Certificate of Need applications.

The requirements at proposed N.J.A.C. 8:43E-3.11, Cease and Desist Order, concern actions taken by the Department in response to the operation of an unlicensed health care facility.

Proposed subchapter 4 addresses both the right of a facility to a hearing following receipt of a notice of a proposed enforcement action and a mechanism for settling the matter without an administrative hearing. Proposed N.J.A.C. 8:43E-4.1 states that the Department will transmit hearing requests to the Office of Administrative Law and that hearings will be conducted in accordance with the Administrative Procedures Act and the Uniform Administrative Procedure Rules. N.J.A.C. 8:43E-4.2(c) imposes limits on the terms of settlements without hearings. The function of the Health Care Facilities Improvement Fund is described at N.J.A.C. 8:43E-4.2(e).

Social Impact

The statute which authorizes the Department to promulgate standards for the licensure of health care facilities, N.J.S.A. 26:2H-1 et seq., also provides for the assessment and collection of penalties and the taking of other enforcement actions in response to verifiable violations of those standards. The rules proposed at N.J.A.C. 8:43E would formalize and standardize these penalties and other enforcement actions in relation to the classes of violations found to exist through the facility survey and complaint investigation processes.

As is the case with the licensure standards which they support, the rules at N.J.A.C. 8:43E are primarily intended to promote the health,

safety, and welfare of patients or residents of licensed health care facilities in New Jersey. Consequently, these patients and residents are expected to be the principal beneficiaries of the proposed rules. The efficacy of the licensure standards depends in part on the expectation that violations of those standards will be discovered and, when appropriate, followed by enforcement action. The rules at N.J.A.C. 8:43E would support that expectation by clearly setting forth the survey procedures and the nature and magnitude of the consequences which would attend a finding that a facility is deficient in its compliance with standards, thereby rendering the standards more effective and better able to achieve their objective.

The health care facilities would benefit from adoption of the new rules in that both the rights of the Department to conduct surveys and the rights of the facility to discuss the accuracy of survey findings, to request an informal review of deficiencies cited, and to request a formal hearing are described in detail. For example, proposed N.J.A.C. 8:43E-2.1(c) very specifically lists some types of activities which the facility could expect surveyors to perform on-site in the facility, such as inspection of medical records, and proposed N.J.A.C. 8:43E-3.2 would ensure that the Department provides adequate notice of proposed enforcement action to the facility. The clarity and specificity of the rules would foster a better understanding of the process of rule enforcement, its basis, and the protections it affords the regulated facilities.

Economic Impact

The direct economic effect of the proposed new rules would be experienced by health care facilities and by the Department. As should be expected in the case of penalties assessed for the violation of standards of care and physical plant maintenance, penalized facilities would be, in a strictly economic sense, negatively affected. The extent of the effect of civil monetary penalties could be anticipated by facilities on the basis of the rather precise specification of amounts given at N.J.A.C. 8:43E-3.4(a). The rule associates penalties of defined amounts with violations of particular significance, type, and/or frequency. The intent of N.J.A.C. 8:43E-3.4 is to establish a standardized system whereby penalties assessed are commensurate with the nature of the violations and are assessed in a consistent, predictable fashion. During 1993, the Department assessed \$1,540,823 in monetary penalties against health care facilities for violations of rules and statutes.

Some enforcement actions which the Department may impose would exert economic pressure by restraining facility income through the control of facility admissions. Such enforcement actions include curtailment of admissions, suspension of a license, and revocation of a license. Placement of a facility on provisional licensure status, in addition to possibly resulting in revocation of the license after 12 months, could have financial implications for the facility through the application of proposed N.J.A.C. 8:43E-3.10(c), which lists events which accompany placement on provisional licensure status. These events include withholding of authorization or review of applications filed for approval of additional beds or services; notification of the Certificate of Need Program, which might influence the status of any pending CN application; and notification of any public agency providing funding or reimbursement to the facility.

The proposed rules would ensure that the facility is provided with ample opportunity for a hearing and for less formal reviews of deficiencies cited. The appeal of an action against a license may entail costs for professional services, such as those of an attorney, though such services are not specifically required by the rules. The rules permit informal dispute resolution (N.J.A.C. 8:43E-2.3) and settlement of enforcement actions (N.J.A.C. 8:43E-4.2) through conference. Should a matter be referred to the Office of Administrative Law as a contested case, however, hearing costs would be incurred by the facility and by the Department.

The scope and frequency of Departmental surveys would not change as a result of adoption of the proposed rules, hence no new costs would be incurred in this area.

All funds which the Department collects from facilities as a result of penalties assessed will be deposited in the Health Care Facilities Improvement Fund. These funds will be used to make corrections in health care facilities as described at proposed N.J.A.C. 8:43E-4.2(e).

Regulatory Flexibility Analysis

Proposed N.J.A.C. 8:43E sets forth rules and procedures governing the enforcement of standards for licensure of all types of health care facilities within the State of New Jersey. Many of the facilities presently licensed have fewer than 100 full-time employees and are, therefore,

categorized as small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The nature of the proposed rules suggests no reason or need for differentiation based upon business size. These rules and procedures do not impact the provision of health care services in the same way that licensure standards do. They neither impose program requirements nor require use of particular professional services.

Where the rules may be interpreted as imposing compliance requirements, the rules are establishing procedures which a facility needs to follow in taking advantage of its right to contest Departmental actions. For example, proposed N.J.A.C. 8:43E-2.3(b) states that a written request for an informal review of deficiencies cited must be submitted within 10 business days and must include supporting documentation. Such uniformity is necessary to ensure an orderly process and would not result in substantial, if any, additional costs.

The requirements at proposed N.J.A.C. 8:43E-2.4 concerning plans of correction to be submitted to the Department are reporting requirements and have associated costs of plan preparation. The Department contends that these costs are minimal and that such reports are essential to the process of determining an appropriate Departmental response to the finding of a violation of a licensure standard, regardless of facility size.

Full text of the proposed new rules follows:

CHAPTER 43E

ENFORCEMENT OF LICENSURE REGULATIONS

SUBCHAPTER 1. SCOPE AND GENERAL PROVISIONS

8:43E-1.1 Scope

The rules in this chapter pertain and apply to all health care facilities licensed by the Department pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. The rules set forth the procedures for the conduct of surveys of health care facilities, the basis and procedures for imposition of penalties and other enforcement actions and remedies, and the rights and procedures available to facilities to request a hearing to contest survey findings and the imposition of penalties.

8:43E-1.2 Purpose

The rules in this chapter are intended to promote the health, safety, and welfare of patients or residents of health care facilities through establishing rules and regulations implementing the Department's legislative mandate to enforce violations of licensing regulations. The rules also are intended to afford health care facilities with appropriate and adequate due process rights and procedures upon the finding of a violation or assessment of a penalty or other enforcement action.

8:43E-1.3 Definitions

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

"Commissioner" means Commissioner of Health.

"Curtailment" means an order by the Department which requires a licensed health care facility to cease and desist all admissions and readmissions of patients or residents to the facility or affected service.

"Deficiency" means a determination by the Department of one or more instances in which a State licensing regulation or a Federal certification regulation has been violated.

"Department" means New Jersey Department of Health.

"Division" means Health Facilities Evaluation and Licensing, Department of Health.

"Facility" means the entity which has been issued a license to operate a health care facility pursuant to N.J.S.A. 26:2H-1 et seq.

"Immediate and serious threat" means a deficiency or violation that has caused or will imminently cause at any time serious injury, harm, impairment, or even death to residents or patients of the facility and therefore requires immediate corrective action.

"Patient" means an individual under the medical and nursing care and supervision of a licensed health care facility. For purposes of this chapter, "patient" is synonymous with "resident."

"Plan of correction" means a plan developed by the facility and reviewed and approved by the Department which describes the actions the facility will take to correct deficiencies and specifies the timeframe in which those deficiencies will be corrected.

"Resident" means an individual permanently residing in a licensed health care facility and under the medical and nursing care and supervision of that facility for a long-term or chronic condition. For purposes of this chapter, "resident" is synonymous with "patient."

"Survey" means the evaluation of the quality of care and/or the fitness of the premises, staff, and services provided by a facility as conducted by the Department and/or its designees to determine compliance or non-compliance with applicable State licensing regulations, statutes, or Federal Medicare/Medicaid certification regulations or statutes.

SUBCHAPTER 2. SURVEY PROCEDURES

8:43E-2.1 Scope and types of surveys

(a) The Department, or another State agency to which the Department has delegated the authority for conduct of surveys either partially or fully, may conduct periodic or special inspections of licensed health care facilities to evaluate the fitness and adequacy of the premises, equipment, personnel, policies and procedures, and finances, and to ascertain whether the facility complies with all applicable State and Federal licensure regulations and statutes.

(b) The Department or its designee may also conduct periodic surveys of facilities on behalf of the U.S. Department of Health and Human Services or other Federal agency for purposes of evaluating compliance with all applicable Federal regulations or Medicare and Medicaid certification regulations.

(c) The Department may evaluate all aspects of patient care, and operations of a health care facility, including the inspection of medical records; observation of patient care where consented to by the patient; inspection of all areas of the physical plant under the control or ownership of the licensee; and interview of the patient or resident, his or her family or other individuals with knowledge of the patient or care rendered to him or her.

(d) All information pertaining to an individual patient shall be maintained as confidential by the Department and shall not be available to the public in a manner that identifies an individual patient, unless so consented to by the patient or pursuant to an order by a court of law.

(e) The Department may conduct a survey of a facility upon the receipt of complaint or allegation by any person or agency, including a patient, his or her family, or any person with knowledge of the services rendered to patients or operations of a facility.

(f) The Department may evaluate the quality of patient care rendered by a facility through analysis of statistical data reported by facilities to the Department or other agency, or by review of reportable event information or other notices filed with the Department pursuant to regulation. Upon receipt of information indicating a potential risk to patient safety or violations of licensing regulations, the Department may conduct a survey to investigate the causes of this finding, or request a written response from the facility to ascertain the validity of the data and to describe the facility's plan or current actions to address the identified findings.

(g) Following a reasonable opportunity for facilities to review and comment on the validity of the Department's statistical data related to the quality of patient care by facilities, the Department may make such information, as appropriately amended, available to the public.

8:43E-2.2 Deficiency findings

(a) A deficiency may be cited by the Department upon any single or multiple determination that the facility does not comply with a licensure regulation. Such findings may be made as the result of either an on-site survey or inspection or as the result of the evaluation of written reports or documentation submitted to the Department, or the omission or failure to act in a manner required by regulation.

(b) At the conclusion of a survey or within 30 days thereafter, the Department shall provide a facility with a written summary of

any factual findings used as a basis to determine that a licensure violation has occurred, and a statement of each licensure regulation to which the finding of a deficiency relates.

8:43E-2.3 Informal dispute resolution

(a) A facility may request an opportunity to discuss the accuracy of survey findings with representatives of the Department in the following circumstances during a survey:

1. During the course of a survey to the extent such discussion does not interfere with the surveyor's ability to obtain full and objective information and to complete required survey tasks; or
2. During the exit interview or other summation of survey findings prior to the conclusion of the survey.

(b) Following completion of the survey, a facility may contact the Health Facilities Inspection Services office to request an informal review of deficiencies cited. The request must be made in writing within 10 business days of the receipt of the written survey findings. The written request must include:

1. A specific listing of the deficiencies for which informal review is requested; and
2. Documentation supporting any contention that a survey finding was in error.

(c) The review will be conducted within 30 days of the request by supervisory staff of Health Facilities Inspection Services who did not directly participate in the survey. The review can be conducted in person at the offices of the Department or, by mutual agreement, solely by review of the documentation as submitted.

(d) A decision will be issued by the Department within seven business days of the conference or the review, and if the determination is to agree with the facility's contentions, the deficiencies will be removed from the record. If the decision is to disagree with the request to remove deficiencies, a plan of correction is required within five business days of receipt of the decision. The facility retains all other rights to appeal deficiencies and enforcement actions taken pursuant to these rules.

8:43E-2.4 Plan of correction

(a) The Department may require that the facility submit a written plan of correction specifying how each deficiency that has been cited will be corrected along with the time frames for completion of each corrective action. A single plan of correction may address all events associated with a given deficiency.

(b) The plan of correction shall be submitted within 10 days of the facility's receipt of the notice of violations, unless the Department specifically authorizes an extension for cause. Where deficiencies are the subject of informal dispute resolution pursuant to N.J.A.C. 8:43E-2.3, the extension shall pertain only to the plans of correction for the deficiencies under review.

(c) The Department may require that the facility's representatives appear at an office conference to review findings of serious or repeated licensure deficiencies and to review the causes for such violations and the facility's plan of correction.

(d) The plan of correction shall be reviewed by the Department and will be approved where the plan demonstrates that compliance will be achieved in a manner and time that assures the health and safety of patients or residents. If the plan is not approved, the Department may request that an amended plan of correction be submitted within five business days. In relation to violations of resident or patient rights, the Department may direct specific corrective measures that must be implemented by facilities.

SUBCHAPTER 3. ENFORCEMENT REMEDIES

8:43E-3.1 Enforcement remedies available

(a) Pursuant to N.J.S.A. 26:2H-13, 14, 15, 16 and 38, the Commissioner or his or her designee may impose the following enforcement remedies against a health care facility for violations of licensure regulations or other statutory requirements:

1. Civil monetary penalty;
2. Curtailment of admissions;
3. Appointment of a receiver or temporary manager;
4. Provisional license;

5. Suspension of a license;
6. Revocation of a license;
7. Order to Cease and Desist operation of an unlicensed health care facility; and
8. Other remedies for violations of statutes as provided by State or Federal law, or as authorized by Federal survey, certification, and enforcement regulations and agreements.

8:43E-3.2 Notice of violations and enforcement actions

The Commissioner shall serve notice to a facility of the proposed assessment of civil monetary penalties, suspension or revocation of a license, or placement on a provisional license, setting forth the specific violations, charges or reasons for the action. Such notice shall be served on a licensee or its registered agent in person or by certified mail.

8:43E-3.3 Effective date of enforcement actions

The assessment of civil monetary penalties, or revocation of a license, or the placement of a license on provisional status shall become effective 30 days after the date of mailing or the date personally served on a licensee, unless the licensee shall file with the Department a written answer to the charges and give written notice to the Department of its desire for a hearing in which case the assessment, suspension, revocation, or placement on provisional license status shall be held in abeyance until the administrative hearing has been concluded and a final decision is rendered by the Commissioner. Hearings shall be conducted in accordance with N.J.A.C. 8:43E-4.1.

8:43E-3.4 Civil monetary penalties

(a) Pursuant to N.J.S.A. 26:2H-13 and 14, the Commissioner may assess a penalty for violation of licensure regulations in accordance with the following standards:

1. For operation of a health care facility without a license, or continued operation of a facility after suspension or revocation of a license, \$250.00 per day from the date of initiation of services;
2. For violation of an order for curtailment of admissions, \$250.00 per patient, per day from the date of such admission to the date of discharge or lifting of the curtailment order;
3. For failure to obtain prior approval from the Licensing Program, Division of Health Facilities Evaluation and Licensing, for occupancy of an area or initiation of a service following construction or application for licensure, \$250.00 a day;
4. For construction or renovation of a facility without the Department's approval of construction plans, \$1,000 per room or area renovated and immediate suspension of use of the room or area;
5. For the transfer of ownership of a health care facility without prior approval of the Department, \$250.00 per day from the date of the transfer of interest to the date of discovery by the Department. Such fine may be assessed against each of the parties at interest;
6. For maintaining or admitting more patients or residents to a facility than the maximum capacity permitted under the license, except in an emergency as documented by the facility in a contemporaneous notice to the Department, \$25.00 per patient per day plus an amount equal to the average daily charge collected from such patient or patients;
7. For violations of licensure regulations related to patient care or physical plant standards that represent a risk to the health, safety, or welfare of patients or residents of a facility or the general public, \$250.00 per violation where such deficiencies are isolated or occasional and do not represent a pattern or widespread practice throughout the facility;
8. Where there are multiple deficiencies related to patient care or physical plant standards throughout a facility, and/or such violations represent a direct risk that a patient's physical or mental health will be compromised, or where an actual violation of a resident's or patient's rights is found, a penalty of \$500.00 per violation may be assessed for each day non-compliance is found;
9. For repeated violation of any licensing regulation within a 12-month period or on successive annual inspections, or failure to implement an approved plan of correction, where such violation was not the subject of a previous penalty assessment, \$250.00 per violation, which may be assessed for each day non-compliance is found.

If the initial violation resulted in the assessment of a penalty, within a 12-month period or on successive annual inspections, the second violation shall result in a doubling of the original fine, and the third and successive violations shall result in a tripling of the original fine;

10. For violations resulting in either actual harm to a patient or resident, or in an immediate and serious risk of harm, \$1,000 per violation, which may be assessed for each day non-compliance is found;

11. For failure to report information to the Department as required by statute or licensing regulation, after reasonable notice and an opportunity to cure the violation, \$250.00 per day; or

12. For failure to implement a Certificate of Need condition, \$1,000 per day.

(b) Except for violations deemed to be immediate and serious threats, the Department may decrease the penalty assessed in accordance with (a) above, based on the compliance history of the facility; the number, frequency and/or severity of violations by the facility; the measures taken by the facility to mitigate the effects of the current violation, or to prevent future violations; the deterrent effect of the penalty; and/or other specific circumstances of the facility or the violation.

(c) The Department may increase the penalties in (a) above up to the statutory maximum per violation per day in consideration of the economic benefit realized by the facility for non-compliance.

8:43E-3.5 Failure to pay a penalty; remedies

(a) Upon the receipt of a Notice of the Proposed Assessment of a Penalty, a facility has 30 days in which to notify the Department of its intent to request a hearing pursuant to the Administrative Procedures Act.

(b) The penalty becomes due and owing upon the 30th day from receipt of the Notice of Proposed Assessment of Penalties, if a notice requesting a hearing has not been received by the Department. If a hearing has been requested, the penalty is due 45 days after the issuance of a Final Agency Decision by the Commissioner, if the Department's assessment has not been withdrawn, rescinded, or reversed, and an appeal has not been timely filed with the Appellate Division pursuant to Rule 2:2-3 of the New Jersey Court Rules.

(c) Failure to pay a penalty within 30 days of the date it is due and owing pursuant to (b) above may result in one or more of the following actions:

1. Institution of a summary civil proceeding by the State pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.); or
2. Placing the facility on a provisional license status.

8:43E-3.6 Curtailment of admissions

(a) The Department may issue an order curtailing all new admissions and readmissions to a health care facility in the following circumstances:

1. Where violations of licensing regulations are found that have been determined to pose an immediate and serious threat of harm to patients or residents of a health care facility;
2. Where the Department has issued a Notice of Proposed Revocation or Suspension of a health care facility license, for the purpose of limiting the census of a facility if patients or residents must be relocated upon closure;
3. Where the admission or readmission of new patients or residents to a health care facility would impair the facility's ability to correct serious or widespread violations of licensing regulations related to direct patient care and cause a diminution in the quality of care; or
4. For exceeding the licensed or authorized bed or service capacity of a health care facility.

(b) The order for curtailment may be withdrawn upon a survey finding that the facility has achieved substantial compliance with the applicable licensing regulations or Federal certification requirements and that there is no immediate and serious threat to patient safety, or in the case of providers exceeding licensed capacity, has achieved a census equivalent to licensed and approved levels. Such order to lift a curtailment may reasonably limit the number and priority of patients to be admitted by the facility in order to protect patient safety.

8:43E-3.7 Appointment of a receiver

(a) Pursuant to N.J.S.A. 26:2H-37 et seq., the Department may seek an order or judgment in a court of competent jurisdiction, directing the appointment of a receiver for the purpose of remedying a condition or conditions in a residential health care facility, assisted living facility, or long-term care facility, that represent a substantial or habitual violation of the standards of health, safety, or resident care adopted by the Department or pursuant to Federal law or regulation.

(b) The Department shall review and approve the receiver's qualifications prior to submission for court approval. The receiver shall have experience and training in long-term care, assisted living, or residential health care, as appropriate, and, if the facility is a licensed long-term care provider, the receiver shall possess a current New Jersey license as a nursing home administrator and be in good standing. The Department shall maintain a list of interested and approved receivers.

(c) No receiver may be a current owner, licensee, or administrator of the subject facility or a spouse or immediate family member thereof.

8:43E-3.8 Suspension of a license

(a) Pursuant to N.J.S.A. 26:2H-14, the Commissioner may order the summary suspension of a license of a health care facility or a component or distinct part of a facility upon a finding that violations pertaining to the care of patients or to the hazardous or unsafe conditions of the physical structure pose an immediate threat to the health, safety, and welfare of the public or the residents of the facility.

(b) Upon a finding described in (a) above, the Commissioner shall serve notice in person or by certified mail to the facility or its registered agent of the nature of the findings and violations and the proposed order of suspension. Except in the case of a life-threatening emergency, the notice shall provide the facility with a 72-hour period from receipt to correct the violations and provide proof to the Department of such correction.

(c) If the Department determines the violations have not been corrected, and the facility has not filed notice requesting a hearing to contest the notice of suspension within 48 hours of receipt of the Commissioner's notice pursuant to (e) below, then the license shall be deemed suspended. Upon the effective date of the suspension, the facility shall cease and desist the provision of health care services and effect an orderly transfer of patients.

(d) The Department shall approve and coordinate the process to be followed during an evacuation of the facility or cessation of services pursuant to an order for suspension or revocation.

(e) If the facility requests a hearing within 48 hours of receipt of the Notice of Proposed Suspension of License in accordance with N.J.S.A. 26:2H-14, the Department shall arrange for an immediate hearing to be conducted by the Commissioner and a final agency decision shall be issued within 48 hours by the Commissioner. If the Commissioner shall affirm the proposed suspension of the license, the order shall become final. The licensee may file for injunctive relief against the Commissioner's order in Superior Court.

(f) Notwithstanding the issuance of an order for proposed suspension of a license, the Department may concurrently or subsequently impose other enforcement actions pursuant to these rules.

(g) The Department may rescind the order for suspension upon a finding that the facility has corrected the conditions which were the basis for the action.

8:43E-3.9 Revocation of a license

(a) A Notice of the Proposed Revocation of a health care facility license may be issued in the following circumstances:

1. The facility has failed to comply with licensing requirements, posing an immediate and serious risk of harm or actual harm to the health, safety, and welfare of patients or residents, and the facility has not corrected such violations in accordance with an approved plan of correction or subsequent to imposition of other enforcement remedies issued pursuant to these rules;

2. The facility has exhibited a pattern and practice of violating licensing requirements, posing a serious risk of harm to the health,

safety and welfare of residents or patients. A pattern and practice may be demonstrated by the repeated violation of identical or substantially-related licensing regulations during three consecutive surveys, or the issuance of civil monetary penalties pursuant to N.J.A.C. 8:43E-3.4 or other enforcement actions for unrelated violations on three or more consecutive surveys;

3. Failure of a licensee to correct identified violations which had led to the issuance of an order for suspension of a license, pursuant to N.J.A.C. 8:43E-3.6 or 3.8; or

4. Continuance of a facility on provisional licensure status for a period of 12 months or more.

(b) The notice shall be served in accordance with N.J.A.C. 8:43E-3.2, and the facility has a right to request a hearing pursuant to N.J.A.C. 8:43E-4.1.

8:43E-3.10 Provisional license

(a) The Department may place a health care facility on provisional license status in the following circumstances:

1. Upon issuance of a Notice for Revocation or Suspension of a License, pursuant to N.J.A.C. 8:43E-3.8 or 3.9, for a period extending through final adjudication of the action;

2. Upon issuance of an order for curtailment of admissions pursuant to N.J.A.C. 8:43E-3.6, for a minimum period of three months and for a maximum period extending through 90 days following the date the Department finds the facility has achieved substantial compliance with all applicable licensing regulations;

3. For failure to satisfy a civil penalty due and owing pursuant to N.J.A.C. 8:43E-3.4; or

4. Upon a recommendation to the Federal government or the New Jersey Division of Medical Assistance and Health Services for termination of a provider agreement for failure to meet the Federal certification regulations.

(b) A facility placed on provisional license status shall receive a notice of the action pursuant to N.J.A.C. 8:43E-3.10. The action is effective upon receipt, although the facility may request a hearing to contest the action in accordance with procedures identified at N.J.A.C. 8:43E-4.1.

(c) While a facility is on provisional license status, the following will occur:

1. Withholding of authorization or review of any application filed with the Department for approval of additional beds or services;

2. Notification of the action to the Certificate of Need Program, for consideration during any pending application. It may result in withholding of Certificate of Need approval or denial of the Certificate of Need, in accordance with Certificate of Need rules at N.J.A.C. 8:33, or applicable licensing regulations; and

3. Notification of the action to any public agency that provides funding or third party reimbursement to the facility or that has statutory responsibility for monitoring the quality of care rendered to patients or residents. Conspicuous posting of the provisional license in the health care facility must occur.

8:43E-3.11 Cease and desist order

(a) Pursuant to N.J.S.A. 26:2H-14 and 15, the Commissioner or his or her designee may issue an order requiring the operation of an unlicensed or unauthorized care facility or service to cease and desist.

(b) The Commissioner may also impose other enforcement actions pursuant to these rules for operation of an unlicensed health care facility.

(c) The Department may maintain an action in Superior Court to enjoin any entity from operation of a health care facility without a license or after the suspension or revocation of a license pursuant to these rules.

SUBCHAPTER 4. HEARINGS

8:43E-4.1 Hearings

(a) Notice of a proposed enforcement action shall be afforded to a facility pursuant to N.J.A.C. 8:43E-3.2.

(b) A facility shall notify the Department of its intent to request a hearing in a manner specified in the Notice within 30 days of its receipt.

(c) The Department shall transmit the hearing request to the Office of Administrative Law.

(d) Hearings shall be conducted pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1.

8:43E-4.2 Settlement of enforcement actions

(a) The facility may request that the matter be settled in lieu of conducting an administrative hearing concerning an enforcement action.

(b) If the Department and the facility agree on the terms of a settlement, a written agreement specifying these terms shall be executed.

(c) Pursuant to N.J.S.A. 26:2H-16, civil penalties may be settled by the Department in cash or in-kind services to patients where circumstances warrant such agreement and the settlement does not compromise the health, safety, or welfare of patients. In no case shall such settlement reduce a penalty below \$250.00, or \$500.00 for second and subsequent offenses.

(d) The Department may agree to accept payment of penalties over a schedule not exceeding 18 months where a facility demonstrates financial hardship.

(e) All funds received in payment of penalties shall be deposited in the Health Care Facilities Improvement Fund. Such fund shall be designated for use by the Commissioner to make corrections in a health care facility which is in violation of a licensure standard and in which the owner or operator is unable or unwilling to make the necessary corrections. The owner of the facility shall repay the fund any monies plus interest at the prevailing rate that were expended by the State to correct the violation at the facility. If the owner fails to promptly reimburse the fund, the Commissioner shall have a lien in the name of the State against the facility for the cost of the corrections plus interest and for any administrative cost incurred in filing the lien.

(f) If a facility fails to meet the conditions of the settlement, the Department may immediately impose the original enforcement action without any further right to an administrative hearing.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Adult Day Health Care Facilities Standards for Licensure

Proposed Readoption with Amendments: N.J.A.C. 8:43F

Authorized By: Len Fishman, 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 1994-614.

Submit comments by January 4, 1995 to:

Robert J. Fogg, J.D., M.P.A.
Director, Licensing, Certification and Standards
Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The current Manual of Standards for Licensure of Adult Day Health Care Facilities, N.J.A.C. 8:43F, will expire on February 20, 1995, pursuant to the "sunset" provisions of Executive Order No. 66(1978). Therefore, the Department of Health has thoroughly reviewed the rules for consistency with current regulations and statutes and, with the exception of a number of technical amendments in this regard proposed below, has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

N.J.A.C. 8:43F of the New Jersey Administrative Code has been the basis for licensure of the 71 adult day health care facilities currently in operation in New Jersey. These facilities exist either as free-standing facilities or as programmatically-distinct components of licensed long-term facilities.

N.J.A.C. 8:43F first became effective on January 2, 1980 as R.1979 d.452. See: 11 N.J.R. 437(b), 11 N.J.R. 622(b). This chapter was re-adopted, without change on March 18, 1985 (See: 16 N.J.R. 3277(a), 17 N.J.R. 706(a)). On February 20, 1990, new rules were adopted. (See 21 N.J.R. 3385(a), 22 N.J.R. 635(a).) The rules were developed to provide high availability and a cost-effective alternative to long-term care through allowing patients to continue to live independently in the community. Adult day health care facilities are intended to provide services to adults who are well enough to live in their homes, but who need ongoing health care services and may need assistance with activities of daily living.

The current rules, N.J.A.C. 8:43F, Standards for Licensure of Adult Day Health Care, were originally developed with the assistance of an advisory committee established by the Department which included representatives from the New Jersey Adult Day Care Association, the New Jersey Association of Health Care Facilities, the Southern New Jersey Medical Day Care Directors Group, the New Jersey Chapter of the American Physical Therapy Association, the New Jersey Occupational Therapy Association, and the New Jersey Activities Professionals Association, as well as representatives from the Gerontology Program of the Division of Epidemiology of the Department of Health, the Medicaid Program of the Division of Medical Assistance and Health Services of the Department of Human Services, and the Health Facilities Inspection Services, New Jersey State Department of Health. The advisory committee was convened by the Department in order to review and make recommendations regarding the licensure rules.

The Department maintains that the current rules have met their intended purpose of ensuring the provision of quality patient care and services, while also providing sufficient flexibility to facility administrators and health care professionals to devise innovative, effective methods of providing adult day health care services to patients.

The Department intends, during the coming year, to reconvene the advisory committee to review the rules and delete any which have not functioned to maintain or improve the quality of care and to add a subchapter specifying requirements which are unique to pediatric patients who require day health care. The current manual does not address the needs of pediatric patients, and facilities intending to provide pediatric services must apply for licensure following a cumbersome application of the waiver process. The Department believes that the addition of a subchapter describing staffing and physical plant modifications to meet the needs of children requiring medical day care services will result in more efficient use of licensure staff time and give clear guidance to providers who wish to offer these specialized services.

A summary of the rules to be readopted and the proposed amendments follows:

The scope and purpose of the rules in the chapter are set forth in N.J.A.C. 8:43F-1. The rules contain definitions of technical terms, many of which are the same as those for the terms in licensure rules developed by the Department for other types of health care facilities. There are, however, terms specific to adult day health care facilities which are defined for the purposes of this text and general terms which are defined from an adult day health care perspective. The definition of "daily census," for example, includes the method for calculating patient equivalents, and clarifies the meaning of "daily census," and simplifies the calculation of staffing levels. Qualifications of staff are specified in this subchapter. A proposed amendment to N.J.A.C. 8:43F-1.13 specifies the new address of the National Council for Therapeutic Recreation and delete the previous address. An amendment to N.J.A.C. 8:43F-1.18, Qualifications of social workers, is proposed, since social workers in New Jersey must now be licensed or certified by the Board of Social Work Examiners.

N.J.A.C. 8:43F-2, Licensure Procedures, outlines procedures for obtaining licensure. Sections of N.J.A.C. 8:43F-2 address requirements for the following: Certificate of Need (CN); application for licensure; newly constructed or expanded facilities; surveys and temporary license; full license; surrender of license; the fee schedule for filing an application for licensure; as well as the facility's right to a hearing 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. Inasmuch as a Certificate of Need is no longer required for adult day

health care facilities in accordance with N.J.S.A. 26:2H-7a, deletion of the requirement at N.J.A.C. 8:43F-2.1 is proposed, and reference to CN will be deleted at N.J.A.C. 8:43F-2.3. The section will be amended to indicate that onsite inspection of the physical plant to verify construction according to approved architectural plans is now at the discretion of the Department. Amendments to correct the current name of the Licensing, Certification and Standards program are proposed at N.J.A.C. 8:43F-2.1 and 2.2.

N.J.A.C. 8:43F-3 lists the services which the facility must provide directly in the facility, as well as the services which must be provided either on the premises or by contractual arrangements. Dietary, nursing, patient activities, pharmaceutical and social work services must be provided directly in the facility. In addition, dental, laboratory, medical, nutritional counseling, occupational therapy, physical therapy, speech-language pathology, and radiological services must be provided to patients. The facility must provide transportation services, from the patient's home to the facility and from the facility to the patient's home. N.J.A.C. 8:43F-3.1(f) delineates staffing requirements, and was developed on the basis of advisory committee discussions and recommendations. N.J.A.C. 8:43F requires that the facility provide at least one full-time adult day health care staff member for every nine patient equivalents, calculated on the basis of the daily census. According to N.J.A.C. 8:43F-3.1(f), however, the facility must provide additional staff when assessment of the acuity of patient need indicates that more staff assistance is required. The subchapter also requires job descriptions for all personnel. The facility is required to maintain written staffing schedules and to substitute staff with equivalent qualifications for absent staff members. Deletion of the reference to CN at N.J.A.C. 8:43F-3.2 is proposed. Amendments are proposed to N.J.A.C. 8:43F-3.9 which reflect current law (Professional Medical Practitioner Reform Act, P.L. 1989, c.300) regarding reporting of information to the State Board of Medical Examiners.

N.J.A.C. 8:43F-4 outlines the responsibilities of the governing authority, which retains legal responsibility for the management, operation, and financial viability of the facility. Responsibilities enumerated in the rules include provision of a safe, adequately staffed and equipped physical plant.

N.J.A.C. 8:43F-5 applies to the administration of the facility. The subchapter requires the appointment of a full-time administrator who must be available on the premises of the facility when patient care services are being provided and of a designee to act in the absence of the administrator. The subchapter also enumerates administrative responsibilities.

Requirements for patient care policies for the facility are set forth in N.J.A.C. 8:43F-6. The rationale for this subchapter is to protect patient health and safety, to facilitate the delivery of appropriate patient care, and to enhance the patient's access to information. The subchapter requires the formulation of written policies and procedures, including policies and procedures for the determination of staffing levels on the basis of the daily census as well as an assessment of the acuity of patient need, and the referral of patients to other health care providers. Policies and procedures for the emergency care of patients must also be developed. The subchapter contains a series of provisions to ensure that the patient is fully informed of all financial arrangements.

N.J.A.C. 8:43F-7 concerns the patient plan of care and is formulated so as to reflect the multidisciplinary approach necessary for successful adult day health care, with emphasis on continuity of care. The rules include a requirement for the development of a patient plan of care, based upon assessment of the acuity of patient's needs. In addition to including orders for treatment or services, the patient plan of care must include goals of the care to be provided, time frames for achieving goals, and measures for assessing effects of treatment or services. Each health care practitioner providing services to the patient is to participate as a member of the multidisciplinary team.

N.J.A.C. 8:43F-8, Medical Services, requires that a physician be designated to serve as medical director. The medical director's responsibilities for the direction, provision, and quality of the medical service are delineated. The subchapter also states that the medical director must ensure that a physician and an alternate physician have been designated for each patient, who can be contacted when necessary. The duties of the physician responsible for providing care to the patient are specified.

N.J.A.C. 8:43F-9 requires the facility to provide nursing services to patients, directly in the facility. The subchapter includes a requirement for a registered professional nurse to direct the nursing service. The rules

also stipulate that additional licensed nursing personnel and ancillary nursing personnel must be provided in accordance with a systematic determination of nurse staffing levels on the basis of an assessment of the acuity of patient need. The rules allow nurse staffing decisions to be determined by relevant characteristics of the patient population, thus allowing for individualized patient care rather than care based solely upon the number of patients in the facility. Requirements for nursing care services related to pharmaceutical services are also specified.

According to N.J.A.C. 8:43F-10, pharmaceutical services must be provided to patients directly in the facility. If the facility has an institutional pharmacy, the pharmacy must be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39. The facility must designate a pharmacist to direct the pharmaceutical service, and this pharmacist's responsibilities include working together with a pharmacy committee. The facility is required to have policies and procedures for drug administration and storage of drugs. A unit dose drug distribution system must be implemented. The unit dose drug distribution system promotes the safe and proper use of medications and facilitates the provision of cost effective care. An amendment is proposed to N.J.A.C. 8:43F-10.1, indicating that a Controlled Dangerous Substances registration must now be obtained from the New Jersey State Department of Law and Public Safety, rather than the Department of Health, as stated in the current rule.

N.J.A.C. 8:43F-11 includes requirements for dietary services. The adult day health care facility must provide a minimum of one meal per day to patients, supplying at least one-third of the daily caloric and protein requirements, as recommended by the Nutrition Board of the National Academy of Sciences, National Research Council. A dietitian must be designated to be responsible for the direction of the dietary service. A food service supervisor must also be designated and must be present in the facility when meals are prepared in the facility.

N.J.A.C. 8:43F-12 contains rules for physical therapy, occupational therapy, and speech-language pathology services. The facility must provide such services to meet the needs of patients. Practitioners are responsible for participating as part of the multidisciplinary team in developing the patient plan of care and for ensuring that patient care services are provided as specified in the respective portions of the patient plan of care. The rules require that physical therapy and speech-language pathology personnel carry out their responsibilities in accordance with pertinent State practice acts.

Requirements for social work services are specified in N.J.A.C. 8:43F-13. The facility must designate a social worker to assume responsibility for the direction, provision and quality of the social work service. Responsibilities of social work staff are delineated, including a requirement for a social care needs assessment of each patient, completed prior to or upon admission. Social workers must also participate as part of the multidisciplinary team in developing the patient plan of care and providing services in accordance with the social work portion of the patient plan of care.

The requirements for a planned, diversified program of patient activities are delineated at N.J.A.C. 8:43F-14, Patient Activities Services. The patient activities staff are required to arrange a variety of programs which are intended to maintain the patients' sense of usefulness and self-respect. The facility must provide at least ten hours of patient activities services per week for every 15 patient equivalents.

The provision of dental services, laboratory services and radiological services is addressed in N.J.A.C. 8:43F-15. Facilities providing laboratory services and radiological services must be licensed by the appropriate State agency (Departments of Health and Environmental Protection, respectively). Amendments are proposed to N.J.A.C. 8:43F-15.2 specifying current licensing agency citations and names for laboratory and radiological services.

The content of N.J.A.C. 8:43F-16, Emergency Services and Procedures, incorporates principles of fire safety and emergency planning. The facility is required to develop a written emergency plan for various emergency situations, including medical emergencies, equipment breakdown, fire, and other disaster. The provisions contained in the subchapter are intended to promote patient safety.

Requirements for patient rights are stated in N.J.A.C. 8:43F-17. Adult day health care facilities are required to develop and implement policies and procedures regarding, for example, the following patient rights: right to appropriate treatment; freedom from discrimination or abuse; right to register complaints; and right to privacy. The name, addresses and

telephone numbers of offices where information regarding Medicare coverage may be obtained has also been included in this subchapter.

N.J.A.C. 8:43F-18 concerns discharge planning. The intent of the provisions for discharge planning contained in the rules is to ensure continuity of patient care. Evaluation of the patient's needs and goals for discharge, and participation by the patient and family members in the development and implementation of the discharge plan are required.

Requirements for medical records, including provisions for medical record maintenance, storage, contents, and confidentiality, are presented in N.J.A.C. 8:43F-19. The rules stipulate that a medical record shall be maintained for each patient. N.J.A.C. 8:43F-19.2 requires that the facility employ the services of a medical record practitioner, whose qualifications are specified in N.J.A.C. 8:43F-1.11.

N.J.A.C. 8:43F-20 includes requirements for infection prevention and control. The adult day health care facility must establish an infection control committee which has the responsibility for developing and implementing policies and procedures for infection prevention and control. Recommendations regarding infection prevention in specified publications from the Centers for Disease Control must be followed. Requirements regarding collection, storage, handling and disposal of regulated medical waste, in accordance with applicable Federal and State laws and regulations, are stated in the subchapter. Deletion of "Category I" recommendations is proposed at N.J.A.C. 8:43F-20.3, since this terminology is no longer applicable to the rules. Amendments are proposed at N.J.A.C. 8:43F-20.6(b) deleting reference to the Medical Waste Tracking Act of 1988, which is no longer applicable.

Housekeeping, sanitation, and safety are the subject of N.J.A.C. 8:43F-21. The adult day health care facility is required by the new rules to maintain a safe, sanitary environment, managed according to policies and procedures which the facility develops.

The requirement for a quality assurance program is established at N.J.A.C. 8:43F-22. A written plan specifying a timetable and assignment of responsibility must provide for monitoring of staff and services rendered to patients.

N.J.A.C. 8:43F-23 contains standards for construction and N.J.A.C. 8:43F-24 contains physical plant requirements for specific services delivered in adult day health care facilities.

Social Impact

N.J.A.C. 8:43F establishes minimum rules for the licensure of adult day health care facilities. The intent of the rules is to ensure the quality of care provided to patients who receive adult day health care services. Since its adoption in 1990, the chapter has enabled persons to receive health care services while residing in the community.

Persons who are affected by the rules include providers of adult day health care services and persons requiring adult day health care. Adult day care services benefit functionally impaired adult patients who do not require 24-hour inpatient care, but who require health care services and may need assistance with activities of daily living. The need for adult day health care services in New Jersey has increased since the rules were first adopted in 1984, as evidenced by the fact that the number of licensed facilities has increased. There were 28 facilities licensed in 1984. In February, 1990, there were 58 licensed facilities providing adult day health care services. At present, 71 facilities are licensed, serving approximately 12 to 140 patients at each facility.

Adult day health care services occupy a unique position in the continuum of patient care. Services provided in adult day health care facilities permit access to health care to adult patients, while allowing these patients to maintain their independent status as much as possible, and to remain at home, in familiar surroundings, for as long as possible. Another important benefit to patients in adult day health care facilities results from the continued monitoring of their health status. Monitoring of patients' health status by health care practitioners involved in their care may lead to early intervention for health problems, and may decrease the need for frequent physician visits or hospitalization.

Adult day health care services provide benefits, also, to patients' families and caregivers. Adult day health care services assist families and caregivers who may need respite from patient care. Adult day health care services enable family members to continue to work at their daytime jobs. Adult day care services may also help to reduce the level of stress associated with the continual care of the family member, and may, therefore, help to maintain the health of the caregivers at home. There may also be a reduction in the stresses which are associated with placement of the family member in a nursing home or other inpatient long term care facility, if adult day health care services are available as an alternative to such placement.

The rules at N.J.A.C. 8:43F present the various services as an organized system which includes coordinated multidisciplinary patient assessment, goal-oriented patient care planning, ongoing reassessment, and discharge planning. Involvement of the patient and family in patient care planning and discharge planning is emphasized. The rules contain provisions for patient instruction, education, and, when possible, participation in the patient care process.

The rules were designed to provide adult day health care facilities with the flexibility to establish policies, procedures, and means of service delivery which are best, given the facilities' individual structures and patient populations.

The rules emphasize patient care evaluation through an organized quality assurance program, intended to lead to improved staff performance and patient care. Quality assurance activities are required for each patient care service as well as for facility-wide functions. The provisions for quality assurance are designed to focus the facility's efforts upon delivery of safe and effective patient care.

Both the Department and the adult day health care facilities will continue to benefit from the readoption of these rules, which, with their high degree of objectivity and measurability, support the survey, licensure, and enforcement processes. Amendments proposed to the rules will have a beneficial impact since they update laws referenced in the rules without any substantive changes in the intent of the rules.

Failure to readopt these rules may result in consumers having to receive day health care services from unlicensed facilities which may not provide the basic quality of care specified in the rules. Additionally, the public would be deprived of the safeguards inherent in the Department's systems of monitoring and enforcing compliance with these standards of care.

Economic Impact

Adult day health care facilities are currently providing the services delineated in these rules. The Departmental licensure and survey mechanisms already in place for adult day health care facilities will continue to function, at no anticipated additional cost. The rules present requirements which reflect many of the current practices instituted by the facilities.

The rules at N.J.A.C. 8:43F allow the facilities flexibility in management practices, such as in developing policies and procedures best suited to their individual circumstances, and in determining staffing levels to meet patient care needs in accordance with an assessment of the acuity of patient need. This flexibility allows facilities to conserve resources by determining the most efficient manner in which to utilize services and personnel. The emphasis upon continuity and coordination of care reduces duplication and fragmentation of services. Use of a multidisciplinary team approach in patient assessment, development of patient plans of care, and implementation of patient plans of care help to ensure that each patient benefits from a range of professional skills. This approach fosters the efficient marshaling of the facility's resources to serve the patient's needs.

Specific economic impacts are as follows:

Facilities which offer adult day health care services will incur expenses associated with provision of high quality of care as indicated in the Summary above which specifies the required services. 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. 8:43F-1.1 and 1.2 describe 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 1.3 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. Penalties 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 those facilities which violate requirements of the chapter. The appeal of an action against a licensee may entail costs for professional services, such as those of an attorney; however, such services are not specifically required by the rules. The rules encourage settlement with the Department through conference. However, should the issue be referred to the Office of Administrative Law as a contested case, costs of the hearing would be incurred by the Department and the facility contesting.

Subchapter 3 requires the development of job descriptions, policies and procedures for all services, and reporting requirements which will create costs for the licensee. These costs will vary with facility size and

scope of services provided. The reporting requirements involve only telephone and mail contacts and should entail minimal expense.

Preparation and implementation of a patient plan of care, as required at subchapter 7, will impose some costs to facilities.

Costs of professionals who provide medical services, nursing services, pharmaceutical services, dietary, social services, and patient activities must be met by licensees.

Professional services of persons involved in discharge planning will impose some costs to facilities.

Development of a filing system for medical records, services of a qualified medical records professional, and provisions for safe storage of medical records will also result in costs to facilities.

Implementation of a system to prevent and control infections will result in costs which will vary according to the individual facility program.

Subchapter 16 requires development of a written fire safety and emergency plan and may result in expenses to facilities which must employ consultants to assist in development of these plans.

Licensees will have to meet the costs of preparing a written statement of resident rights, as required by subchapter 17.

Professional services of persons involved in discharge planning will impose some costs to facilities.

Development of a filing system for medical records, services of a qualified medical records professional, and provisions for safe storage of medical records will also result in costs to facilities.

Implementation of a system to prevent and control infections will result in costs which will vary according to the individual facility program.

The various physical plant and functional requirements contained in subchapters 23 and 24 each impose a cost; however, the amounts cannot be determined for the entire regulated public, since each licensee is expected to implement the requirements in a manner consistent with the size and scope of the particular program.

A number of the rules may have a direct financial benefit for residents of the facilities. For instance, the provisions at N.J.A.C. 8:43F-6.4(a) requiring full disclosure of fees upon admission and when fees or charges change will help to financially protect residents. The facility must protect the financial interests of residents by taking precautions to ensure the protection of residents' personal property while transportation services are being provided, as stated at N.J.A.C. 8:43F-6.12.

The requirements for a unit dose drug distribution system has proven to be cost effective and has produced long-term savings for facilities.

The amendments proposed to the rules will not have any substantive fiscal impact on facilities, since they only reflect changes in cited laws, but do not require additional expenditures by facilities to provide the required services. Elimination of the CN requirement will result in savings of the associated fees and expenses of filing a certificate of need.

Negative economic consequences would result if the current N.J.A.C. 8:43F were allowed to expire and the rules were not readopted. The discontinuance of adult day health care facilities might lead to institutionalization of patients who currently benefit from adult day health care services. The resultant increase in the need for long-term care beds and the increased numbers of inappropriate placements would increase the costs of patient care. Consumers may not receive quality services for dollars spent in unlicensed facilities which are not surveyed, monitored, and required to comply with these standards of care.

Regulatory Flexibility Analysis

The Department of Health has determined that compliance with N.J.A.C. 8:43F is necessary for all facilities which provide adult day health care services. The Department acknowledges that approximately half of the 71 facilities presently licensed have fewer than 100 full-time employees and are, therefore, categorized as small businesses, as defined by N.J.S.A. 52:14B-16 et seq. Since the rules are intended to protect the health and safety of patients, the Department recognizes the need to apply the rules to all adult day health care facilities, regardless of size. Adult day health care providers are required to keep certain records regarding patient care and patient activities, including a patient plan of care and a complete medical record for each patient. These recordkeeping requirements apply to all adult day health care facilities and are not different for those facilities which are defined as small businesses. The re-adoption of these rules will not impose any additional reporting, recordkeeping, or other compliance requirements. The other requirements, as delineated in the Summary, will require expenditures for staff, equipment and materials. These expenses will vary, with size of the facility one of the many factors, as they are delineated in the Economic Impact above. Professional services, beyond those directly related to patient care, are not required.

Annual compliance cost cannot be determined at this time because of the varying nature of the patient population in adult day health care facilities. The rules, however, were designed to minimize adverse economic impact on small businesses, while ensuring the provision of quality care to patients.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:43F-43F.

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

8:43F-1.13 Qualifications of patient activities director

(a) The patient activities director shall:

1. (No change.)

2. Be certified or eligible for certification as a certified therapeutic recreation specialist (CTRS) by the National Council for Therapeutic Recreation (National Council for Therapeutic Recreation, [P.O. Box 16126, Alexandria, Virginia 22302] Inc., P.O. Box 479, Thiells, NY 10984-0479); or

3.-5. (No change.)

8:43F-1.18 Qualifications of social workers

[(a) Each social worker shall have:

1. A master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education (Council on Social Work Education, 1744 R Street, NW, Washington, DC 20036); or

2. A baccalaureate or master's degree from a college or university approved by a state department of education with a major in social work, psychology, sociology, or counseling and at least one year of full-time, or full-time equivalent, social work experience in a licensed health care facility.]

Each social worker shall be certified or licensed by the New Jersey State Board of Social Work Examiners.

SUBCHAPTER 2. LICENSURE PROCEDURES

[8:43F-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., 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.

(b) Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program

Division of Health Planning and Resources Development

New Jersey State Department of Health

CN 360

Trenton, N.J. 08625

(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 N.J.S.A. 26:2H-1 et seq.]

8:43F-[2.2]2.1 Application for licensure

(a) [Following receipt of a Certificate of Need as an adult day health care facility, any] **Any** person, organization, or corporation desiring to operate an adult day 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

Licensing, [and] **Certification and Standards**

Division of Health Facilities Evaluation and Licensing

New Jersey State Department of Health

CN 367

Trenton, N.J. 08625

(b)-(c) (No change.)

8:43F-[2.3]2.2 Newly constructed or expanded facilities

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

(c) Any adult day health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

8:43F-[2.4]2.3 Surveys and temporary license

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Division of Health Facilities [Inspection Program] **Evaluation and Licensing** of the Department shall be conducted at the Department's discretion to determine if the facility adheres to the rules in this chapter.

1. (No change.)

2. The facility shall notify the Division of Health Facilities [Inspection Program] **Evaluation and Licensing** 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 may be issued to a facility when the following conditions are met:

1. A preliminary conference (see N.J.A.C. 8:43F-2.2(c)) for review of the conditions for licensure and operation has taken place between the Licensing, [and] Certification and Standards Program and representatives of the facility, who will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq. and the rules pursuant thereto;

2.-5. (No change.)

(c)-(g) (No change.)

Recodify existing 8:43F-2.5 through 2.9 as **8:43F-2.4 through 2.9**. (No change in text.)

8:43F-3.9 Information reportable to State Board of Medical Examiners

[(a) In compliance with N.J.S.A. 26:2H-12.2, the facility shall establish and implement written policies and procedures for reporting information to the New Jersey State Board of Medical Examiners in writing on forms provided by the Department within 30 days of the proceeding or action, request, settlement, judgement or award. (Submit forms to the New Jersey State Board of Medical Examiners, 28 West State Street, Trenton, New Jersey 08608. Questions may be directed to the Board office at (609) 292-4843.) The information to be reported shall include, but not be limited to, the following:

1. A disciplinary proceeding or action taken by the governing body against any physician or surgeon licensed by the Board when the proceeding or action results in a physician's or surgeon's reduction or suspension of privileges or removal or resignation from the medical staff, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was the subject of governing authority action which resulted in the reduction or suspension of privileges, or the removal or resignation of the physician or surgeon from the medical staff;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of existence and location of pertinent records or persons familiar with matter;

v. Pendency of any appeal; and

vi. Other information relating to the proceeding or action as may be requested by the Board; and

2. A medical malpractice liability insurance claim settlement, judgment or arbitration award in which the facility is involved, including:

i. Name, professional degree, license number, and residence and/or office address of each physician or surgeon who was involved in the medical malpractice liability insurance claim settlement, judgment or arbitration award;

ii. Nature and grounds of proceedings;

iii. Date(s) of precipitating event(s) and of official action taken;

iv. Name, title, and telephone number of facility official(s) having knowledge of the existence and location of pertinent records or persons familiar with the matter;

v. A copy of the complaint, response, and settlement order, judgment, or award; and

vi. Other information relating to the settlement, judgement, or arbitration award as may be required by the Board.]

(a) In accordance with the Professional Medical Conduct Reform Act, P.L. 1989, c.300, the facility shall notify the Medical Practitioner Review Panel established by the New Jersey State Board of Medical Examiners if a practitioner who is employed by, is under contract to render professional services to, or who has privileges at the facility:

1. Voluntarily resigns from the staff if the facility is reviewing the practitioner's conduct or patient care or has expressed, through any member of the medical or administrative staff, an intention to do so;

2. Voluntarily relinquishes any partial privileges to perform a specific procedure if the facility is reviewing the practitioner's conduct or patient care or has expressed, through any member of the medical or administrative staff, an intention to do so;

3. Has full or partial privileges summarily or temporarily revoked or suspended, permanently reduced, suspended or revoked, has been discharged from the staff or has had a contract to render professional services terminated or rescinded for reasons relating to the practitioner's incompetency, misconduct, or impairment;

4. Agrees to the placement of conditions or limitations on the exercise of clinical privileges or practice within the health care facility including, but not limited to, second opinion requirements, nonroutine concurrent or retrospective review of admissions or care, nonroutine supervision by one or more members of the staff, or the completion of remedial education or training;

5. Is granted a leave of absence pursuant to which the practitioner may not exercise clinical privileges or practice within the facility and if the reasons provided in support of the leave relate to any physical, mental, or emotional condition or drug or alcohol use, which might impair the practitioner's ability to practice with reasonable skill and safety; or

6. Is a party to a medical malpractice liability suit in which the facility is also a party and in which there is a settlement, judgment, or arbitration award.

(b) For the purposes of (a) above, "practitioner" means physician, medical resident or intern, or podiatrist.

(c) Notifications required by (a) above shall be provided within seven days of the date of the action, settlement, judgment or award and shall be submitted, with supporting documentation, on forms approved by the Department of Health for that purpose. The facility shall submit a completed supplemental form to the New Jersey State Board of Medical Examiners, if so requested by the Board, and to the Department's Health Facilities Evaluation and Licensing Program.

8:43F-10.1 Provision of pharmaceutical services

Pharmaceutical services shall be provided to patients, directly in the facility. If the facility has an institutional pharmacy, the pharmacy shall be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39, and shall possess a current Drug Enforcement Administration registration and a Controlled Dangerous Substance registration from the [Department in accordance with the Controlled Dangerous Substances Acts and amendments thereto] **New Jersey State Department of Law and Public Safety**.

8:43F-15.2 Provision of laboratory and radiological services

(a) Facilities providing laboratory services shall be licensed or approved by the Department, **in accordance with N.J.A.C. 8:44 and 8:45**.

(b) Facilities providing radiological services shall be licensed or approved by the New Jersey State Department of Environmental Protection, Bureau of [Radiation Protection] **Radiological Health**, **in accordance with N.J.A.C. 7:28**.

8:43F-20.3 Infection prevention measures

(a) The facility shall follow all [Category I] recommendations in the current editions of the following Centers for Disease Control publications, incorporated herein by reference, unless the infection control committee makes a documented exception for a specific guideline:

1.-5. (No change.)

8:43F-20.6 Regulated medical waste

(a) (No change.)

(b) The facility shall comply with the provisions of [42 U.S.C. 6903 et seq., the Medical Waste Tracking Act of 1988, and] N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules and regulations promulgated pursuant to the aforementioned Act[s].

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Hospital Licensing Standards

Proposed Redoption with Amendments: N.J.A.C. 8:43G

Authorized By: Len Fishman, 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 1994-615.

Submit comments by January 4, 1995 to:

Robert J. Fogg, J.D., M.P.A.
Director, Licensing, Certification and Standards
Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, NJ 08625-0367

The agency proposal follows:

Summary

N.J.A.C. 8:43G, Hospital Licensing Standards, became effective on February 5, 1990 and operative on July 1, 1990 as R.1990 d.77, and is the basis for licensure of the 97 acute care hospitals currently in operation in New Jersey. These rules will expire on February 5, 1995, pursuant to the "sunset" provisions of Executive Order No. 66 (1978), and the Department is proposing reoption of these rules in order to avert their expiration.

The goal of the hospital licensing standards is to ensure patient safety and welfare, a goal that the Department believes has been met. At this time the agency is proposing reoption with amendments only in key areas. These amendments are intended to reflect current law and/or practice, address several priority public health issues, eliminate obsolete dates or provisions, and clarify regulatory intent.

The Department proposes to delete the designations "mandatory" and "advisory" from subsection headings throughout the entire chapter. When the hospital licensing standards were originally proposed, these designations were included in order to differentiate between standards that were required as minimum standards of care and those that were seen as additional indicators of quality which hospitals could implement on a voluntary basis. After extensive public comment, the advisory standards were withheld from adoption, for the purpose of further review, but subsections were reserved for later inclusion of advisory standards.

In intervening years, subsequent amendments have incorporated the intent of many of the advisory standards into the rule, and the Department believes that the distinction no longer has validity. Thus, the designations are removed from the Administrative Code.

The rules proposed for reoption, and the amendments to them, are summarized below.

Subchapter 1. General Provisions

The scope and purpose of the rules in the chapter are set forth in N.J.A.C. 8:43G-1. The rules contain definitions of technical terms and classification of hospitals by types of ownership. Finally, they describe the procedure for obtaining information about hospital licensure or making a complaint about a hospital on a toll-free telephone number.

An amendment is proposed at N.J.A.C. 8:43G-1.3(b)3 to specify the classification of psychiatric hospitals, which provide care for patients with primary psychiatric diagnoses. The intent of this amendment is to provide an operational definition for psychiatric hospitals, as distinct from general or special hospitals.

Subchapter 2. Licensure Procedure

N.J.A.C. 8:43G-2 explains the licensing and certification requirements for hospitals. The provisions in the subchapter are generally consistent with licensing and certification requirements regulating other facilities under the authority of the Department of Health. Minor amendments are proposed at N.J.A.C. 8:43G-2.1, 2.2, 2.4, for purposes of style, clarification, and implementation of changes in the organization of the Department and in the Certificate of Need process.

In N.J.A.C. 8:43G-2.1(a) and 2.2, the Department is proposing minor changes in this standard to clarify that a Certificate of Need must be obtained where required, in contrast to the services which are exempt from this process.

In N.J.A.C. 8:43G-2.3(b), the Department has made a change which allows the conduct of on-site inspections to be based on the availability of inspections staff.

In N.J.A.C. 8:43G-2.11(a) and new (b), limitations on the number of beds for satellite hospital facilities are no longer deemed necessary, given the recent downsizing, mergers, and other cost-cutting measures in today's health care environment, and have been deleted.

Subchapter 3. (Reserved)

Subchapter 4. Patient Rights

The rules in this subchapter represent clear, comprehensive, and effective standards for the rights of every patient in New Jersey hospitals. It is essential to have enforceable rights which are communicated to the patient directly upon admission and which give the patient redress in case of abrogation of his or her rights. Prior to the adoption of these rules in 1990, no written standards for patient rights had existed in New Jersey. Amendments to the rules were made in 1992 requiring hospitals to provide a summary in the patient's native language if 10 percent or more of the population in the hospital's service area speak that language.

Major provisions in this subchapter include the patient's right to: treatment without discrimination, explanation of medical condition to patient, refusal of medications and treatment, sufficient discharge notice, freedom from chemical and physical restraints, confidential treatment of information, and access to medical records.

The rules are amended at N.J.A.C. 8:43G-4.1(a)30 to include the provisions of the Private Duty Nursing Act of 1994, P.L.1994, c.22. The intent of this law is to ensure the hospital patient's right to choose private duty nurses and requires the hospital to provide, upon request of the patient or a designee, a list of local nonprofit registries that provide private professional nursing care. The amendment also stipulates that the contracted nurse adhere to treatment protocols and other policies and procedures so long as these requirements are the same for private duty and regularly employed nurses. This provision affirms the need to protect the safety of all patients by permitting the hospital to set minimum standards for treatment and qualifications for specialty services such as intensive care.

Subchapter 5. Administrative and Hospital Wide Services

This subchapter includes rules that are applicable throughout the hospital and as such are frequently cross-referenced throughout the licensing manual. For example, N.J.A.C. 8:43G-5.9, Department education programs, sets forth general staff education requirements that must be "customized" for, and implemented in, each department. N.J.A.C. 8:43G-5.1 delineates requirements for the structural organization of hospitals and standards for addressing bioethical issues. With regard to protecting the health and safety of patients and staff, the rules at N.J.A.C. 8:43G-5.2 (l) through (p) require hospitals to be smoke-free (as defined within the rule).

Major amendments were made to this subchapter in 1992 requiring hospitals to comply with the New Jersey Advance Directives for Health Care Act and the New Jersey Declaration of Death Act. These amendments facilitate the patient's right of self-determination in regards to provision or withdrawal of life support and accommodate the patient's religious beliefs with respect to declaration of death, thus implementing the intent of the public laws.

The Department is proposing to amend N.J.A.C. 8:43G-5.2(l) through (o) by requiring that hospitals provide a totally smoke-free environment by April 1, 1995. By this amendment, the hospital must ensure that there is no smoking in the facility by employees, visitors, or patients; this removes the option of controlled, physician-ordered smoking by patients in designated areas. This amendment reflects public health policy, as well as voluntary guidelines set by the New Jersey Hospital Association.

Subchapter 6. Anesthesia

Standards for anesthesia care became effective in February 1989, one year earlier than the remainder of the hospital manual. The rationale for developing and adopting these rules at the earliest time possible was that no anesthesia safety standards existed in New Jersey prior to that time, and the need for ensuring patient safety through regulation was deemed essential. An expert anesthesia advisory committee was convened and rules were developed which concentrated on anesthesia safety systems, maintenance and inspection of supplies/equipment, and patient monitoring. The rules at N.J.A.C. 8:43G-6.9 (c) also required that hospitals submit confidential reports to the Department on all deaths in anesthetizing locations and unexpected severe outcomes following the administration of anesthesia.

Within a short period of time, it became apparent through numerous requests for interpretation that further clarity in the rules was needed in regards to staff qualifications for the administration and monitoring of anesthesia. The Department drafted amendments which delineated the qualifications of staff who could administer, monitor, and supervise the administration and monitoring of anesthesia based on the risk level of the type of anesthesia (general/regional, conscious sedation, or local). These amendments, which were seen as crucial for the provision of high quality, safe anesthesia care, became effective in 1991. New Jersey's anesthesia rules have been cited as the safest in the nation.

Several amendments to this subchapter are being proposed. Under "Definitions" at N.J.A.C. 8:43G-6.1, the Department wishes to clarify that "monitoring" means the observation of a patient using instruments to measure, display, and record values, without an option of whether or not to record.

At N.J.A.C. 8:43G-6.3(a), a correction is made to an incorrect date cited in earlier versions. The correct reference is "a fellow of the American College of Anesthesiology before 1982." N.J.A.C. 8:43G-6.3(b) codifies criteria requirements for hospital-wide anesthesia credentialing to ensure objective evaluation and continuing education requirements for all personnel who administer anesthesia. The intent of this amendment is to promote patient safety in all anesthetizing locations throughout the hospital by requiring consistent, objective credentialing standards and continuing education requirements (determined by the hospital) for all personnel who administer anesthetic agents.

Finally, changes are proposed at N.J.A.C. 8:43G-6.3(g) and (h) to incorporate the substance of Advisory Bulletin H-5-91, which clarified circumstances in which nursing personnel are permitted to administer supplemental doses of anesthesia. The Advisory Bulletin and the amendment also address the monitoring of patients who have been given anesthesia, delineating personnel who may perform this function and including for the first time licensed respiratory care practitioners to reflect State Board of Respiratory Care rules which became effective in 1993.

This change is based upon a written interpretation by the Department including licensed respiratory care practitioners in the roster of professionals who can monitor patients receiving anesthetic agents for conscious sedation. The interpretation limited this monitoring to bronchoscopic procedures, and was predicated upon a review of the scope of practice delineated in the State Board of Respiratory Care Rules at N.J.A.C. 13:44F-3.1.

Subchapter 7. Cardiac

The volume of cardiovascular procedures in New Jersey, as in the entire nation, has increased dramatically in recent years due to expanding clinical and scientific knowledge, as well as an aging population requiring these services. The Department is committed to providing sophisticated cardiac care to the citizens of New Jersey and thus has developed rigorous standards for staff qualifications and hospital space and equipment for cardiac care. The standards in this subchapter reflect this philosophy, applying to separate, designated units or services for cardiac surgery and catheterization. Effective in 1990, the rules were amended in 1992 to reflect clarifications or updates to staffing qualifications to ensure the highest level of care. One amendment is being proposed: to eliminate an obsolete date at N.J.A.C. 8:43G-7.3(b) regarding the qualifications of the primary surgeon in a cardiac operation.

Subchapter 8. Central Supply

The rules in this subchapter were developed to protect hospital patients and staff from the spread of disease through regulating the cleaning, decontamination, and/or sterilization of all equipment, supplies, and instruments used in patient care. Effective in 1990, the rules were

amended in 1992 at N.J.A.C. 8:43G-8.7(b) through (d) to include requirements for the processing of scopes such as laparoscopes and arthroscopes that enter normally sterile areas of the body, other scopes that enter non-sterile areas of the body, and accessories to scopes. This subchapter is proposed for readoption without change.

Subchapter 9. Critical and Intermediate Care

The rules in this subchapter address areas that had not been regulated prior to their adoption. The areas of critical and intermediate care services are distinct and highly specialized health care delivery areas requiring a high concentration of specially educated and trained staff to implement treatment. This treatment often entails the use of highly sophisticated equipment and intensive medical therapies. The rules at N.J.A.C. 8:43G-9.3(a)6 require written policies and procedures for removal of life support systems, an issue of great importance in this service. The physician director is required, at N.J.A.C. 8:43G-9.4(c)3, to be board certified, considered an indicator of quality. Hospitals are also required at N.J.A.C. 8:43G-9.18 to provide intermediate care services if they have critical care services. Studies have shown that admitting the low-risk patient to intermediate care areas that provide monitoring, but not intensive therapy, is both cost and quality efficient. This provision is intended to ensure appropriate use of available health care resources and improved patient care.

Minor amendments were added to this subchapter for purposes of clarification in 1992. Amendments are currently proposed at N.J.A.C. 8:43G-9.5 (d) and 9.19 (a) to delete obsolete dates from the standards. N.J.A.C. 8:43G-9.7(d) is deleted and moved to the Nursing Care subchapter at N.J.A.C. 8:43G-18.5(a)1 to ensure that nursing students are supervised appropriately throughout the hospital, not only in the critical care unit.

Subchapter 10. Dietary

Standards in this subchapter were adopted to ensure that patients receiving care in New Jersey hospitals are provided with meals that adequately meet their dietary and nutritional needs. The dietary service has an obligation to serve nutritionally well balanced meals and to meet the specialized therapeutic needs of individual patients. The involvement of a registered dietitian in hospital food service departments is essential to ensure that patients' nutritional needs are recognized and adequately met.

These rules became effective in 1990 and were amended in 1992 to clarify that the duties of dietary service members are matched to their education, training and competence. The subchapter is proposed for readoption without change.

Subchapter 11. Discharge Planning

Discharge planning is seen as a necessary process whereby each patient is screened for post-discharge needs, the patient's needs are addressed in a multi-disciplinary plan, and every attempt is made to secure adequate and appropriate post-discharge care. This planning is seen as increasingly critical as the length of stay in acute care settings decreases dramatically and as the average hospital patient is older and more in need of continued services. The rules in subchapter 11 were developed and adopted to meet these needs and to emphasize the multi-disciplinary nature of the process. The rules were amended in 1992 to specify documentation requirements at N.J.A.C. 8:43G-11.5(b) and (g). No changes in the rules are being proposed at this time.

Subchapter 12. Emergency Department

The emergency department rules that became effective in 1990 require all hospitals to provide a full range of emergency services 24 hours a day and to be staffed by professionals with specialty training in emergency care. Emergency care is often the first point of access to health care, and as such must be timely, of high quality, and appropriate. The standards clearly delineate the required levels of clinical training, competency, and availability for emergency department medical and nursing staff at N.J.A.C. 8:43G-12.3 and 12.5. They also address issues such as initial assignment of clinical priority, immediate treatment for life-threatening emergencies, and maximum waiting time and retention in the emergency department at N.J.A.C. 8:43G-12.8.

The rules were adopted in 1990 and amended in 1992 to include an increased clinical experience requirement for emergency room physicians as recommended by the advisory group, as well as a requirement that staff receive training related to domestic violence and abuse of the elderly or disabled adult.

A new requirement at N.J.A.C. 8:43G-12.2(f) proposes that the emergency department have policies that ensure compliance with regulations at 42 CFR 489.24 and 42 CFR 489.20 related to the examination and treatment for emergency medical conditions and women in labor. These regulations (known as "anti-dumping" provisions) implement section 1867 of the Social Security Act, which requires Medicare participating hospitals with emergency departments to meet emergency medical screening, stabilizing treatment and transfer requirements within the hospital's capabilities. It also sets forth nondiscrimination provisions, provisions for no delay in treatment to inquire about payment status, whistleblower protections, and penalties for noncompliance with these provisions. All general acute care hospitals in New Jersey are Medicare participating and are required to provide emergency services; consequently the Federal rules, which have been in effect since 1986 but are subject to new enforcement policies, apply.

Amendments are also proposed at N.J.A.C. 8:43G-12.3 to delete an obsolete date and a reference to board eligibility, as this status is not recognized by the American Board of Emergency Medicine. Existing N.J.A.C. 8:43G-12.3(b) is moved to N.J.A.C. 8:43G-12.5(a) as it more appropriately fits in the "staff time and availability" section.

Subchapter 13. Housekeeping and Laundry

These rules were adopted to ensure high standards of cleanliness and maintenance in the hospital environment, thus contributing to the safety of patients, staff, and others. This is accomplished by deterring the spread of disease and eliminating hazards and nuisances which might adversely affect safety and quality of care to patients. The standards require that each hospital have a housekeeping or environmental service with a full time director and overall responsibility for the cleaning and maintenance of all equipment, structures, areas, and systems. The hospital must also have a laundry service with a full time director or supervisor; this service must be governed by policies and procedures approved by the infection control committee for the handling of clean and soiled laundry.

These standards became effective in 1990 with minor amendments in 1992 related to fly strips being prohibited in patient care areas, and bacterial monitoring of laundry deleted from the standards. No amendments are proposed at this time.

Subchapter 14. Infection Control and Sanitation

Standards in this subchapter are essential to the safe operation of hospitals in New Jersey, especially in this time of significant public health issues such as the spread of HIV/AIDS and tuberculosis, as well as the disposal of medical waste generated by health care facilities. The rules as adopted ensure that each hospital complies with infection control and medical waste disposal procedures which meet Federal, State, and local guidelines and regulations, thus offering protection to those in the hospital environment and to all citizens of New Jersey.

Minor amendments were added to the standards in 1982, including the addition of representatives of the respiratory care service to the infection control committee, and the redefinition of patient care water temperature. The subchapter is proposed for readoption without change.

Subchapter 15. Medical Records

Standards in this subchapter are essential to patient safety by requiring hospitals to keep up to date, legal, and accurate records of the patient's stay in the hospital. The medical record department specified at N.J.A.C. 8:43G-15.1 establishes the parameters that must be followed by physicians and other staff in the preparation of medical records. Policies and procedures at N.J.A.C. 8:43G-15.2(d) delineate what must be included in each complete medical record. The rules at N.J.A.C. 8:43G-15.3(d) also ensure patient access to copies of their medical record at a reasonable cost and within a specified timeframe, a service that previously had not been consistently available.

The rules became effective in 1990, with amendments made in 1992. These include requirements for electronic and fax orders and documentation of advance directives. Amended N.J.A.C. 8:43G-15.3(d) specifically spells out fees and standards for copying medical records. No amendments are proposed at this time.

Subchapter 16. Medical Staff

This subchapter includes important provisions regarding the qualifications and responsibilities of medical staff in New Jersey hospitals. These provisions include the granting of medical staff privileges at N.J.A.C. 8:43G-16.1(b) through (e), the required actions at N.J.A.C. 8:43G-16.1(f) regarding impaired physicians, and notification to the New Jersey State Board of Medical Examiners of reduced privileges (N.J.A.C.

8:43G-16.1(l)). It also includes provisions at N.J.A.C. 8:43G-16.5(a) for availability of life support services for all hospital patients at all times, in addition to emergency room services, and access to hospital care for all patients regardless of ability to pay (N.J.A.C. 8:43G-16.6(h)).

This subchapter has continued essentially unchanged since adoption in 1990. At this time amendments are proposed at N.J.A.C. 8:43G-16.2(a)5 and 6. Hospitals utilizing certified nurse practitioners/clinical nurse specialists will be required to have policies and procedures related to the prescribing or ordering of medications and devices by these practitioners in accordance with rules of the New Jersey State Board of Nursing at N.J.A.C. 13:37-7 (rules promulgated as a result of the Nurse Practitioner/Clinical Nurse Certification Act of 1991). Similarly, policies and procedures for scope of practice, supervision, and record keeping requirements will be mandated for hospitals utilizing licensed physician assistants as described in State Board of Medical Examiners rules at N.J.A.C. 13:35-2B (rules implementing the provisions of the Physician Assistant Licensing Act of 1991).

Subchapter 17. Nurse Staffing

In order to ensure the efficient use of available nursing staff in meeting the increasing demand for health care, the standards in this subchapter require that hospitals use a system to classify patients according to the acuity of their illness, assess nursing needs, and provide adequate staff to meet those needs. At N.J.A.C. 8:43G-17.1(c) each hospital is given the responsibility to develop and implement the system that best serves its individual situation. The rules also require, for the protection of patients, that the hospital have a policy outlining procedures that must be followed if staffing levels fall below the hospital's predetermined level considered sufficient for patient care (N.J.A.C. 8:43G-17.1(f)).

These rules became effective in 1990 and have continued without amendment since that time. No amendments are proposed at this time.

Subchapter 18. Nursing Care

The intent of the rules in this subchapter is to ensure that a high level of nursing care is provided to each patient. The rules also reflect the underlying importance of nursing care in the spectrum of health care. The rules specify the structural organization, policies and procedures, and staff qualifications of the nursing service (N.J.A.C. 8:43G-18.1, 18.2, and 18.3). All patients must receive patient-specific nursing care consistent with medical care planning (N.J.A.C. 8:43G-18.2(e)).

These rules became effective in 1990, and were amended in 1992 to include a new subsection at N.J.A.C. 8:43G-18.4 regarding the use of restraints for hospitalized patients. This rationale for this subsection is based on patients' rights to remain in the least restrictive environment possible, and the rules specify protocols for the use of restraints, indications and contraindications for use, emergency and non-emergency application, physician orders, and nursing interventions. Amendments were also made to nursing care services related to pharmaceutical services at N.J.A.C. 8:43G-18.6.

The Department is proposing amendments at N.J.A.C. 8:43G-18.5(a). New N.J.A.C. 8:43G-18.5(a)1 gives hospitals the flexibility to deploy certified nurse practitioners/clinical nurse specialists to provide patient care according to the Board of Nursing's rules for scope of practice. New N.J.A.C. 8:43G-18.5(a)2 describes the supervisory requirements for nursing students. This standard has been moved from N.J.A.C. 8:43G-9.7(d) to generalize the supervision requirement to nursing students throughout the hospital.

Subchapter 19. Obstetrics

The standards as adopted in 1990 required hospitals to deliver high quality services to obstetrical patients and newborns, reflecting the Department's commitment to implementation of rules addressing the state of the art in obstetrical and newborn care.

1992 brought a major revision and amendments to Subchapter 19. Specific staffing requirements and descriptions of services within Department-approved Perinatal centers were added, as were rules at N.J.A.C. 8:43G-19.6 regarding maternal-fetal and neonatal transport. As amended for reasons of patient safety, the rules require a physician to examine the patient prior to the use of oxytocics (N.J.A.C. 8:43G-19.13(d)). The subsection at N.J.A.C. 8:43G-19.14 for labor, delivery, anesthesia and recovery patient services is new and reflects the application of general hospital rules for anesthesia and post-anesthesia care to the specific circumstances of labor and delivery. Postpartum policies and procedures were added at N.J.A.C. 8:43G-19.15(c). New requirements were added at N.J.A.C. 8:43G-19.19 and 19.20 for newborn care staff time/availability and patient services to ensure a high level of care. N.J.A.C. 8:43G-19.35

through 19.52 were added to integrate existing physical plant requirements for newborn, intermediate care, and intensive care areas into the licensing standards. Although Subchapter 19 is undergoing further review, no amendments to the subchapter are proposed at this time.

Subchapter 20. Employee Health

The intent of the rules in this subchapter is to protect employees, patients, and others from the risks of exposure to infectious disease hazards. Consequently, the hospital is required to document the results of a medical examination for each employee and ensure screening of each employee for tuberculosis and rubella. This is especially cogent in this era of the spread of TB and other infectious pathogens in our densely populated State. The hospital must have the capability to respond to any outbreak of infectious disease or similar health hazard with measures that will protect the health and safety of employees as well as patients.

These rules became effective in 1990 and were amended in 1992. At that time hospitals were required to screen each new employee, including medical staff, for rubella, and provisions for rubeola screening plus rubella/rubeola vaccination were added (N.J.A.C. 8:43G-20.2(f) through (i)). Amendments are now proposed at N.J.A.C. 8:43G-20.1(a)2 and 20.2(d) and (e) to mandate a two-step Mantoux tuberculin skin test for each employee, including members of the medical staff employed by the hospital, both upon employment and annually. The rules regarding testing for tuberculosis have been made more stringent in response to increased public health concerns about the rising incidence and virulence of tuberculosis in our heavily populated State.

An additional amendment is proposed at N.J.A.C. 8:43G-20.2(l) re-codified from (k). This amendment deletes the word "testing" and specifies that hospitals must comply only with the reporting requirements of the Department of Health's Division of Epidemiology, Environmental and Occupational Health Services and reflects that Division's correct name. References to testing and results have been deleted as testing is required by the Division of Health Facilities Evaluation, and reporting by the Division of Epidemiology.

Subchapter 21. Oncology

The rules in subchapter 21 are directed towards hospitals that have a designated oncology service and provide specialized care to cancer patients. They address flexible visiting policies and procedures, staff qualifications, and the need for a multidisciplinary team approach. These rules have not been amended since their adoption in 1990. No amendments are proposed at this time.

Subchapter 22. Pediatrics

Upon adoption in 1990, the rules in this subchapter represented the first specific standards addressing the specialized needs of pediatric patients. The intent of the rules is to strengthen and improve the delivery of care in the State for both general and intensive care pediatric patients. Staff qualifications, safety, and patient services are addressed, and the rules have remained essentially unchanged (with minor modifications only) since adoption. This subchapter is proposed for re-adoption without change.

Subchapter 23. Pharmacy

The rules in this subchapter ensure that each hospital complies with pharmaceutical policies and procedures that meet Federal, State, and local guidelines and regulations, thus promoting quality of care and safety for patients and others. The rules at N.J.A.C. 8:43G-23.2 and 23.6 address the important dual role of hospitals in the management and control of drugs: handling and dispensing drugs safely and responsibly, as well as restricting access so as to eliminate unauthorized or unsafe use. The rules continue as adopted in 1990, with a 1992 amendment at N.J.A.C. 8:43G-23.2(a)13 that regulates the self-administration of drugs. No amendments are proposed at this time.

Subchapter 24. Plant Maintenance and Emergency Preparedness

These rules protect the health and safety of patients and staff by ensuring that hospitals are properly maintained and equipped, and capable of responding effectively to emergencies occurring within the facility. This is specifically addressed at N.J.A.C. 8:43G-24.1(a), which requires that each hospital have a multidisciplinary safety committee that is responsible for a comprehensive hospital-wide safety program. The subchapter also includes standards for physical plant general compliance for construction, alteration, or renovation, which were updated by amendment in 1992.

The Department is proposing to delete N.J.A.C. 8:43G-24.9 through 24.12 as these subsections are obsolete and redundant. All buildings built

during the years specified in these standards were required to meet the building codes currently in effect. Any new construction, alteration, or renovation must comply with the Uniform Construction Code at N.J.A.C. 5:23 as reflected in the standard at N.J.A.C. 8:43G-24.8. Subsections following the deleted text have been renumbered.

Subchapter 25. Post Mortem

The standards in this subchapter ensure that hospital morgues are operated in a safe and efficient manner, and that autopsies are conducted by qualified physicians in a manner that safeguards patients and others and provides valuable information. The rules when adopted in 1990, reflected standard practice, and were amended in 1992 to include a specific rule at N.J.A.C. 8:43G-25.1(a)6 addressing the identification and handling of high-risk or infectious bodies in accordance with Centers for Disease Control guidelines. No changes are proposed at this time.

Subchapter 26. Psychiatry

The standards in this subchapter apply only to hospitals that have a separate, designated unit or service for psychiatry. The rules reflect current psychiatric practice which attempts to address the patient's multiple needs: emotional, physical, social, and medical, through a multidisciplinary approach which includes an individualized treatment plan with observable goals. The rules address patient safety, staff qualifications, patient rights, and patient services. Amendments in 1992 included seclusion, restraint, and ECT standards at N.J.A.C. 8:43G-26(a) through (c). This subchapter is proposed for re-adoption without change.

Subchapter 27. Quality Assurance

The intent of the standards in subchapter 27 is to ensure that patient care in New Jersey hospitals is safe, effective, and of the highest possible quality. Every hospital is required to have a multidisciplinary committee responsible for the facility-wide quality assurance program. In addition, each department in the hospital is required to have a quality assurance program that targets early identification and remediation of problems. No amendments have been made to these standards since their adoption in 1990. This subchapter is proposed for re-adoption without change.

Subchapter 28. Radiology

The standards in subchapter 28 were adopted with the intent of ensuring that every hospital patient requiring radiologic procedures has access to services that are safe, timely, and effective. The rules address diagnostic and radiation therapy services, staff qualifications, safety and emergency procedures, availability of specialized radiologic services such as ultrasound, and quality assurance. The rules were amended in 1992 to allow off-site specialized services if approved through the Certificate of Need process. No changes are proposed at this time.

Subchapter 29. Physical and Occupational Therapy

The rules in subchapter 29 address the needs of patients for these services in acute care hospitals, especially given the aging population which require rehabilitation to facilitate return to a state of independent functioning. The rules address timely implementation of treatment plans, professional qualifications for staff, space and environment, and quality assurance measures. Minor amendments were added to the rules in 1992. No further amendments are proposed at this time.

Subchapter 30. Renal Dialysis

These standards acknowledge the growing role of acute and chronic renal dialysis services (provided in approximately 24 New Jersey hospitals), a growth based in part upon the rise in drug and alcohol abuse and in AIDS. The rules address the multi-system medical, social and psychological conditions associated with the renal dialysis patient and require compliance with the Trans-Atlantic Renal Council's Bill of Rights for renal patients. (See N.J.A.C. 8:43G-30.6(e).) They also address professional staff qualifications, a requirement at N.J.A.C. 8:43G-30.6(a) for a written, multidisciplinary plan of care, explanation of the hospital's policy on dialyzer reuse, and compliance with professional standards for equipment and supplies (N.J.A.C. 8:43G-30.8).

The rules were amended in 1992 to incorporate physical plant requirements at N.J.A.C. 8:43G-30.13 through 30.17, but are not being amended at this time.

Subchapter 31. Respiratory Care

This subchapter is intended to facilitate the provision of respiratory care of high quality and affordable cost to hospital patients in the State. The rules address diagnostic evaluation and implementation of telephone orders, professional qualifications of respiratory care staff (N.J.A.C.

8:43G-31.3), staff availability at all times (N.J.A.C. 8:43G-31.5), and patient education programs at N.J.A.C. 8:43G-37(a). These rules have not been amended since their adoption in 1990, but amendments throughout the subchapter are being proposed at this time to reflect qualifications as required by the State Board of Respiratory Care rules, which became effective in 1993. All references to respiratory care practitioners are amended to include the designation "licensed," while all references to categories of personnel which are not recognized in the State Board's rules are deleted. Additionally, N.J.A.C. 8:43G-31.3(a) and (b) have been amended to more clearly define responsibilities, replacing the general "critical care" with the specific component of critical care, "neonatal, pediatric and adult intensive care," and to add a definition of respiratory care practitioner, in accordance with N.J.A.C. 13:44F. Since N.J.A.C. 8:43G-31.3(a) incorporates the intent of (b), that the physician be Board-certified or Board-eligible in pulmonary medicine, N.J.A.C. 8:43G-31.1(b) has been deleted.

Subchapter 32. Same-Day Stay

The rules in this subchapter apply to hospitals that have a separate, designated unit or service for same-day stay for surgical or medical services. The rules reflect the increasing importance of same-day stay as a clinically effective and cost-saving approach to providing these services. The rules address criteria for types of patients who may utilize these services, categories of procedures that may be performed in this setting, preadmission testing, and infection control (N.J.A.C. 8:43G-32.3 and 32.12). They also include a prohibition against patients' driving themselves home after discharge if anesthesia has been given. The rules received minor amendments in 1992, but are not being amended at this time.

Subchapter 33. Social Work

The intent of this subchapter is to ensure that hospitals offer professional social work services and that each patient has access to a full range of services, including at least counseling, discharge planning, assessment, consultation and referral, patient advocacy, community liaison, and education (N.J.A.C. 8:43G-33.1 and 33.2). These rules have been in effect since 1990, and underwent minor modification by amendment in 1992. The Department is currently proposing amendments at N.J.A.C. 8:54G-33.3 to ensure that the director of the social work department and all social workers meet requirements found in the State Board of Social Work Examiners rules, which became effective in 1993.

Subchapter 34. Surgery

This subchapter reflects the vital role of surgical services in hospitals and underscores the correlation between skilled surgical staff working as a smoothly functioning team and positive patient outcomes. The rules address the importance of the patient's medical record that includes at least written informed consent, medical history, perioperative notes, and operative reports (see N.J.A.C. 8:43G-34.6(d) through (g)), as well as infection control issues. This subchapter has not been amended since its adoption in 1990 and will continue unchanged at this time.

Subchapter 35. Postanesthesia Care

The intent of the rules in this subchapter is to protect the health and safety of each patient recovering from anesthesia. The rules reflect the specialized equipment and highly trained staff that are needed to stabilize the patient during an especially vulnerable period of treatment. N.J.A.C. 8:43G-35.1 addresses the requirements for criteria for admission to and discharge from the unit, delineation of medical responsibility, and protocols for patient care. Qualifications and time/availability for postanesthesia care are spelled out at N.J.A.C. 8:43G-35.2 and 35.3. Essential patient services and supplies/equipment are delineated at N.J.A.C. 8:43G-35.4 and 35.6. This subchapter has remained essentially unchanged since its adoption in 1990; no amendments are proposed at this time.

Social Impact

The hospital licensing standards establish minimum standards of care for these facilities in New Jersey. Since their adoption these rules have had a significant social impact in virtually all of the areas represented by the 35 subchapters in the manual. Following are examples of current rules and proposed amendments which are thought to have particular impact on the overall welfare of hospital patients in New Jersey.

Subchapters 1 and 2, General Provisions and Licensure Procedure, have indirect social impact upon patients. They set forth definitions and classifications of hospitals and the procedures hospitals must follow to apply for licensure (N.J.A.C. 8:43G-2.2) and waivers (N.J.A.C.

8:43G-2.5). The Department's address and toll-free complaint hotline are given at N.J.A.C. 8:43G-1.4 to enable consumers to write or telephone with concerns about their hospital care.

Subchapter 4 delineates 29 patient rights which had been scattered throughout statute or were not previously addressed. Included are rights related to informed consent, refusing treatment or life-support, transfer to other facilities, freedom from abuse and restraints, and confidentiality. A proposed amendment to this subchapter implements the Private Duty Nursing Act of 1994, which gives hospital patients the right to employ a registered professional nurse of their choice to provide private duty nursing services.

Major provisions of subchapter 5 address bioethical issues, including advance directives for health care in the event of future decision making incapacity, and smoking prohibitions. The Department is now proposing a complete ban on smoking within the confines of the hospital so as to ensure a totally smoke-free environment for patients, staff, and visitors.

The rules in subchapter 6 have been instrumental in promoting patient safety during anesthesia care. These rules have been cited as among the most advanced in the nation; initially they addressed anesthesia safety systems and patient monitoring, and later they addressed staff qualifications for the administration, monitoring, and supervision of anesthesia care. Proposed amendments provide further clarification of some of these items.

The standards in subchapter 7 have substantial social impact as they address a major area of health care: the diagnosis and treatment of cardiovascular disease. The Department is committed to ensuring that sophisticated and appropriate cardiac care is provided to the citizens of New Jersey, and through the standards in this Subchapter has addressed the training and expertise of practitioners as well as proper equipment and volume requirements for facilities offering cardiac care.

Subchapter 8, which is proposed for readoption without change, addresses safe hospital practice in the cleaning, decontamination, and/or sterilization of all equipment used in patient care. These practices deter the spread of disease and contribute to the safety and well-being of patients and staff.

Critically ill patients account for an ever-increasing share of a hospital's inpatient population. Rules at subchapter 9 address essential services, technology, and staff qualifications, as well as the issue of removal of life support systems, which impacts significantly upon the lives of patients and their families.

Subchapter 10, Dietary, is proposed for readoption without change. The primary social impact of these standards is to ensure that patients receiving care in New Jersey hospitals are provided with meals that adequately meet their dietary and nutritional needs. Subchapter 11, Discharge Planning, is also proposed for readoption without amendment. The rules in this subchapter ensure that each hospital patient is screened for post-discharge needs, that the patient's needs are addressed in a multidisciplinary plan, and that every attempt is made to secure adequate and appropriate post-discharge care.

Emergency Department rules in subchapter 12 have had significant social impact since adoption in that they definitively raised the standards for qualifications of staff working in emergency departments in New Jersey. The rules also addressed sensitive issues such as waiting time in the emergency department and transfer out of the department. The proposed amendment at N.J.A.C. 8:43G-12.2(f) likewise has notable impact on emergency care for all persons, since this amendment will enforce compliance by hospitals with existing federal "anti-dumping" legislation (that is, hospitals are required to examine and treat persons with emergency medical conditions and women in labor without regard to ability to pay).

The rules at subchapter 13, Housekeeping and Laundry, are intended to ensure that every hospital meet high standards of cleanliness and maintenance of equipment, structures, systems and environments to promote quality of care for patients, as well as the safety and well-being of all who are present in the hospital environment. No rules changes are proposed at this time for this Subchapter or for subchapter 14, Infection Control and Sanitation. As noted in the Summary, standards in this Subchapter are essential to the safe operation of hospitals in New Jersey, with special emphasis on significant public health issues such as the spread of HIV/AIDS and tuberculosis, as well as the disposal of medical waste. These public health issues have the potential to affect the lives of all citizens of New Jersey, and as hospitals are required to comply with infection control and medical waste disposal procedures meeting Federal, State, and local regulations, the public will be protected.

Subchapter 15, Medical Records, is also proposed for readoption without amendment at this time. Standards in this subchapter are essential to patient safety by requiring hospitals to keep up to date, legal, and accurate records of the patient's stay in the hospital. Patients are assured that the care they receive is documented during the entire stay and that a copy of the chart can be obtained at reasonable cost in a timely manner. This can have an impact on continuity of care or resolution of legal or insurance issues.

Provisions for utilization of certified nurse practitioners/clinical nurse specialists and licensed physician assistants, as proposed in subchapter 16, are expected to have a positive social (as well as economic) impact through the provision of services that might otherwise be unavailable to various patient populations. This subchapter also speaks to protecting patients through the mandated responsibilities of medical staff and requirements regarding impaired physicians.

Subchapters 17 and 18, Nurse Staffing and Nursing Care, both have impact on the quality of nursing care patients receive in New Jersey hospitals. Nurses provide vital services in the health care delivery network. The proposed readoption of these rules will ensure that a high level of nursing care is provided to each patient, particularly in regards to the numbers and qualifications of nurses providing care.

Subchapter 19, Obstetrics, has a significant impact on the health and safety of mothers and newborns in New Jersey. The rules, which are being proposed for readoption without change, delineate standards of care for labor and delivery, anesthesia, post partum, and newborn care, as well as nurse-midwifery and physical plant requirements. By requiring the highest level of care to these vulnerable populations, the rules are contributing significantly to the well-being of our State's mothers and babies.

The Department is proposing amendments at subchapter 20 to strengthen the tuberculin skin testing requirements for hospital employees. Given the current increase in the incidence and infectious nature of tuberculosis in our heavily populated State, precautions that will protect staff and patients in hospitals and assist in preventing the spread of disease are considered vitally important.

Cancer, one of the major causes of death of people of all ages, continues to be a significant public health issue. The standards in subchapter 21, which are proposed for readoption without change, are directed towards hospitals that have a designated oncology service and recognize the specialized needs of cancer patients. The rules ensure that these patients will receive services such as highly skilled nursing care, nutritional support, and attention to their emotional, social, and spiritual needs.

The rules for pediatric and pediatric intensive care units at subchapter 22 acknowledge the importance of treating children in services specifically designed to meet their medical and psychosocial needs. By focusing attention on staffing, equipment, and the environment demanded by current clinical practice, the rules, which are proposed for readoption without change, will continue to ensure the delivery of high quality pediatric services in the State.

The rules at subchapter 23, which are proposed for readoption without change, ensure that each hospital complies with Federal, State and local regulation for pharmaceutical services. Pharmacy services hold the strong potential both to heal and to harm. Controlled, medically supervised use of drugs can anesthetize, ease pain, and ameliorate or cure disease. Uncontrolled use of drugs can have a devastating effect on the individual and on society as a whole. Hospitals have an important dual role in the management and control of drugs: to handle and dispense drugs safely and responsibly, and to restrict access in order to eliminate unauthorized or unsafe use. Thus compliance with the rules will ensure quality of care for patients and safety for those both within and outside of the hospital environment.

The rules at subchapter 24 protect the health and safety of patients and staff through assuring that medical services are provided in facilities that are properly maintained and equipped, and capable of effectively responding to emergencies that may occur within the facility. No amendments are proposed at this time.

The rules at subchapter 25 address the post mortem phase of hospital service. The rules, which are not amended, ensure that appropriate care is provided to the deceased and that information gained through autopsies and epidemiological studies is disseminated as a public health measure, as in, for example, cardiovascular disease.

Psychiatric care is no longer seen as merely custodial, but attempts to address the whole patient's needs: emotional, physical, social, and medical through a multidisciplinary approach. The rules at subchapter

26, which are not amended, help ensure that the multiplicity of the patient's needs are met through individualized treatment plans with observable goals.

Every consumer entering a New Jersey hospital has the right to receive quality care. The primary social impact of the standards at subchapter 27, which require that the hospital have an effective quality assurance program, is to ensure that care received by patients is of the highest caliber possible, so that all consumers of hospital services receive safe, effective, and high quality care.

The standards at subchapter 28 are proposed for readoption without change. These rules ensure that every patient who requires diagnostic or therapeutic radiology procedures has access to services that are safe, timely, and effective, thus promoting quality of care for all radiology service patients.

The rules at subchapter 29 for physical and occupational therapy services address the needs of patients for these services in acute care hospitals. With the increasing age and activity levels of health care consumers, medical and surgical conditions occur which require these therapeutic modalities to help restore independent functioning. This subchapter is proposed for readoption without change.

Subchapter 30 addresses renal dialysis services, which are provided in about one-fourth of New Jersey acute care hospitals. Increasing drug and alcohol abuse as well as HIV/AIDS has raised the demand for these services, and the rules, which are not amended, address the multi-system medical, social and psychological conditions associated with the renal dialysis patient.

The Department is proposing amendments which reflect new licensing laws for respiratory practitioners in subchapter 31 and social workers in subchapter 33. Mirroring a nationwide trend towards certifying and credentialing all health care professionals, these licensing requirements are viewed as a protective measure for the public against unqualified practitioners. They are seen as a further advance in ensuring the safety and welfare of hospital patients.

The rules in subchapter 32 reflect the increasing importance of same-day stay as a clinically effective and cost-saving approach to providing surgical and medical services. There is great benefit to the individual patient and to society in terms of significant reduction of costs associated with health care and return to healthy functioning. These standards will not be amended but are seen as vital in the delivery of high quality services to the outpatient population.

Subchapter 34 addresses surgical services, an essential part of any hospital. The rules, not amended at this time, acknowledge the correlation between skilled surgical staff working as a smoothly functioning team and positive patient outcomes. The rules thus ensure a high quality of care for surgical patients.

Postanesthesia care is an accepted part of the management of the post-surgical patient. Specialized equipment and highly trained staff are needed to stabilize the patient during an especially vulnerable period of treatment. The rules in subchapter 35, not amended at this time, ensure that the hospital protects the health and safety of each patient recovering from anesthesia.

Severely negative social consequences would result if the current hospital licensing standards were allowed to expire and the rules were not readopted. Unregulated care would almost certainly lead to a relaxation of standards with compromised patient safety and welfare. Hospitals need objective, quantifiable standards against which to be evaluated and to measure the care they are providing, just as consumers need these standards to be assured of the quality of care they are receiving. It is essential that the citizens of New Jersey be able to rely upon health care which is rendered in facilities that are monitored, surveyed, and required to comply with appropriate standards of care.

Economic Impact

Hospitals are currently providing the services and complying with the standards of care delineated in these rules. The standards require hospitals to have staff and equipment, the cost of which cannot be accurately calculated due to the large diversity in hospitals throughout the State. However, most if not all of this staff and equipment is already in place; thus, continuation of the existing rules should provide no adverse economic impact on hospitals in New Jersey. In some instances implementation of selected amendments may require modest increase in costs to facilities, but in other instances costs to patients may be reduced. For example, higher credentialing requirements for some health care professionals may slightly increase personnel costs for hospitals, but in other areas, such as free choice of private duty nurses or utilization by the hospital of licensed physician assistants or certified

nurse practitioners, the savings may be passed along to consumers. Minor additional costs may also accrue to hospitals in regards to the increased level of tuberculin skin testing, but the social and public health benefits of this screening are considered to far exceed the cost.

The remaining amendments proposed to the rules are not expected to have any substantive fiscal impact on facilities since for the most part they constitute clarification, elimination of obsolete material, or reflection of changes in cited laws, but do not require additional expenditures by facilities to provide required services.

Negative economic consequences would also result if these rules were allowed to expire and not be readopted. Health care dollars would go to care in unlicensed, unregulated hospitals, so that patients could be paying more for a lower quality of care. This would not be an appropriate allocation of the resources of either patients or third party payors, and would contribute to increases in the long term cost of medical care.

Regulatory Flexibility Statement

The proposed re-adoption would not affect small business as they are defined in the Regulatory Flexibility Act, N.J.S.A. 54:14B-16 et seq. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43G all employ more than 100 people. Businesses other than hospitals would not be affected. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:43G.

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

OFFICE OF ADMINISTRATIVE LAW NOTE: In section headings throughout the chapter, “; mandatory” is proposed for deletion wherever it appears. While such deletions are specifically shown for the sections proposed for amendment below, such change is also proposed for all applicable sections not otherwise proposed to be amended; however, the changes to the latter are not reproduced herein. In addition, the section headings for all sections of the chapter currently appearing as “(Reserved)” are also proposed for deletion, although none are reproduced herein.

8:43G-1.3 Classification of Institutions

(a) (No change.)

(b) Hospitals shall be further classified as:

1. General hospital, which shall include any hospital which maintains and operates organized facilities and services for the diagnosis, treatment or care of persons suffering from acute illness, injury or deformity and in which all diagnosis, treatment and care are administered by or performed under the direction of persons licensed to practice medicine or osteopathy in the State of New Jersey; [and]

2. Special hospital, which shall include any hospital which assures provision of comprehensive specialized diagnosis, care, treatment and rehabilitation where applicable on an in-patient basis for one or more specific categories of patients[.]; and

3. **Psychiatric hospital, which shall include any hospital which assures provision of comprehensive specialized diagnosis, care, treatment and rehabilitation where applicable on an in-patient basis for patients with primary psychiatric diagnoses.**

8:43G-2.1 Certificate of Need

(a) [According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility] **Where, in accordance with N.J.S.A. 26:2H-1 et. seq., as amended, a Certificate of Need is required, a hospital 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 of the Department of Health.**

(b) (No change.)

(c) The [facility] **hospital** shall implement all conditions imposed by the Commissioner as specified in [the] Certificate of Need approval letters. Failure to implement the conditions may result in the imposition of **enforcement** sanctions in accordance with N.J.S.A. 26:2H-[1 et seq., and amendments thereto] **13 and 14.**

8:43G-2.2 Application for licensure

(a) [Following] **Where applicable, following** receipt of a Certificate of Need as a hospital, any person, organization, or corpor-

ation desiring to operate a hospital [facility] shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director

Licensing [and], Certification and Standards

Division of Health Facilities Evaluation and Licensing

New Jersey State Department of Health

CN 367

Trenton, New Jersey 08625-0367

8:43G-2.3 Newly constructed or expanded facilities

(a) (No change.)

(b) An on-site inspection of the construction of the physical plant shall be made **at the Department's discretion** by representatives of the Health Facilities Construction Service to verify that the building has been constructed in accordance with the final architectural plans approved by the Department.

(c) (No change.)

8:43G-2.4 Surveys and temporary license

(a) When the written application for licensure pursuant to N.J.A.C. 8:43G-2.2 is approved and the building is ready for occupancy, a survey of the facility by representatives of the **Division of Health Facilities [Inspection Program] Evaluation and Licensing** of the Department shall be conducted **at the Department's discretion** to determine if the facility meets the standards set forth in this chapter.

1. [The] **Representatives of the Division of Health Facilities [Inspection Program] Evaluation and Licensing** of the Department shall [notify the facility in writing of] **discuss** the findings of the survey, including any deficiencies found, **with representatives of the hospital facility.**

2. The hospital facility shall notify the **Division of Health Facilities [Inspection Program] Evaluation and Licensing** of the Department **in writing** when the deficiencies, if any, have been corrected [, and the]. **Following review of the hospital facility's report, the Division of Health Facilities [Inspection Program] Evaluation and Licensing [will] may** schedule one or more surveys of the facility prior to occupancy.

(b) (No change.)

(c) No hospital facility shall accept patients **in any new service, unit, or facility** until the hospital has a written approval and/or license issued by the Licensing and Certification Program of the Department.

(d)-(f) (No change.)

8:43G-2.5 Full license

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

(d) The license is not assignable or transferable and shall be immediately void if a hospital ceases to operate or its ownership changes. **A hospital shall notify the Department of any change in the ownership form or controlling interests affecting hospital governance. The Department shall determine in accordance with N.J.A.C. 8:33-3.3 whether a certificate of need or licensing application must be completed prior to the implementation of any ownership changes.**

(e) (No change.)

8:43G-2.11 Hospital satellite facilities

(a) [If the need is demonstrated, any] A satellite hospital facility may be [smaller than 100 rated beds, if the satellite hospital is affiliated with, and] operated under the effective supervision [of the Board of Trustees] of,] an existing [200 bed (or larger)] hospital.

[(b) Any new satellite hospital facility shall be planned and constructed under the supervision of the Board of Trustees of the hospital with which it is affiliated.

(c) If the need is demonstrated, an out-patient service (including emergency services) of an existing hospital may be located in a separate building at a distance from the hospital, but shall be operated under the effective supervision of the Board of Trustees of an existing 200-bed (or larger) hospital.]

[(d)](b) Individual licenses shall not be required for separate hospital buildings and services located on the same or adjoining grounds, if these are operated under one management.

8:43G-4.1 Patient rights[; mandatory]

(a) Every New Jersey hospital patient shall have the following rights, none of which shall be abridged by the hospital or any of its staff. The hospital administrator shall be responsible for developing and implementing policies to protect patient rights and to respond to questions and grievances pertaining to patient rights. These rights shall include at least the following:

1.-27 (No change.)

28. To present his or her grievances to the hospital staff member designated by the hospital to respond to questions or grievances about patient rights and to receive an answer to those grievances within a reasonable period of time. The hospital is required to provide each patient or guardian with the names, addresses, and telephone numbers of the government agencies to which the patient can complain and ask questions, including the New Jersey Department of Health Complaint Hotline at 1-800-792-9770. This information shall also be posted conspicuously in public places throughout the hospital; [and]

29. To be assisted in obtaining public assistance and the private health care benefits to which the patient may be entitled. This includes being advised that they are indigent or lack the ability to pay and that they may be eligible for coverage, and receiving the information and other assistance needed to qualify and file for benefits or reimbursement[.]; and

30. To contract directly with a New Jersey licensed registered professional nurse of the patient's choosing for private professional nursing care during his or her hospitalization. A registered professional nurse so contracted shall adhere to hospital policies and procedures in regard to treatment protocols so long as these requirements are the same for private duty and regularly employed nurses. The hospital, upon request, shall provide the patient or designee with a list of local non-profit professional nurses association registries that refer nurses for private professional nursing care.

SUBCHAPTER 5. ADMINISTRATIVE AND HOSPITAL-WIDE SERVICES

8:43G-5.1 Administrative and hospital-wide structural organization[; mandatory]

(a)-(k) (No change.)

[(l)](l) Smoking rules shall be developed, implemented, and enforced until January 1, 1992 in accordance with N.J.S.A. 26:3D-1 et seq. These rules shall include prominently marking areas which, at the option of the hospital, have been designated for smoking and at least:

1. No smoking in patient rooms on pediatric patient care units;
2. No smoking in any area where there are flammable liquids or gases; and
3. No smoking by any volunteers or staff in the presence of patients.]

[(m)](l) The hospital shall develop and implement a policy for the facility to be smoke-free by April 1, 1995. The hospital shall ensure that there is no smoking in the facility by employees, visitors or patients. [a program to become smoke-free and shall become smoke-free by January 1, 1992. Smoke-free means a total ban on smoking in the facility by employees, visitors and patients except that, at institutional option, controlled smoking by patients may be permitted in a designated area with outside ventilation. Patients may smoke only on written orders of the attending physician when the physician has concluded that smoking is in the best interest of the patient.]

[(n)](n) If the hospital permits controlled smoking by patients, any room designated for smoking shall not share the same ventilation system as rooms occupied by patients and/or nonsmokers.

(o) The hospital shall have a written policy establishing the maximum number of patients permitted in a designated smoking room at the same time; and procedures for monitoring patients while in

the smoking room. The maximum number of patients permitted in a designated smoking room at the same time shall not exceed five smokers per 100 square feet.]

8:43G-6.1 Definitions

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

...

"Monitoring" means the observation of a patient using instruments to measure, display, [and/or] and record (continuously or intermittently) the values of certain physiologic variables such as pulse, blood pressure, oxygen saturation, and respiration.

...

8:43G-6.3 Anesthesia staff; qualifications for administering anesthesia

(a) There shall be a physician director of anesthesia services who is a diplomate of either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, or who was made a fellow of the American College of Anesthesiology before [1972] 1982.

(b) The physician director of anesthesia services shall participate in the credentialing process and delineation of privileges of all personnel who administer anesthetic agents. **Criteria for hospital-wide anesthesia credentialing shall include at least:**

1. Objective measures of training and experience in anesthesia care against which all candidates are evaluated; and

2. A requirement for continuing education in anesthesia care.

(c)-(f) (No change)

(g) Anesthetic agents used for conscious sedation shall be administered only by the following:

1. (No change.)

2. Under the supervision of a physician who has been credentialed in accordance with medical staff bylaws to administer or supervise anesthetic agents used for conscious sedation and who is immediately available:

i.-iii. (No change.)

iv. For a supplemental dose, or doses after administration of the initial dose, by a credentialed physician who remains continuously in the procedure room, a registered nurse who is trained and experienced in the use of anesthetic agents; or

3. (No change)

(h) The monitoring of patients who have been given an anesthetic agent for the purpose of creating conscious sedation shall be provided by an individual who is continuously present for the primary purpose of anesthesia monitoring, and who is separate from the individual performing the procedure. This individual shall be one of the following:

1. [one] One of the personnel identified in (g) above[.];

2. [a] A registered professional nurse who is certified in basic cardiac life support and who has training and experience in the use of monitoring devices[.]; or

3. For bronchoscopic procedures only, a licensed respiratory care practitioner.

8:43G-7.3 Cardiac surgery staff qualifications[; mandatory]

(a) (No change.)

(b) [Effective July 1, 1991, the surgeon in charge of a cardiac operation] The primary surgeon shall be board certified in thoracic surgery, or shall meet current requirements to be examined and shall be examined within two years of eligibility.

(c)-(e) (No change.)

8:43G-9.5 Critical care staff qualifications

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

(d) [Effective January 1, 1992, the] The nursing manager of each unit within the critical care service shall be certified in critical care nursing by the American Association of Critical Care Nurses or have three years of experience in critical care nursing.

(e) (No change.)

8:43G-9.6 Critical care staff qualifications; advisory (Reserved)

8:43G-9.7 Critical care staff time and availability[; mandatory]

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

[(d) Nursing students shall render care to patients in the critical care service only when qualified supervision, as defined by the hospital and the nursing school, is available in the unit.]

8:43G-9.19 Intermediate care structural organizations[; mandatory]

(a) [Effective January 1, 1992, intermediate] **Intermediate** care services shall be provided in all hospitals that provide critical care services.

8:43G-12.2 Emergency department policies and procedures[; mandatory]

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

(f) The emergency department shall have policies to ensure compliance with regulations at 42 CFR 489.24 and 42 CFR 489.20 requiring examination and treatment for emergency conditions and women in labor.

8:43G-12.3 Emergency department staff qualifications[; mandatory]

(a) Effective July 1, 1992, each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall meet at least one of the following qualifications:

1. Board certification [or current eligibility to be certified] in emergency medicine;

2.-3. (No change.)

[(b) At all times at least one licensed physician who meets at least one of the qualifications in (a) above shall be present in the emergency department to attend to all emergencies.]

[(c)](b) Each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall be certified in Advanced Cardiac Life Support and either Advanced Pediatric Life Support or Pediatric Advanced Life Support within 12 months of initial assignment. Physicians who are board certified [or currently eligible to be certified] in emergency medicine shall be exempt from this requirement.

[(d)](c) Each physician practicing in the emergency department, except residents functioning under supervision as part of the hospital's graduate residency training program, consulting physicians, and private physicians who are attending to their patients in the emergency department, shall be certified in Advanced Trauma Life Support within 12 months of initial assignment. Physicians who are board certified [or currently eligible to be certified] in emergency medicine shall be exempt from this requirement.

Recodify (e) recodified as (d) (No change in text.)

8:43G-12.4 [Emergency department qualifications; advisory] (Reserved)

8:43G-12.5 Emergency department staff time and availability[; mandatory]

(a) At all times at least one licensed physician who meets at least one of the qualifications in N.J.A.C. 8:43G-12.3(a) shall be present in the emergency department to attend to all emergencies.

Recodify (a)-(b) as (b)-(c) (No change in text.)

8:43G-16.2 Medical staff policies and procedures[; mandatory]

(a) The medical staff shall have written policies, procedures, and by-laws that are reviewed annually; revised as needed, and implemented. They shall include at least:

1.-2. (No change.)

3. The minimum content of physician orders; [and]

4. Specifications for verbal orders, including who may give verbal orders, who may receive them, and how soon they must be verified or countersigned in writing[.];

5. If applicable, policies and procedures related to the prescribing or ordering of medications or devices by certified nurse practi-

tioners/clinical nurse specialists in accordance with New Jersey State Board of Nursing rules at N.J.A.C. 13:37-7; and

6. If applicable, the scope of practice, supervision, and record keeping requirements of licensed physician assistants in accordance with New Jersey State Board of Medical Examiners rules at N.J.A.C. 13:35-2B.

(b)-(k) (No change.)

8:43G-18.5 Nursing care patient services[; mandatory]

(a) Registered professional nurses and licensed practical nurses shall provide patient care commensurate with their scope of practice, as delineated in the Nurse Practice Act.

1. Patient care may be provided by certified nurse practitioners/clinical nurse specialists in accordance with New Jersey State Board of Nursing rules at N.J.A.C. 13:37-7.

2. Nursing students shall render care to patients only when qualified supervision, as defined by the hospital and the nursing school, is available in the unit.

8:43G-20.1 Employee health policies and procedures[; mandatory]

(a) Employee health service shall have written policies and procedures that are reviewed annually, revised as needed, and implemented. These policies and procedures shall be readily available for employees to review and include at least the following:

1. (No change.)

2. Timeframes for subsequent Mantoux tuberculin skin tests after the initial employment test[;]

Recodify existing 3.-5. as 2.-4. (No change in text.)

8:43G-20.2 Employee health services[; mandatory]

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

(d) Each new employee, including members of the medical staff employed by the hospital, upon employment, shall receive a **two-step** Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions are employees with documented negative Mantoux skin test results (zero to nine millimeters of induration) within the last year, employees with documented positive Mantoux skin test results (10 or more millimeters of induration), employees who 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 [not significant (between five and nine millimeters of induration)] less than 10 millimeters of induration**, the test shall be repeated one to three weeks later.

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

(e) Each employee, including members of the medical staff employed by the hospital, shall receive an annual Mantoux tuberculin skin test. The only exceptions are those employees exempted at (d) above. Results of positive Mantoux tuberculin skin tests administered to employees shall be acted upon in accordance with (d)2 above.

Recodify existing (e)-(j) as (f)-(k) (No change in text.)

[(k)](l) The hospital shall comply with the [testing and] reporting requirements of the Department of Health's Division of Epidemiology, **Environmental and Occupational Health Services** for tuberculin and rubella [tests and] test results, pursuant to N.J.A.C. 8:57. Information regarding testing and reporting can be obtained from:

New Jersey State Department of Health
Communicable Disease Control Services
CN 369 Trenton,
NJ 08625-0369

Recodify existing (l)-(n) as (m)-(o) (No change in text.)

8:43G-24.9 Physical plant general compliance for construction, alteration or renovation completed during the period of July 1, 1979 through May 7, 1981 or May 8, 1981 through October 1, 1987

For construction, alteration or renovation completed during the period of July 1, 1979 through May 7, 1981 or May 8, 1981 through October 1, 1987, the hospital shall comply with the New Jersey Uniform Construction Code, standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and Community Affairs, and the HHS "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" (HHS) Publication No. (HRA) 79-14500. In order to avoid conflict, sections 502 (except as it pertains to area limitations), 1702.7, 1716.0, article 7 except sections 712.0, 716.0 and 717.0 and article 8 except sections 818.6 through 818.7.6 of the building subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities. The HHS (HRA) 79-14500 shall serve as the Uniform Code for the matters regulated by these sections.]

8:43G-24.10 Physical plant general compliance for construction, alteration or renovation completed during the period of August 1, 1977 through July 1, 1979; mandatory

For construction, alteration or renovation completed during the period of August 1, 1977 through July 1, 1979, the hospital shall comply with the Uniform Construction Code, standards imposed by the United States Department of Health and Human Services (HHS), the New Jersey Departments of Health and Community Affairs, and the HHS "Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities" (HHS) Publication No. (HRA) 74-4000. In order to avoid conflict, sections 302 (except as it pertains to area limitations), 1202.7 and 1216.0, Article 5 except sections 513.0, 519.0, 520.0 and Article 6 except sections 618.7 through 618.9.3 of the building subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities. The HHS (HRA) 74-4000 shall serve as the Uniform Code of the State for the matters regulated by these sections.]

8:43G-24.11 Physical plant general compliance for construction, alteration or renovation completed during the period of September, 1974 to August 1, 1977; mandatory

For construction, alteration or renovation completed during the period of September, 1974 to August 1, 1977, the hospital shall comply with the United States Public Health Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities (HRA) 74-4000 and the New Jersey Supplementary Standards to this regulation, adopted by the Health Care Advisory Board and dated June 27, 1968.]

8:43G-24.12 Physical plant maintenance general compliance for construction, alteration or renovation completed prior to September, 1974; mandatory

For construction, alteration or renovation completed during the period prior to September, 1974, the hospital shall comply with the United States Public Health Service Minimum Requirements of Construction and Equipment for Hospital and Medical Facilities (930-A-7) and the New Jersey Supplementary Standards to this regulation, adopted by the Health Care Advisory Board and dated June 26, 1968.]

8:43G-31.1 Respiratory care structural organization; definitions; mandatory]

(a) The respiratory care service shall be represented on hospital committees responsible for [critical care] neonatal, pediatric and adult intensive care, patient care, and infection control.

(b) The following term, when used in this subchapter, shall have the following meaning:

"Licensed respiratory care practitioner" means an individual who qualified and passed the National Board of Respiratory Care Entry Level Examination and is licensed by the State Board of Respiratory Care in accordance with N.J.A.C. 13:44F.

8:43G-31.2 Respiratory care policies and procedures[; mandatory]

(a) (No change.)

(b) Verbal or telephone respiratory care orders within the scope of practice of the licensed respiratory care practitioner shall be accepted and recorded by a [registered respiratory therapist or certified respiratory therapy technician] licensed respiratory care practitioner. (c) There shall be a protocol whereby the nurse is informed of any verbal or telephone order that is taken by the [registered respiratory therapist or certified respiratory therapy technician] licensed respiratory care practitioner.

(c) There shall be a protocol whereby the nurse is informed of any verbal or telephone order that is taken by the [registered respiratory therapist or certified respiratory therapy technician] licensed respiratory care practitioner.

8:43G-31.3 Respiratory care staff qualifications[; mandatory]

(a) There shall be a physician director of respiratory care or pulmonary medicine who is board certified or board eligible in pulmonary medicine, and who is responsible for all respiratory care rendered in the hospital.

[(b) The physician director of respiratory care shall be board certified or board eligible in pulmonary medicine.]

[(c)](b) There shall be an administrative director of respiratory care who is [registered or certified by the National Board for Respiratory Care] licensed by the New Jersey State Board of Respiratory Care.

[(d) A registered respiratory therapist or certified respiratory therapy technician shall supervise non-credentialed respiratory care aides. A registered respiratory therapist (RTT) is an individual who qualified and passed the National Board of Respiratory Care (NBRC) examination or equivalent and who is registered by the NBRC. This individual functions at a higher level than a certified respiratory therapy technician (CRTT). A certified respiratory therapy technician is an individual who qualified and passed the NBRC technician's examination or equivalent and who is certified by the NBRC. This individual functions at a higher level than a respiratory care aide].

8:43G-31.5 Respiratory care staff time and availability[; mandatory]

(a) There shall be at least one [registered respiratory therapist or certified respiratory therapy technician] licensed respiratory care practitioner assigned primarily to patients in licensed critical care units. Assignments shall be based on the acuity level of patient illness assessed each shift.

(b) There shall be at least one [registered respiratory therapist or certified respiratory therapy technician] licensed respiratory care practitioner in the hospital or on call, at all times, in addition to the one who is primarily assigned to patients in the critical care unit.

8:43G-31.7 Respiratory care patient services[; mandatory]

(a) (No change.)

(b) Written treatment plans, and respiratory therapy goals, and patient progress notes] shall be written by the licensed respiratory care practitioner. The written treatment plans shall supplement the respiratory care orders written by physicians and become part of the medical record.

8:43G-33.3 Social work staff qualifications[; mandatory]

(a) [The] **There shall be a director of the social work department** [shall hold a master's degree in social work from a college or university program accredited by the Council on Social Work Education] **who is licensed by the New Jersey State Board of Social Work Examiners in compliance with rules at N.J.A.C. 13:44G.**

(b) **Each social worker shall be certified or licensed by the New Jersey State Board of Social Work Examiners.**

HUMAN SERVICES

(a)

MENTAL HEALTH AND HOSPITALS

Adult Partial Care Standards

Proposed New Rules: N.J.A.C. 10:37F

Proposed Repeals: N.J.A.C. 10:37-5.46 through 5.51

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

Authority: N.J.S.A. 30:9A-10.

Proposal Number: PRN 1994-612.

Submit comments by December 21, 1994 to:

Raymond M. Deeney, Esq.
Administrative Practice Officer
Division of Mental Health and Hospitals
CN 727
Trenton, NJ 08625-0727

The agency proposal follows:

Summary

These proposed new rules govern the provision of adult partial care services by provider agencies funded by the Division of Mental Health and Hospitals. The current rules governing the provision of these services are hereby being proposed for repeal. Partial care services provide comprehensive, non-residential, structured programming for individuals with severe and persistent mental illness. The therapeutic milieu of these programs provides rehabilitation and intensive support to prevent hospitalization, optimal level of client functioning, and to assist in the development of community living skills. These program services include counseling, case management, psychoeducation, pre-vocational services, social and recreational services and psychiatric services, and are available to the individuals five days a week, on a full-day or half-day basis. In fiscal year 1993, the Division provided over \$8.3 million to 74 such programs to serve over 10,000 individuals throughout New Jersey. These services will be essentially unchanged. Produced with the input of providers, consumers and advocates, the Department believes that these rules will provide clearer and more up-to-date standards regarding service delivery.

Subchapter 1 contains provisions outlining the general scope and purpose of the chapter and defines some words and terms used throughout the chapter. Subchapter 2 provides partial care standards, including provisions regarding admission and intake of clients, assessment and service planning, services to be provided, termination, transfer and referral of clients, management functions, quality assurance activities, therapeutic environment and staffing.

Social Impact

Adult partial care services are designed to address the mental health needs of adults with serious and persistent mental illness. The proposed new rules are expected to positively impact those individuals by establishing standards which will continue to promote the effective delivery of appropriately prioritized quality services. Implementation of these services and standards is expected to promote greater independence and improved quality of life, as well as reduced hospitalizations, among the clients receiving the services. The opportunity for input offered the clients, advocates and providers has resulted in rules which the Division believes are more clear and reflective of current thinking and recent experience.

Additionally, the standards contained in these proposed new rules assist provider agencies in attaining their goal of providing high quality and well focused services. The Division benefits from the promulgation of these standards because they provide an appropriate measure to use in determining whether service delivery meets basic minimum requirements.

Economic Impact

The funding of, and the establishment of standards for, the services which are the basis for these rules have a positive economic impact on clients with limited incomes because they are generally made available to them at no cost. The Department believes that provider agencies can comply with these rules without expenditures in addition to the funding received from the Division, or other sources, in relation to these services.

The promulgation of these standards is not intended or expected to impact the amount of Division funding available to agencies to provide these services in the future. The Department also believes that taxpayers throughout the State ultimately benefit from the effective delivery of these services, because the services reduce the need for expensive psychiatric hospitalization. The partial care programs have not changed; the new rules provide a clearer and more up-to-date delineation of the Division's standards.

Regulatory Flexibility Analysis

Some of the 74 providers of Division funded adult partial care services may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed new rules require provider agencies to develop and implement admission and intake policies and procedures (N.J.A.C. 10:37F-2.1), complete a written comprehensive assessment for each client prior to development of the comprehensive service plan (N.J.A.C. 10:37F-2.2), provide or arrange a range of services to effectively address the needs of clients (N.J.A.C. 10:37F-2.3), document procedures for the termination, transfer and referral of clients (N.J.A.C. 10:37F-2.4), perform specified management functions (N.J.A.C. 10:37F-2.5), address quality assurance functions (N.J.A.C. 10:37F-2.6), provide a safe therapeutic environment (N.J.A.C. 10:37F-2.7), and be sufficiently staffed to provide appropriate services (N.J.A.C. 10:37F-2.8).

The reporting, recordkeeping and other compliance requirements imposed upon such provider agencies must be uniformly applied, regardless of the size of the provider agency, to ensure that individuals with mental illness receiving these services throughout the State do so in accordance with basic minimum standards of quality. These standards are important because many consumers of these community services would be at risk of more restrictive and expensive hospitalization, unless these services are competently and effectively provided. Additionally, these agencies are individually funded by the Division to be able to meet these requirements. It is not anticipated that compliance will require the employment of professional services by providers.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 10:37-5.46 through 5.51.

Full text of the proposed new rules follows:

CHAPTER 37F

PARTIAL CARE SERVICES STANDARDS

SUBCHAPTER 1. GENERAL PROVISIONS

10:37F-1.1 Scope and purpose

(a) The rules in this chapter shall apply to all Division funded partial care services (PC) for adults.

(b) The purpose of PC services is to provide comprehensive, non-residential, structured programming for individuals with severe and persistent mental illness. The therapeutic milieu of these programs provides rehabilitation and intensive support to prevent hospitalization and decompensation, and to assist in the development of community living skills. PC services include counseling, case management, psychoeducation, pre-vocational services, social and recreational services, and psychiatric services, and shall be available to eligible individuals on a half-day or full-day basis five times per week.

10:37F-1.2 Definitions

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

"Division" means the Division of Mental Health and Hospitals in the Department of Human Services.

"Partial care services (PC)" means comprehensive, structured, non-residential health services provided in a community setting to adult clients who have serious and persistent mental illness.

"Provider agency (PA)" means a public or private organization which has a contract with the Division to provide PC services.

"Psychoeducation services" means a mutual exchange of information and education between the professional and client or the professional and family members in order to increase the likelihood of family and community support to the client and to reduce the probability of client decompensation. Information may address etiology and symptoms characteristic of the client's mental illness,

effects of medication, coping skills, daily living skills, community resources and supports, and similar mental health service-related matters.

SUBCHAPTER 2. PARTIAL CARE STANDARDS

10:37F-2.1 Admission and intake

(a) First priority for admissions into PC services shall be given to persons with severe and persistent mental illness in accordance with target populations, as defined in N.J.A.C. 10:37-5.2.

1. Inclusionary and exclusionary admission criteria, which are not inconsistent with contract provisions, shall be written and utilized in intake procedures designed to assure clinical appropriateness of each admission.

(b) The initial contact shall serve to orient and engage new clients, and facilitate continuity of service.

1. The PA shall have a procedure for the recording of pertinent information during the potential client's contact with the PA.

2. The PA shall train staff regarding appropriate responses to inquiries for service and shall document such training.

3. The PA shall maintain a system to schedule face-to-face intake appointments. If the client cannot be immediately scheduled, the PA shall contact the client within two working days to arrange for an initial intake appointment.

4. The PA shall develop a written policy for minimum client information required for intake. A major purpose of this policy shall be to ensure that there is an adequate client assessment without undue delay of service.

5. The PA shall develop a procedure for clients who cannot be served immediately, but for whom interim support is needed to address emergent needs. In all cases, a determination of the clients' interim medication needs shall be made. These interim support services shall be documented.

(c) The PA shall develop and implement an intake process that provides an opportunity for assessment of an applicant's eligibility for service and the formulation of a plan to guide initial services which is mutually developed by the client and a staff member.

1. Intake procedures shall be designed to facilitate program participation at the earliest appropriate opportunity. Completion of the formal intake process shall not preclude an otherwise eligible client from participating in program activities or receiving services on a provisional or try-out basis.

2. The intake process shall include a minimum of one face-to-face interview.

3. There shall be written policies and procedures which require that the following information be documented for all intake interviews conducted. These procedures shall include requirements for documenting the following:

- i. Basic information, including emergency contact person;
- ii. Presenting problems and reason for referral;
- iii. A brief history of illness, including previous services received at agency and elsewhere;
- iv. Medication information;
- v. Current mental health service providers and other social service providers;
- vi. A signed consent for release of information, in accordance with all applicable legal requirements;
- vii. Basic family and social supports;
- viii. A medical history, including allergies;
- ix. Legal information relevant to treatment;
- x. Basic chemical dependency information; and
- xi. Risk factors (for example, under what circumstances the client may be a danger to self or others).

4. The PA shall develop and implement a written procedure which requires a review of all intakes that result in a determination that a client may be denied service.

5. The PA shall develop and implement written procedures that require the PA to maintain contact with any client who is waiting for service in order to ensure that each client's emergent needs are identified and met.

6. An initial service plan shall be completed during the intake process. This plan shall address the client's needs and concerns, with

special attention to urgent presenting problems, to meet immediate needs for food, clothing, shelter and medication.

7. The initial plan shall be documented in the progress notes and shall include interventions utilized, such as prevocational or counseling services.

8. The initial service plan shall be revised as needed until the comprehensive service plan is developed. The PA shall develop a formal procedure for updating the initial service plan, which shall be completed within six weeks of intake and shall involve supervisory personnel.

9. The intake process shall include an orientation to the program and an explanation of the client's rights and grievance procedure. The PA shall also post the grievance procedure in a prominent location within the agency.

10:37F-2.2 Assessment and service planning

(a) PA staff shall complete a written comprehensive assessment for each client prior to development of the comprehensive service plan.

1. The PA's written procedures shall require that every comprehensive assessment include, at a minimum, the assessment of the client's strengths and deficits in the following areas:

- i. Motivation, including, but not limited to, willingness to participate in the program;
- ii. Social and recreational functioning including, but not limited to, ability to make friendships, communication skills and hobbies;
- iii. Emotional and psychological characteristics including, but not limited to, mental status, abuse history, if applicable, understanding of their own illness, and coping mechanisms;
- iv. Physical health including, but not limited to, applicable allergic and adverse medication reactions;
- v. Vocational and educational factors including, but not limited to, job history, task concentration and motivation for work;
- vi. Activities of daily living including, but not limited to, transportation, budgeting, self care and hygiene;
- vii. Living arrangements including, but not limited to, housing, entitlements and subsidies;
- viii. Social supports including, but not limited to, family, friends, social and religious organizations;
- ix. Substance abuse; and
- x. Other important characteristics of the individual such as special skills, talents and abilities.

2. The written comprehensive assessment shall include sufficient justification for the need for PC services.

3. The written comprehensive assessment shall be completed within three months after acceptance to the program and prior to development of the comprehensive service plan.

4. The written comprehensive assessment shall include a documented psychiatric evaluation completed within four weeks of admission which shall reflect consideration of the following:

- i. Diagnosis (Axis I-III) in conformance with the Diagnostic and Statistical Manual of Mental Disorders—IV (DSM-IV (available from the American Psychiatric Association, 1400 K St., NW, Washington, DC 20005), incorporated herein by reference, as amended and supplemented);
- ii. Recommendations for treatment, including treatment modality;
- iii. Medical history;
- iv. Medication history and present regimen;
- v. Mental status;
- vi. Presenting psychiatric and non-psychiatric problems;
- vii. Substance abuse history;
- viii. Relevant legal issues (that is, legal issues with implications for treatment);
- ix. Family psychiatric history.

5. The PA shall involve the family and significant others in the assessment process to the extent possible.

(b) The comprehensive service plan shall be based on the comprehensive assessment. It shall be completed within three months of the client's admission to the program. The comprehensive service plan shall reflect agreement between the client and the program staff on goals to be achieved by the client and program activities to address these goals.

1. The comprehensive service plan shall include the following:
 - i. Language that can be easily understood by the client;
 - ii. The signatures of the client, primary case coordinator or counselor and direct care staff supervisor;
 - iii. The psychiatrist's signature, which shall reflect the psychiatrist's direction of the course of treatment;
 - iv. Involvement of family members and others in the development of the plan, when applicable;
 - v. The client's goals and objectives, with target dates for achievement;
 - vi. Specific partial care services to be provided to the client;
 - vii. Interventions, strategies and activities to implement the comprehensive service plan; and
 - viii. Identification of staff responsible for implementing each intervention.

2. The PA shall make every effort to include client participation in service planning. The client's signature on the comprehensive service plan shall indicate that the client was involved in the formulation of the plan or that the client reviewed and approved of the plan. In the event that the client is not involved in the development of the plan or the client does not agree with any part of the plan, program staff shall document the client's lack of participation or disagreement in the clinical record.

3. The comprehensive service plan shall reflect any other service in which the client participates and coordinative efforts, if any, in achieving the treatment goals and objectives.

4. The PA shall train staff in the development of a comprehensive service plan.

(c) The comprehensive service plan shall be periodically reviewed to determine the client's need for continued services and revised as necessary.

1. The comprehensive service plan shall be reviewed and revised within three months of its development, every three months for the first year, and every six months thereafter. Documentation of the comprehensive service plan reviews shall include signatures of the client, direct care staff, supervisor and psychiatrist.

2. Comprehensive service plan reviews shall reflect the client's changing needs and progress toward goals. Documentation shall include a determination of the need for continued PC services and any revisions in service provision. Consideration of the expected benefits of continued services and the risk of service termination shall be included.

3. The PA shall update the psychiatric evaluation:

i. At least every three months, based on information from the prescribing physician for clients receiving medications for their psychiatric condition; and

ii. Every six months for all other clients who are not receiving medication for their psychiatric condition.

4. As the client progresses, treatment goals shall address a gradual reduction in services or a transition to less intensive services.

5. Maintenance of functioning shall be a legitimate service goal if it is appropriate to the client's needs.

(d) The PA shall write progress notes in the client's record at least weekly, as follows:

1. The PA staff shall document development of the comprehensive service plan during the initial three month period in the progress notes.

2. Each weekly progress note shall address:

i. The client's response to at least one specific treatment intervention identified in the service plan;

ii. A summary of PC activities in which the client participated during that week;

iii. The client's general level of participation and clinical progress in the program for that week; and

iv. Significant events that occurred during that week.

3. Within every three-month period, the progress notes shall reflect the client's progress towards all goals and objectives included within the comprehensive service plan.

4. Progress notes shall contain documentation by P.A. staff of all known current medications prescribed to address both psychiatric

and medical conditions. All medications and changes in the medication regimen shall also be documented by P.A. staff on a medication summary sheet.

5. Progress notes shall be legibly written, signed and dated.

10:37F-2.3 Services to be provided

(a) The PA shall provide, or arrange for, a range of services to effectively address the holistic needs of the client. Service provision shall be coordinated with other service providers.

1. The PA shall directly provide the following core services:

i. Counseling/case management services, which include evaluation, service planning, and personal intervention;

ii. Psychoeducational services for clients and families, which include mental health and medication education;

iii. Prevocational services directed toward maximizing vocational potential, which include work readiness, prevocational experiences, prevocational training and counseling, prevocational assessment and planning;

iv. Social/recreational services, which include independent living skills training, client government, goal oriented social club activities, goal oriented recreational and cultural activities; and

v. Psychiatric services, which include assessment and ongoing treatment supervision.

2. The PA shall provide or arrange services based on individual client need. The PA shall participate in service planning, resolve identified issues, and advocate on behalf of the client, as appropriate, for all services that are not provided directly. At a minimum, the following services shall be provided or arranged:

i. Basic services, which may include assisting clients to procure needed food, clothing, shelter, or income benefits;

ii. Health care services, which may include assisting in procurement of, treatment or education about health care and medication;

iii. Natural support system services, which may include consultation and education with families, friends or landlords, facilitating self-help groups, or helping clients connect with community institutions;

iv. Financial services, which may include money management and budgeting;

v. Other prevocational services, which may include transitional employment, client owned and operated business opportunities, sheltered employment, supported employment, job training, job placement, or volunteer work;

vi. Client-outreach and linkage services designed to facilitate new clients' participation in the program, to re-engage clients who have discontinued participating in the program or to effectively link them with other programs that would meet their needs, and to promote continuity of programming for clients who are hospitalized during the course of their participation in the program. These services shall include, but are not limited to, arranging needed transportation to the program site, relating to other agencies, and contacting and visiting clients who have discontinued participating in the program;

vii. Educational services, which may include basic education courses, special education courses, G.E.D. classes, pre-college preparation;

viii. Chemical dependency services, which may include support groups, educational, informational and referral services regarding drugs, alcohol, nicotine and caffeine;

ix. Residential services, which may include community residences, board and care homes, private homes or apartments with support, emergency shelters, cooperative apartments or crisis housing; and

x. Acute care services, which may include screening, crisis intervention and inpatient services.

3. The PA shall develop procedures regarding medications to include:

i. Identification of each client's medication needs;

ii. Documentation of each client's current medications;

iii. A mechanism for sharing relevant clinical information with medication providers;

iv. Medication education for clients and families, where relevant; and

v. Provisions for education of staff and other involved caregivers regarding adverse reactions and potential side effects, as well as procedures to respond to such reactions.

4. The PA shall develop written descriptions of services directly provided and arranged. Clinical records, schedules, logs and other documents shall serve as evidence that these services have been provided.

10:37F-2.4 Termination, transfer and referral of clients

(a) Procedures for termination, transfer and referral of clients shall be documented and shall ensure that the continuing service needs of clients are met.

1. Discharge criteria shall be developed. These criteria shall be limited to the following specific reasons for termination from the program:

- i. The client has achieved the service plan goals and needs no further treatment;
- ii. The client can be more effectively served by and has been linked to another program, agency or institution;
- iii. The client has either refused repeatedly to participate in major components of the program or stopped attending the program;
- iv. The client demonstrates dangerous, criminal, or other aggressive behavior that is unresponsive to interventions; or
- v. The client has moved to a location which makes continued participation in the program impossible.

2. When the client has stopped attending the program, significant outreach efforts to re-engage the client prior to termination, such as repeated telephone calls, correspondence and home visits, shall be documented in the clinical record.

3. Termination decisions shall be finalized only with approval of the direct care staff supervisor.

4. Every effort shall be made to consider the client's preferences for continuing services and to include the client in the development of the discharge plan.

5. The discharge plan shall include arranged follow-up care or justification for no follow-up care.

6. A termination or transfer summary shall be written and maintained, separate from the progress notes. The summary shall include:

- i. The presenting problem;
- ii. The admission date and date of service termination;
- iii. The course of treatment and client's status upon discharge;
- iv. The reason for termination;
- v. The medication prescribed upon discharge;
- vi. To the extent known, the client's perspective on his or her experience in the program, and the client's stated reasons for leaving, if applicable; and
- vii. The discharge plan.

10:37F-2.5 Management functions

(a) In addition to meeting the management requirements as promulgated in N.J.A.C. 10:37D, the PA shall also perform the following management functions:

1. Data on client characteristics, such as diagnosis, cultural and communication issues and service needs in addition to Partial Care; program utilization; and outcomes shall be collected, analyzed and used for program design;

2. Client input from client surveys, exit interviews and other mechanisms shall be utilized by management;

3. Structured and informal opportunities for client input and participation, such as client management, organization or town meetings, shall be provided;

4. Staff input regarding program design, development, or changes shall be solicited through supervisory meetings, team meetings, and other mechanisms utilized by management;

5. Staff and client involvement and participation in larger "systems-oriented" activities, such as conferences, seminars, workshops, or membership in local, State, or national organizations shall be encouraged whenever possible;

6. The PA shall conduct regularly scheduled meetings for staff and clients to discuss program issues; and

7. The PA shall develop written policies and procedures regarding the release of confidential client information within the program and

among other clients and staff. These policies and procedures shall comply with all related Federal and State statutes and any Department rules.

10:37F-2.6 Quality assurance activities

(a) In addition to meeting the quality assurance requirements as promulgated in N.J.A.C. 10:37-9, the PA shall address the following areas:

1. Client outcome measures shall be monitored based on client-identified and program-identified goals; and

2. Client satisfaction, and efforts to engage clients, shall be monitored.

10:37F-2.7 Therapeutic environment

(a) The PA shall provide a safe environment, normalized to the extent possible, that shall serve to enhance interaction among staff and clients.

1. The PA facility shall conform to all Federal, State and local laws and shall provide evidence of satisfactory inspections.

2. The PA shall document that monitoring and follow-up on all safety and health issues identified by inspections or by the PA has occurred.

3. The PA shall document evidence of regular cleaning and maintenance of the facility.

4. Staff trained in CPR and first aid shall be available during program operation.

5. The PA shall have procedures for responding to emergency situations, including assaultive and suicidal behavior and ideation, acute decompensation, and medical emergencies.

10:37F-2.8 Staffing

(a) The PA shall be sufficiently staffed with qualified personnel to provide PC services as set forth in this chapter. Staff may be engaged on a full time, part time or consulting basis, provided that services are adequate to meet the program needs of participating clients.

(b) The PA shall, at a minimum, employ the following staff titles with the following responsibilities:

1. The program director shall:
 - i. Have primary responsibility for program operation, development and management;
 - ii. Be available for crisis consultation and management and for coordination with outside practitioners; and
 - iii. Possess a master's degree in a human service field and five years experience in mental health services, with two years supervisory experience.

2. The medical director or supervising psychiatrist shall:

- i. Be board eligible or certified;
- ii. Provide needed medical input into the development of the program;
- iii. Be directly affiliated with the program;
- iv. Assume professional responsibility for the treatment and services provided and assure that the treatment and services are medically appropriate;
- v. Supervise the treatment provided to each client;
- vi. Provide input into treatment and service plans;
- vii. Provide initial psychiatric assessment and ongoing psychiatric review at least two times per year;
- viii. Provide consultation to program staff on an ongoing basis;
- ix. Be available and provide inservice training to program staff; and
- x. Assure that all psychiatric and medical services that are provided by the program, meet accepted standards of medical practice.

3. The direct care staff supervisor shall:

- i. Have primary responsibility for supervision of direct care staff; and
- ii. Possess a master's degree in a human services field, or a bachelor's degree and a minimum of two years experience in providing mental health services.

4. The primary case coordinator or counselor shall:

- i. Have primary responsibility for service coordination, provision or arrangement of services needed, personal advocacy, and develop-

ment, review and updating of individual treatment and service plans; and

ii. Possess a bachelor's degree in a human services field, or an associate's degree and two years experience in providing human services, or five years of human service experience.

5. The mental health services worker shall:

i. Have primary responsibility for the provision and coordination of program services; and

ii. Possess a bachelor's degree or associate degree in psychosocial rehabilitation or mental health services, or related life or work experience, such as assuming leadership roles during participation in mental health services or mental health consumer initiatives.

(c) Each PA shall designate staff to take primary responsibility for providing pre-vocational and chemical dependency services. Such designated staff members shall possess the qualifications for the primary case coordinator or counselor position and shall have training and experience in providing the specialized service.

(d) The PA may employ students and volunteers, in addition to required staff as set forth in this chapter.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospital Services

Proposed Readoption: N.J.A.C. 10:52

Proposed Repeal and New Rules: N.J.A.C. 10:52-1 through 4

Proposed New Rule: N.J.A.C. 10:52-10

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

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b, c, and e; 30:4D-12, P.L. 1992, c.160; 1902(a)(13) of the Social Security Act; 42 U.S.C. 1396(a); 42 447.251, 253.

Proposal Number: PRN 1994-592.

Agency Control Number: 94-P-43.

Submit comments by December 21, 1994 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services

CN 712

Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

N.J.A.C. 10:52 became effective on February 8, 1990, for a period of five years. The chapter expires on February 8, 1995, pursuant to Executive Order No. 66(1978). The Division of Medical Assistance and Health Services has made an administrative review and determined that the proposed rules are necessary, reasonable, and adequate for the purpose for which they were intended. As a result of this review, the Division has chosen to amend some rules, repeal certain rules, and add new rules. The intent of the proposal is to set forth rules pertaining to the provision of, and reimbursement for Medicaid covered and non-covered services in an inpatient and outpatient hospital setting. Some requirements have remained the same and were reorganized into appropriate sections and subsections. Some have been altered, as indicated in the summary. This proposal has been prepared to clearly present updated requirements.

The rules have been amended since the last re-adoption. N.J.A.C. 10:52-5 through 9 were adopted as Emergency New Rules (R.1993 d.154, effective March 11, 1993 (to expire May 10, 1993). See: 25 N.J.R. 1582(a)). The provisions of R.1993 d.154 were re-adopted as R.1993 d.263, effective May 10, 1993, with changes effective June 7, 1993. See: 25 N.J.R. 2560(a). The reason(s) for adding these subchapters was the requirement that Medicaid develop its own reimbursement methodology for hospitals, due to the phasing out of the hospitals all-payer system. Any changes to N.J.A.C. 10:52-5 through 9 have been or are being made separately from this re-adoption proposal.

The following summarizes changes within each of the sections of the new N.J.A.C. 10:52.

N.J.A.C. 10:52-1.1 Purpose and scope

N.J.A.C. 10:52-1 is a new rule, which provides introductory material to this chapter.

N.J.A.C. 10:52-1.2 Definitions

N.J.A.C. 10:52-1.2 "Definitions" is recodified from N.J.A.C. 10:52-1.1 and N.J.A.C. 10:53-1.1. The following definitions have been either deleted; replaced with changes; recodified; or added in this section.

"Ambulatory Surgical Centers" definition was deleted and appropriately codified in N.J.A.C. 10:66-1.2.

"Division"—This definition is a new definition and allows abbreviation of the Division of Medical Assistance and Health Services throughout the Chapter.

"Early Periodic Screening, Diagnosis, and Treatment" is added and a new section of regulations for EPSDT services is in N.J.A.C. 10:52-2.4.

"Hospital" replaces the definition of "Approved Hospital".

"Hospital (Acute General)" replaces the previous definition of Approved Hospital and defines this kind of hospital more specifically. A new definition was developed to differentiate approved private psychiatric facilities that provide inpatient services only to children under 21 years of age from other approved private psychiatric hospitals. The previous definition of approved private psychiatric hospitals was recodified from N.J.A.C. 10:52-1.13 and N.J.A.C. 10:53-1.12 to this definition section.

"Hospital (Approved Special)" definition replaces the previous definitions in N.J.A.C. 10:53-1.1 as it defined special hospitals (Classification A, B and C).

"Hospital (Approved Private Psychiatric)", a facility that provides inpatient services to children under 21 years of age, has been redefined.

"Medical Day Care" and "Medical Day Care Center" definitions have been recodified to N.J.A.C. 10:52-2.6.

"Outpatient hospital services" definition is added to differentiate inpatient services from outpatient services.

"Partial hospitalization" definition (and inappropriate regulatory language) was deleted in this section and recodified in N.J.A.C. 10:52-2.9 under a new section named "Psychiatric Services—Partial Hospitalization".

"Patient" definition is added because of its unique connotation in the hospital setting.

"Physician" and "physician services" definitions were added to distinguish hospital services from physician services.

"PSRO" and "PSRO/DRG Hospital" has been deleted because of changes in the functions of utilization review organizations.

"Qualified physical therapy" definition was recodified with other definitions related to rehabilitation services at N.J.A.C. 10:52-2.10 Rehabilitation; Hospital Outpatient Department.

"Sterilization" and "non-therapeutic sterilization" definitions were recodified to N.J.A.C. 10:52-2.12, with the applicable rules concerning this subject.

"Utilization Review Organization" definition was deleted and regulations placed where the applicable reference was in N.J.A.C. 10:52-1.4(b).

The other definitions remain essentially the same with minor technical changes.

N.J.A.C. 10:52-1.3 Eligibility

N.J.A.C. 10:52-1.3 extends the specificity of N.J.A.C. 10:52-2.4 and 2.5 as the rule applies to hospitals. There is no previous citation in this chapter on this material except a general reference in N.J.A.C. 10:52-1.2(a)13. The new rule states the process to be followed by hospitals in facilitating the eligibility for a newborn of a Medicaid recipient in order for the newborn to become a Medicaid recipient.

N.J.A.C. 10:52-1.4 Covered Services (Inpatient and Outpatient)

N.J.A.C. 10:52-1.4 combines and recodifies the previous N.J.A.C. 10:52-1.2 (Covered Inpatient Services) and N.J.A.C. 10:52-1.7 (Covered Outpatient Services) sections to include in one section for both covered inpatient and outpatient services. Specialized sections were developed in Subchapter 2 for each subject and reference is made at the end of this subchapter of where to find the regulations to each subject. Outdated requirements were deleted and technical changes were made to update the rule.

N.J.A.C. 10:52-1.5 Non-Covered Services (Inpatient and Outpatient)

N.J.A.C. 10:52-1.5 combines and recodifies the previous sections N.J.A.C. 10:52-1.3 (Non-Covered Inpatient Services) and N.J.A.C. 10:52-1.8 (Non-Covered Outpatient Services) sections to include in one section both non-covered inpatient and outpatient services. Specialized sections were developed in Subchapter 2 for each subject, indicating the limits to each service and reference is made at the end of this subchapter of where to find the regulations to each subject. Outdated rules were deleted and technical changes were made to update the rules. Non-approved hospitals are not recognized, so the references to "Hospital benefits in a non-approved hospital," has been deleted.

N.J.A.C. 10:52-1.6 Administrative Days (Nursing Facility Level of Care)—Acute General, Special (Classification A and B) and Private Psychiatric Hospitals

N.J.A.C. 10:52-1.6 is a new section combining and recodifying N.J.A.C. 10:52-1.2(a)19.iii. and iv and N.J.A.C. 10:52(a)19.ii., iii., and iv. This was necessary because N.J.A.C. 10:52 contains regulations specific to all hospitals except special hospitals (Classification C). It also conforms and refers to changes in N.J.A.C. 10:49-9.2 and updates the reference to Pre-Admission Screening. Special Hospitals (Classification B) are Rehabilitation Hospitals.

N.J.A.C. 10:52-1.7 Authorization (Prior)

N.J.A.C. 10:52-1.7, a new section, combines and recodifies all references to the limitations of services related to the Prior Authorization process. Subsection (a) refers to specialized section concerning dental services and partial hospitalization. Subsection (b) refers the provider to N.J.A.C. 10:49-6.1, which contains the general policy on prior authorization. Subsection (c) is recodified from N.J.A.C. 10:52-1.9(g) and (h).

N.J.A.C. 10:52-1.8 Pre-Admission Screening

N.J.A.C. 10:52-1.8 is a new section, recodified and enlarged from N.J.A.C. 10:52-1.4(a)6, which includes rules applicable to hospitals regarding discharge planning, Pre-Admission Screening (PAS) and Pre-Admission Screening and Annual Resident Review (PASARR). This section has been updated to include changes in the program.

N.J.A.C. 10:52-1.9 Recordkeeping

N.J.A.C. 10:52-1.9—This section was formerly codified, but not published at, N.J.A.C. 10:52-4. This text is more appropriately codified in Subchapter 1, where it serves as a foundation for validating service and payment provisions.

N.J.A.C. 10:52-1.10 Second Opinion Program for Elective Surgical Procedures

N.J.A.C. 10:52-1.10—The section on the Second Opinion Program for Elective Surgical Procedures is recodified from N.J.A.C. 10:52-1.3(a)15 and 10:53-(a)15, enlarged, and updated. Material formerly in the non-published HCPCS subchapter of the Physician Services Manual on the Second Opinion Program which was regulatory in nature and applicable to outpatient and inpatient surgical care provided by a hospital or a hospital-based physician, including the anesthesiologist, was moved to this section.

N.J.A.C. 10:52-1.11 Social Necessity Days

N.J.A.C. 10:52-1.11—This section was recodified from N.J.A.C. 10:52-1.2(a)19i. Differentiation is made between those rules which apply to social necessity days (for child abuse and neglect, for example) and those that apply to administrative days (for discharge delays for social circumstances, such as awaiting long term care placement).

N.J.A.C. 10:52-1.12-1.14 Utilization Control

N.J.A.C. 10:52-1.12-1.14—These sections were recodified from N.J.A.C. 10:52-1.4(a)3, 4, and 8 and updated and enlarged to include utilization control for inpatient psychiatric services for recipients under 21 years of age in Private Psychiatric Hospitals and outpatient psychiatric services.

SUBCHAPTER 2

This is a new Subchapter which is organized alphabetically, to include all the requirements for a specific service in one section.

N.J.A.C. 10:52-2.1 Ambulatory Surgical Centers

N.J.A.C. 10:52-2.1 recodifies the definitions from N.J.A.C. 10:52-1.1 regarding Ambulatory Surgical Centers, defines the relationship between

an ASC and a hospital and refers the reader to N.J.A.C. 10:66 Independent Clinic Services Manual, for reimbursement purposes.

N.J.A.C. 10:52-2.2 Blood and Blood Products

N.J.A.C. 10:52-2.2 is recodified from N.J.A.C. 10:52-1.10 and 10:53-1.9 Blood and Blood Products.

N.J.A.C. 10:52-2.3 Dental Services

N.J.A.C. 10:52-2.3 is recodified from N.J.A.C. 10:52-2.8A and 1.6(c)4 and 10:53-1.8(e) and 1.5(c)4. For other rules related to Dental Services, the provider is referred to N.J.A.C. 10:56, Dental Services.

N.J.A.C. 10:52-2.4 Early Periodic Screening, Diagnosis and Treatment

N.J.A.C. 10:52-2.4 is a new section covering all aspects of Early Periodic Screening, Diagnosis and Treatment (EPSDT), including new policy on lead screening, organ procurement and transplantation services, and EPSDT services in hospital outpatient departments.

N.J.A.C. 10:52-2.5 Home Health Agencies (Hospital-based)

N.J.A.C. 10:52-2.5 is a new section, covering only those Home Health Agencies which are hospital-based. This section includes a requirement that such agencies be licensed by the New Jersey Department of Health and a description of the kinds of home health services which are provided. The section refers the provider to the Home Care Services Chapter in N.J.A.C. 10:60 for other policies and procedures.

N.J.A.C. 10:52-2.6 Medical Day Care Centers (Hospital Affiliated)

N.J.A.C. 10:52-2.6 is recodified from N.J.A.C. 10:52-1.19 and 10:52-1.1, "Definitions", and from 10:53-1.15 to include only material relevant to hospital affiliated medical day care centers. After defining the relationship and reimbursement methodology of these hospital affiliated entities and the limitation for partial hospitalization services with medical day care services, this section refers providers to the Medical Day Care Services Chapter at N.J.A.C. 10:65 for further policies and procedures.

N.J.A.C. 10:52-2.7 Narcotic and Drug Abuse Treatment Centers (Free-standing)

N.J.A.C. 10:52-2.7 is recodified from N.J.A.C. 10:52-1.21, which differentiates hospital outpatient services which are reimbursed on a cost-to-charge ratio from those services delivered by facilities which are both free-standing and hospital-affiliated.

N.J.A.C. 10:52-2.8 Organ Procurement and Transplantation Services

N.J.A.C. 10:52-2.8—Organ Procurement and Transplantation Services is a new rule, which has been written subsequent to the promulgation of Section 1138 of the Social Security Act regulation (42 U.S.C. 1320(b)) on organ procurement organizations (OPO).

N.J.A.C. 10:52-2.9 Psychiatric Service—Partial Hospitalization

N.J.A.C. 10:52-2.9—Psychiatric Service—Partial Hospitalization is recodified from N.J.A.C. 10:52-1.9(f). Descriptive parameters, formerly listed in the HCPCS subchapter for half-day and full-day partial hospitalization, have been codified in this section. Subsection (c) updates the current requirements and procedures for prior authorization of partial hospitalization which has been recodified from N.J.A.C. 10:52-1.7(b).

N.J.A.C. 10:52-2.10 Rehabilitation Services in the Hospital Outpatient Department

N.J.A.C. 10:52-2.10 is recodified from N.J.A.C. 10:52-1.11 and updated to include revised licensing and certification requirements for the rehabilitation professionals. Speech-language pathologist and audiologist were added to the definitions.

N.J.A.C. 10:52-2.11 Renal Dialysis Services for End-Stage Renal Disease (ESRD)

N.J.A.C. 10:52-2.11—Renal Dialysis Services for End-Stage Renal Disease (ESRD) has been recodified and updated from N.J.A.C. 10:52-1.6(c)6 and N.J.A.C. 10:52-1.2(a)16.

N.J.A.C. 10:52-2.12 Sterilization

N.J.A.C. 10:52-2.12, Sterilization, was recodified from N.J.A.C. 10:52-1.2(a)18 and 19 and definitions regarding informed consent were put in this section. Additionally, Federal regulations have been referenced.

N.J.A.C. 10:52-2.13 Hysterectomy

N.J.A.C. 10:52-2.13, Hysterectomy, was recodified from N.J.A.C. 10:52-1.2(a)18 and 19 and definitions were put in this section instead of in N.J.A.C. 10:52-1.1 from "Informed Consent". Background for this section is in federal regulations (42 CFR 441.250 through 42 CFR 441.258).

N.J.A.C. 10:52-2.14 Termination of Pregnancy

N.J.A.C. 10:52-2.14 is recodified from N.J.A.C. 10:52-1.16, which was called Medicaid reimbursement for abortions, with minor technical change.

N.J.A.C. 10:52-2.15 Transportation Services (Hospital-Based)

N.J.A.C. 10:52-2.15 is a new section codified from policy stated in a Division Newsletter on Transportation Services, relevant only to hospital-based services. This section refers providers to the Transportation Services Chapter in 10:50-1.2. The policy which states that reimbursement for transportation services to and from hospital affiliated medical day care centers (MDC) are included in the MDC per diem rate, is designed to prohibit duplicate billing for the same service by both the hospital and/or the MDC.

SUBCHAPTER 3. HealthStart—Maternity and Pediatric Care Services

This whole Subchapter was recodified and revised from N.J.A.C. 10:49-3 (before it eliminated in the re-adoption of the Administration chapter). The plan at that time was to put relevant regulations in each of the provider manuals, as appropriate, and to be as inclusive as possible as to describe the dimensions and components of the HealthStart program to avoid fragmentation of regulations.

SUBCHAPTER 4. Basis of Payment for Hospital Services

This new subchapter brings together and updates rules spread out through the previous Manual of Hospital Services.

The Division of Medical Assistance and Health Services (the Division) is proposing Subchapters 5 through 9 for re-adoption in order to continue a rate setting methodology for those Medicaid categorically and optional categorically eligible individuals that require inpatient acute care (general) and special (Classification A) hospital care.

The following terms and acronyms will be used in this summary:

The term "Department" refers to the New Jersey Department of Human Services.

The term "Division" refers to the Division of Medical Assistance and Health Services.

The acronym "DOH" refers to the New Jersey Department of Health.

The acronym "DRG" refers to the Diagnosis Related Groups system of classification of patients for the purpose of rate setting.

The acronym "EHSC" refers to the Essential Health Services Commission.

The Division had previously participated in the Hospital All Payer Rate Setting System, commonly referred to as "Chapter 83" (N.J.S.A. 26:2H-1), regulated by the New Jersey Department of Health.

However, on November 30, 1992, State legislation was signed abolishing the all payer system (P.L.1992, c.160). As a consequence, the Division had to develop its own rate setting methodology for inpatient acute care hospital services. The Division submitted five subchapters to the current Hospital Manual to establish a regulatory basis for the reimbursement methodology, as follows:

N.J.A.C. 10:52-5—Basis of Payment—Hospitals—Acute Care (General) and Special (Classification A), Procedural and Methodological regulations.

N.J.A.C. 10:52-6—Various Financial Elements Reporting Principles and Concepts.

N.J.A.C. 10:52-7—A description of various Cost Centers.

N.J.A.C. 10:52-8—The methodology for payments—Disproportionate Share.

N.J.A.C. 10:52-9—Rate Review and Appeals.

In addition, the definition section of N.J.A.C. 10:52-1.1 was amended to include definitions necessary for the terminology in the new subchapters.

The regulatory history of these five subchapters indicates that they were adopted as an emergency rule (R.1993 d.154) effective March 11, 1993, and were concurrently proposed as new rules (see N.J.R. 1582(a)). The concurrently proposed new rules were adopted as R.1993 d.263 at 25 N.J.R. 2560(a), without change. There are no changes associated with this re-adoption in Subchapters 5 through 9.

There have been three amendments to N.J.A.C. 10:52-8.2 since these subchapters were adopted.

First, the Division and the EHSC adopted requirements concerning the payments from the Hospital Subsidy Fund for the Mentally Ill and Developmentally Disabled Clients. (See R.1994 d.432 at 26 N.J.R. 3473(a).)

The second amendment to N.J.A.C. 10:52-8.2 was an emergency amendment and concurrent proposed amendment. The emergency amendment was filed August 1, 1994 as R.1994 d.440. (See N.J.R. 3485(a).) The concurrent proposed amendment was adopted in the November 7, 1994 New Jersey Register.

The third amendment that has been proposed by the Division and the EHSC concerns the Disproportionate Share Adjustment for the Other Uncompensated Care Component of the Health Care Subsidy Fund in N.J.A.C. 10:52-8.2. The proposal appeared at 26 N.J.R. 2239(a). It has not yet been adopted.

Subchapter 5 explains the procedures and methodology which establishes the basis of reimbursement. The methodology for determining a preliminary cost base for each hospital is indicated in N.J.A.C. 10:52-5.1. The hospital will continue to be required to submit data which will be used to establish the Medicaid rates. Subchapter 5 also provides an explanation on how costs are allocated for cost finding purposes, and indicates those costs that the Division will recognize for reimbursement.

Subchapter 6 also describes the numerous cost centers. (See N.J.A.C. 10:52-6.27 to 6.79.) These cost centers are related to the various categories of patient services, such as obstetrics, pediatrics and coronary care. Each section specifies what functions are provided attributable to each cost center.

Subchapter 6 also explains the accounting procedures that are used in the rate setting process (see N.J.A.C. 10:52-6.1 to 6.26).

Subchapter 7 lists the broad categories of DRGs which are the basis of payment by Medicaid to the hospital.

Subchapter 8 establishes a methodology to make disproportionate share payments and adjustments to hospitals who serve a large number of low income clients. The need for disproportionate share payments is a Federal requirement. (See the Federal law and regulations cited under "Authority" above.)

Subchapter 9 provides for rate review and appeal. This subchapter provides the process for filing an appeal with the Division of Medical Assistance and Health Services. The rule specifies the timeframes for submitting an appeal and the types of information and the data that the hospital may be required to submit to support their appeal.

If a hospital is not satisfied with the Division's determination, the hospital continues to have the right to request an administrative hearing pursuant to N.J.A.C. 10:49-10. The OAL hearing is limited to the reasonableness of the Division's reason for denying the requested rate adjustment. No other documentation can be introduced into evidence at the hearing. Final decision shall be made by the Director of the Division of Medical Assistance and Health Services.

SUBCHAPTER 10. Hospital Laboratory Health Care Financing Administration (HCFA) Common Procedure Coding System

This subchapter is recodified from Subchapter 4 and technical changes and updating of procedure codes to 1994 were included.

Social Impact

Medicaid covered services delineated in this chapter enable eligible individuals to receive medical care in hospitals. There will be minimal if any effect on clients, as a result of the changes to the rules. The Medicaid recipients of Medicaid covered services in the hospital setting will continue to receive Medicaid covered services. The hospitals, in most cases, have received newsletters regarding the process to be followed in specific areas, such as organ procurement and transplant, EPSDT, and transportation services. These requirements are now being incorporated into this chapter.

The proposed amendments affect providers of hospital and special hospital services, including private psychiatric hospitals and rehabilitation hospitals.

Economic Impact

There will be no change in impact on Medicaid recipients, since they are not required to pay towards the cost of inpatient hospital care. They will continue to receive Medicaid services in hospitals, which may otherwise be unavailable to them, due to cost.

The readoption of subchapters 5 through 9 will continue to provide a rate reimbursement system for hospitals, previously provided by the all-payers system.

Medicaid has made payments of approximately \$837,293,655 (Federal/State share combined) for inpatient hospital services (including out-of-State and specialty hospitals) in State Fiscal Year 1994. Additionally, Medicaid made disproportionate share payments from the Health Care Subsidy Fund, from the Hospital Relief Subsidy Fund, and from the Hospital Subsidy Fund for the mentally ill and developmentally disabled.

Hospitals will continue to be required to comply with the requirements of N.J.A.C. 10:52, in order to receive Medicaid reimbursement. The readoption of this chapter keeps current the policies related to hospital services provided to Medicaid recipients and the reimbursement methodology for these services.

Regulatory Flexibility Analysis

A regulatory flexibility analysis might not be necessary because most hospital providers are not considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:16 et seq., since hospitals generally employ more than 100 persons full time. However, in the event a hospital might qualify under the terms of the Act, this analysis is included. Hospitals are required to maintain sufficient records to indicate the name of the patient, dates of service, nature and extent of inpatient hospital services, and any additional information as may be required by regulation, in accordance with N.J.S.A. 30:4D-12. With respect to reimbursement, hospitals will be required to maintain sufficient records, such as cost studies, to enable the Division to establish rates. The reporting provisions are similar to the regulatory requirements that existed under the all payers system. The proposed new rules do not create any additional reporting, recordkeeping or other compliance requirement. There should be no need to hire any additional professional staff other than those persons already involved in meeting the requirements of this chapter.

There are no capital costs associated with this proposed readoption.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:52.

Full text of the proposed repeals may be found in N.J.A.C. 10:52-1 through 4.

Full text of the proposed new rules follows:

CHAPTER 52 HOSPITAL SERVICES MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS

10:52-1.1 Purpose and scope

This chapter of the Hospital Services Manual outlines the policies and procedures of the Division for the provision of inpatient and outpatient (including emergency room) hospital services to Medicaid recipients. The hospitals that are included in these policies and procedures are general hospitals, special hospitals, rehabilitation hospitals and private psychiatric hospitals, unless specifically indicated otherwise.

10:52-1.2 Definitions

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

"Adjusted admissions" means inpatient admissions increased to reflect outpatient activity, which is calculated by admissions multiplied by total gross revenue divided by inpatient gross revenue.

"Base year" means the year from which historical cost data are utilized to establish prospective reimbursement in the rate year.

"Bundled drug service" means a drug that is marketed or distributed by the manufacturer or distributor as a combined package which includes in the cost of the drug, the drug product and ancillary services, such as, but not limited to, case management and laboratory services.

"Current Cost Base" means the actual costs and revenue of the hospital as identified in the Financial Elements in the base reporting period for the purposes of rate setting.

"Diagnosis Related Groups (DRGs)" means a patient classification system in which cases are grouped by shared characteristics

of principal diagnosis, secondary diagnosis, age, surgical procedure, and other complications, and consumption of a similar amount of resources.

"Division" means the New Jersey Division of Medical Assistance and Health Services within the New Jersey Department of Human Services.

"Equalization Factor" means the factor that is calculated based on defined Labor Market Areas and multiplied by hospital costs to permit comparability between differing regional salary costs in setting Statewide standard costs per case.

"Early and Periodic Screening, Diagnosis and Treatment (EPSDT)" means a preventive and comprehensive health program for Medicaid recipients under 21 years of age for the purpose of assessing a recipient's health needs through initial and periodic examinations, health education and guidance, and identification, diagnosis, and treatment of health problems.

"Financial Elements" means the reasonable cost of items approved as reimbursable under Medicaid (see N.J.A.C. 10:52-5.10).

"Grouper" means the logic that assigns cases into the appropriate Diagnosis Related Groups in accordance with the clinical and statistical information supplied.

"Hospital" means an institution which is primarily engaged in providing the following services to inpatients, by or under the supervision of physicians:

1. Diagnostic services and therapeutic services for the prevention, medical diagnosis, treatment, and care of injured, disabled or sick persons, including obstetrical services and services to the normal newborn; or,

2. Rehabilitative services for the rehabilitation of injured, disabled, or sick persons; and that

3. Maintains clinical records on all patients;

4. Has by-laws in effect with respect to its staff of physicians;

5. Requires every patient to be under the care of a physician;

6. Provides 24-hour nursing services rendered or supervised by a registered professional nurse, and has a registered professional nurse or licensed practical nurse on duty at all times;

7. Has in effect a hospital utilization review plan that meets the requirement of the law (Sec. 1861(K) of the Social Security Act); and has in place a discharge planning process that meets the requirements of the law (Sec. 1861(ee)) of the Social Security Act;

8. Is licensed as a hospital in the State of New Jersey, or licensed as a hospital by the appropriate agency under the laws of the respective state in which the hospital is located, or approved by the agency of the state or locality responsible for licensing hospitals meeting the standards established for such licensing; and

9. Meets any other requirements that the U.S. Secretary of Health and Human Services finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

"Hospital (Approved General)" means an institution which is approved to participate as a provider in the Division if it:

1. Is licensed as a general hospital by the State of New Jersey, or licensed as a hospital by the appropriate agency under the laws of the respective state in which the hospital is located; (NOTE: When only a specific identifiable part of a multi-service institution is licensed, only the section licensed is considered a Medicaid provider);

2. Meets the requirements for participation and certification under Medicare (Title XVIII of the Social Security Act);

3. Has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under Medicaid (Title XIX); and,

4. Has signed a provider agreement to participate in and abide by the rules of the Division and applicable Federal regulations.

"Hospital (Approved Private Psychiatric)" means an institution which is approved to participate as a provider in the Division and:

1. Is licensed by the State of New Jersey as a psychiatric (mental-non-governmental) hospital or licensed as a private psychiatric hospital (non-governmental) by the appropriate agency under the laws of the respective state in which the hospital is located;

2. Meets the requirements for participation and certification under Medicare (Title XVIII of the Social Security Act) as a psychiatric hospital;

3. Has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under Medicaid (Title XIX);

4. Meets the special Medicare standards relative to staffing requirements and clinical medical records; and,

5. Has signed a provider agreement to participate in and abide by the rules of the Division and applicable Federal regulations.

"Hospital (Approved Private Psychiatric) facility that provides inpatient services to children under 21 years of age" means an institution that shall meet the requirements of 1., 2., 3., 4. and 5. above, listed in the definition of "Hospital (Approved Private Psychiatric); or in addition to 1. and 5. above, has facility accreditation by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO).

"Hospital (Approved Special)" means an institution which is approved by the New Jersey State Department of Health as a special hospital (for definition of special hospital, see N.J.A.C. 8:43G-1.3(b)2) and which includes any hospital which assures the provision of comprehensive specialized diagnosis, care, treatment and rehabilitation, where applicable, on an inpatient basis for one or more specific categories of patients; and approved to participate as a provider in the Division if it meets the appropriate standards of participation for one of the following classifications:

(a) Special (Acute care or short term) or Comprehensive Rehabilitation Hospital:

1. Licensed as a special or comprehensive rehabilitation hospital by the New Jersey Department of Health;

2. Accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) or the Commission on Accreditation as a hospital or rehabilitation facility; and/or

3. Meets the requirements for participation and certification under Medicare (Title XVIII of the Social Security Act) as a hospital;

4. Has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under Medicaid (Title XIX); and,

5. Has signed a provider agreement to participate in and abide by the rules of the Division and all applicable Federal regulations.

"Informed Consent" means the voluntary knowing assent from the individual on whom any sterilization is to be performed after he or she has been given (as evidenced by a document executed by such individual) and has been given:

1. A fair explanation of procedures to be followed;

2. A description of attendant discomforts and risks;

3. A description of benefits to be expected;

4. An explanation concerning appropriate alternative methods of family planning and the effect and impact of the proposed sterilization including the fact that it must be considered to be an irreversible procedure;

5. An offer to answer any inquiries concerning the procedures; and

6. An instruction that the individual is free to withhold or withdraw his or her consent to the procedure at any time prior to the sterilization without prejudicing his or her future care without loss of other project or program benefits to which the patient might otherwise be entitled;

7. The documentation referred to in this subsection must meet all applicable State and Federal requirements, and should be bilingual as necessary. (See N.J.A.C. 10:52-2.12 Sterilization).

"Inliers" means inpatient cases who display common or typical patterns of resource use that are assigned to DRGs and have a length of stay within the high and low trim points.

"Inpatient" means a patient who has been admitted to an approved hospital as an inpatient on the recommendation of a physician or dentist and receives room, board, and professional services in the hospital for a 24 hour period or longer, even though it later develops that the patient dies, is discharged or is transferred to another facility and does not actually stay in the hospital for 24 hours.

"Inpatient Hospital Services" means services that:

1. Are ordinarily furnished in a hospital for the care and treatment of inpatients;

2. Are furnished under the direction of a physician or dentist, except, as specified in 42 CFR 440.165 of the Social Security Act, for services provided by a certified nurse midwife;

3. Are furnished in an institution that:

i. Is maintained primarily for the care and treatment of patients with disorders including obstetrical services and services to the normal newborn;

ii. Is licensed or formally approved as a hospital by an officially designated authority for State standard-setting;

iii. Except in the case of medical supervision of nurse-midwife services, as specified in 42 CFR 440.165 of the Social Security Act, or private inpatient psychiatric facilities for children under 21 years of age, meets the requirements for participation in Medicare as a hospital; and,

iv. Has in effect a utilization review plan, applicable to all Medicaid patients, that meets the requirements of 42 CFR 482.30 of the Social Security Act, unless a waiver has been granted by the U.S. Secretary of Health and Human Services.

"Labor Market Area" means counties and municipalities in the State that are grouped in accordance with similar labor costs.

"Neonate" means a newborn less than 29 days of age.

"Nontherapeutic sterilization" means any procedure or operation, the purpose of which is to render an individual permanently incapable of reproducing and which is not either a necessary part of the treatment of an existing illness or injury, or medically indicated as an accompaniment of an operation on the female genitourinary tract. For the purpose of this definition, mental incapacity is not considered an illness or injury.

"Outliers" means patients who display atypical characteristics relative to other patients in a DRG and have lengths of stay either above or below the established trim points.

"Outpatient" means a patient registered in the outpatient department of a hospital or in a distinct part of that hospital who is expected to receive and who does receive professional services for less than a 24 hour period, regardless of the hour of admission; or whether or not a bed is used; or whether or not the patient remains in the hospital past midnight.

"Outpatient hospital services" means medically necessary items or services (preventive, diagnostic, rehabilitative, therapeutic, or palliative) provided to an outpatient by or under the direction of a physician or dentist, except for the medical supervision of nurse midwife services, or private inpatient psychiatric facility under 21 years of age, by an institution that is licensed or formally approved as a hospital by the New Jersey State Department of Health or by the officially designated authority in the state in which the hospital is located and meets the requirements for participation in Medicare (Title XVIII) as a hospital.

"Patient" means an individual who is receiving needed professional services that are directed by a licensed practitioner of the healing arts toward the maintenance, improvement, or protection of health, or lessening of illness, disability, or pain.

"Physician" means a doctor of medicine (M.D.) or osteopathy (D.O.) licensed to practice medicine and surgery by the New Jersey State Board of Medical Examiners, or similarly licensed by comparable agencies of the state in which he or she practices.

"Physician services" means those services provided within the scope of practice of a doctor of medicine (M.D.) or osteopathy (D.O.) as defined by the laws of New Jersey, or if in practice in another state by the laws of that state, and which services are performed by or under the direction and/or personal supervision of the physician. (See also N.J.A.C. 10:54-1.2.)

"Preliminary Cost Base (PCB)" means the estimated revenue a hospital may collect based on an approved schedule of rates which includes DRG rate amounts and indirect costs not included in the all-inclusive rate. Those indirect costs will either be the dollar amount specified or the estimated amount determined by a specific percentage adjustment to the rate.

"Rate year" means the year in which current reimbursement takes place.

"Trim points" means the high and low length of stay cutoff points assigned to each DRG.

“Uniform Bill—Patient Summary (UB-PS or UB-92)” means the common billing and reporting form used by the hospital for each Medicaid inpatient.

10:52-1.3 Eligibility; claim procedures

(a) A hospital shall adhere to the following procedure for completing the form, the “Public Assistance Inquiry (PA-1C)” to inform the appropriate agency that an individual intends to file a Medicaid application:

1. For those aged, blind or disabled persons with limited income and resources who appear to be eligible for Supplemental Security Income (SSI)/Medicaid, a hospital shall complete the form PA-1C and send it to the Social Security Administration (SSA) District Office serving their locale to initiate the eligibility process. The date of the inquiry shall protect the application date provided that the individual follows through with filing of an application.

2. For the aged, blind and/or disabled individuals, or pregnant women and certain children who do not qualify for or do not want an SSI money payment from the Social Security Administration and/or do want to be a Medicaid recipient through “Medicaid Only” or New Jersey Care . . . Special Medicaid Programs, a hospital shall complete the form PA-1C and send it to the appropriate county welfare agency (CWA).

3. A hospital shall submit the form PA-1C to the County Welfare Agency (CWA) immediately after the birth of a newborn of a mother who is or may become eligible for Medicaid. (Information on the newborn shall be included in item 1, 2, 4, 11a and 15 only. The mother’s signature shall be included in Item 23.)

i. There shall be no requirement for joint hospitalization of a mother and newborn as the sole condition for which claims for services to the newborn may be submitted using the mother’s Person Number.

ii. A mother who is a Medicaid recipient and her newborn shall have the same HSP (Medicaid) Case Number when they are a part of the same household, but each shall be assigned his or her own Person Number.

iii. A hospital shall be permitted to submit a claim for services to a newborn for 60 days from the date of the birth through the end of the month in which the 60th day occurs or until the newborn is assigned his or her own Person Number, whichever happens first.

iv. After the extended time frame of 60 days from the date of birth through the end of the month in which the 60th day occurs or upon the assignment of the newborn’s Person Number, the newborn’s personal data shall be used on the claim form as soon as it is available to the hospital. The mother’s personal data shall not be used on the claim form after this time frame or after the newborn’s Person Number is available to the hospital.

4. Previously submitted PA-1C forms shall be updated by the hospital if subsequent facts emerge that alter the original referral.

i. When it is determined that the original referral to the Social Security Administration was incorrect, the hospital shall forward a copy of the original PA-1C to the CWA with a note of explanation (see also N.J.A.C. in Administration Chapter for further information on Medicaid eligibility).

10:52-1.4 Eligibility of recipient for hospital services

(a) A recipient shall be ineligible for Medicaid reimbursement for hospital services under the following circumstances:

1. Hospital services were rendered prior to and after period of recipient eligibility, as determined in accordance with N.J.A.C. 10:49-2.5; except that, when a Medicaid recipient in an acute care general hospital loses eligibility during an inpatient hospital stay, but was eligible on the date of admission, eligibility shall continue for hospital inpatient services for the entire length of that hospital stay;

2. When a patient is admitted to a hospital and is determined Medicaid eligible subsequent to the date of admission, charges incurred during the ineligible period of the hospital stay shall not be reimbursable, unless coverage is pursued and approved under retroactive eligibility.

3. For coverage of services rendered prior to date of application for Medicaid, the recipient shall apply for retroactive eligibility, in accordance with N.J.A.C. 10:49-1.1.

10:52-1.5 Covered Services (Inpatient and Outpatient)

(a) Inpatient services which shall be covered by the Division are those services ordinarily furnished by an approved hospital maintained for the treatment and care of patients and provided to any Medicaid recipient for whom professionally developed criteria and standards of care were used to determine that the recipient warranted an appropriate hospital level of care for a given diagnosis and/or problem.

1. Inpatient psychiatric services in approved beds in a general hospital for patients of any age shall be covered services.

2. Inpatient room and board service shall be provided in a semi-private accommodation. Accommodations other than semi-private require certification of medical necessity or lack of availability of semi-private accommodations.

3. Inpatient services in an acute general hospital rendered the day after acute care is no longer medically necessary shall be covered only under specified conditions. (See Social Necessity Days in N.J.A.C. 10:52-1.11 and Administrative Days in N.J.A.C. 10:52-1.6.)

4. Non-physician services, supplies and equipment supplied by an outside vendor to Medicaid recipients who are receiving inpatient acute care hospital services shall be covered directly under the hospital reimbursement system. Vendor claims for these services are the responsibility of the acute care hospital where the recipient is a patient and shall not be billed directly to the Medicaid fiscal agent.

5. For recipients in the Medically Needy Program, inpatient hospital services shall be available only to pregnant women. For information on how to identify a Medicaid recipient in the Medically Needy Program, refer to N.J.A.C. 10:49-2.3(b)4, Administration Chapter.

(b) The Division shall pay for eligible ancillary services provided during a non-covered period in an acute care hospital in the following situations:

1. When the Utilization Review Organization (URO) denies the entire admission for acute level of care; and,

2. When the URO certifies the admission as acute but “carves out” days from the approved continued stay. For eligible ancillary services that were provided during days that were “carved out” or “non-covered” and occurring in an inlier stay, no additional reimbursement by Medicaid shall be made, since the services are already included in the DRG reimbursement rate; and

3. When the URO certifies that only part of the stay is acute.

(c) Medically necessary inpatient psychiatric services provided in an approved private psychiatric hospital shall be covered by the Division for any Medicaid recipient age 65 or older; or for any other Medicaid recipient before attaining the age of 21, except that a recipient receiving the services immediately before attaining age 21 may continue to receive the services until they are no longer needed or until the recipient reaches age 22, whichever occurs first.

(d) Outpatient services that shall be covered by the Division are those medically necessary items or services (preventive, diagnostic, therapeutic, rehabilitative, or palliative) provided to an outpatient, by or under the direction of a physician or dentist, except for the supervision of the certified nurse midwife services, pursuant to the rules of the Division and applicable Federal regulations, including those services listed below:

1. Outpatient psychiatric services in general hospitals and private psychiatric hospitals for patients of all ages;

2. Same Day Surgery shall be covered by the Division when the Medicaid recipient:

i. Is identified on the UB-92 claim form as a 131 or 136 bill type in accordance with N.J.A.C. 8:31B-2.1; and,

ii. Is discharged before midnight of the day of admission so the admission date and discharge date are the same; and,

iii. Had surgery performed in a fully equipped operating room, for example, one routinely equipped and capable of providing general anesthesia, and identified by an operating room charge on the claim; and,

iv. Had a normal discharge, for example was not transferred, did not leave “against medical advice”, and was not discharged dead. (See N.J.A.C. 8:31B-3.11 and 8:31G-32—Same day surgery.)

3. Physician services in hospitals (outpatient) (that is, specifically unbundled physicians): A physician practicing in a hospital outpa-

tient department whose reimbursement is not part of the hospital's cost may bill fee-for service if the arrangement with the hospital permits it.

4. Family planning services including medical history and physical examination (including pelvis and breast), diagnostic and laboratory tests, drugs and biologicals, medical supplies and devices, counseling, continuing medical supervision, continuity of care and genetic counseling.

5. The Norplant System (NPS) shall be a Medicaid covered service when provided as follows:

i. The NPS is used only in reproductive age women with established regular menstrual cycles;

ii. The Food and Drug Administration (FDA)-approved physician prescribing information is followed; and

iii. Patient education and counseling are provided relating to the NPS, including pre and post insertion instructions, indications, contraindications, benefits, risks, side effects, and other contraceptive modalities.

iv. The visit relating only to the insertion and removal of the Norplant System (NPS) is not reimbursable on the day of insertion or removal.

v. Only two insertions and two removals of the NPS per recipients are permitted during a five year continuous period.

vi. The hospital shall not be reimbursed for the NPS in conjunction with other forms of contraception, for example, intra-uterine device.

(e) Transfer from one outpatient facility to another outpatient facility, or a change from an outpatient facility to a private practitioner's care is allowable; however, effort shall be made to avoid duplication of diagnostic tests or services.

(f) For policies and procedures for Ambulatory Surgical Centers, see N.J.A.C. 10:52-2.1 and N.J.A.C. 10:66-5 in the Independent Clinic Services Chapter.

(g) For policies and procedures for hospital-affiliated home health agencies, see N.J.A.C. 10:52-2.5 and N.J.A.C. 10:60 in the Home Care Services Chapter.

(h) For policies and procedures for Medical Day Care Centers (Hospital Affiliated), see N.J.A.C. 10:52-2.6 and N.J.A.C. 10:65 in the Medical Day Care Services Chapter.

(i) For policies and procedures for HealthStart (Comprehensive Maternity and Pediatric Care Services), see N.J.A.C. 10:52-3 in this manual. For policies and procedures for Early and Periodic Screening Diagnostic and Treatment, see N.J.A.C. 10:52-2.5.

(j) For other policies and procedures related to specific services, both inpatient and outpatient, see N.J.A.C. 10:52-2.

10:52-1.6 Non-Covered Services (Inpatient and Outpatient)

(a) Non-covered services (inpatient and outpatient) that shall not be eligible for payment by the Division are as follows:

1. Hospital admissions of the following description:

i. Admission for any condition for which hospitalization is not medically necessary;

ii. Admission primarily for rest cure, custodial care, convalescent care, or diet therapy for exogenous obesity;

iii. Admission for illnesses which, according to generally accepted professional standards, are not amenable to favorable modification. However, psychiatric services in a general hospital shall be covered for the purpose of determining that such disorders or illness (such as senility) are not amenable to favorable modification;

iv. Admission for diagnostic procedures which may be done on out-of-hospital basis, including but not limited to laboratory tests, electrocardiograms, and diagnostic radiological services;

v. Admission or extension of hospital stay solely for research or teaching studies;

vi. Admission for inpatient services provided in an approved private psychiatric hospital unless:

(1) The Medicaid recipient is age 65 or over; or,

(2) The Medicaid recipient has not attained age 21, except that an individual receiving such services immediately preceding the date on which he or she attained age 21 will continue to be covered until the date the individual no longer requires such services or the date the individual reaches age 22, whichever occurs first; and,

vii. Admission of recipients in the Medically Needy Program, except for pregnant women. For information on how to identify a Medically Needy recipient, see N.J.A.C. 10:49-2.3(b), Administration Chapter.

2. Any service or item requiring prior authorization (see N.J.A.C. 10:52-1.7, Prior authorization) which has been performed without prior authorization.

3. Medically unnecessary items and services, as follows:

i. Any service or item which is not medically necessary for the prevention, diagnosis, palliation, rehabilitation, or treatment of a disease, injury or condition;

ii. Inpatient hospital services rendered prior to the day it is medically necessary for the diagnostic services and/or surgical or medical treatment for which the patient is admitted.

iii. Inpatient hospital services rendered after the day it is medically necessary in a general hospital, except when special circumstances, that is, "social necessity", to prevent the discharge or transfer of the patient or when an inpatient is eligible for "administrative days" (see N.J.A.C. 10:52-1.11 Social Necessity and N.J.A.C. 10:52-1.6 Administrative Days).

iv. Inpatient hospital services denied for lack of medical necessity shall not be covered.

4. Private duty nursing services in the hospital inpatient setting;

5. Research or Teaching Studies;

6. Surgery (Elective), as follows:

i. Cosmetic Surgery, except that the Division shall consider authorization of a request from the patient's physician for elective cosmetic surgery, if a significant redeeming medical necessity can be demonstrated; and,

ii. Second Opinion Elective Procedures without meeting the Second Opinion requirement (see N.J.A.C. 10:52-1.10—Second Opinion Program);

7. Transportation, except as in N.J.A.C. 10:52-2.15—Transportation Services (Hospital-based);

8. Fee-for-service billed by a hospital-based physician who is salaried and whose services are reimbursed as part of the hospital's cost.

9. Services provided primarily for the diagnosis and treatment of infertility, including sterilization reversals, and related medical visits, drugs, laboratory, radiological and diagnostic services and surgical procedures:

i. Exception: When a service is provided that is ordinarily considered an infertility service, but is provided for another purpose then.

ii. The hospital shall submit the claim with supporting documentation for medical review and approval of payment to the Division of Medical Assistance and Health Services, Office of Medical Affairs and Provider Relations, Mail Code #14, Trenton, New Jersey 08625-0712;

10. Other services and items not directly related to the care of the patient, such as:

i. Inpatient items and services including guest meals and accommodations, television, telephone, and similar items and services. Personal items shall be billed to the patient directly, provided the patient is informed and agrees to accept responsibility for personal items; and,

ii. Outpatient items and services which are not usually part of the outpatient service; for example, eyeglasses, custom-made limbs and braces, or surgical supplies.

11. Services and items that are billed by, and payable to, another vendor;

12. Services and items furnished by the hospital, for which the hospital does not normally charge;

13. Services and items not medically required for the diagnosis or treatment of a disease, injury or condition; and,

14. Services provided to a patient during the same period for the same condition by both private practitioner and outpatient facility, or by two different facilities, shall not be covered. Payment shall be made for only one service, except in an emergency. (For definition of an emergency, see N.J.A.C. 10:49-6.1, Administration Chapter.)

10:52-1.7 Administrative Days (Nursing Facility Level of Care)—
General, Special (Classification A & B) and Private
Psychiatric Hospitals

(a) For a patient who is no longer in need of inpatient acute level of care and who is awaiting placement in a nursing facility, payment shall be made for "administrative days" if the general, special, rehabilitation, or the private psychiatric hospital demonstrates that:

1. All other possible health insurance benefits have been utilized;
2. Discharge planning was initiated upon admission of the patient to the hospital, reviewed, and updated regularly. Within one working day of identifying a Medicaid recipient as being at risk for nursing facility placement, the hospital notified the Medicaid District Office and the county welfare agency (CWA). See N.J.A.C. 10:52-1.8 in this chapter—Pre-Admission Screening for Nursing Facility Placement;
3. The care and services provided are medically necessary, that is, the attending physician wrote a discharge order from acute care or made a written entry in the medical record that the patient could be transferred to a nursing facility (NF); and a Pre-Admission Screening Evaluation (PAS) confirmed the necessity for nursing facility services; and

4. Placement could not be made in an NF, as substantiated by documentation of timely and continuous contact (at a minimum, twice a week) with family members, nursing facilities (NFs), and placement agencies.

(b) Upon satisfaction of all the conditions listed under (a)1 through 4 above, payment will be made at the statewide weighted average per diem rate paid to Medicaid participating NFs, as determined on January 1 of each year;

(c) The N.J.S.A. 30D:4D-6.7 and 6.8 requires every nursing facility in the State to reserve a Medicaid recipient's bed up to ten days when the recipient is transferred from the nursing facility to a general or private psychiatric hospital. If the discharged Medicaid recipient is unable to return to the nursing facility before the end of the 10 day period, the discharged recipient shall have priority for the next available Medicaid bed in the facility. When the recipient is admitted to the hospital under the bed reserve policy, the hospital shall:

1. Involve the NF in the preparation of the hospital's discharge planning; and,
2. Advise the NF of an anticipated discharge date; and,
3. Keep the NF informed of the patient's progress, particularly if something unexpected happens which causes a revision to the discharge plan; and,
4. Give the NF as much advanced notice as possible to prepare for the return of the patient; and,
5. When the 10 day bed reserve is exceeded and no bed is available in the NF from which the recipient was transferred, the hospital must provide the level of NF care determined by the Medicaid Regional Staff Nurse during the Pre-Admission Screening Evaluation until such time as a bed is available to the Medicaid recipient. (See N.J.A.C. 10:52-1.8.)

(d) For the information of hospital staff assisting in the discharge of a patient to an NF, N.J.S.A. 30:4D-17.3, prohibits, in general, an NF from requiring private pay contracts or donations under certain conditions on behalf of Medicaid recipients. To enforce this prohibition, the law establishes both criminal and civil penalties. (See also N.J.A.C. 10:49-9.7, Administration.)

(e) N.J.S.A. 10:5-12.2 of the New Jersey Civil Rights Act prohibits an NF from discriminating against Medicaid eligible persons and recipients of municipal general assistance by denying them admission when the NF's Medicaid occupancy level is below the Statewide occupancy level.

(f) Provisions for reimbursement of administrative days (nursing facility level of care) do not apply to special hospitals (Classifications A and B).

10:52-1.8 Prior authorization

(a) Prior authorization shall be required for certain dental procedures (see N.J.A.C. 10:56 of the Dental Services Manual) and partial hospitalization provided in the outpatient department of an

acute care hospital beyond exempt time frames (see N.J.A.C. 10:52-2.9(c).)

(b) Other services require adherence to special procedures, such as the requirements of the Second Opinion Program, before certain elective surgical procedures are performed. Specific services are described in the "Policies and Procedures for Providing Specific Services", in N.J.A.C. 10:52-2. Hospital entitlement to Medicaid payment is subject to providing these services in accordance with the policies and procedures as outlined. For general information about prior and retroactive authorization, see N.J.A.C. 10:49-6.1, Administration Chapter.

(c) For out-of-State services, see 42 CFR 431.52. Prior authorization as outlined in (d) below shall be required for inpatient and outpatient hospital services provided to a recipient outside the State of New Jersey, except as provided in (e) below. Hospital covered services for a recipient with an HSP (Medicaid) Case Number with the 1st and 2nd digits of 90 or the 3rd and 4th digits of 60, residing out-of-State at the discretion of the New Jersey Department of Human Services, shall not require prior authorization. Any covered service that requires prior authorization as a prerequisite for payment to New Jersey Medicaid providers also requires prior authorization if it is to be reimbursed by the Division in any other State, except that prior authorization is not required for emergency and interstate transfers.

(d) A request for authorization for reimbursement for out-of-State services shall be directed to the Medicaid District Office in the area where the recipient resides except as listed in (d)1 below. For a listing of MDOs, see the Directory at the end of the N.J.A.C. 10:49, Administration Chapter.

1. Prior authorization of out-of-State psychiatric services shall be directed to the psychiatric consultant in the Office of Medical Affairs and Provider Relations of the Division of Medical Assistance and Health Services, in accordance with N.J.A.C. 10:54, Physician Services Chapter.

2. For a recipient who resides in New Jersey in other than a hospital and who is to be admitted or referred to an out-of-State hospital for elective inpatient or outpatient services, the physician planning such action shall sign a statement that the medically necessary service is not available at a reasonable distance within the State of New Jersey; and

3. For a recipient who is traveling outside New Jersey and who is to be admitted to an out-of-State hospital for elective surgery, the attending physician shall justify by a signed statement that an attempt to return to a New Jersey hospital would create a significant risk to life or health or would create the need for an unreasonable amount of travel for the recipient.

4. The Division shall notify, in writing, the physician making the request.

i. If authorized, the authorization letter of the Medical Consultant of the Division shall be forwarded to the requesting physician. When arranging for hospital admission, the physician shall forward a copy of the authorization letter to the hospital. When submitting the claim for services to the fiscal agent, the hospital shall attach the authorization letter, or a copy of the letter, to the claim.

(e) Prior authorization shall not be required for emergencies nor for interstate hospital transfers. However, in these instances, the hospital shall attach the attending physician's signed statement to the claim, attesting to the nature of the emergency or, for a hospital interstate transfer, attesting to the unavailability of the medically necessary service within a reasonable distance within the State of New Jersey.

(f) For Medicaid recipients who have the diagnosis of Head Injury, for whom it is medically necessary to discharge from a hospital or special hospital to a special program in an NF, or to home care through the Traumatic Brain Injury Waiver Program, the hospital discharge planner and/or social worker shall obtain prior authorization for the placement (for either in-State or out-of-State patients) from the Medicaid District Office in the county where the recipient is residing. For information on the Traumatic Brain Injury Waiver program, see N.J.A.C. 10:60-5.2 and 5.3 and N.J.A.C. 10:49-17.5, Administration Chapter.

10:52-1.9 Pre-Admission screening for nursing facility (NF) placement

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

"Pre-Admission screening" (PAS) means that process by which all Medicaid eligible recipients seeking admission to a Medicaid certified NF and individuals who may become Medicaid eligible within six months following admission to a Medicaid certified NF, receive a comprehensive needs assessment by the Regional Staff Nurse to determine their long term care needs and the most appropriate setting for those needs to be met, pursuant to N.J.S.A. 30:4D-17.10. (P.L. 1988, c.97.)

"Pre-Admission screening and annual resident review (PASARR)" means that process by which all individuals with mental illness (MI) or mental retardation (MR), regardless of payment source, are screened prior to admission to a NF and annually thereafter in order to determine the individual's appropriateness for NF services, and whether the individual requires specialized services for his or her condition.

"PASARR Level I" means the process of identification of individuals diagnosed with a serious mental illness (MI) or mental retardation (MR).

"PASARR Level II" is the process of evaluating and determining whether NF services and specialized services are needed.

"Specialized Services for Mental Illness (MI)" mean those services offered when an individual is experiencing an acute episode of serious mental illness and psychiatric hospitalization is recommended, based on a Psychiatric Evaluation. Specialized Services entail implementation of a continuous, aggressive, and individualized treatment plan by an interdisciplinary team of qualified and trained mental health personnel. During a period of 24-hour supervision for the individual, specific therapies and activities are prescribed, with the following objectives: a) to diagnose and reduce behavioral symptoms; b) to improve independent functioning; and c) as early as possible, to permit functioning at a level where less than Specialized Services are appropriate. Specialized Services go beyond the range of services which a NF is required to provide.

"Specialized Services for Mental Retardation (MR)" mean those services required when an individual is determined to have skill deficits or other specialized training needs that necessitate the availability of trained MR personnel, 24-hours per day, to teach the individual functional skills. Specialized Services are those services needed to address such skill deficits or specialized training needs. Specialized services may be provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR) or in a community-based setting which meets ICF/MR standards. Specialized services go beyond the range of services which a NF is required to provide.

"Health Services Delivery Plan (HSDP)" means an initial plan of care prepared by the Medicaid Regional Staff Nurse (RSN) during the Pre-Admission Screening (PAS) assessment process. The HSDP reflects the individual's current or potential problems, required care needs, and the Track of Care, and shall be forwarded to the authorized care setting.

"Nursing Facility (NF)" means an institution (or distinct part of an institution) certified for participation in Title XIX Medicaid and primarily engaged in providing health-related care and services on a 24-hour basis to Medicaid recipients (children and adults) who, due to medical disorders, developmental disabilities, and/or related cognitive and behavioral impairments, exhibit the need for medical, nursing, rehabilitative, and psychosocial management above the level of room and board. However, the nursing facility is not primarily for the care and treatment of mental diseases which require continuous 24-hour supervision by qualified mental health professionals or the provision of parenting needs related to growth and development.

"Regional Staff Nurse (RSN)" means a registered professional nurse employed by the Division who performs health needs assessments as required by this section.

"Track of Care" means designation of the setting and scope of Medicaid services as determined by the PAS process conducted by

the RSN following assessment of the Medicaid recipient or potential Medicaid recipient, as follows:

1. "Track I" means long-term NF care;
2. "Track II" means short-term NF care; and,
3. "Track III" means long-term care services in a community setting.

(b) Pre-admission Screening (PAS) authorization shall be required prior to admission to a Medicaid certified NF of a Medicaid recipient, or an individual who may become a Medicaid recipient within six months following placement in a Medicaid certified NF. The Medicaid Regional Staff Nurse (RSN) will assess each individual's care needs and determine the appropriate setting for the delivery of needed services. The RSN will authorize or deny NF placement based on service requirements at N.J.A.C. 10:63-2 and the feasibility of alternative placement and will designate the track of care, in accordance with N.J.A.C. 10:63-1.11.

(c) PAS authorization is also required for individuals identified as having MI or MR regardless of the payment source. The PASARR assessment and authorization process shall be subsumed within the State's PAS protocols, as required by (d) below.

1. PASARR Level I Identification Screens shall be required for individuals diagnosed as MI, MR, or related conditions.

2. An individual is considered to have mental illness (MI) if he or she has a serious mental illness, such as schizophrenia, mood disorder, paranoia, panic or severe anxiety disorder, or similar condition, diagnosable in the Diagnostic and Statistical Manual of Mental Disorders (DSMIII-R; 1987 edition) (available from the American Psychiatric Association, 1400 K St. NW, Washington, DC 20005), which leads to a chronic disability and which meets the PASARR requirements for diagnosis, level of impairment, and duration of illness.

i. An individual is considered to have dementia if he or she has a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders (DSMIII-R; 1987 edition) and does not have a serious mental illness.

3. An individual is considered to have mental retardation if he or she has a level of retardation (mild, moderate, severe or profound) described in the "American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983)" or a related condition, as defined by, and pursuant to, Section 1905(d) of the Social Security Act (Omnibus Budget Reconciliation Act of 1987—P.L. 100-203); 42 U.S.C. 1396(d), and i below. An individual with a diagnosis of MR or a related condition and a diagnosis of dementia must have the PASARR Level II Screen, prior to admission to a Medicaid facility.

i. "Persons with related conditions" means individuals who have severe, chronic disability that meet all of the following conditions:

(1) It is attributable to cerebral palsy or epilepsy; or any other condition (other than mental illness) found to be closely related to mental retardation (developmental disability) because this condition (the mental and/or physical impairment) results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons;

- (2) It is manifested before the person reaches the age 22; and
- (3) It is likely to continue indefinitely.

4. PASARR Level II Specialized Services Screens shall be conducted for mentally ill or mentally retarded individuals only if the Medicaid RSN's assessment results in authorization of NF placement.

i. Level II Specialized Services Screens require that a psychiatric examination be performed by a Board eligible/certified psychiatrist to determine the need for specialized services, in accordance with (e) below.

ii. Level II Specialized Services Screens for MR individuals will be performed by the Division of Developmental Disabilities (DDD) to determine the need for specialized services, in accordance with (d) below.

5. After an initial PASARR assessment has been completed, the individual transferred from a nursing facility to an acute care general hospital or to a psychiatric hospital with an admitting diagnosis of

MI, shall not require a Level II specialized services screen or a PAS nursing facility assessment prior to readmission to a nursing facility. If the individual is transferred to a different facility, the hospital discharge planner shall advise the admitting NF of the individual's former NF placement.

6. For individuals diagnosed with Alzheimer's or related dementias, documentation to support the diagnosis, including history, physical examination and diagnostic workup shall be provided to the admitting Medicaid certified nursing facility for the individual's clinical record.

7. Hospitals shall not transfer individuals to Medicaid certified NFs until Level II Specialized Service Screens have been conducted and the hospital has received MDO notification that specialized services are not required.

(d) The determination of the necessity for NF services shall be performed through Pre-admission Screening (PAS), as mandated by N.J.S.A. 30:4D-17.10. The Medicaid Regional Staff Nurse (RSN) shall determine the necessity for nursing facility services for Medicaid recipients, for individuals who may become Medicaid recipients within six months following admission to a Medicaid certified facility, and for individuals identified as meeting PASARR Level I criteria. The MDO having jurisdiction for the area where an acute care hospital is located has the responsibility for completing the PAS assessment, regardless of the recipient's county of residence or anticipated county of discharge.

1. The Medicaid RSN shall:

- i. Review the medical, nursing, and social information obtained at the time of assessment, as well as any other supporting data;
- ii. Assess the individual's care needs;
- iii. Determine the appropriate setting for the delivery of needed services;
- iv. Authorize or deny NF placement based on service requirements at N.J.A.C. 10:63-2 and the feasibility of alternative care;
- v. Designate the track of care; and
- vi. Advise the discharger planner and/or social worker of the appropriate setting for the delivery of needed services and, if appropriate, for the need for the PASARR Level II specialized services screen.

2. The Medicaid RSN shall schedule and perform the assessment process within three working days of the hospital discharge planner and/or social worker's initial contact with the MDO. Individuals who exhibit unstable, severe medical conditions, such as a patient in the Intensive Care or Coronary Care Unit, shall not be referred for PAS until that condition has stabilized.

3. A signed "Release of Information form (MCNH-69 Rev. 11/89)" shall be obtained from the patient. If the patient refuses NF placement, home care services, or participation in the PAS assessment process, the Medicaid RSN shall make every effort to obtain a signed participation declination statement, which shall be included in the patient's MDO case record.

4. NF placement approval: The Medicaid RSN shall verbally advise the hospital discharge planner and/or social worker and patient and/or family of the assessment decision.

i. For a Track I or II determination, the Medicaid RSN shall leave a copy of the HSDP and signed approval letter with the discharge planner/social worker. For individuals requiring Level II special services screens, the signed approval letter shall be forwarded only after the determination has been made that no specialized services are required.

ii. For a Track III determination, the Medicaid RSN shall leave a copy of the HSDP and signed approval letter with the discharge planner and/or social worker to forward to the home care provider. The discharge planner and/or social worker shall arrange needed home health services and forward a copy of the HSDP and signed approval letter to the home care agency. A Track III determination shall not be an authorization for NF services.

iii. The original approval letter signed by the Medicaid RSN shall be sent by the MDO to the patient and/or family with copies to the county welfare agency (CWA).

iv. A copy of the HSDP that was left with the hospital discharge planner and/or social worker by the Medicaid RSN, shall be attached

to the hospital discharge material and forwarded with the patient to the admitting NF.

(1) If the patient being transferred will be eligible for Medicare benefits, the transfer shall be made to a Medicare participating NF.

5. NF placement denial: The Medicaid RSN shall verbally advise the hospital discharge planner and/or social worker and patient and/or family of the assessment decision. The Medicaid RSN shall leave a signed copy of the NF placement denial letter with the discharge planner/social worker. The original denial letter, signed by the Medicaid RSN, shall be sent to the patient and/or family by the MDO, with copies to the CWA.

(e) The hospital discharge planner and/or social work staff shall be responsible for identifying a Medicaid recipient inpatient or a Medicaid applicant inpatient who may be at risk of NF placement.

1. The identification process shall also include any inpatient in need of NF care who may become a Medicaid recipient within six months after NF admission and individuals meeting PASARR Level I criteria. (See N.J.A.C. 10:52-1.8(c).) These patients shall be referred by the hospital to the MDO and the CWA or the basis of the "At-Risk Criteria for Nursing Facility Placement and Referral to the Medicaid Office for PAS Evaluation" in (f) below. Medicaid recipients already residing in Medicaid participating facilities who are transferred to an acute care hospital and who are returning to either the same or a different NF, shall not require PAS authorization.

i. Within one working day of identifying an inpatient as being at risk for NF placement, the Hospital Discharge Planner and/or Social Worker shall:

(1) Make a telephone or FAX referral to the MDO and the CWA; and,

(2) If not already a Medicaid recipient, generate a Public Assistance Inquiry (PA-1C) to initiate the application process for Medicaid.

(3) Within two working days of the telephone referral to the MDO and CWA, the Hospital Discharge Planning Office shall forward the completed "Hospital Pre-Admission Screening Referral (PAS-5, 2/90)" to the MDO, unless it was "faxed" on the day of the referral.

2. The PASARR Level II Specialized Service Screens shall be performed by a Board eligible or Board certified psychiatrist for final determination, as follows:

i. The hospital discharge planning unit and/or social services department shall immediately arrange through the individual's attending physician, a consultation by a board eligible or board certified psychiatrist to complete the "Psychiatric Evaluation DMHH (1994)" form. (The "Psychiatric Evaluation" form shall not be completed until such time as the Medicaid RSN has approved Medicaid-certified NF placement.)

ii. Within 48 hours of the psychiatrist's review of the recipient or potential Medicaid recipient, the completed Psychiatric Evaluation form shall be sent to the Division of Mental Health and Hospitals, CN-727, Trenton, New Jersey 08625-0727, Attention: PASARR Coordinator.

(1) A supply of the "Psychiatric Evaluation" form may be ordered from the PASARR Coordinator in the Division of Mental Health and Hospitals.

iii. The MDO shall contact the appropriate Regional Office of the Division of Developmental Disabilities (DDD) agency to advise them of the need for a Level II MR Screen. The MR Level II Specialized Services Screen will be completed by the DDD staff within three working days of the MDO contact.

iv. The final determination of the specialized services review by the DMH&H and/or DDD agencies shall be communicated to the Medicaid District Office who, in turn, shall provide the hospital discharge planning unit and/or social services department with the approval or denial decision for placement in a Medicaid NF.

(f) The "At-Risk Criteria for Nursing Facility Placement and Referral to the Medicaid Office for PAS" shall be utilized by the hospital in determining if a referral for long term care services, either in an NF or in the community, is indicated, as follows:

i. The medical criteria are as follows. Has the patient experienced any of the following:

(1) Catastrophic illness requiring major changes in lifestyle and/or living conditions, that is, multiple sclerosis, stroke, multiple trauma, AIDS, amputation, neurological disease, cancer, birth defect(s), and end stage renal disease.

(2) Debilitation and/or chronic illness causing progressive deterioration of self-care skills, that is, severe chronic disease, spina bifida, progressive pulmonary disease or diabetes.

(3) Multiple hospital admissions within the past six months. (Do not refer patients admitted directly from NFs.)

(4) Previous NFs admissions within the past two years.

(5) Major health needs, that is, tube feedings, special equipment or treatments, rehabilitation-/restorative services.

ii. The social criteria are as follows: In addition to the medical criteria, does the patient meet any of the following social situations:

(1) Homeless;

(2) Lives alone and/or has no immediate support system;

(3) Primary caregiver is not able to provide required care services;

or
(4) Lack of adequate support systems.

iii. The financial criteria are as follows. Does the patient meet any of the income and asset tests:

(1) Currently eligible for Medicaid;

(2) Monthly income at/or below the current institutional specified at N.J.A.C. 10:71-5.6.

(A) Has no spouse in the community and resources no greater than those specified at N.J.A.C. 10:71-4.4 and 4.5;

(B) Has no spouse in the community and resources at/or below \$26,000. (This is an indication that the patient may become Medicaid eligible within the next six months by spending down assets in an NF as private pay); or

(C) Has a spouse in the community with combined countable resources at or below \$52,000. (This allows for calculation of the community spouse's resources under Medicare Catastrophic Coverage Act of 1988.)

(3) Monthly income at/or below the current New Jersey Care Special Medicaid programs maximum monthly income limit specified at N.J.A.C. 10:72-4.1 and:

(A) Has no spouse in the community and resources no greater than those specified at N.J.A.C. 10:71-4.4 and 4.5;

(B) Has no spouse in the community and resources at/or below \$26,000. (This is an indication that the patient may become Medicaid eligible within the next six months by spending down assets in an NF as private pay); or

(C) Has a spouse in the community with combined countable resources and/or below \$56,000. (This allows for calculation of community spouse's resources under the Medicare Catastrophic Coverage Act of 1988.)

(g) The hospital discharge planner and/or social worker shall be responsible for the discharge or placement arrangements of the patient.

1. For each hospital patient referred for PAS, the hospital shall complete and send to the MDO a "Hospital Pre-Admission Screening Discharge form (PAS-6, 2/90)".

i. For any patient discharged to a NF, a Discharge Package (HSDP, discharge paper work, MDO approval letter, hospital transfer sheet, and PASARR documentation including the documentation which supports a diagnosis of Alzheimer's disease or related organic dementia) shall be compiled to accompany the patient to the NF.

(1) If the patient being transferred to a NF is eligible for Medicare benefits, the transfer shall be made to a Medicare participating NF.

ii. For those recipients discharged to community locations, the hospital social worker and/or discharge planner shall be responsible for the implementation of the HSDP by securing home care services.

10:52-1.10 Recordkeeping

Hospitals shall be required to keep legible individual records as are necessary to fully disclose the kind and extent of services provided, as well as the medical necessity for those services. This information shall be available upon the request of the Division or its agents.

10:52-1.11 Second opinion program for elective surgical procedures

(a) A second opinion shall be obtained for any elective surgical procedures. The recipient shall retain the right to decide whether or not to proceed with the surgery; however, failure to obtain a second opinion for these procedures shall result in a denial of the hospital claim.

1. If the operating physician determines that the need for surgery is urgent or is an emergency, no second opinion shall be required. "Urgent" or "emergency" includes any situation in which a delay in performing surgery in order to meet the second opinion requirement could result in a significant threat to the patient's health or life.

i. Reimbursement for urgent or emergency surgery shall be made only if a specific statement is attached to the claim form by the operating physician certifying that the second opinion requirement was not met and substantiating the urgent or emergent nature of the surgery.

2. If a Medicaid recipient is covered by another health insurance carrier (except Medicare) which makes only partial payment on the claim, the fiscal agent shall not make supplementary payment unless the second opinion requirement has been met. However, the fiscal agent shall make payment on the claim if the hospital receives documentation that a second opinion was arranged for and paid for by another health insurance carrier. A copy of this documentation must be attached to the Medicaid claim form.

(b) The following elective surgical procedures fall under the Second Opinion Program:

1. Hernia Repair (Unilateral or bilateral including common abdominal wall type) for any herniorrhaphy involving an adult (over 18 years of age).

2. Hysterectomy (See also N.J.A.C. 10:52-2.13(e));

3. Laminectomy;

4. Spinal fusion;

i. A second opinion shall not be required for spinal fusion for scoliosis in a child or young adult 18 years of age or under.

5. Tonsillectomy/Adenoidectomy;

i. A second opinion is required for all tonsillectomy/adenoidectomy procedures except for primary adenoidectomy for children under 12 years of age.

(c) A second opinion shall be arranged through the Medicaid Second Opinion Referral Services of the Provider Services Unit at the fiscal agent.

1. A consultation ordered by a physician shall not meet the Program's definition of a second opinion and no "Authorization for Payment" shall be granted based on such a consultation. The only exception to this policy involves second opinions arranged and paid for by other health insurance carriers. (See (a)2 above.)

2. In order to prevent claim denial as a result of a situation in which one of the elective surgical procedures is scheduled and performed before the second opinion requirement is met, it is suggested that the elective surgery not be scheduled until after the second opinion has been rendered.

(d) Neither the physician claim nor hospital claim associated with one of the second opinion procedures shall be paid unless attached to the hard copy claim is an "Authorization for Payment", or documentation of a second opinion arranged through another health insurance carrier, or a specific statement from the operating physician certifying that the second opinion requirement was not met and substantiating the urgent or emergency nature of the surgery.

1. Reimbursement shall not be made for a second opinion rendered to an individual who is not a Medicaid recipient. The issuance of a "Medicaid Second Opinion Referral Form" to the recipient by the Medicaid Second Opinion Referral Services of the Provider Services Unit shall not guarantee the individual's eligibility on the date of the second opinion or subsequent surgery. The individual's Medicaid eligibility shall be verified by checking the individual's current New Jersey Medicaid Validation Form before rendering any service (See N.J.A.C. 10:49-2.3, Administration Chapter—How to Identify a Medicaid Recipient).

(e) For physician requirements regarding Second Opinion procedures, see N.J.A.C. 10:54, Physician Services Chapter.

10:52-1.12 Social necessity days

(a) Payment for "Social necessity days" shall be made to hospitals for a maximum of 12 calendar days per hospitalization for a Medicaid recipient child admitted with the diagnosis of child abuse or suspected child abuse, if special circumstances (social necessity) prevent the discharge or transfer of the patient and the hospital has taken effective action to initiate discharge or transfer of the patient.

1. For these cases, it is not necessary for the day of admission to be at the acute level of care.

2. Effective action is defined as telephone notification to the County Welfare Agency (CWA), or Division of Youth and Family Services (DYFS) district office, or other responsible officials as may be designated, within 48 hours of the time that the stay is determined to be no longer medically necessary. This telephone contact shall then be confirmed in writing within three working days. A copy of the written notification shall be submitted with all claims for which reimbursement is claimed for special circumstances (social necessity).

3. Medicaid reimbursement for social necessity shall be made to hospitals paid in accordance with the DRG rate setting methodology in N.J.A.C. 10:52-5 through 9.

10:52-1.13 Utilization control (inpatient services)

(a) This section provides information on the requirements for utilization control for inpatient services for approved acute general hospitals, special hospitals, and private psychiatric hospitals. EXCEPTION: For inpatient psychiatric hospital services for individuals under the age of 21, refer to N.J.A.C. 10:52-1.13 of this manual.

(b) For the purposes of this rule, the following words and terms shall have the following meanings:

"Utilization Control" means an approved program instituted, implemented and operated by or under the authorization of a utilization review organization (URO) which effectively safeguards against unnecessary or inappropriate Medicaid services and assesses the quality of those services to Medicaid recipients.

"Utilization Review Organization (URO)" means an organization designated and certified by the New Jersey State Department of Health, that has review authority over hospitals for specific functions for utilization review and quality assurance for all admissions to and continued lengths of stay at general hospitals in New Jersey. The review may be delegated or non-delegated and billed to the hospital under N.J.A.C. 8:31B-3.81.

(c) Under the Social Security Act, Section 1903(g) and (h), the Division is responsible for an effective program to control the utilization of services in hospitals. (See 42 CFR Part 456, Utilization Control, Subchapters B, C, and D). Included under utilization control are: Certification and recertification of the need for inpatient care; medical, psychiatric and social evaluations; a PoC established and periodically reviewed and evaluated by a physician; and a continuous program of utilization review under which the admission of each recipient is reviewed or screened. Hospital entitlement to Medicaid payment for services rendered to a Medicaid recipient for each period of hospitalization is subject to the following requirements:

1. A physician shall certify, for each recipient or applicant, that inpatient services in the acute care or in the private psychiatric hospital are or were needed.

i. The certification shall be made at the time of admission or, if an individual applies for assistance while in a hospital, before the Medicaid Program authorizes payment.

ii. The certification shall be in writing and signed, or initialed, by a physician. The signature or initials are not acceptable if they are rubber stamped unless the physician has initialed the stamped signature. The physician shall date the certification on the date he or she signs it.

iii. The certification for any Medicaid patient shall be maintained in the recipient's medical record.

iv. Acceptable documentation for certification or recertification may be any of the following:

(1) A statement, signed and dated, by the attending physician, staff physician, and/or consultant physician who has knowledge of the case, attesting that the recipient is in need of hospital care.

(2) Physician's orders which are signed and dated on admission and clearly attest to the need for hospital care.

(3) A medical evaluation which designates the services and which is signed and dated by a physician who has knowledge of the case.

(4) An admission review form signed and dated by an attending or staff physician who has knowledge of the case.

2. A physician shall recertify for each Medicaid recipient or applicant that inpatient services in a hospital are needed.

i. Recertification shall be made at least every 60 days after certification.

ii. The recertification shall be in writing, shall attest to the need for inpatient services, and shall be signed or initialed by a physician who has knowledge of the case.

iii. The physician shall date the recertification on the date that he or she signs it.

iv. The recertification shall demonstrate the need for the level and type of care that the recipient is receiving.

v. The recertification for any Medicaid recipient must be maintained in the recipient's medical record.

vi. Acceptable documentation for recertification shall include any one of the following:

(1) A signed and dated statement by the physician who has knowledge of the case, attesting that continued care of a particular level or type is needed; or,

(2) Signed and dated orders by the physician who has knowledge of the case that clearly indicated that continued care is needed; or,

(3) Signed and dated progress notes by the physician who has knowledge of the case that clearly indicate that continued care is needed; or,

(4) Signed and dated reports that a physician might use in caring for the recipient that clearly indicate that continued care is needed; or,

(5) An admission certification or recertification form signed and dated by a physician who has knowledge of the case; or

(6) Utilization Review Committee (URC) minutes or form which indicate that the recipient's care was reviewed by a physician who had knowledge of the case and that continued care was needed. The physician's signature, with the date, shall be attached to the URC minutes or forms.

3. Any days billed by the hospital that are not in compliance with the certification/recertification requirements in (b)1 and 2 above shall be considered non-certified days and shall not be reimbursed by the Division.

i. Claims submitted that include non-certified days, (that is, "carved out" days or continued stay denials) as determined by the Division or its agents to affect billing, shall be billed "hard copy" and be accompanied by a certification of stay form.

(d) Before admission of an applicant or recipient to a private psychiatric hospital or before authorization for payment, the attending or staff physician shall make a medical evaluation of each applicant's or recipient's need for care in the hospital; and appropriate personnel shall make a psychiatric and social evaluation.

1. Each medical evaluation shall include the following:

i. Diagnoses;

ii. Summary of present medical findings;

iii. Medical history;

iv. Mental and physical functional capacity;

v. Prognoses; and,

vi. A recommendation by a physician concerning admission to the mental hospital, or continued care in the hospital for individuals who apply for Medicaid while in the private psychiatric hospital.

(e) Plan of Care (PoC): Before the admission of an applicant/recipient to an acute care general, special hospital, or private psychiatric hospital or before authorization for payment, a physician and other personnel in an acute care general and special hospital and the attending or staff physician in a private psychiatric hospital involved in the care of the individual shall establish a written PoC for each Medicaid recipient or applicant.

1. The PoC shall include:

i. Diagnoses, symptoms, complaints, and complications, indicating the need for admission;

ii. A description of the functional level of the individual;
 iii. Objectives of the care (in private psychiatric hospitals only);
 iv. Any order for diagnostic procedures; medications; treatments; consultations; restorative and rehabilitative services; patient activities; therapies; social services; diet; and, for private psychiatric hospitals only, special procedures for the health and safety of the patient;

v. Plans for continuing care, as appropriate; and, in a private psychiatric hospital, the review and modification of the plan of care; and,

vi. Plans for discharge, as appropriate.

2. Orders and activities shall be developed in accordance with the physician's instructions, (only for acute care general and/or special hospitals).

3. Orders and activities shall be reviewed and revised as appropriate by all personnel involved in the care of an individual (only for acute care general and/or special hospitals).

4. In acute care general and/or special hospitals, a physician and other personnel involved in the Medicaid recipient's case shall review each PoC at least every 60 days.

5. In private psychiatric hospitals, for recipients age 65 or over, the attending or staff physician and other personnel involved in the recipient's care shall review each PoC at least every 90 days; or,

6. Reports of evaluations and PoCs: A written report of each evaluation and plan of care shall be entered in the applicant's or recipient's record, as follows:

i. At the time of admission; or

ii. If the individual is already in the facility, immediately upon completion of the evaluation or plan.

(f) For the Utilization Review (UR) Plan, each hospital shall evaluate the necessity, appropriateness, and efficiency of the use of medical services, procedures, and facilities. The UR includes review of the appropriateness of admissions, services ordered and provided, length of stay, and discharge practices. (See 42 CFR 456.10 through 456.145, incorporated herein by reference.)

1. Upon admission of the patient to the hospital, a discharge plan shall be initiated and thereafter reviewed and updated regularly.

2. Any Medicaid recipient or potential Medicaid recipient who is considered for admission to an NF shall receive a pre-admission screening in accordance with N.J.A.C. 10:52-1.9.

3. When an inpatient is to be discharged from the hospital and continuing medical care is required, either in another medical facility (such as an NF, special hospital) or by a community health agency (such as a home health agency), the hospital shall provide the facility or agency with a legible abstract or summary of the patient's care while hospitalized and recommendations for further medical care.

i. This information shall be provided at the time of hospital discharge and shall be signed by the attending physician. The patient information transfer form (adopted by the New Jersey Hospital Association and the New Jersey Nursing Home Association) for a transfer from a hospital to an NF, or an equivalent transfer form, shall be used.

10:52-1.14 Utilization control: inpatient psychiatric services for recipients under 21 years of age in private psychiatric hospitals

(a) This section specifies the unique requirements for certification of the need for inpatient psychiatric services provided to recipients under 21 years of age in private psychiatric hospitals. In accordance with Section 1905(a)16 and (h) of the Social Security Act, a team, consisting of physicians and other qualified personnel, shall determine that inpatient services are necessary and can reasonably be expected to improve the recipient's condition. This section also includes general requirements; certification of the need for services, which involves "active treatment" as defined in (c) below; requirements for the team certifying the need for services; and, requirements for an individual plan of care. These requirements do not apply to an admission to a psychiatric unit of a general hospital. See N.J.A.C. 10:52-1.12 in this manual for requirements on utilization control in an acute care general hospital.

(b) This rule applies only to inpatient psychiatric services in an approved private psychiatric hospitals for the treatment of children

and youths, before the recipient reaches age 21, or, if the recipient was receiving the services immediately before he reached age 21, before the earlier of the following:

1. The date the recipient no longer requires the services; or,
 2. The date the recipient reaches age 22. (See 42 CFR 441.151).

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

1. "Active treatment" means implementation of a professionally developed and supervised PoC, as described in (f) below, that is:

i. Developed and implemented no later than 14 days after admission; and,

ii. Designed to achieve the recipient's discharged from inpatient status at the earliest possible time.

2. "Independent team" means a team that is not associated with the facility; for example, none of the members of the team has an employment or consultant relationship with the admitting facility. The independent team shall include a physician who has competence in diagnosis and treatment of mental illness, preferably child psychiatry and who has knowledge of the individual's clinical condition and situation.

3. "Interdisciplinary team", as described in federal regulations in 42 CFR 441.156, is comprised of those employed by, or those who provide services to Medicaid recipients in the facility or program, and include, as a minimum either a Board eligible or Board certified psychiatrist; or a physician and a clinical psychologist who has a doctoral degree; or a physician with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a Master's degree in clinical psychology or who has been certified by the State psychological association; and one of the following:

i. A psychiatric social worker;

ii. A registered nurse with specialized training or one year's experience in treating mentally ill individuals;

iii. A psychologist who has a Master's degree in clinical psychology or who has been certified by the State or by the State psychological association; or,

iv. An occupational therapist who is licensed by the State in which the individual is practicing, if applicable, and who has specialized training or one year experience in treating mentally ill individuals.

4. "Plan of care (PoC)" means a written plan developed for each recipient to improve the recipient's condition to the extent that inpatient care is no longer necessary.

(d) Certification of the need for services (see 42 CFR 441.152) shall be made by a team, either independent or interdisciplinary, as specified in (e) below, and shall include the following statements:

1. Ambulatory care resources available in the community do not meet the treatment needs of the recipients;

2. Proper treatment of the recipient's psychiatric condition, requires services on an inpatient basis under the direction of a physician are needed; and,

3. Services can reasonably be expected to improve the recipient's condition, or prevent further regression, so that inpatient services would no longer be needed.

(e) Team certifying the need for services is as follows.

1. Certification for the admission of a recipient: For an individual who is a recipient when admitted to a facility or program, certification must be made by an independent team, as described under (c) above.

2. Certification for inpatient applying for Medicaid: For an individual who applies for Medicaid while in the facility or program, the certification must be made by an interdisciplinary team responsible for the plan of care, as described under (c) above.

3. Certification—Emergency Admission: For emergency admission of a recipient, the certification must be made by the interdisciplinary team responsible for the plan of care as described under (f)1 below.

(f) The individual PoC is as follows. Within 14 days of admission to a Private psychiatric hospital, or before authorization for payment, the attending physician or staff physician must establish a written PoC for each applicant or recipient to improve the recipient's con-

dition to the extent that inpatient care no longer is necessary, in accordance with (e) above. (See 42 CFR 456.180 and 456.181.)

1. The Plan of Care (PoC) shall:

- i. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral and developmental aspects of the recipient's clinical condition and situation, and reflects the need for inpatient psychiatric care;
- ii. Be developed by a team of professionals as described in (g) below in consultation with the recipient, the recipient's parents, legal guardians, or others in whose care he or she will be released after discharge;
- iii. State treatment objectives;
- iv. Prescribe an integrated program of therapies, activities, and experiences designed to meet the objectives; and,
- v. Include, at an appropriate time, post discharge plans and coordination of inpatient services with partial discharge plan and related community services to ensure continuity of care with the recipient's family, school, and community, upon discharge.

2. The plan shall be reviewed every 30 days by the team to:

- i. Determine that services being provided are or were required on an inpatient basis; and,
- ii. Recommend changes in the plan as indicated by the recipient's overall adjustments as an inpatient.

(g) Functions of the interdisciplinary team developing the individual PoC are as follows:

1. The individual PoC as described under 42 CFR 441.156, must be developed by an interdisciplinary team of physicians and other personnel who are employed by, or provide services to, patients in the psychiatric hospital.

2. Based on education and experience, preferably including competence in child psychiatry, the team shall be capable of the following:

- i. Assessing the recipient's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;
- ii. Assessing the potential resources of the recipient's family;
- iii. Setting treatment objectives; and,
- iv. Prescribing therapeutic modalities to achieve the plan's objectives.

10:52-1.15 Utilization control; outpatient psychiatric services

(a) The following policies and procedures in this rule were developed to help ensure the appropriate utilization of outpatient psychiatric services. These include the role of the evaluation team in relation to the patient's treatment regimen, with emphasis placed on intake evaluation, development of a PoC, performance of periodic reviews for evaluation purposes, and supportive documentation for services rendered. Outpatient psychiatric services include initial evaluation; individual psychotherapy; group psychotherapy; family therapy; family conference; partial hospitalization (see N.J.A.C. 10:52-2.9); psychological testing; and medication management.

(b) The policy for intake evaluation shall be as follows:

1. An intake evaluation shall be performed within 14 days or by the third outpatient visit, whichever is later, for each Medicaid recipient being considered for continued treatment, and shall consist of a written assessment that:
 - i. Evaluates the recipient's mental condition; and,
 - ii. Determines whether treatment in the program is appropriate, based on the patient's diagnosis; and,
 - iii. Includes certification (signed statement) by the evaluation team that the program is appropriate to meet the patient's treatment needs; and,
 - iv. Is made part of the patient's records.

(c) The policy for the evaluation team shall be as follow:

1. The evaluation team for the intake process shall include, at a minimum, a physician and an individual experienced in diagnosis and treatment of mental illness (both criteria can be satisfied by the same individual, if appropriately qualified, in accordance with 42 CFR 153).

(d) The policy for the Plan of Care (PoC) shall be as follows:

1. A written individualized PoC shall be developed by the evaluation team for each patient who receives continued treatment. The

PoC shall be included in the patient's records and shall be designed to improve the patient's condition to the point where continued participation in the program (beyond occasional maintenance visits) is no longer necessary. The PoC shall consist of the following:

- i. A written description of the treatment objectives which include the treatment regimen, the specific medical and remedial services, therapies, and activities that will be used to meet the objectives;
- ii. A projected schedule for service delivery which includes the frequency and duration of each type of planned therapeutic session or encounter;
- iii. A description designation of the type of personnel that will be furnishing the services; and,
- iv. A projected schedule for completing reevaluations of the patient's condition and updating the PoC.

(e) Documentation for outpatient psychiatric services shall be as follows:

1. For psychiatric services, the outpatient department shall develop and maintain written documentation to support each medical or remedial therapy, service, activity, or session for which billing is made. Such documentation shall include, at a minimum, the following:

- i. The specific services rendered, such as individual psychotherapy or family therapy;
- ii. The date and the actual time services were rendered;
- iii. The duration of services provided, such as 1 hour or 1/2 hour;
- iv. The signature of the practitioner who rendered the services;
- v. The setting in which services were rendered; and,
- vi. A notation of unusual occurrences or significant deviations from the treatment described in the PoC.

2. Clinical progress, complications, and treatment which affect prognosis and/or progress shall be documented in the patient's medical record at least once a week for partial hospitalization, and at each patient contact or visit for other psychiatric services. Any other information important to the clinical picture, therapy, and prognosis shall also be documented.

i. The individual services rendered under partial hospitalization shall be documented on a daily basis. More substantive documentation, including progress notes, and any other information important to the clinical picture shall be made at least once a week.

3. For services requiring prior authorization, such as partial hospitalization (see N.J.A.C. 10:52-2.10), a departure from the PoC requires a new request for prior authorization when a change in the patient's clinical condition necessitates an increase in the frequency and intensity of services, or change in the type of services which will exceed the services authorized.

(f) The policy for periodic Review shall be as follows:

1. The evaluation team should periodically review the patient's PoC on a regular basis (at least every 90 days) to determine:

- i. The patient's progress toward the treatment objectives;
- ii. The appropriateness of the services being furnished; and
- iii. The need for the patient's continued participation in the program.

2. The periodic reviews should be documented in detail in the patient's records and made available upon request of the Division and/or its agents.

SUBCHAPTER 2. POLICIES AND PROCEDURES RELATED TO SPECIFIC SERVICES

10:52-2.1 Ambulatory Surgical Center (ASC)

(a) An Ambulatory Surgical Center (ASC) shall be defined as follows:

1. Any distinct entity that operates for the purpose of providing surgical services to patients not requiring hospitalization; and,
2. Has an agreement with the Health Care Financing Administration (HCFA) to participate in the Medicare program; and,
3. Meets specific conditions for coverage set forth in Federal regulations in 42 CFR 416.2, Part B.

(b) An ASC may be operated by a hospital, that is under common ownership or control of a hospital.

1. An ASC operated by a hospital shall be a separately identifiable entity physically, administratively, and financially independent and

distinct from other operations of the hospital. For policies and procedures concerning an ASC, see N.J.A.C. 10:66-2, Independent Clinic Services Chapter.

i. To apply as a provider of ASC services, contact the Chief, Provider Enrollment, Division of Medical Assistance and Health Services, CN-712, Mail Code #9, Trenton, New Jersey 08625-0712.

10:52-2.2 Blood and blood products

(a) Blood may be provided to an inpatient or an outpatient of an approved hospital when prescribed and supervised by a licensed physician.

(b) Whole blood and derivatives, and necessary processing and administration thereof, are allowed with the following limitations:

1. Efforts should be made to arrange for the replacement of blood. This can be done by contribution of a blood donor or by using a blood replacement plan that includes the Medicaid recipient as a beneficiary (if available).

2. The cost of donated blood or blood products (including autologous donation) received through a replacement plan is not reimbursable. However, the charge for phlebotomy, cross-matching, indexing, storage and transfusing is reimbursable.

3. The hospital shall obtain a certification that a voluntary blood donation cannot be obtained, in order to be reimbursed.

i. When arrangements for payment for the replacement of blood are not accomplished, reimbursement to the hospital shall be 100 per cent of the "add-on" charge.

10:52-2.3 Dental services

(a) Dental services in the outpatient department shall follow the policies and procedures outlined in N.J.A.C. 10:56, Dental Services Chapter. The outpatient dental department shall be subject to the same policies and procedures that apply to the Medicaid provider of dental services in the community, except for emergency dental care provided under special circumstances in a hospital emergency room.

1. A hospital with an outpatient dental department serving Medicaid recipients is given a unique provider number for that department. A hospital that starts an outpatient dental department shall request a provider number for that department from the fiscal agent.

(b) Reimbursement for a dental service is determined by the Commissioner of the Department of Human Services in accordance with N.J.A.C. 10:56, and is based on the same fee, conditions and definitions for the corresponding service, utilized for the payment of individual Medicaid dental practitioners and providers in the community. In no event shall the charge to the Division exceed the charge by the provider for identical services to other groups or individuals in the community.

1. If a dental procedure code is assigned both a specialist and a non-specialist "Maximum Fee Allowance Schedule", the amount of the payment will be based upon the status (specialist or non-specialist) of the individual practitioner who actually provided the billed service.

i. If the dentist providing the services is a resident, intern, or house staff member, the status of the supervising dentist, specialist or non-specialist, determines the amount of the payment.

2. Covered emergency dental care performed in the hospital emergency room care shall not be reimbursed if the services were provided in the emergency room and the dental clinic was available at the same time.

10:52-2.4 Early and Periodic Screening, Diagnosis and Treatment (EPSDT)

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program is a comprehensive health program for Medicaid recipients from birth through 20 years of age. The goal of the program is to assess the recipient's health needs through initial and periodic examinations (screenings); to provide health education and guidance; and to assure that health problems are prevented, diagnosed, and treated at the earliest possible time.

1. As a condition of participation in Medicaid, all ambulatory care facilities (including hospital outpatient departments) providing primary care to children and adolescent from birth through 20 years of age, shall participate in the EPSDT program and shall provide,

at a minimum, the required EPSDT screening services. The required EPSDT services include the following:

2. HealthStart is a program of enhanced maternity care and preventive health care for children under 2 years of age. Certified Pediatric HealthStart providers agree to assure continuity of care by following up on referrals and missed appointments, making available 24 hour telephone access and sick care, either directly or by formal arrangement with another pediatric provider. EPSDT providers may apply to the New Jersey Department of Health for certification as Pediatric HealthStart providers.

i. Pediatric HealthStart providers shall be approved for a higher reimbursement for preventive child health for preventive child health examinations (screening) than other EPSDT providers, in accordance with N.J.A.C. 10:52-3.

ii. For policies and procedures for HealthStart, see also N.J.A.C. 10:52-3.

(b) EPSDT/HealthStart screening services shall be billed on the Report and Claim for EPSDT/HealthStart Screening and Related Procedure Form using EPSDT/HealthStart specific procedure codes as listed in N.J.A.C. 10:66-6.3(a) in Independent Clinic Services. Claims shall be submitted within 30 days of the date of service for EPSDT services.

(c) The required EPSDT services shall include the following:

1. Screening services, as described in (e) below;

2. Vision services;

3. Dental services;

4. Hearing services; and,

5. Other medically necessary health care, diagnostic services and treatment and other measures to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services.

i. For the policy related to prior authorization of organ procurement and transplantation for Medicaid recipients receiving EPSDT services, see N.J.A.C. 10:52-2.8(e) under organ procurement and transplantation services.

ii. For the policy related to private duty nursing services in the home care setting for EPSDT recipients, see N.J.A.C. 10:60.

6. The parameters used in assessing the recipient's developmental level and behavior shall be appropriate for the age. While no specific test instrument is endorsed, it is expected that an evaluation of a young child shall, at a minimum, address the gross and fine motor coordination, language/vocabulary and adaptive behavior. An assessment of a school age child should include school performance; peer relationships; social activity and/or behavior; physical and/or athletic aptitude; and sexual maturation.

(d) EPSDT screening, vision services, dental services, and hearing services shall be provided at defined intervals as recommended by the appropriate professional organizations.

(e) EPSDT Screening Services shall be provided as follows:

1. The components of EPSDT Screening Services are as follows:

i. A comprehensive health and developmental history including an assessment of both physical and mental health development;

ii. A comprehensive unclothed physical examination including vision and hearing screening, dental inspection and nutritional assessment;

iii. Appropriate immunizations according to age and health history;

iv. Appropriate laboratory tests, including:

(1) Hemoglobin or hematocrit;

(2) Urinalysis;

(3) Tuberculin skin test, intradermal, administered annually and when medically indicated;

(4) Lead screening using blood lead level determinations between 6 and 12 months, at 2 years of age, and annually up to 6 years of age. At all other visits, screening shall consist of verbal risk assessment and blood lead level testing, as indicated.

(5) Additional laboratory tests which may be appropriate and medically indicated (e.g. for oval and parasites) shall be obtained, as necessary.

v. Health education including anticipatory guidance.

vi. Referral for further diagnosis and treatment or follow-up of all correctable abnormalities, uncovered or suspected. Referral may

be made to the provider conducting the screening examination or to another provider, as appropriate.

vii. Referral to the Special Supplemental Food program for Women, Infants and Children (WIC) is required for children under 5 years of age and for pregnant or lactating women.

2. EPSDT screening services shall be provided periodically according to the following schedule which reflects the age of the child:

- i. Under six weeks; two months; four months; six months; nine months; 12 months; 15 months; 18 months; 24 months; and, annually through age 20.

(f) Vision services shall include the following:

1. A newborn examination including general inspection of the eyes, visualization of the red reflex, and evaluation of ocular motility;

2. An appropriate medical and family history;

3. An evaluation, by age six months, of eye fixation preference, muscle imbalance, and pupillary light reflex; and

4. A third examination with visual acuity testing by age three or four years.

5. Periodicity of testing for school aged children shall be as follows:

i. Kindergarten or first grade (five or six years);

ii. Second grade (seven years);

iii. Fifth grade (10/11 years);

iv. Eighth grade (13/14 years); and

v. Tenth or eleventh grades (15/17 years)

6. Children should be referred if they:

i. Cannot read the majority of the 20/40 line before their fifth birthday;

ii. Have a two-line difference of visual acuity between the eyes;

iii. Have suspected strabismus; or

iv. Have an abnormal light or red reflex.

(g) Dental services shall include the following:

1. An intraoral examination which is an integral part of a general physical examination, including observation of tooth eruption, occlusion pattern, and presence of caries or oral infection;

2. A formal referral to a dentist is recommended at one year of age; it is mandatory for children three years of age and older; and

3. Dental inspection and prophylaxis that should be carried out every six months until 17 years of age, then annually.

(h) Hearing services shall include the following:

1. Hearing screening, which includes, at a minimum, an observation of an infant's response to auditory stimuli. Speech and hearing assessment shall be part of each preventive visit for an older child. An objective audiometric test, such as a pure tone screening test, if performed as part of an EPSDT screening examination, is eligible for separate reimbursement;

2. An individual hearing screening which should be administered annually to all children through age eight and to all children at risk of hearing impairment; and

3. After age eight, children shall be screened every other year, except as required in 2 above.

10:52-2.5 Home health agencies; hospital-based

(a) A home health agency (hospital-based) shall be licensed by the New Jersey State Department of Health; certified as a home health agency under Title XVIII (Medicare); possesses a valid and current provider agreement from the Division; and be an identifiable part of a hospital.

(b) The provision of home health care services can range from a complex concentrated professional program (for acute care cases) which would require the services of a public health nurse, registered professional nurse, a licensed practical nurse, physical therapist, occupational therapist, speech-language pathologist, social worker, and homemaker/home health aide to a less complex program (as in chronic care cases) involving a homemaker/home health aide, personal care assistant and/or therapist and minimal visits by a registered nurse. The types of services provided, the frequency and the duration of these services are determined by the needs of each recipient. Only medically necessary home health services are reimbursed by the Division.

(c) Policies and procedures related to Home Health Agencies (Hospital-based) are located in N.J.A.C. 10:60, Home Care Services

Chapter. A hospital wishing to become a provider of home health services should contact the Chief, Provider Enrollment Unit, Division of Medical Assistance and Health Services, CN-712, Mail Code #9, Trenton, New Jersey 08625-0712.

10:52-2.6 Medical day care centers; hospital affiliated

(a) A Medical Day Care Center shall be affiliated and identified as part of a hospital which is licensed by the New Jersey State Department of Health, in accordance with its Manual of Standards for Licensure of Adult Day Health Care Facilities and which possesses a valid and current provider agreement from the Division.

(b) Medical Day Care is a program of medically supervised, health related services provided in a hospital affiliated ambulatory care setting to persons who are non-residents of the facility, who do not require 24 hour inpatient institutional care and yet, due to their physical and/or mental impairment, need health maintenance and restorative services supportive to their community living.

(c) A hospital affiliated Medical Day Care Center shall be paid a negotiated per diem rate which shall not exceed the maximum medical day care per diem rate paid to a Medical Day Care Center based in a nursing facility.

1. The per diem rate shall include all required services except for physical therapy and speech-language pathology services, which shall be billed separately.

2. Occupational therapy and transportation services shall be included in the per diem rate paid for medical day care services. Medical day care transportation services shall not be reimbursed by the fiscal agent as a separate service.

3. All direct and indirect costs associated with hospital affiliated Medical Day Care Centers shall be reported separately on New Jersey State Department of Health cost filings for payment purposes and shall not be considered an allowable cost under the DRG reimbursement system.

(d) The Division shall not reimburse for medical day care services and partial hospitalization services provided to the same recipient on the same day.

(e) Policies and procedures related to medical day care are found in N.J.A.C. 10:65, Medical Day Care Services Chapter. A hospital wishing to become a provider of medical day care services should contact the Chief, Provider Enrollment Unit, Division of Medical Assistance and Health Services, CN-712, Mail Code #9, Trenton, New Jersey 08625-0712.

10:52-2.7 Narcotic and drug abuse treatment centers; free-standing

(a) Services provided by a free standing hospital affiliated narcotic and drug abuse treatment center shall be covered only if those services are eligible for Federal Financial Participation under the Medicaid Program (Title XIX of the Social Security Act) and the following conditions are met:

1. The treatment is prescribed by a physician; and,

2. The treatment is provided in a narcotic and drug abuse treatment center licensed or approved by the New Jersey State Department of Health pursuant to N.J.S.A. 26:2G-21 et seq.; and,

3. The staff of the treatment center includes a medical director.

(b) Payment for outpatient services provided in a free-standing narcotic and drug abuse treatment center shall be made on a fee-for-service basis. The services include mental health services, methadone maintenance, and other related health services. The Division's payment shall be accepted as payment in full.

(c) Approved centers shall submit claims only for those procedure codes which correspond to the allowable services included in their New Jersey Medicaid provider approval letter. Room, board and other residential services shall not be covered. Claims for reimbursement shall be submitted to the fiscal agent on the claim form used by independent clinics (1500 N.J.-Health Insurance Claim Form).

10:52-2.8 Organ procurement and transplantation services

(a) The Division covers services rendered and items dispensed or furnished in connection with organ procurement and transplantation services of kidney, heart, heart-lung, liver, bone marrow, cornea and other selected medically necessary organ transplants except for those transplants categorized as experimental. (See (d) below for EPSDT and out-of-state organ procurement and transplantation.)

(b) Hospitals that perform organ transplants (with the exception of bone marrow transplants and corneas) must meet the following requirements for participation in the Medicare and Medicaid programs.

1. Payment for transplant services and organ procurement services rendered to or items dispensed or furnished a donor will be considered a charge on behalf of the Medicaid recipient.

(c) Federal organ procurement service requirements are listed in the Social Security Act, Section 1138 as amended by Section 9318(a) of the Omnibus Budget Reconciliation Act of 1986.

1. Organ procurement services, with the exception of bone marrow transplant and cornea procurement services, are covered only when the Organ Procurement Organization (OPO) meets the requirements as outlined in the Section 1138 of the Social Security Act (42 U.S.C. 1320 (b)-8 Note) and when the OPO is designated and certified by the Secretary of the Department of Health and Human Services as the OPO for that geographical area in which the hospital is located.

(d) The covered organ transplantation procedures shall be performed in an organ transplant center approved or certified by a nationally recognized certifying or approving body, or one designated by the Federal government. In the absence of such a certification or approval of a nationally recognized body, the approval or certification, whichever applies, shall have been obtained from the appropriate body so charged in the State in which the organ transplant center is located.

(e) The candidate for transplantation shall have been accepted for the procedure by the transplant center. Such acceptance shall precede a request for prior authorization from the medical staff in the Office of Medical Affairs and Provider Relations, if applicable. All out-of-state hospitalizations for transplantations shall require prior authorization from the MDO of the recipient's county of residence (see N.J.A.C. 10:49-6.2, Administration Chapter.) Prior authorization shall also be required for hospitalizations for procurement and transplantation services for Medicaid recipients of EPSDT services for anatomical sites not explicitly listed in (a) above.

(f) Organ transplantations shall be medically necessary. Transplantations, with the exception of cornea transplantations, shall be performed only to avert a potentially life-threatening situation for the patient.

1. If all factors pertinent to decision-making concerning the site of performance of a transplant procedure are essentially equal, preference shall be given to a New Jersey transplant center. However, Medicaid policy of equitable access also applies (see 42 CFR 431.52 (c)).

(d) Hospital inpatient services for an out-of-State organ procurement and transplantation shall require approval by the Medicaid District Office and shall be reimbursed according to the policies in the section on the Basis of Payment—Out-of-State Hospital Services in N.J.A.C. 10:52-4.6.)

10:52-2.9 Psychiatric service; partial hospitalization

(a) Partial Hospitalization (PH) means a psychiatric service whose primary purpose is to maximize the client's independence and community living skills in order to reduce unnecessary hospitalization. It is directed toward the acute and chronically disabled individual. A PH program shall provide, as listed below, a full system of services necessary to meet the comprehensive needs of the individual Medicaid recipient. These services shall include:

1. Assessment and evaluation;
2. Service procurement;
3. Therapy;
4. Information and referral;
5. Counseling;
6. Daily living education;
7. Community organization;
8. Pre-vocational therapy;
9. Recreational therapy; and,
10. Health-related services.

(b) Pre-vocational therapy; recreational therapy, and health related services, as required in (a) above, may be provided directly or arranged by partial hospitalization staff through other programs'

elements or agencies. To avoid duplication of payment, these services shall not be billed separately from the claim submitted for partial hospitalization reimbursement.

(c) The requirements of the PH program include the following:

1. PH shall serve ambulatory, non-residential patients who spend only a part of a 24-hour period (a minimum of three hours of participation in active programming for a half day program exclusive of meals and a minimum of five hours of active participation in active programming for a full day program exclusive of meals) in the hospital.

i. Day, evening, or night care (night care shall include overnight stay) shall not require prior authorization from the Division for the first 90 calendar days from the first date of treatment.

2. A PH program shall be available daily for five days a week, with additional planned activities each week, during evening and/or weekend hours, as needed. Individual clients need not attend every day but as needed.

3. The staff of the PH program shall include a director who shall be a qualified professional from the specialties of psychiatry, psychology, social work, psychiatric nursing, vocational rehabilitation, or a related field, with training and/or experience in direct service provision and administration. A qualified psychiatrist shall be available to the PH program, on a regularly scheduled basis. Other staff deemed necessary to implement a PH program shall include qualified mental health professionals, para-professionals, and volunteers.

(c) Prior authorization for PH from the Division shall be required after the first 90 calendar days from the date of the initial treatment. Each prior authorization for PH shall be granted for a maximum period of six months. Additional authorizations may be requested.

1. A detailed explanation and a new prior authorization request for PH is required when a departure from the PoC is made because a change in the patient's clinical condition necessitates an increase in the frequency, duration, and intensity of services, or a change in the type of services which will exceed the services authorized.

2. When prior authorization is required, the request shall be submitted on the form, "Request for Authorization of Mental Health Services (FD-07)" to the Psychiatric Consultant, Mental Health Services, Office of the Medical Affairs and Provider Services, Division of Medical Assistance and Health Services, CN-712, Mail Code #18, Trenton, New Jersey 08625-0712.

3. The request shall include the diagnosis, as set forth in the "(Annotated) International Classification of Diseases, 9th Revision, Clinical Modifications, (ICD-9-CM)", a brief clinical history; present clinical status; and the treatment plan. A request for retroactive authorization will be considered only when the request has been delayed by circumstances beyond the control of the outpatient department.

4. The notification of the disposition (approved, modified, denied, or suspended) of the prior authorization request will be made by the Medicaid fiscal agent. When submitting a claim for reimbursement, the prior authorization number shall be provided on the UB-92 hospital claim form, in order for the claim to be paid by Medicaid.

5. The Division shall not reimburse a hospital for partial hospitalization and medical day care center services provided to the same recipient on the same day.

6. The Division also shall not reimburse a hospital for any mental health service (including medication management) in addition to partial hospitalization services provided to the same recipient on the same day.

10:52-2.10 Rehabilitative services; hospital outpatient department

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

1. "Rehabilitative services" means physical therapy, occupational therapy, speech-language pathology and audiology services, and the use of such supplies and equipment as are necessary in the provision of such services.

2. "Occupational therapy" means services prescribed by a physician and provided to a Medicaid recipient by or under the direction

of a qualified occupational therapist. They services necessary supplies and equipment.

3. "Occupational therapist" means an individual who is:
 - i. Registered by the American Occupational Therapy Association (AOTA); or,
 - ii. A graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association.

If treatment and or services are provided in a state other than New Jersey, the occupational therapist shall meet the requirements of that state, including licensure, if applicable, and shall also meet all applicable federal requirements.

4. "Physical therapy" means services prescribed by a physician and provided to a Medicaid recipient by or under the direction of a qualified physical therapist. They include necessary supplies and equipment.

5. "Physical therapist" means an individual who is:
 - i. A graduate of a program of physical therapy approved by both the Council on Medical Association of the American Medical Association and the American Physical Therapy Association or its equivalent; and,
 - ii. Meet all applicable Federal requirements; be licensed by the State of New Jersey; or, if treatment and/or services are provided in a state other than New Jersey, meet the requirements of that state, including licensure, if licensure is required by that state.

6. "Speech-language pathology" and "audiology services" means diagnostic, screening, preventive, or corrective services provided by or under the direction of a speech-language pathologist or audiologist. The services include necessary supplies and equipment.

7. "Speech-language pathologist" or "audiologist" means an individual who:

- i. Has a certificate of clinical competence from the American Speech-Language-Hearing Association; or,
- ii. Has completed the equivalent educational requirements and work experience necessary for the certificate; or,
- iii. Has completed the academic program and is acquiring supervised work experience to qualify for the certificate; and,
- iv. If practicing in the State of New Jersey, is licensed by the State of New Jersey as a speech-language pathologist or audiologist; or, if treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable, and meets all applicable federal requirements.

(b) All treatment services shall be prescribed by a physician (M.D.) or doctor of osteopathy (D.O.) and provided by or under the direction and/or personal supervision of the appropriate qualified practitioner.

(c) When rehabilitative treatment services are prescribed, a plan of treatment shall be kept on file and completed during the Medicaid recipient's initial evaluation visit. The plan of treatment shall be definitive as to type, amount, frequency, and duration, of the rehabilitative services that are to be furnished and shall include the diagnosis and anticipated goals. For example, an order for "treatment three times a week as needed" is not acceptable.

10:52-2.11 Renal dialysis services for end-stage renal disease (ESRD)

(a) A hospital outpatient renal dialysis center shall have been approved by the New Jersey State Department of Health to provide renal dialysis treatment for ESRD.

(b) At the beginning of a maintenance course of renal dialysis treatment for ESRD, renal dialysis centers should direct their Medicaid recipient/patient to the Social Security Administration District Office to file an application for Medicare benefits, if applicable.

(c) Renal dialysis services for ESRD and Medicare approved "add-on" costs shall be reimbursable by Medicaid only when the individual is a Medicaid recipient and not a Medicare recipient, or during the time frame when ESRD benefits are not Medicare reimbursable.

1. Medicare coverage usually begins with the first day of the third month after the month in which a maintenance course of renal

dialysis services begins. Claims from that date on shall be submitted to Medicare, unless the Medicaid recipient has been denied eligibility for Medicare.

i. Exception: Medicare coverage may begin earlier than the time frame stated above if the individual receives renal transplantation services or participates in a self-dialysis training program.

(d) Reimbursement for hospital inpatient renal dialysis services for ESRD are included in the DRG rate methodology determinations.

10:52-2.12 Sterilization

(a) The Division covers sterilization procedures performed on Medicaid recipients based on 42 CFR 441.250 through 42 CFR 441.258 and related requirements outlined in this section and in the billing instructions contained in the Fiscal Agent Billing Supplement. For sterilization policy and procedures, see (b) through (e) below.

(b) "Sterilization" means any surgical procedure, treatment, or operation, performed for the purpose of rendering an individual permanently incapable of reproducing. Surgical sterilization procedures are considered to be those whose primary purpose is to render an individual incapable of reproducing. Such procedures require the completion of the Federal "Consent Form" for sterilization.

(c) "Consent Form"—(Pursuant to 42 CFR 441.258—Appendix to Subpart F—Specific Requirements for Use) requirements, including time frames to be met and/or documented on the "Consent Form" prior to the sterilization of an individual, follow:

1. The individual shall be at least 21 years of age at the time the consent is obtained;

2. The individual shall not be mentally incompetent. A "mentally incompetent individual" means an individual who has been declared mentally incompetent by a Federal, state, or local court of competent jurisdiction for any purpose, unless the individual has been declared competent for purposes which include the ability to consent to sterilization;

3. The individual shall not be institutionalized. An "institutionalized individual" means an individual who is:

i. Involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness; or,

ii. Confined, under a voluntary commitment, in a mental hospital or other facility for the care and treatment of mental illness;

4. The individual shall have voluntarily given informed consent;

5. At least 30 days, but not more than 180 days, shall have passed between the date of informed consent and the date of sterilization, except in the case of emergency abdominal surgery or premature delivery;

i. In the case of emergency abdominal surgery, at least 72 hours shall have passed between the date he or she gave informed consent and date of sterilization;

ii. In the case of premature delivery, informed consent shall have been given at least 30 days before the expected date of delivery and at least 72 hours have passed between the date of informed consent and the date of premature delivery.

6. In the case where a patient desires to be sterilized at the time of delivery, the "Consent Form" shall be signed by the patient no earlier than the 5th month of pregnancy to minimize the possibility of exceeding the 180 day limit.

(d) An individual shall be considered to have given informed consent only if:

1. The person who obtained consent for the sterilization procedure offered to answer any questions the individual to be sterilized may have had or has concerning the procedure, provided a copy of the "Consent Form", and provided orally all of the following information or advice to the individual to be sterilized; and,

i. Advice that the individual is free to withhold or withdraw consent to the procedure at any time before sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled; and,

- ii. A description of available alternative methods of family planning birth control; and,
 - iii. Advice that the sterilization procedure is considered to be irreversible; and,
 - iv. A thorough explanation of the specific sterilization procedure to be performed; and,
 - v. A full description of the discomfort and risks that may accompany or follow the performing of the procedure, including an explanation of type and possible effects of any anesthetic to be used; and,
 - vi. A full description of the benefits or advantages that may be expected as a result of the sterilization; and,
 - vii. Advice that the sterilization will not be performed for at least 30 days except for emergency abdominal surgery or premature delivery.
2. Suitable arrangements were made to insure that the information specified above under "Informed Consent" was effectively communicated to any individual who is blind, deaf, or otherwise handicapped; and,
3. An interpreter was provided if the individual to be sterilized did not understand the language used on the "Consent Form" or the language used by the person obtaining consent; and,
4. The individual to be sterilized was permitted to have a witness of his or her own choice present when consent was obtained; and,
5. The requirements of the "Consent Form" were met, that is, its contents, certification, and signatures (see (e) below). The consent form currently in use by the Division is a replica of the form contained in the Federal regulations and shall be utilized by providers when submitting claims. No other consent form shall be permitted, unless approved by the Secretary, United States Department of Health and Human Services. The form is available from the Division's fiscal agent.
- (e) Required consent form information, signatures, certification, and dates: In addition to completing all information (name of doctor or clinic the patient received information from, name of the operation to be performed, the patient's birth date, name of the patient, name of the physician who will perform the sterilization, the method, the language used by an interpreter, name and address of the facility the person obtaining consent is associated with, the date of the sterilization and the specific type of operation) in the appropriate spaces provided, the form shall be signed and dated by hand by the person indicated below:
- 1. "Consent to Sterilization," by the individual to be sterilized, prior to the sterilization operation (in accordance with the time frames specified in (c)5. above.
 - 2. "Interpreter's Statement," by the interpreter, if one was provided prior to the sterilization operation. The interpreter must certify by signing and dating the "Consent Form" that:
 - i. He or she translated the information presented orally and read the "Consent Form" and explained its contents to the individual to be sterilized; and,
 - ii. To the best of the interpreter's knowledge and belief, the individual understood what the interpreter told him or her.
 - 3. "Statement of Person Obtaining Consent," by the person who obtained the consent prior to the sterilization operation. The person securing the consent must certify, by signing and dating the "Consent Form" that:
 - i. Before the individual signed the "Consent Form", he or she advised the individual to be sterilized that no Federal benefits may be withdrawn because of the decision not to be sterilized; and,
 - ii. He or she explained orally the requirements for informed consent as set forth on the "Consent Form"; and
 - iii. To the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized. The name and address of the facility or physician's office with which the person obtaining consent is associated must be completed in the space provided on the form.
 - 4. "Physician's Statement," by the physician who performed the sterilization operation after the surgery had been performed. (A date prior to surgery is not acceptable.) The physician performing the sterilization shall certify, by signing and dating the "Consent Form,"

that within 24 hours before the performance of the sterilization operation:

- i. The physician advised the individual to be sterilized that no Federal benefits may be withdrawn from the patient because of the decision not to be sterilized; and,
 - ii. The physician explained orally the requirements for informed consent as set forth on the "Consent Form"; and,
 - iii. To the best of the physician's knowledge and belief, the individual appeared mentally competent and knowingly and voluntarily consented to be sterilized; and,
 - iv. That at least 30 days have passed between the date of the individual's signature on the "Consent Form" and certified that the date upon which the sterilization was performed, except in the case of emergency abdominal surgery or premature delivery; and,
 - v. In the case of emergency abdominal surgery or premature delivery performed within 30 days of consent, the physician shall certify that the sterilization was performed less than 30 days, but not less than 72 hours after informed consent was obtained, and in the case of abdominal surgery must describe the emergency, or in the case of premature delivery, must state the expected date of delivery.
5. Any additional requirement of State or local law for obtaining consent, except a requirement for spousal consent, was followed.
6. Informed consent shall not be obtained while the individual to be sterilized is:
- i. In labor or childbirth; or,
 - ii. Seeking to obtain or obtaining an abortion; or,
 - iii. Under the influence of alcohol or other substances that affect the individual's state of awareness.
- (f) Any New Jersey hospital with electronic billing capabilities shall submit a "hard copy" of the UB-92 claim form (including inpatient or outpatient) for all sterilization claims with the "Consent Form" attached to the UB-92 claim form and not submit the claim through the EMC claim processing system.

10:52-2.13 Hysterectomy

(a) The Division covers hysterectomy procedures performed on Medicaid recipients based on Federal regulations (42 CFR 441.250 through 42 CFR 441.258) and related requirements outlined in this section and in the billing instructions. For hysterectomy policies and procedures, see (b) through (d) below. Also, for the requirements for a Second Surgical Opinion for performing a hysterectomy, see N.J.A.C. 10:52-1.11.

(b) "Hysterectomy" means an operation for the purpose of removing the uterus.

1. A hysterectomy shall not be performed solely for the purpose of rendering an individual permanently incapable of reproducing. A hysterectomy shall be covered as a surgical procedure if performed primarily for the purpose of removing a pathological organ.

(c) Surgical hysterectomy procedures claim processing and reporting requires the completion of the "Hysterectomy Receipt of Information Form (FD-189, Rev. 7/83)" or, under certain conditions (see (d)1.iii. below), a physician certification.

(d) The specific requirements to be met and/or documented on the "Hysterectomy Receipt of Information," FD-189 form, or, under certain conditions, a physician certification, shall be as follows:

- 1. A hysterectomy on a female of any age may be performed when medically necessary for a pathological indication, provided the person who secured authorization to perform the hysterectomy has:
 - i. Informed the individual and her representative (if any), both orally and in writing, that the hysterectomy will render the individual permanently incapable of reproducing; and,
 - ii. Ensures that the FD-189 form is completed and the individual or her representative has signed and dated a written acknowledgement of receipt of that information utilizing the FD-189 form; or,
 - iii. The physician who performed the hysterectomy certifies, in writing, that the individual:
 - (1) Was sterile before the hysterectomy (include cause of sterility); or,
 - (2) Required a hysterectomy because of a life-threatening emergency in which the physician determined that prior acknowl-

edgement was not possible (include a description of the nature of the emergency); or,

(3) Was operated on during a period of the person's retroactive Medicaid eligibility and the individual was informed, before the operation, that the hysterectomy would make her permanently incapable of reproducing or one of the conditions described in (1) or (2) above was applicable. (Include a statement that the individual was informed or describe which condition was applicable). "Retroactive Medicaid eligibility" means the consideration of unpaid medical bills incurred during a three month period prior to the month the person applied for assistance. (See N.J.A.C. 10:49-2.7, Administration Chapter.) Although a physician certification is acceptable for situations described in (d)1iii above, the Division recommends that the FD-189 form be used whenever possible. There is no 30 day waiting period required before a medically necessary hysterectomy may be performed. The standard procedure for a surgical informed consent form within the hospital will prevail.

(e) Any New Jersey hospital with electronic billing capabilities shall submit a "hard copy" of the UB-92 claim form for all hysterectomy claims with the FD-189 form attached to the claim form and must not submit the claim through the EMC claim processing system.

10:52-2.14 Termination of pregnancy

(a) The Division shall reimburse for medically necessary termination of pregnancy procedures on Medicaid recipients when performed by a physician in accordance with N.J.A.C. 13:35-4.2.

(b) A physician may take the following factors into consideration in determining whether a termination of pregnancy is medically necessary:

1. Physical, emotional, and psychological factors;
2. Family reasons; and,
3. Age.

(c) The determination of medical necessity is subject to review by Medicaid in accordance with the rules of the Medicaid Program and consistent with N.J.A.C. 13:35-4.2.

(d) A "Physician Certification (Form FD-179)" shall be attached to the hospital's Medicaid claim form, either for inpatient or outpatient services, if any of the procedures on the claim relate to a voluntary elective abortion.

i. A copy of the completed FD-179 shall also be attached to:

- (1) The physician's Medicaid claim form; and,
- (2) The anesthesiologist's Medicaid claim form.

(e) Any New Jersey hospital with electronic billing capabilities shall submit a "hard copy" of the UB-92 claim form (inpatient or outpatient) for all termination of pregnancy claims with the "Physician Certification (Form FD-179)" attached to the UB-92 claim form and must not submit the claim through the electronic billing system.

10:52-2.15 Transportation services; hospital-based

(a) Transportation shall be recognized by the Division as a covered outpatient hospital service under the following conditions:

1. Hospital-based emergency ambulance service for inpatient admission or outpatient services. For the definition of "emergency conditions", see N.J.A.C. 10:49-6.1, Administration Chapter, Prior and Retroactive Authorization.

2. Non-emergency ambulance service, only when it is ordered by a physician and is medically necessary. A physician's written order stating that any other method of transportation is medically contraindicated shall accompany the claim.

3. When a hospital is under contract with a municipality, county, or other government unit, to provide "911" or rescue squad ambulance service, reimbursement shall only be permitted on a fee-for-service basis under the policies and procedures as defined in N.J.A.C. 10:50-1.2, Transportation Services Chapter.

4. Each hospital providing ambulance service to Medicaid recipients shall possess all of the following:

i. An approved certificate of need for ambulance service from the New Jersey State Department of Health; and,

ii. A provider license and vehicle license(s) for ambulance service from the New Jersey State Department of Health.

(b) Mobile Intensive Care Unit/Advanced Life Support (MICU/ALS) service and associated Ambulance/Basic Life Support (Am-

bulance/BLS) service shall be considered covered services under the following conditions of participation:

1. A hospital shall possess a "Certificate of Need" from the New Jersey State Department of Health to provide MICU/ALS service;

2. A hospital shall complete a "Memorandum of Understanding", issued by the Division of Medical Assistance and Health Services, before reimbursement can be made to the hospital for this service. The "Memorandum of Understanding" may be obtained from and, when completed, shall be returned to the Division of Medical Assistance and Health Services, Provider Enrollment Unit, CN-712, Mail Code #9, Trenton, New Jersey 08625-0712;

3. A hospital providing MICU/ALS service without its own associated Ambulance/BLS service or MICU/ALS transport vehicle, may utilize the service of a volunteer ambulance organization or shall enter into an agreement(s) with a proprietary/nonproprietary Ambulance/BLS company for the purpose of defining the responsibility for service. No reimbursement shall be made when the Ambulance/BLS Service is provided by a volunteer ambulance organization.

i. A copy of the agreement(s) shall be sent to the Division of Medical Assistance and Health Services, CN-712, Provider Enrollment Unit, Mail Code #9, Trenton, New Jersey 08625-0712.

ii. The Hospital shall bill for the Ambulance/BLS service only upon completion of an agreement.

iii. In the absence of an agreement(s) between the hospital providing the MICU/ALS service and a proprietary/nonproprietary Ambulance/BLS company, the hospital shall bill the Division's fiscal agent for the MICU/ALS service only.

iv. Transportation companies providing Ambulance/BLS associated with, and/or in conjunction with a MICU/ALS service, shall bill charges to the hospital providing the MICU/ALS service.

(c) Medicaid reimbursement of MICU/ALS services shall be based on Medicare principles of reimbursement, using standard cost reporting procedures, and reasonable cost and charge guidelines.

(d) Reimbursement for transportation services to and from hospital affiliated medical day care centers are included in the medical day care per diem rate.

SUBCHAPTER 3. HEALTHSTART—MATERNITY AND PEDIATRIC CARE SERVICES

10:52-3.1 Purpose

The purpose of HealthStart shall be to provide comprehensive maternity and child health care services for all pregnant women (including those determined to be presumptively eligible) and for children (under two years of age) in the State of New Jersey who are eligible for Medicaid benefits.

10:52-3.2 Scope of services

(a) HealthStart maternity care services shall include all medical services recommended by the American College of Obstetricians and Gynecologists, as well as a program of health support services. HealthStart pediatric care services shall include the nine preventive visits recommended by the American Academy of Pediatrics and all of the necessary immunizations. This subchapter includes provisions for provider participation, standards for service delivery, procedure codes from the HCFA Common Procedure Coding System (HCPCS), and directions for submitting claims.

(b) HealthStart Comprehensive Maternity Care includes two components; Medical Maternity Care Services and Health Support Services, as follows:

1. Medical Maternity Care Services include, but are not limited to:

- i. Ambulatory prenatal services;
- ii. Admission arrangements for delivery;
- iii. Obstetrical delivery services; and
- iv. Postpartum medical services.

2. Health Support Services include, but are not limited to:

- i. Case coordination services;
- ii. Health education assessment and counseling services;
- iii. Nutrition assessment and counseling services;
- iv. Social-psychological assessment and counseling services.
- v. Home visitation; and
- vi. Outreach, referral and follow-up services.

(c) HealthStart Comprehensive Pediatric Care includes nine preventive child health visits, all the recommended immunizations, case coordination and continuity of care, including, but not limited to, the provision or arrangement for sick care, 24-hour telephone access, and referral and follow-up for complex or extensive medical, social, psychological, and nutritional needs.

10:52-3.3 HealthStart provider participation criteria

(a) Providers that are eligible to participate as HealthStart providers shall be: independent clinics (including local health departments meeting the New Jersey Department of Health Improved Pregnancy Outcome and/or Child Health Conference criteria); hospital outpatient departments; physicians and physician groups; and nurse midwives approved as providers in the New Jersey Medicaid program, in accordance with N.J.A.C. 10:58 and 10:49.

(b) In addition to New Jersey Medicaid Program rules applicable to provider participation, HealthStart providers shall:

1. Sign an Addendum to the New Jersey Medicaid Program Provider Agreement;

2. Have a valid HealthStart Maternity Care Certificate and/or a Pediatric Care Certificate; and

3. Provide maternity care and/or pediatric care services in accordance with the requirements for issuance of a "HealthStart Maternity Care Certificate", and/or a "HealthStart Pediatric Care Certificate", and in accordance with the New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers and HealthStart Pediatric Care Providers.

(c) In addition to (a) and (b) above, HealthStart Maternity Care Providers with more than one care site or more than one maternity clinic at the same site that uses different staff, shall apply for a separate HealthStart Maternity Care Certificate for each separate clinic. Within an agency, only those sites which hold a certificate shall be reimbursed for HealthStart services; and

1. Shall participate in program evaluation and training activities, including but not limited to, site monitoring, agency and patient record review, and submission of required summary information on each patient according to the New Jersey Department of Health Guidelines for HealthStart Providers; and

2. May determine presumptive eligibility for New Jersey Medicaid if approved by the Division of Medical Assistance and Health Services.

(d) In addition to (a) and (b) above, HealthStart Pediatric Care Providers shall participate in program evaluation and training activities, including, but not limited to, documentation of outreach and follow-up activities in the patient's record.

(e) Site reviews may be required to ascertain applicant's ability to meet the Standards for HealthStart Certificates in appropriate areas and to provide services in accordance with the New Jersey State Department of Health Guidelines for HealthStart Providers in appropriate areas.

(f) HealthStart Provider Certificates shall be reviewed at least every eighteen months from the date of issuance.

(g) Applications for HealthStart Provider Certificates are available from:

HealthStart Project
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

(h) Applications for New Jersey Medicaid Provider agreements are available from:

Unisys Corporation
Provider Enrollment
P.O. Box 4804
Trenton, New Jersey 08650-4804

10:52-3.4 Termination of HealthStart certificate

(a) The New Jersey State Department of Health shall be responsible for enforcement of its requirements for HealthStart provider Certificates and for evaluation and enforcement of its requirements within the Standards and Guidelines for HealthStart providers.

(b) Failure to comply with HealthStart Certificate Standards shall be cause for termination of the HealthStart provider certificate. Providers who are terminated shall have the right to request a hearing pursuant to the procedures in N.J.A.C. 10:49-10.10.

10:52-3.5 Standards for a HealthStart comprehensive maternity care provider certificate

(a) Comprehensive maternity care services shall be integrated and coordinated.

(b) HealthStart Maternity Care providers, excluding physicians and nurse midwives who are in private practice, shall be required to provide for comprehensive maternity care services within the following organizational requirements.

1. Providers shall provide directly or through approved agreements, at one contiguous site, the following services: ambulatory prenatal and postpartum care; case coordination services; nutrition assessment; guidance and counseling services; health education assessment and instruction; social-psychological assessment, guidance and counseling;

2. Providers shall provide or arrange for the admission of patients to the appropriate level of care facility for obstetrical care delivery services;

3. Providers shall provide or arrange for all necessary laboratory services;

4. Providers shall provide one or more prenatal home visits for each high risk patient;

5. Providers shall provide at least one postpartum home visit for each high risk patient;

6. Providers shall provide referral and follow-up services, which shall include but not be limited to: referral for specialized evaluation; and counseling and treatment for extensive social, psychological, nutrition and medical needs.

(c) Providers shall adopt procedures and policies which assure the delivery of coordinated, integrated and comprehensive care; and

(d) Providers shall be responsible for linking the mother and newborn infant to a pediatric care provider; if feasible, the linkage shall be with a HealthStart Pediatric Care provider.

(e) Independent clinics, hospital outpatient departments, and local health departments may provide just the HealthStart Health Support Services Component only when they have entered into a written agreement with a private practitioner(s) who will provide the HealthStart Medical Care Services component. This agreement shall delineate which party shall take primary responsibility for provision of all HealthStart services.

10:52-3.6 Access to services

(a) All HealthStart services shall be accessible to patients.

(b) HealthStart Maternity Care providers shall facilitate patient access to services by scheduling an initial appointment within two weeks of the patient's first request for services.

(c) HealthStart Maternity Care providers shall provide or arrange for 24 hour access to case coordination and medical services for emergency situations.

(d) HealthStart Maternity Care providers shall arrange for language translation and/or interpretation services.

(e) HealthStart Maternity Care providers may implement presumptive eligibility determinations if approved by the Division of Medical Assistance and Health Services to institute this process.

(f) HealthStart Maternity Care providers shall undertake community outreach activities to encourage women to seek early prenatal care and increase awareness of the availability of maternity care services.

10:52-3.7 Plan of Care (PoC)

(a) A PoC shall be developed and maintained by the case coordinator for each patient.

(b) A PoC shall be based on the medical, nutritional, social-psychological and health education assessments.

(c) A PoC shall include but not be limited to: identification of risk conditions and/or problems, prioritization of needs, outcome objectives, planned interventions, time frames, referrals and follow-up activities, and identification of staff persons responsible for the services.

(d) The PoC shall be developed and revised in consultation with the patient and staff providing services to the patient.

(e) The initial PoC shall be completed after a case conference and no later than one month after the initial registration visit.

10:52-3.8 Maternity medical care services

(a) Medical Care services shall include antepartum, intra-partum and post-partum care provided by the obstetrical care practitioner(s) in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.

(b) Prenatal services are as follows:

1. Frequency of prenatal visits for an uncomplicated pregnancy shall be every four weeks during the first twenty-eight weeks; then every two weeks until thirty-six weeks; and weekly thereafter. Prenatal visits for complications should be scheduled as needed.

2. Initial prenatal visit content shall include, but not be limited to, the following:

- i. History;
- ii. Review of systems;
- iii. Comprehensive physical examination;
- iv. Risk assessment;
- v. Patient counseling;
- vi. Routine laboratory tests;
- vii. Development of the PoC; and
- viii. Special tests and/or procedures as medically indicated.

3. Subsequent prenatal visit content shall include, but not be limited to the:

- i. Review and revision of the patient PoC;
- ii. Interim history;
- iii. Physical examination;
- iv. Patient counseling and treatment;
- v. Laboratory tests;
- vi. Special tests and/or procedures which are medically indicated;
- vii. Identification of new or developing problems; and
- viii. Management of any new or persistent problems including transfers.

4. Transfer of prenatal records to the hospital of delivery no later than thirty-four (34) weeks gestation.

(c) Obstetrical delivery services shall include, but not be limited to, the following:

- 1. Determination of, and arrangements for, delivery site;
- 2. Attendance at or provision for obstetrical delivery by a qualified physician or certified nurse midwife; and
- 3. Medical treatment during the postpartum stay.

(d) A postpartum visit shall be provided by the 60th day after delivery, and shall include, but not be limited to, the following:

- 1. History;
- 2. Review of the prenatal, labor and delivery record;
- 3. Physical examination;
- 4. Patient counseling and treatment;
- 5. Parent/infant assessment;
- 6. Referral/consultation, as indicated; and
- 7. Procedures/tests, as indicated.

(e) All HealthStart Maternity Care providers shall have policies and protocols consistent with national standards regarding consultation, and/or transfer of medically high risk patients to tertiary level maternity care facilities or specialists, and to genetic counseling and testing facilities.

10:52-3.9 HealthStart health support services

(a) Case coordination services shall facilitate the delivery of continuous, coordinated and comprehensive services for each patient in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers, as follows:

1. A permanent case coordinator shall be assigned to each patient no later than two weeks after the HealthStart enrollment visit.

2. Prenatal case coordination activities shall include but not be limited to:

- i. Orienting the patient to all services;
- ii. Developing, maintaining and coordinating the PoC in consultation with the patient;

iii. Coordinating and monitoring the delivery of all services and referrals;

iv. Monitoring and facilitating the patient entry into and continuation with maternity services;

v. Facilitating and providing advocacy for obtaining referral services;

vi. Reinforcing health teachings and providing support;

vii. Providing vigorous follow-up for missed appointments and referrals;

viii. Arranging home visits;

ix. Meeting with the patient and coordinating patient care conferences; and

x. Reviewing, monitoring and updating the patient's complete record.

3. Postpartum case coordination activities shall include, but not be limited to, the following:

i. Arranging and coordinating the postpartum visit and any home visit;

ii. Arranging with the obstetrical care provider to obtain the labor, delivery and postpartum hospital summary record no later than two weeks after delivery;

iii. Linking the patient to appropriate service agencies including: Women, Infants and Children Program (WIC), pediatric care (preferably with a HealthStart Pediatric Care provider), future family planning, Special Child Health Services County Case Management Unit and other health and social agencies, if needed:

iv. Arranging for the transfer of pertinent information or records to the pediatric care and/or future family planning service providers;

v. Coordinating referrals and following up on missed appointments and referrals;

vi. Reinforcing health instruction for mother and baby.

(b) Nutrition assessment and basic guidance services shall be provided to orient and educate patients to nutritional needs during pregnancy and to educate patients to good dietary practices in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers. Specialized nutrition assessment and counseling must be provided to women with additional needs. Services shall be provided as follows:

1. Initial assessment services, which shall include but are not limited to, the following:

- i. Review of the patient's chart;
- ii. Identification of dental problems which may interfere with nutrition;
- iii. Nutrition history;
- iv. Current nutritional status;
- v. Determination of participation in WIC or other food supplement programs; and
- vi. Identification of need for specialized nutrition counseling;

2. Subsequent nutrition assessment, which shall include but not be limited to, the following:

- i. Monitoring of weight gain/loss;
- ii. Identification of special dietary needs; and
- iii. Identification of need for specialized nutrition counseling services;

3. Prenatal nutrition basic guidance, which shall include but not be limited to, the following:

- i. Basic instruction on nutritional needs during pregnancy including balanced diet, vitamins and recommended daily allowances;
- ii. Review and reinforcement of other nutrition and dietary counseling services the patient may be receiving;
- iii. Instruction on food purchase, storage and preparation;
- iv. Instruction on food substitutions, as indicated;
- v. Discussion of infant feeding and nutritional needs; and
- vi. Referral to food supplementation programs through the case coordinator;

4. Specialized nutrition assessment and counseling, which shall be provided to those women with additional needs;

5. Referral for extensive specialized nutrition services, which shall be initiated by the medical care provider or the nutritionist under the supervision of the medical care provider, in coordination with the case coordinator; and

6. Postpartum nutrition assessment and basic guidance services, which shall include, but not be limited to, the following:

- i. Review and reinforcement of good dietary practices;
- ii. Review of instruction on dietary requirement changes; and
- iii. Instruction on breast feeding and/or formula preparation and feeding.

(c) Social-psychological assessment and basic guidance services shall be provided to all patients to assist each patient in resolving social-psychological needs, as described in the "New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers." Specialized social-psychological assessment and short-term counseling shall be provided to those women with additional needs. Services shall be provided as follows:

1. Initial social-psychological assessment services, which shall include, but not be limited to, the following:

- i. Determining financial resources and living conditions;
- ii. Determining the patient's personal support system;
- iii. Determining the patient's attitudes and concerns regarding the pregnancy;
- iv. Ascertaining present and prior involvement by the patient with other social programs or agencies and current social service needs;
- v. Ascertaining educational and/or employment status and needs; and
- vi. Identifying the need for specialized social-psychological and/or mental health evaluation and counseling services;

2. Subsequent social-psychological assessment services, which shall include, but not be limited to, the following:

- i. Determining patient's reaction to pregnancy;
- ii. Ascertaining the reaction of family, friends and the actual support person to the pregnancy;
- iii. Identifying the need for social service interventions and advocacy; and
- iv. Identifying the need for specialized social-psychological and/or mental health evaluation and counseling;

3. Basic social-psychological guidance, which shall include, but not be limited to, the following:

- i. Orientation and information on available community resources;
- ii. Orientation regarding stress and stress reduction during pregnancy; and
- iii. Assistance with arrangements for transportation, child care and financial needs;

4. Specialized, short-term social-psychological counseling, which shall be provided to women who are identified through assessment or basic counseling as having need for more intense service.

5. Referral for extensive specialized social-psychological services, which shall be initiated by the medical care provider, or by the social worker under the supervision of the medical care provider and in coordination with the case coordinator; and

6. Postpartum social-psychological assessment and guidance, which shall include, but not be limited to, the following:

- i. Review of prenatal, labor, delivery and postpartum course;
- ii. Assessment of patient's current social-psychological status, including mother and infant bonding and father/family acceptance of the infant, as applicable;
- iii. Identification of the need for additional social-psychological services;
- iv. Review of available community resources for mother and infant, as applicable;
- v. Counseling regarding fetal loss or infant death, if applicable; and
- vi. Counseling regarding school/employment planning.

(d) Health education assessment and instruction shall be provided to all patients at intervals throughout the pregnancy, based on the patient's needs and as described in the "New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers." Services shall be provided as follows:

1. Initial assessment of health educational needs, which shall include but not be limited to:

- i. Identification of general educational background;
- ii. Identification of patient's health education needs; and
- iii. Identification of previous education and experience concerning pregnancy, birth and infant care.

2. Health education instruction, which shall be provided for all patients based on their identified health education needs shall include at least the following:

- i. Normal course of pregnancy;
- ii. Fetal growth and development;
- iii. Warning signs, such as signs of pre-term labor, and identification of emergency situations;
- iv. Personal hygiene;
- v. Exercise and activity;
- vi. Child birth preparation, including management of labor and delivery;
- vii. Preparation for hospital admission;
- viii. Substance/occupational/environmental hazards;
- ix. Need for continuing medical and dental care;
- x. Future family planning;
- xi. Parenting, basic infant care and development;
- xii. Availability of pediatric and family medical care in the community; and
- xiii. Normal postpartum physical and emotional changes.

3. Health education services, which shall include guidance in decision making and in the implementation of decisions concerning pregnancy, birth and infant care.

4. Postpartum assessment of health education needs shall be conducted.

(e) The provider shall provide, or arrange for, one or more home visits for each high risk patient, as described in the "New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers."

(f) One face to face encounter shall be provided or arranged for during the time after hospital discharge and prior to the required medical postpartum visit as described in the "New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers," as follows:

1. This contact shall include but not be limited to:

- i. Review of the mother's health status;
- ii. Review of the infant's health status;
- iii. Review of mother/infant interaction;
- iv. Revision of the PoC; and
- v. Provision of additional services, as indicated.

(g) HealthStart Maternity Care Providers shall utilize existing community services to enhance the maternity care services.

(h) HealthStart Maternity Care Providers shall have written procedures which identify specific agencies or practitioners and criteria for referral of patients requiring services which are extensive, complex or expected to extend beyond the pregnancy. These shall include but are not limited to: nutrition and food supplementation services, substance abuse treatment facilities, mental health services, county/local social and welfare agencies, parenting and child care educational programs, future family planning services, fetal alcohol syndrome and AIDS counseling services.

10:52-3.10 Professional staff requirements for HealthStart maternity comprehensive services

(a) All HealthStart Maternity Care services shall be delivered through a team approach by qualified professionals.

(b) Physicians and/or certified nurse midwives shall be Medicaid providers and have obstetrical admitting privileges at a licensed maternity care facility.

(c) Case coordinators shall have, as a minimum, a license as a registered professional nurse; or a Bachelor's degree in social work, health, or a behavioral science, if other than a nurse.

(d) Health professionals shall have a valid license to practice their professions, as required by the State.

(e) All other professionals, for whom no license to practice is required, shall meet generally accepted professional standards for qualification.

(f) Paraprofessionals shall be familiar with the local community, have knowledge and/or skill in maternal and child health services and be supervised by a health professional.

(g) Prenatal, delivery, and postpartum medical services shall be delivered by physicians and/or certified nurse midwives.

(h) Nutrition, social-psychological and health education assessments and development of PoC shall be provided by appropriate professionals in each of the specialty areas, or by case coordinators or medical care professionals. If the nutrition or social-psychological assessment portions of the PoCs are provided by case coordinators or medical care professionals, then these portions shall be reviewed by nutritionists or social workers, respectively.

(i) Nutrition and social-psychological basic counseling shall be provided by case coordinators with at least one year experience providing services to maternity patients or by appropriate specialists in each of the areas or by registered nurses or obstetrical care providers.

(j) Short term specialized social-psychological and nutrition counseling services shall be provided by social workers and nutritionists respectively. Social workers and nutritionists shall be available on site during patient visits.

(k) There shall be adequate professional, paraprofessional and clerical staff to provide, in a timely manner, maternity care services as described herein which meet the needs of the patients.

10:52-3.11 Records; documentation, confidentiality and informed consent requirements for HealthStart Comprehensive Maternity Care Providers

(a) HealthStart Maternity Care Providers shall have policies which protect patient confidentiality, provide for informed consent and document prenatal, labor, delivery and postpartum services in accordance with New Jersey State Department of Health Guidelines for HealthStart Maternity Care Providers.

(b) An individual record shall be maintained for each patient throughout the pregnancy.

(c) Each record shall be confidential and shall include at least the following: history and physical examination findings assessment, a Care Plan, treatment services, laboratory reports, counseling and health instruction provided and documentation of referral and follow up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart services.

10:52-3.12 Standards for HealthStart pediatric care certificate

(a) Pediatric care services shall be comprehensive, integrated and coordinated.

(b) HealthStart Pediatric Care providers shall be Medicaid providers and shall:

1. Directly provide preventive, well-child care, maintenance of complete patient history, outreach for preventive care, initiation of referrals for appropriate medical, educational, social, psychological and nutrition services, and follow-up of referrals and sick care.
2. Directly provide or arrange for non-emergency room based, 24-hour physician telephone access to patients.
3. Directly provide or arrange for sick care and emergency care.

10:52-3.13 Professional requirements for HealthStart pediatric care providers

All HealthStart Pediatric Care Providers shall be physicians or have a physician on staff who possesses a knowledge of pediatrics. This may be demonstrated by eligibility for board certification by the American Academy of Pediatrics and/or by hospital admitting privileges in pediatrics.

10:52-3.14 Preventive care services provided by HealthStart pediatric care providers

(a) HealthStart Pediatric Care Providers shall provide preventive health visits in accordance with the recommended guidelines of the American Academy of Pediatrics and the New Jersey State Department of Health Guidelines for HealthStart Pediatric Care. The schedule shall include a 2-4 week visit, 2 month visit, 4 month visit, 6 month visit, 9 month visit, 12 month visit, 15 month visit, 18 month visit and 23-24 month visit. Each visit shall include, at a minimum, medical, family and social history, unclothed physical examination, developmental and nutritional assessment, vision and hearing screening, dental assessment, assessment of behavior and social environment, anticipatory guidance, age appropriate laboratory examinations, and immunizations. Referrals shall be made as appropriate. The EPSDT/HealthStart Child Health Preventive Visit form

(MC-19) shall be completed for each HealthStart preventive visit and submitted within thirty (30) days.

(b) Each provider shall provide or arrange for sick care and twenty-four hour telephone physician access during non-office hours. If not directly provided by the HealthStart provider, sick care and twenty-four hour telephone access shall be provided for each child by a single designated provider via a documented agreement. Information on care given shall be communicated to the primary HealthStart pediatric care provider. Telephone access provided exclusively via emergency room staff shall not be permitted. Referral to the emergency room shall occur only for emergency medical care or urgent care as recommended by the physician responsible for sick care.

(c) Case coordination outreach and follow-up services shall include letter and/or telephone call reminders to the child's parent or guardian for preventive well-child visits and letters and/or telephone follow-up of missed appointments. Referrals for home visit services for follow-up shall be made when appropriate. For all referrals and follow-up visits, the provider shall document the completion of such referrals and/or visits. If the referral is not completed, a letter or phone call to the child's parent or guardian and/or to the referred agency shall be sent or made, encouraging the follow through of the referral. All of the activity shall be recorded on the patient's chart.

(d) All HealthStart Pediatric Care providers shall make provision for consultation for specialized health and other pediatric services. Services shall include medical services, as well as social, psychological, educational and nutrition services. This may include, but is not limited to: the Women, Infants and Children Program (WIC), the Division of Youth and Family Services, Special Child Health Services Case Management Units and Child Evaluation Centers, the early intervention programs, County Welfare Agencies/ Board of Social Services, certified home health agencies, community mental health centers, local and county health departments.

10:52-3.15 Records; documentation, confidentiality and informed consent for HealthStart pediatric care providers

(a) HealthStart Pediatric Care providers shall have policies which protect patient confidentiality, provide for informed consent and document comprehensive care services in accordance with New Jersey State Department of Health Guidelines for HealthStart Pediatric Care Providers.

(b) An individual record shall be maintained for each patient.

(c) Each record shall be confidential and shall include at least the following: history and physical examination, results of required assessments, Care Plan, treatment services, laboratory reports, counseling and health instruction provided and documentation of referral and follow-up services.

(d) There shall be policies and procedures for appropriate informed consent for all HealthStart Pediatric services.

10:52-3.16 Policy for reimbursement for HealthStart providers

(a) The HealthStart HCPCS procedure codes listed in this subchapter are governed by the same policies and rules that appear in the HCPCS subchapter of each non-insitutional provider services manual (Independent Clinic, Physician and the Nurse Midwifery Services Chapters). The maximum fee allowance schedule and reimbursement requirements for HCPCS HealthStart Maternity Codes (Medical Care and Health Support Services) and HCPCS HealthStart Pediatric Codes are listed under N.J.A.C. 10:66-3(a).

(b) A hospital outpatient department (OPD) which is a HealthStart Provider shall use the UB-92 claim form; except for:

1. HealthStart support services (W9040 through W9043), which shall be billed on the HCFA-1500NJ claim form, using the Independent Clinic billing number, and

2. HealthStart pediatric continuity of care services (W9070), which shall be billed on the MC-19 form, Report and Claim for EPSDT/HealthStart Screening and Related Procedures.

10:52-3.17 HealthStart maternity care billing code requirements

(a) HealthStart maternity care billing code requirements shall be as follows:

1. Separate reimbursement shall be available for Maternity Medical Care Services and Maternity Health Support Services.

2. Maternity Medical Care Services shall be billed as a total obstetrical package, when feasible, but may be billed as separate procedures.

3. The enhanced reimbursement for the delivery and postpartum care may be claimed only for a patient who had received at least one antepartum HealthStart Maternity Medical or Health Support Service.

4. The modifier "WM" in the HCPCS lists of codes (W9025 through W9030) refers to those services provided by certified nurse midwives who shall include the modifier at the end of each code. HCPCS codes for Health Support Services do not require the "WM" modifier on HCPCS codes W9040 and W9043.

5. Laboratory and other diagnostic procedures and all necessary medical consultations shall be eligible for separate reimbursement.

(b) HealthStart Maternity Medical Care Procedure codes are provided in 10:66-3(a) Health Care Financing Administration Common Procedure Coding System (HCPCS), Independent Clinic Services.

SUBCHAPTER 4. BASIS OF PAYMENT FOR HOSPITAL SERVICES

10:52-4.1 Basis of payment; acute general hospitals reimbursed under the Diagnosis Related Groups (DRG) system— inpatient services

The Division will reimburse acute care general hospitals for inpatient services based upon rates determined under N.J.A.C. 10:52-5 through 9, except for distinct units of acute care general hospitals. For reimbursement methodology for distinct units of acute care general hospitals, see N.J.A.C. 10:52-4.2(c).

10:52-4.2 Basis of payment; special hospitals (Classification A and B), private psychiatric hospitals and distinct (excluded units) of acute general hospitals— inpatient services

(a) The Division will reimburse special hospitals (Classification A) (acute and short term special hospitals) and Classification B (Rehabilitation hospitals) for inpatient services (including the interim and final settlement), in accordance with Medicare principles: reimbursement (see 42 CFR 413).

(b) The Division will reimburse special hospitals (Classification C) according to the rules and reimbursement methodology of Chapter 63, long Term Care Services (N.J.A.C. 10:63).

(c) The Division will reimburse private psychiatric hospitals and distinct units of acute general hospitals for inpatient services (including the interim and final settlement) in accordance with Medicare principles of reimbursement. Distinct units of acute general hospitals are not reimbursed through the Diagnosis Related Groups (DRG) reimbursement system (N.J.A.C. 8:31B) for inpatient services in acute care general hospitals.

(d) Therapeutic leave days (days spent outside the facility) are not reimbursed to hospitals by the Division.

10:52-4.3 Basis of payment; all general and special (Classification A), rehabilitation (Classification B), and private psychiatric hospitals—outpatient services

(a) The Division reimburses providers for covered services in the outpatient department of general hospitals, special hospitals (Classification A), rehabilitation hospitals (Classification B) and private psychiatric hospitals consistent with the following conditions and reimbursement methodology:

1. Establishment of a final rate of reimbursement: The final rate of reimbursement is based on the lower of cost or charges as defined by Medicare principles of reimbursement at 42 CFR 447.321; and,

2. Establishment of an interim rate of reimbursement: The charge for an outpatient service is subject to a reduction based on the application of a cost-to-charge ratio determined for each individual hospital by the Division, in accordance with Medicare principles of reimbursement at 42 CFR 447.321. This cost-to-charge ratio is used to assure that reimbursement for outpatient services does not exceed the rate based on Medicare principles of reimbursement.

3. Effective for services rendered on or after July 1, 1991, and until further notice, the Division is reducing the interim reimbursement rates for covered outpatient services subject to the cost-to-charge ratio in general, special (Classification A), rehabilitation (Classification B) and private psychiatric hospitals by 4.4 percent. The final settlement for covered outpatient services subject to the cost-to-charge ratio is the lower of costs or charges minus 4.4 percent.

(b) Certain outpatient services, that is, most laboratory services, all renal dialysis services, all dental services, some HealthStart services, and the Medicare deductible and coinsurance amounts, are excluded from a reduction based on the cost-to-charge reimbursement methodology and have their own reimbursement methodology as follows:

1. Most outpatient laboratory services are reimbursed on the basis of a fee-for-service using the Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS) procedure codes and the fee schedule contained in the N.J.A.C. 10:52-9.3 through 9.5. If the hospital charge is less than the amount on the fee allowance, reimbursement is based upon the actual billed charge. In addition, there are situations which have unique billing arrangements, as follows:

i. Specimen collection, that is a routine venipuncture for collection of specimen(s) or a catheterization for collection of urine specimen(s) are reimbursed at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per patient encounter, regardless of the number of patient encounters per day. (See HCPCS G0001, P9610, P9615 in N.J.A.C. 10:52-10.3); and,

ii. Profiles and panels shall be reimbursed as follows:

(1) Profiles are comprised of those components of a test or series of tests performed as groups or combinations (profiles) which are performed on automated multichannel equipment and are finished identifiable laboratory study(ies). Examples are: The components of an SMA (Sequential Multichannel Automated Analysis) 12/60 or other automated laboratory study. Complete blood counts (CBC) with inclusion of Hemoglobin, Hematocrit, Red Blood Cell (RBC) Counts, Red Blood Cell (RBC) indices, White Blood Cell (WBC) Counts, and Differentials, MCHs, MCVs and MCHCs, are calculations, and not billable services. If the components of a profile or panel are billed separately, reimbursement for the components of the profile shall not exceed the Medicaid fee schedule for the profile itself.

(2) Panels are laboratory tests that are associated with other organ or disease oriented areas, such as organ "panels". Examples are hepatic function panels and lipid panels. The tests listed with each panel identifies the defined components of that panel. (See also (b)2iii below.)

2. Some outpatient laboratory services which use laboratory HCPCS procedure codes that are reimbursed based on actual billed charges, are subject to the cost-to-charge ratio. These include procedure codes such as:

i. Those valid for Medicaid reimbursement but not listed on the Medicare Laboratory HCPCS Procedure Code File (see 42 U.S.C. §1395L). They are designated as "subject to cost-to-charge" or S.C.C. in N.J.A.C. 10:52-9.2;

ii. For those HCPCS codes submitted for payment on the same claim with charges for blood products (if no blood product is provided and/or billed on the same claim, the codes are reimbursed according to the fee allowance schedule); and

iii. For some codes associated with other laboratory services such as for organ or disease oriented panels; clinical pathology consultations; unlisted chemistry or toxicology procedures; certain bone marrow testing; certain specific or unlisted hematology procedures; certain immunology testing; unlisted microbiology procedures; and certain procedures under anatomic pathology.

3. All renal dialysis services for end-stage renal disease (ESRD) are reimbursed at 100 percent of the composite rate and includes any add-on charge to the composite rate approved by Medicare.

i. Renal dialysis services provided on an emergency basis in a hospital center not approved to provide renal dialysis services for ESRD are reimbursed actual billed charges, subject to the cost-to-charge ratio.

4. All dental services are reimbursed in accordance with the Division Dental Fee Schedule. This fee-for-service schedule is consistent with the Division's fees paid to the private practitioners and independent dental clinics. For information about dental services in the Outpatient Department, see N.J.A.C. 10:52-2.3.

5. All HealthStart Maternity Health Support Services and HealthStart Pediatric Continuity of Care services are reimbursed on a fee-for-service basis in the hospital outpatient department. All other HealthStart Maternity and Pediatric Care Services are reimbursed based on the cost-to-charge ratio. (For policies and procedures for HealthStart Services, see N.J.A.C. 10:52-3.10.)

6. Early Periodic Screening, Diagnosis, and Treatment services are reimbursed in the hospital outpatient department according to the specific reimbursement methodology. (See also N.J.A.C. 10:52-2.4.)

i. The physician who is allowed by the hospital to bill Medicaid separately from the hospital costs (unbundled) for EPSDT services, shall bill on the EPSDT form.

7. All deductible and coinsurance amounts for Medicare crossover claims are not subject to the cost-to-charge ratio and are reimbursed are 100 percent of the amounts.

(c) Emergency room visits for Medicaid recipients not admitted as inpatients are coded by the hospital as needing primary care or non-primary care. (See N.J.A.C. 8:31B-3.23(e)).

1. Primary care is defined as those categories described in the Physicians' Current Procedural Terminology (CPT) as either minimal, brief, or limited service.

2. Non-primary care shall be defined as those categories described in the Physicians' Current Procedural Terminology (CPT), 1994, as amended and supplemented, as either intermediate, extended, or comprehensive service.

3. Hospitals shall not refuse to provide emergency room services to any Medicaid recipient for the reason that such recipient does not require services on an emergency basis.

NOTE: The cost of emergency room services for a Medicaid recipient admitted as an inpatient is allocated to the inpatient rates and is not reimbursed through the outpatient hospital reimbursement methodology, as stated above.

10:52-4.4 Basis of payment; out-of-State hospital services

(a) The Division will reimburse an out-of-State approved hospital (see N.J.A.C. 10:52-1.2—Definitions) for providing inpatient and outpatient hospital services to New Jersey Medicaid recipients if the hospital meets the requirements of the Division and the services are prior authorized pursuant to N.J.A.C. 10:52-1.6(b) in this manual. Reimbursement of inpatient hospital services is outlined in (b) through (d) below; and for outpatient services, is outlined in (e) below.

(b) Reimbursement of inpatient hospital services for hospitals participating in the Medicaid program is based on the following criteria:

1. All rates in effect at the time the service is rendered shall be considered final rates by the State.

i. In Diagnosis Related Group (DRG) hospitals, interim reimbursement is 100 percent of the DRG rate approved for the provider by the State Medicaid Agency in the state in which the hospital is located and in effect at the time the service is rendered.

ii. In non-Diagnosis Related Group (DRG) hospitals, reimbursement is 95 percent of the any reimbursement methodology (per diem, charges or case rate) approved by the State Medicaid agency of the state in which the hospital is located.

3. An out-of-State hospital should provide official documentation of the Medicaid rate that has been established by the State Medicaid agency in the state in which the hospital is located.

i. An example of acceptable documentation is a copy of the letter sent by the State Medicaid Agency to the hospital specifying the Medicaid rate. The purpose of this information is to facilitate claims processing.

(c) In the event an out-of-State hospital does not participate in the Medicaid Program in the state where the hospital is located or has not established a rate with the State Medicaid agency, the hospital must enter into a negotiated rate with the Division at the time of enrollment for inpatient hospital services. The rate that is

established between the hospital and the Division may be reviewed periodically thereafter.

1. Reimbursement for out-of-state inpatient hospital services for organ transplantation and procurement provided to a Medicaid recipient who has been determined to be in need of, and approved for, a kidney, heart, liver, or bone marrow transplant, because of a life-threatening situation is a rate negotiated between the New Jersey Medicaid program and the hospital performing the organ transplant.

(d) Reimbursement for outpatient hospital services in an out-of-state approved hospital is based on the rate of reasonable covered charges (subject to a percentage reduction based upon the cost-to-charge ratio) approved by the State Medicaid Agency in the state in which the hospital is located if the hospital participates in the State's Medicaid program, or if the hospital does not participate in the State's Medicaid program, the rate negotiated by the Division with the hospital.

10:52-4.5 Medicaid reimbursement for third-party claims

On claims for hospital services rendered to Medicaid recipients who are also covered by another form of health insurance, the Division shall pay the difference between the insurer's payment amount and that of Medicaid for covered services. (See N.J.A.C. 10:49-7.3, Administrative chapter.)

10:52-4.6 Medicare/Medicaid claims

(a) Some patients may be covered under both Medicare and Medicaid. When the Medicaid recipient is covered under both programs, Item 57 on the hospital claim form shall be completed showing the Medicaid Program Case and Person Number.

(b) Reimbursement of the deductible and coinsurance for inpatient and outpatient services for Medicaid recipients having both Medicare and Medicaid coverage shall be limited to the unsatisfied deductible and coinsurance.

(c) Where benefits have been exhausted under Medicare, the charges to be billed to the Medicaid Program must be itemized for the Medicare non-covered services and the HSP (Medicaid) Case Number, including Person Number, must be shown on the hospital claim form.

(d) Where prior authorization is required for Medicaid program purposes, it shall be obtained and shall be submitted with the UB-92 claim form.

10:52-4.7 Medicaid settlement

(a) In the capacity of the New Jersey Medicaid Settlement Agent for hospital for all New Jersey acute care general (excluding inpatient services), special, rehabilitation, private psychiatric and county governmental psychiatric hospitals and all hospital-based home health agencies, Blue Cross and Blue Shield of New Jersey, Inc. (BCBSNJ) shall determine their amount of disbursements, recoupments, and/or changes in per diem amounts and outpatient percentages, as applicable. BCBSNJ shall inform the hospital and the Division of Medical Assistance and Health Services (Division) of the results of their review. If the BCBSNJ's review is accepted, DMAHS, through its fiscal agent for claims processing, shall perform the following processes:

1. For disbursements, payment shall be made to the hospital for the full amount due within 20 working days from the date of BCBSNJ's letter.

2. The fiscal agent shall begin recoupment for the full amount of the overpayment 30 days after the date the Division receives BCBSNJ's overpayment notification by withholding the Medicaid payments to the hospital.

3. If the withholding of the New Jersey Medicaid payment is not acceptable to the hospital, the hospital must submit, prior to the end of the 30-day period, a proposed repayment schedule to the Division. For a repayment schedule in excess of three months, documentation (as specified in Medicare Bulletin No. 0452) shall be submitted. If an approvable repayment schedule is not received by the Division, the withholding of Medicaid payments shall be implemented to begin recoupment.

4. The proposed repayment plans should be submitted directly to the following address:

Bureau of Institutional and Provider Reimbursement
 Division of Medical Assistance and Health Services
 CN 712, Mail Code #25
 Trenton, New Jersey 08625-0712
 Attention: Health Care Facilities Analyst

5. Interest shall be charged at the maximum legal rate as of the date of the repayment agreement or 30 days from the date of the BCBSNJ letter to the Division, whichever is sooner.

SUBCHAPTER 10. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

10:52-10.1 Introduction

(a) The New Jersey Medicaid program utilizes the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). HCPCS follows the American Medical Association's Physician's Current Procedural Terminology—4th Edition (CPT-4) architecture, employing a five-position code and as many as two 2-position modifiers. Unlike the CPT-4 numeric design, the HCFA assigned codes and modifiers contain alphabetic characters. HCPCS was developed as a three-level coding system.

1. LEVEL I CODES (Narratives found in CPT-4)

These codes are adapted from CPT-4 for utilization primarily by Physicians, Podiatrists, Optometrists, Certified Nurse-Midwives, Independent Clinics and Independent Laboratories. CPT-4 is a listing of descriptive terms and numeric identifying codes and modifiers for reporting medical services and procedures performed by physicians.

Copyright restrictions make it impossible to print excerpts from CPT-4 procedure narratives for Level I codes. Thus, in order to determine those narratives it is necessary to refer to CPT-4, which is incorporated herein by reference, as amended and supplemented.

2. LEVEL II CODES (Narratives found at N.J.A.C. 10:52-10.3)

These codes are assigned by HCFA for physicians and non-physician services which are not in CPT-4.

3. LEVEL III CODES (Narratives found at N.J.A.C. 10:52-4.3)

These codes are assigned by the Division to be used for those services not identified by CPT-4 codes or HCFA assigned codes. Level III codes identify services unique to New Jersey.

(b) The responsibility of the provider when rendering specific services and requesting reimbursement is listed in both Subchapter 1 and Subchapter 2 of the Hospital Services Manual, N.J.A.C. 10:52.

(c) Regarding specific elements of HCPCS codes which requires attention of provider, the lists of HCPCS code numbers for Pathology and Laboratory are arranged in tabular form with specific information for a code identified under columns with titles such as: "IND", "HCPCS CODE", "MOD", "DESCRIPTION", and "MAXIMUM FEE ALLOWANCE". The information identified under each column is summarized below:

| Column Title | Description |
|--------------|--|
| IND | (Indicator-Qualifier) Lists alphabetic symbols used to refer provider to information concerning the New Jersey Medicaid program's qualifications and requirements when a procedure or service code is used. Explanation of indicators and qualifiers used in this column are identified below: "A" preceding any procedure code indicates that these tests can be and are frequently done as groups and combinations (profiles) on automated equipment. "F" preceding any procedure code indicates that this code, when used primarily for the diagnosis and treatment of infertility, is not covered by the New Jersey Medicaid program. "L" preceding any procedure code indicates that the complete narrative for the code is located at N.J.A.C. 10:52-10.3. |

"N" preceding any procedure code indicates that qualifiers are applicable to that code. These qualifiers are listed by procedure code number at N.J.A.C. 10:52-10.4.

Lists the HCPCS procedure code numbers.

HCPCS CODE
MOD

Lists alphabetic and numeric symbols. Services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance should be identified by the addition of alphabetic and/or numeric characters at the end of the code. The New Jersey Medicaid program's recognized modifier codes are listed at N.J.A.C. 10:52-10.5.

DESCRIPTION

Lists the code narrative. (Narratives for Level I codes are found in CPT-4. Narratives for Level II and Level III codes are found at N.J.A.C. 10:52-10.3.)

MAXIMUM FEE ALLOWANCE

Lists New Jersey Medicaid program's maximum reimbursement schedule for Pathology and Laboratory services. If the symbols "S.C.C." (Subject Cost-to-Charge) are listed instead of a dollar amount, it means that service is subject to the cost-to-charge ratio. If the symbols "N.A." (Not Applicable) are listed instead of a dollar amount, it means that service is not reimbursable.

1. The fee listed under "Office Total Fee(s)" represents the combined technical and professional component of the reimbursement for the procedure code notwithstanding any statement to the contrary in the narrative. It will be paid only to one provider and will not be broken down into its component parts.

2. The fee schedule for all diagnostic Medical, Radiology and Pathology services performed in a hospital setting is indicated in the "Prof. Comp" and represents the professional component for those hospital based physicians whose contract is based on fee-for-service.

(d) Regarding alphabetic and numeric symbols under "IND" and "MOD", these symbols when listed under the "IND" and "MOD" columns are elements of the HCPCS coding system used as qualifiers or indicators (as in the "IND" column) and as modifiers (as in the "MOD" column). They assist the physician in determining the appropriate procedure codes to be used, the area to be covered, the minimum requirements needed, and any additional parameters required for reimbursement purposes.

1. These symbols and/or letters must not be ignored because in certain instances requirements are created in addition to the narrative which accompanies the CPT/HCPCS procedure code as written in CPT-4. The provider will then be liable for the additional requirements and not just the CPT/HCPCS procedure code narrative. These requirements must be fulfilled in order to receive reimbursement.

2. If there is no identifying symbol listed, the CPT/HCPCS code narrative prevails.

10:52-10.2 HCPCS Procedure Codes and Maximum Fee Allowance Schedule for Pathology/Laboratory

| | | Maximum Fee Allowance | | |
|-----|------------|-----------------------|------------------|---------------|
| Ind | HCPCS Code | Mod | Office Total Fee | \$ Prof. Comp |
| N | 36415 | | 1.80 | |
| N | 80002 | | 5.00 | |
| N | 80003 | | 5.90 | |
| N | 80004 | | 5.90 | |
| N | 80005 | | 5.90 | |
| N | 80006 | | 5.90 | |
| N | 80007 | | 7.10 | |

HUMAN SERVICES

PROPOSALS

| | | | | | |
|---|-------|--------|---|-------|--------|
| N | 80008 | 7.10 | | 81005 | 1.00 |
| N | 80009 | 7.10 | | 81007 | 3.82 |
| N | 80010 | 7.50 | | 81015 | .40 |
| N | 80011 | 7.50 | | 81025 | 3.00 |
| N | 80012 | 7.50 | | 81050 | 3.40 |
| N | 80016 | 7.50 | | 82000 | 15.00 |
| N | 80018 | 11.00 | | 82003 | 26.00 |
| N | 80019 | 11.00 | | 82009 | 5.00 |
| N | 80050 | 36.00 | | 82010 | 10.00 |
| N | 80055 | 15.00 | | 82013 | 14.00 |
| N | 80058 | 5.90 | | 82024 | 30.00 |
| N | 80059 | 30.00 | | 82030 | 34.00 |
| N | 80061 | 15.00 | A | 82040 | 1.80 |
| N | 80072 | 12.00 | | 82042 | 4.30 |
| N | 80090 | 28.80 | | 82043 | 4.30 |
| N | 80091 | 12.00 | | 82044 | 1.00 |
| | 80092 | 37.00 | | 82055 | 4.50 |
| | 80100 | 5.20 | | 82075 | 8.80 |
| | 80101 | 5.20 | | 82085 | 13.75 |
| | 80102 | 15.00 | | 82088 | 40.00 |
| | 80150 | 15.00 | | 82101 | 16.30 |
| | 80152 | 15.00 | | 82103 | 7.80 |
| | 80154 | 21.50 | | 82104 | 7.80 |
| | 80156 | 20.00 | | 82105 | 10.20 |
| | 80158 | 20.00 | | 82106 | 10.20 |
| | 80160 | 15.00 | | 82108 | 38.00 |
| | 80162 | 15.00 | | 82128 | 12.90 |
| | 80164 | 10.00 | | 82130 | 25.00 |
| | 80166 | 15.00 | | 82131 | 24.00 |
| | 80168 | 24.50 | | 82135 | 20.00 |
| | 80170 | 12.60 | | 82140 | 6.00 |
| | 80172 | 1.80 | | 82143 | 4.20 |
| | 80174 | 15.00 | | 82145 | 12.00 |
| | 80176 | 18.00 | A | 82150 | 4.50 |
| | 80178 | 9.00 | | 82154 | 40.00 |
| | 80182 | 12.00 | | 82157 | 29.00 |
| | 80184 | 12.80 | | 82160 | 38.00 |
| | 80185 | 19.00 | | 82163 | 21.00 |
| | 80186 | 19.00 | | 82164 | 20.00 |
| | 80188 | 20.00 | | 82172 | 20.00 |
| | 80190 | 15.00 | | 82175 | 7.20 |
| | 80192 | 15.00 | | 82180 | 3.60 |
| | 80194 | 15.00 | | 82190 | S.C.C. |
| | 80196 | 7.00 | | 82205 | 12.00 |
| | 80198 | 15.00 | | 82232 | 24.50 |
| | 80200 | 12.60 | | 82239 | 20.00 |
| | 80202 | 12.00 | | 82240 | 5.69 |
| | 80299 | 10.80 | A | 82250 | 3.00 |
| | 80400 | 34.00 | A | 82251 | 4.50 |
| | 80402 | 96.00 | | 82252 | 2.50 |
| | 80406 | 98.00 | | 82270 | 1.20 |
| | 80408 | 130.00 | | 82273 | 3.70 |
| | 80410 | 127.00 | | 82286 | 7.60 |
| | 80412 | S.C.C. | | 82300 | 30.00 |
| | 80414 | 61.00 | | 82306 | 30.00 |
| | 80415 | 50.00 | | 82307 | 25.00 |
| | 80418 | S.C.C. | | 82308 | 34.00 |
| | 80420 | 74.00 | A | 82310 | 3.00 |
| | 80422 | 45.00 | | 82330 | 14.70 |
| | 80424 | 33.00 | | 82331 | 7.50 |
| | 80426 | 130.00 | | 82340 | 3.60 |
| | 80428 | 60.00 | | 82355 | 9.00 |
| | 80430 | 73.00 | | 82360 | 12.00 |
| | 80432 | 125.00 | | 82365 | 9.00 |
| | 80434 | 100.00 | | 82370 | 9.00 |
| | 80435 | 95.00 | A | 82374 | 3.30 |
| | 80436 | 75.00 | | 82375 | 6.00 |
| | 80438 | 50.00 | | 82376 | 3.00 |
| | 80439 | 100.00 | | 82378 | 22.40 |
| | 80440 | 60.00 | | 82380 | 6.00 |
| | 80500 | 9.00 | | 82382 | 12.00 |
| | 80502 | 13.00 | | 82383 | 12.00 |
| | 81000 | 1.20 | | 82384 | 18.00 |
| | 81002 | 1.00 | | 82387 | 24.00 |
| | 81003 | 1.50 | | 82390 | 6.00 |

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

| | | | | | |
|---|-------|-------|---|-------|--------|
| | 82397 | 21.00 | | 82803 | 16.50 |
| | 82415 | 18.50 | | 82805 | 8.00 |
| A | 82435 | 3.00 | | 82810 | 10.00 |
| | 82436 | 3.00 | | 82820 | 14.92 |
| | 82438 | 3.00 | | 82926 | 6.00 |
| | 82441 | 8.92 | | 82928 | 6.00 |
| A | 82465 | 3.00 | | 82938 | 26.00 |
| | 82480 | 4.50 | | 82941 | 16.00 |
| | 82482 | 11.27 | | 82943 | 20.00 |
| | 82485 | 30.00 | | 82946 | 13.00 |
| | 82486 | 4.40 | A | 82947 | 3.00 |
| N | 82487 | 4.00 | | 82948 | 1.50 |
| N | 82488 | 15.00 | | 82950 | 3.00 |
| N | 82489 | 15.00 | | 82951 | 5.00 |
| | 82491 | 21.50 | | 82952 | 1.00 |
| | 82495 | 30.00 | | 82953 | 10.00 |
| | 82507 | 40.00 | | 82955 | 6.00 |
| | 82520 | 17.00 | | 82960 | 7.00 |
| | 82525 | 9.00 | | 82962 | 2.60 |
| | 82528 | 19.70 | | 82963 | 26.50 |
| | 82530 | 17.00 | | 82965 | 6.30 |
| | 82533 | 17.00 | | 82975 | 22.00 |
| | 82540 | 3.00 | A | 82977 | 4.80 |
| A | 82550 | 4.80 | | 82978 | 12.00 |
| | 82552 | 7.80 | | 82979 | 10.00 |
| | 82553 | 7.50 | | 82980 | 20.00 |
| | 82554 | 16.00 | | 82985 | 6.60 |
| A | 82565 | 3.00 | | 83001 | 17.00 |
| | 82570 | 3.00 | | 83002 | 17.00 |
| | 82575 | 4.50 | | 83003 | 16.00 |
| | 82585 | 6.30 | | 83008 | 24.00 |
| | 82595 | 1.50 | | 83010 | 12.00 |
| | 82600 | 27.50 | | 83012 | 12.00 |
| | 82607 | 15.00 | | 83015 | 10.20 |
| | 82608 | 15.00 | | 83018 | 25.00 |
| | 82615 | 11.50 | | 83020 | 6.00 |
| | 82626 | 37.00 | | 83026 | 2.00 |
| | 82627 | 33.00 | | 83030 | 12.00 |
| | 82633 | 43.50 | | 83033 | 7.00 |
| | 82634 | 39.00 | | 83036 | 6.60 |
| | 82638 | 18.00 | | 83045 | 1.50 |
| | 82646 | 25.30 | | 83050 | 3.00 |
| | 82649 | 31.00 | | 83051 | 1.20 |
| | 82651 | 33.00 | | 83055 | 1.50 |
| | 82652 | 55.00 | | 83060 | 3.00 |
| | 82654 | 13.60 | | 83065 | 3.00 |
| | 82664 | 13.60 | | 83068 | 3.00 |
| | 82666 | 22.00 | | 83069 | 3.00 |
| | 82668 | 17.50 | | 83070 | 6.00 |
| | 82670 | 25.00 | | 83071 | 10.00 |
| | 82671 | 41.00 | | 83088 | 40.00 |
| | 82672 | 25.00 | | 83150 | 12.00 |
| | 82677 | 28.00 | | 83491 | 12.60 |
| | 82679 | 25.00 | | 83497 | 6.00 |
| | 82690 | 25.00 | | 83498 | 30.50 |
| | 82693 | 12.50 | | 83499 | 30.50 |
| | 82696 | 22.00 | | 83500 | 34.00 |
| | 82705 | .60 | | 83505 | 40.00 |
| | 82710 | 7.80 | | 83518 | 8.00 |
| | 82715 | 7.80 | | 83519 | 15.00 |
| | 82725 | 15.50 | | 83520 | S.C.C. |
| N | 82728 | 16.00 | | 83525 | 12.00 |
| | 82735 | 24.00 | | 83527 | 22.00 |
| | 82742 | 29.50 | | 83528 | 20.00 |
| | 82746 | 10.50 | A | 83540 | 4.50 |
| | 82747 | 18.00 | A | 83550 | 7.20 |
| | 82757 | 25.00 | | 83570 | 6.00 |
| | 82759 | 11.50 | | 83582 | 6.00 |
| | 82760 | 15.00 | | 83586 | 7.50 |
| | 82775 | 30.00 | | 83593 | 6.00 |
| | 82776 | 8.90 | | 83605 | 15.00 |
| | 82784 | 11.30 | A | 83615 | 4.20 |
| | 82785 | 16.00 | | 83625 | 9.00 |
| | 82787 | 49.00 | | 83632 | 16.00 |
| | 82800 | 5.20 | | 83633 | 6.30 |

HUMAN SERVICES

PROPOSALS

| | | | | | |
|---|-------|--------|---|-------|-------|
| | 83634 | 14.00 | | 84150 | 30.00 |
| N | 83655 | 9.00 | | 84153 | 26.00 |
| | 83661 | 10.50 | A | 84155 | 1.80 |
| | 83662 | 5.00 | | 84160 | 1.80 |
| | 83670 | 2.10 | | 84165 | 6.00 |
| | 83690 | 4.50 | | 84181 | 25.00 |
| | 83715 | 7.50 | | 84182 | 26.00 |
| | 83717 | 22.00 | N | 84202 | 10.40 |
| A | 83718 | 8.00 | N | 84203 | 3.00 |
| | 83719 | 17.00 | | 84206 | 19.00 |
| | 83721 | 10.00 | | 84207 | 40.00 |
| | 83727 | 17.00 | | 84210 | 16.00 |
| A | 83735 | 4.50 | | 84220 | 13.00 |
| | 83775 | 5.90 | | 84228 | 17.00 |
| | 83785 | 35.00 | | 84233 | 16.00 |
| | 83805 | 26.00 | | 84234 | 20.00 |
| | 83825 | 8.40 | | 84235 | 63.20 |
| | 83835 | 10.20 | | 84238 | 43.00 |
| | 83840 | 4.50 | | 84244 | 25.00 |
| | 83857 | 12.00 | | 84252 | 30.00 |
| | 83858 | 22.00 | | 84255 | 37.00 |
| | 83864 | 13.00 | | 84260 | 44.00 |
| | 83866 | 15.00 | | 84270 | 25.00 |
| | 83872 | 3.20 | | 84275 | 16.00 |
| | 83873 | 25.00 | | 84285 | 28.80 |
| | 83874 | 12.00 | A | 84295 | 3.90 |
| | 83883 | S.C.C. | | 84300 | 3.90 |
| | 83885 | 19.00 | | 84305 | 16.00 |
| | 83887 | 20.00 | | 84307 | 16.00 |
| | 83890 | 5.71 | | 84311 | 7.50 |
| | 83892 | 5.71 | | 84315 | 3.00 |
| | 83894 | 5.71 | | 84375 | 29.00 |
| | 83896 | 5.71 | | 84392 | 7.00 |
| | 83898 | 30.00 | | 84402 | 38.00 |
| | 83912 | 31.39 | | 84403 | 32.00 |
| | 83915 | 6.00 | | 84425 | 32.00 |
| | 83916 | 20.00 | | 84430 | 3.60 |
| | 83918 | 19.00 | | 84432 | 13.00 |
| | 83925 | 22.00 | | 84436 | 6.00 |
| | 83930 | 9.50 | | 84437 | 6.00 |
| | 83935 | 9.90 | | 84439 | 10.00 |
| | 83957 | 65.00 | | 84442 | 12.00 |
| | 83945 | 17.00 | | 84443 | 24.00 |
| | 83970 | 54.00 | | 84445 | 27.80 |
| | 83986 | 4.30 | | 84446 | 19.00 |
| | 83992 | 18.00 | | 84449 | 30.00 |
| | 84022 | 20.00 | A | 84450 | 3.00 |
| | 84030 | 6.00 | A | 84460 | 3.00 |
| | 84035 | 4.90 | | 84466 | 19.00 |
| | 84060 | 3.60 | A | 84478 | 8.30 |
| | 84061 | 3.60 | | 84479 | 6.00 |
| | 84066 | 14.00 | | 84480 | 15.00 |
| A | 84075 | 3.60 | | 84481 | 15.00 |
| | 84078 | 3.60 | | 84482 | 15.00 |
| | 84080 | 3.60 | | 84485 | 3.30 |
| N | 84081 | 24.00 | | 84488 | 3.30 |
| | 84085 | 7.90 | | 84490 | 3.30 |
| | 84087 | 15.00 | | 84510 | 12.70 |
| A | 84100 | 3.00 | A | 84520 | 3.00 |
| | 84105 | 3.00 | | 84525 | 3.00 |
| | 84106 | 1.80 | | 84540 | 3.00 |
| | 84110 | 7.50 | | 84545 | 6.00 |
| | 84119 | 3.00 | A | 84550 | 3.00 |
| | 84120 | 7.50 | | 84560 | 3.00 |
| | 84126 | 37.00 | | 84577 | 6.00 |
| | 84127 | 15.00 | | 84578 | .40 |
| A | 84132 | 3.90 | | 84580 | 2.10 |
| | 84133 | 3.90 | | 84583 | 2.10 |
| | 84134 | 20.00 | | 84585 | 12.00 |
| | 84135 | 12.00 | | 84586 | 50.00 |
| | 84138 | 12.00 | | 84588 | 49.50 |
| | 84140 | 50.00 | | 84590 | 6.00 |
| | 84143 | 60.00 | | 84597 | 20.00 |
| | 84144 | 20.00 | | 84600 | 18.00 |
| | 84146 | 20.00 | N | 84620 | 16.00 |

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

| | | | | | |
|---|-------|--------|--|---------|--------|
| | 84630 | 16.00 | | 85460 | 9.40 |
| | 84681 | 22.00 | | 85475 | 10.00 |
| | 84702 | 11.39 | | 85520 | 19.00 |
| | 84703 | 3.00 | | 85525 | 17.00 |
| | 84830 | 3.00 | | 85530 | 16.00 |
| | 84999 | S.C.C. | | 85535 | 3.00 |
| | 85002 | 1.20 | | 85540 | 8.90 |
| N | 85007 | 2.40 | | 85547 | 10.50 |
| | 85008 | 1.20 | | 85549 | 28.00 |
| | 85009 | 1.20 | | 85555 | 4.80 |
| | 85013 | 1.50 | | 85557 | 4.80 |
| N | 85014 | 1.50 | | 85576 | 10.00 |
| N | 85018 | 1.20 | | 85585 | 1.00 |
| N | 85021 | 1.80 | | N 85590 | 3.00 |
| N | 85022 | 3.00 | | N 85595 | 3.00 |
| N | 85023 | S.C.C. | | 85597 | 20.00 |
| N | 85024 | 4.80 | | 85610 | 3.00 |
| N | 85025 | S.C.C. | | 85611 | 4.50 |
| N | 85027 | 4.80 | | 85612 | 13.00 |
| | 85029 | 2.75 | | 85613 | 10.00 |
| | 85030 | 3.25 | | 85635 | 8.40 |
| | 85031 | 3.00 | | 85651 | 1.50 |
| N | 85041 | 1.20 | | 85660 | 3.00 |
| N | 85044 | 3.00 | | 85670 | 6.60 |
| | 85045 | 4.00 | | 85675 | 6.42 |
| N | 85048 | 1.20 | | 85705 | 7.90 |
| | 85060 | S.C.C. | | 85730 | 3.00 |
| | 85095 | S.C.C. | | 85732 | 3.00 |
| | 85097 | S.C.C. | | 85810 | 15.00 |
| | 85102 | S.C.C. | | 85999 | S.C.C. |
| | 85130 | S.C.C. | | 86000 | .90 |
| | 85170 | .60 | | 86003 | 20.00 |
| | 85175 | 3.90 | | 86005 | 5.00 |
| | 85210 | 3.00 | | 86021 | 9.00 |
| | 85220 | 25.00 | | 86022 | 9.00 |
| | 85230 | 25.00 | | 86023 | 15.00 |
| | 85240 | 25.00 | | 86038 | 7.80 |
| | 85244 | 29.00 | | 86039 | 15.00 |
| | 85246 | 10.00 | | 86060 | 3.60 |
| | 85247 | 10.00 | | 86063 | 1.20 |
| | 85250 | 27.00 | | 86077 | S.C.C. |
| | 85260 | 26.00 | | 86078 | S.C.C. |
| | 85270 | 26.00 | | 86079 | S.C.C. |
| | 85280 | 26.00 | | 86140 | 3.00 |
| | 85290 | 8.00 | | 86147 | 38.00 |
| | 85291 | 7.00 | | 86155 | 14.00 |
| | 85292 | 28.00 | | 86156 | 3.00 |
| | 85293 | 28.00 | | 86157 | 9.00 |
| | 85300 | 15.00 | | 86160 | 9.00 |
| | 85301 | 16.00 | | 86161 | 9.00 |
| | 85302 | 17.00 | | 86162 | 15.60 |
| | 85303 | 18.00 | | 86171 | 4.50 |
| | 85305 | 17.00 | | 86185 | 7.90 |
| | 85306 | 18.00 | | 86215 | 18.50 |
| | 85335 | 10.00 | | 86225 | 13.00 |
| | 85337 | 10.00 | | 86226 | 15.00 |
| | 85345 | 1.80 | | 86235 | 25.00 |
| | 85347 | 3.00 | | 86243 | 15.90 |
| | 85348 | 1.20 | | 86255 | 7.80 |
| | 85360 | 12.00 | | 86256 | 12.50 |
| | 85362 | 3.00 | | 86277 | 16.00 |
| | 85366 | 8.00 | | 86280 | 5.40 |
| | 85370 | 5.00 | | 86287 | 10.00 |
| | 85378 | 5.00 | | 86289 | 15.00 |
| | 85379 | 5.00 | | 86290 | 18.00 |
| | 85384 | 9.60 | | 86291 | 15.00 |
| | 85385 | 9.60 | | 86293 | 12.00 |
| | 85390 | 7.00 | | 86295 | 12.00 |
| | 85400 | 9.00 | | 86296 | 10.00 |
| | 85410 | 9.00 | | 86299 | 12.60 |
| | 85415 | 10.00 | | 86302 | 19.00 |
| | 85420 | 9.00 | | 86306 | 20.00 |
| | 85421 | 15.00 | | 86308 | 3.00 |
| | 85441 | 6.00 | | 86309 | 5.00 |
| | 85445 | 5.00 | | 86310 | 4.50 |

HUMAN SERVICES

PROPOSALS

| | |
|-------|--------|
| 86311 | 26.00 |
| 86316 | 30.00 |
| 86317 | 8.00 |
| 86318 | 7.00 |
| 86320 | 10.50 |
| 86325 | 25.00 |
| 86327 | 25.00 |
| 86329 | 20.00 |
| 86331 | 4.50 |
| 86332 | 33.00 |
| 86334 | 31.20 |
| 86337 | 13.71 |
| 86340 | 20.00 |
| 86341 | 25.00 |
| 86343 | 6.00 |
| 86344 | 10.86 |
| 86353 | 32.00 |
| 86359 | 40.00 |
| 86360 | 55.00 |
| 86376 | 6.60 |
| 86378 | 26.00 |
| 86382 | 20.00 |
| 86384 | 10.86 |
| 86403 | 8.00 |
| 86430 | 1.80 |
| 86431 | 4.50 |
| 86485 | S.C.C. |
| 86490 | S.C.C. |
| 86510 | S.C.C. |
| 86580 | S.C.C. |
| 86585 | S.C.C. |
| 86586 | S.C.C. |
| 86588 | 13.20 |
| 86590 | 8.00 |
| 86592 | 1.50 |
| 86593 | 3.00 |
| 86602 | 10.00 |
| 86603 | 10.00 |
| 86606 | 10.00 |
| 86609 | 10.00 |
| 86612 | 10.00 |
| 86615 | 10.00 |
| 86618 | 25.00 |
| 86619 | 10.00 |
| 86622 | 8.00 |
| 86625 | 10.00 |
| 86628 | 10.00 |
| 86631 | 10.00 |
| 86632 | 15.00 |
| 86635 | 10.00 |
| 86638 | 12.50 |
| 86641 | 12.50 |
| 86644 | 23.00 |
| 86645 | 12.00 |
| 86648 | 18.00 |
| 86651 | 12.00 |
| 86652 | 12.00 |
| 86653 | 12.00 |
| 86654 | 12.00 |
| 86658 | 12.00 |
| 86663 | 12.00 |
| 86664 | 23.00 |
| 86665 | 25.00 |
| 86668 | 12.00 |
| 86671 | 15.00 |
| 86674 | S.C.C. |
| 86677 | 12.00 |
| 86682 | 12.00 |
| 86684 | 15.00 |
| 86687 | 12.00 |
| 86688 | 13.00 |
| 86689 | 21.20 |
| 86692 | 20.00 |
| 86694 | 12.80 |
| 86695 | 12.80 |

EACH MITOGEN

| | |
|-------|--------|
| 86698 | 15.00 |
| 86701 | 13.00 |
| 86702 | 13.00 |
| 86703 | 21.00 |
| 86710 | 12.00 |
| 86713 | 20.00 |
| 86717 | S.C.C. |
| 86720 | 15.00 |
| 86723 | 15.00 |
| 86727 | 15.00 |
| 86729 | 12.00 |
| 86732 | 15.00 |
| 86735 | 15.00 |
| 86738 | 12.00 |
| 86741 | 12.00 |
| 86744 | 12.00 |
| 86747 | 12.00 |
| 86750 | 12.00 |
| 86753 | 12.00 |
| 86756 | 12.00 |
| 86759 | 12.00 |
| 86762 | 12.00 |
| 86765 | 10.00 |
| 86768 | 12.00 |
| 86771 | 12.00 |
| 86774 | 5.40 |
| 86777 | 12.00 |
| 86778 | 15.00 |
| 86781 | 12.00 |
| 86784 | 8.00 |
| 86787 | 12.60 |
| 86790 | S.C.C. |
| 86793 | 8.00 |
| 86800 | 13.00 |
| 86805 | 22.00 |
| 86806 | 22.00 |
| 86807 | 55.00 |
| 86808 | 39.00 |
| 86812 | 12.60 |
| 86813 | 19.00 |
| 86816 | 19.00 |
| 86817 | 19.00 |
| 86821 | 68.00 |
| 86822 | 50.00 |
| 86849 | S.C.C. |
| 86850 | 4.20 |
| 86860 | 4.20 |
| 86870 | 9.00 |
| 86880 | 5.00 |
| 86885 | 6.80 |
| 86886 | 5.00 |
| 86890 | 75.00 |
| 86891 | 75.00 |
| 86900 | 2.00 |
| 86901 | 2.00 |
| 86903 | 11.70 |
| 86904 | 11.70 |
| 86905 | 3.00 |
| 86906 | 2.00 |
| 86910 | 12.60 |
| 86911 | 5.00 |
| 86915 | 67.50 |
| 86920 | 12.00 |
| 86921 | 12.00 |
| 86922 | 12.00 |
| 86940 | 9.50 |
| 86941 | 12.50 |
| 86945 | S.C.C. |
| 86950 | S.C.C. |
| 86965 | S.C.C. |
| 86970 | S.C.C. |
| 86971 | S.C.C. |
| 86972 | S.C.C. |
| 86975 | S.C.C. |
| 86976 | S.C.C. |

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

| | | | | | | | |
|---|-------|--------|------|---|-------|--------|--------|
| | 86977 | S.C.C. | | | 88151 | 6.00 | |
| | 86978 | S.C.C. | | N | 88155 | 6.00 | |
| | 86985 | S.C.C. | | | 88156 | 6.00 | |
| | 86999 | S.C.C. | | | 88157 | 6.00 | |
| | 87001 | 9.00 | | | 88160 | S.C.C. | |
| | 87003 | 15.00 | | | 88161 | S.C.C. | 7.00 |
| | 87015 | 5.10 | | | 88162 | S.C.C. | |
| N | 87040 | 9.00 | | | 88170 | S.C.C. | |
| N | 87045 | 9.00 | | | 88171 | S.C.C. | |
| N | 87060 | 9.00 | | | 88172 | S.C.C. | |
| N | 87070 | 9.00 | | | 88173 | S.C.C. | |
| | 87072 | 6.00 | | | 88180 | S.C.C. | |
| | 87075 | 9.00 | | | 88182 | 300.00 | |
| | 87076 | 6.00 | | | 88199 | S.C.C. | |
| | 87081 | 9.00 | | | 88230 | 90.00 | |
| | 87082 | 4.00 | | | 88233 | 90.00 | |
| | 87083 | 4.00 | | | 88235 | 90.00 | |
| | 87084 | 3.00 | | | 88237 | 90.00 | |
| | 87085 | 4.00 | | | 88239 | 90.00 | |
| | 87086 | 6.00 | | | 88245 | 184.00 | |
| | 87087 | 2.70 | | | 88248 | 230.00 | |
| | 87088 | 2.70 | | | 88250 | 184.00 | |
| | 87101 | 8.00 | | | 88262 | 184.00 | |
| | 87102 | 8.00 | | | 88263 | 184.00 | |
| | 87103 | 8.00 | | | 88267 | 230.00 | |
| | 87106 | 8.00 | | | 88280 | 37.00 | |
| | 87109 | 14.00 | | | 88283 | 46.00 | |
| | 87110 | 15.00 | | | 88285 | 2.00 | |
| | 87116 | 6.00 | | | 88289 | 40.00 | |
| | 87117 | 9.00 | | | 88300 | S.C.C. | 7.00 |
| | 87118 | 12.00 | | | 88302 | S.C.C. | 15.00 |
| | 87140 | 3.00 | | | 88304 | S.C.C. | 19.00 |
| | 87143 | 3.00 | | | 88305 | S.C.C. | 30.00 |
| | 87145 | 3.00 | | | 88307 | S.C.C. | 44.00 |
| | 87147 | 3.00 | | | 88309 | S.C.C. | 66.00 |
| | 87151 | 3.00 | | | 88311 | S.C.C. | |
| | 87155 | 3.00 | | | 88312 | S.C.C. | 8.00 |
| | 87158 | 3.00 | | | 88313 | S.C.C. | 5.00 |
| | 87163 | 12.00 | | | 88314 | S.C.C. | 7.00 |
| | 87164 | 6.00 | | | 88318 | S.C.C. | |
| | 87166 | 6.00 | | | 88319 | S.C.C. | |
| | 87174 | 10.00 | | | 88321 | S.C.C. | |
| | 87175 | 15.00 | | | 88323 | S.C.C. | |
| | 87176 | 6.40 | | | 88325 | S.C.C. | |
| | 87177 | 5.10 | | | 88329 | S.C.C. | |
| | 87178 | 24.00 | | | 88331 | S.C.C. | 41.00 |
| | 87179 | 24.00 | | | 88332 | S.C.C. | |
| | 87181 | 5.80 | | | 88342 | S.C.C. | 7.00 |
| N | 87184 | 9.00 | | | 88346 | 40.00 | 7.00 |
| | 87186 | 13.00 | | | 88347 | 45.00 | 7.00 |
| | 87187 | 13.00 | | | 88348 | 184.00 | 151.00 |
| | 87188 | 6.00 | | N | 88349 | S.C.C. | 151.00 |
| | 87190 | .60 | | N | 88355 | S.C.C. | 31.50 |
| | 87192 | .60 | | | 88356 | S.C.C. | 31.50 |
| | 87197 | 15.00 | | | 88358 | S.C.C. | 31.50 |
| | 87205 | 4.20 | | | 88362 | S.C.C. | 31.50 |
| | 87206 | 4.20 | | | 88365 | 47.25 | 15.75 |
| | 87207 | 3.00 | | | 88371 | S.C.C. | |
| | 87208 | 5.10 | | | 88372 | S.C.C. | |
| | 87210 | 2.40 | | | 88399 | S.C.C. | |
| | 87211 | 5.10 | | | 89050 | 0.90 | |
| | 87220 | 2.40 | | | 89051 | 0.90 | |
| | 87230 | 27.00 | | | 89060 | 8.50 | |
| | 87250 | 28.00 | | | 89100 | S.C.C. | |
| | 87252 | 29.50 | | | 89105 | S.C.C. | |
| | 87253 | 6.00 | | | 89125 | 0.60 | |
| | 87999 | S.C.C. | | | 89130 | S.C.C. | |
| | 88104 | S.C.C. | 7.00 | | 89132 | S.C.C. | |
| | 88106 | S.C.C. | 7.00 | | 89135 | S.C.C. | |
| | 88107 | S.C.C. | 7.00 | | 89136 | S.C.C. | |
| | 88108 | S.C.C. | 7.00 | | 89140 | S.C.C. | |
| | 88125 | S.C.C. | | | 89141 | S.C.C. | |
| | 88130 | 9.65 | 7.00 | | 89160 | 2.10 | |
| | 88140 | 4.20 | 3.00 | | 89190 | 2.20 | |
| | 88150 | 6.00 | | | 89300 | 2.40 | |

HUMAN SERVICES

PROPOSALS

| | | |
|-----|-------|--------|
| | 89310 | 4.80 |
| | 89320 | 3.00 |
| | 89325 | 13.00 |
| F | 89329 | 31.00 |
| F | 89330 | 8.00 |
| | 89350 | S.C.C. |
| | 89355 | S.C.C. |
| N | 89360 | S.C.C. |
| | 89399 | S.C.C. |
| L | G0001 | 1.80 |
| L | P9610 | 1.80 |
| L | P9615 | 1.80 |
| L | Q0111 | 2.40 |
| L | Q0112 | 2.40 |
| L | Q0113 | 5.10 |
| L | Q0114 | 9.60 |
| L | Q0115 | 12.33 |
| L | Q0116 | 2.00 |
| L N | W8200 | 2.00 |
| L | W8260 | 33.00 |
| L | W8265 | 33.00 |
| L | W8730 | 11.00 |
| L | W8900 | 10.00 |
| L | W8920 | 1.80 |
| L | W8925 | .60 |

| | | |
|---------|---|-------|
| Q0115 | Post-coital direct, qualitative examinations of vaginal or cervical mucous | 12.33 |
| Q0116 | Hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurements and read-out | 2.00 |
| N W8200 | Glucose, serum (separate tube, grey top) QUALIFIER: Submitted on same claim, and performed on same date as chemistry profiles | 2.00 |
| W8260 | Haldol (haloperidol) serum, confirmation test | 33.00 |
| W8265 | Serentil, serum mesoridazine, quantitative, confirmation test | 33.00 |
| W8730 | Gonozyme, Gonococcal antigen | 11.00 |
| W8900 | House call to home bound patient in home or sheltered boarding home for purpose of obtaining blood by venous or arterial puncture QUALIFIER: Reimbursement limited to once per trip regardless of number of patients | 10.00 |
| W8920 | Visit to obtain blood specimens by venous or arterial puncture "first person in nursing home" | 1.80 |
| W8925 | Each additional person in nursing home | .60 |

10:52-10.3 HCPCS Code Numbers, Procedure Description and Maximum Fee Schedule; Pathology/Laboratory (Codes and Narratives Not Found in CPT-4)

PATHOLOGY/LABORATORY

| HCPCS Ind Code Mod | Procedure Description | Maximum Fee Allowance |
|--------------------|---|-----------------------|
| G0001 | Routine Venipuncture QUALIFIER: This service is reimbursable at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per patient encounter, regardless of the number of patient encounters per day. | \$ 1.80 |
| P9610 | Catheterization for collection of (urine) specimen(s), single home bound, nursing home, or SNF patient QUALIFIER: This service is reimbursable at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per patient encounter, regardless of the number of patient encounters per day. | 1.80 |
| P9615 | Catheterization for collection of (urine) specimen(s), (multiple) patients QUALIFIER: This service is reimbursable at a fixed rate or at the amount of the hospital charge (whichever is less) per specimen type, per patient encounter, regardless of the number of patient encounters per day. | 1.80 |
| Q0111 | Wet mount, including preparations of vaginal, cervical or skin specimens | 2.40 |
| Q0112 | All potassium hydroxide (KOH) preparations | 2.40 |
| Q0113 | Pinworm examination | 5.10 |
| Q0114 | Fern test | 9.60 |

10:52-10.4 Pathology and Laboratory HCPCS Codes—Qualifiers
(a) Qualifiers for pathology and laboratory services are summarized below:

1. Chemistry Automated, Multichannel Tests
Applies to CPT Codes: 80002, 80003, 80004, 80005, 80006, 80007, 80008, 80009, 80010, 80011, 80012, 80016, 80018, and 80019. The following list contains those tests which can be and are frequently performed as groups and combinations (profiles) on automated multichannel equipment: Apply this methodology to the above CPT Codes. For reporting one test, regardless of method of testing, use appropriate single test code number. For any combination of tests among those listed below use the appropriate number 80002-80019. Groups of the tests listed here are distinguished from multiple tests performed individually for immediate or "stat" reporting. Laboratory chemistry tests performed on your automated equipment in addition to laboratory chemistry tests listed must be billed as 80002-80019 as part of the automated multichannel test listing.
- Acid—Phosphatase
 - Albumin
 - Alkaline Phosphatase
 - (ALT, SGPT) Aspartate Aminotranferase
 - (AST, SGOT) Aspartate Aminotranferase
 - Amylase
 - Bilirubin, Total
 - Bilirubin, Direct
 - Blood Urea Nitrogen (BUN)
 - Calcium
 - Carbon Dioxide (CO2)
 - Chlorides (Cl)
 - Cholesterol
 - Creatine Kinase (CK, CPK)
 - Creatinine
 - Gamma Glutamyl Transpeptidase (GGTP)
 - Glucose (Sugar)
 - Iron
 - Iron Binding Capacity
 - Lactic Dehydrogenase (LD)

- 90 Reference (Outside) Laboratory: When laboratory procedures are performed by a party other than the treating or reporting physician, the procedure may be identified by adding the modifier '90' to the usual procedure number.

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Admission Requirements for Foreign and Alien Life and Health Insurers

Proposed New Rules: N.J.A.C. 11:2-1

Authorized By: Andrew J. Karpinski, Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1C-6(ε) and (i); 17:1-8 and 8.1; 17B:17-1 et seq.; 17B:21-1 et seq.; 17B:23-1 et seq.; and 17B:23-5.

Proposal Number: PRN 1994-602.

Submit comments by December 21, 1994 to:

Donald Bryan
Acting Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

The proposed new rules contain the procedures to be followed by foreign and alien life and health insurers in making application for a certificate of authority to transact the business of insurance in the State of New Jersey. The new rules are similar to admission requirements for foreign and alien property and casualty insurers at N.J.A.C. 11:1-10 which have been in effect since June 19, 1989. New Jersey is one of only a handful of states that have attempted to implement its legislation with formal administrative rules setting forth admission requirements.

The application process is essentially a two-step procedure. Initially, general requirements must be satisfied. These requirements are summarized below. If an applicant believes that it satisfies the general requirements, it must file with the Department a "letter of intent." After the receipt of a fully completed letter of intent, which is essentially a preliminary application, the second step requires a "final application" to be completed and filed with the Department for analysis and evaluation.

The proposed new rules generally codify existing Departmental guidelines, with the following significant exceptions:

1. The inclusion of additional means by which a foreign or alien insurer can reduce or waive the five-year seasoning requirement (see proposed N.J.A.C. 11:2-1.4(a)5iii(1) and (2));
2. The delineation of the specific requirements concerning hazardous financial condition (see proposed N.J.A.C. 11:2-1.4(a)1);
3. The additional information required concerning the plan of operation of the applicant (see proposed N.J.A.C. 11:2-1.6(a));
4. An expanded appeal and review procedure (see proposed N.J.A.C. 11:2-1.7); and
5. The requirement that applicants seeking admission by fulfilling the five-year seasoning requirement secure a favorable financial rating (see proposed N.J.A.C. 11:2-1.4(a)5ii(3)).

These new requirements are the result of the Department's belief that, based upon its experience with and its review of the present guidelines, some modifications to the present procedures are necessary.

A summary of the various provisions of the proposed new rules follows:

Proposed N.J.A.C. 11:2-1.1 and 1.2 establish the purpose and scope of the proposed subchapter. Proposed N.J.A.C. 11:2-1.3 is a definitions section.

The substantive provisions of the proposed new rules include N.J.A.C. 11:2-1.4 through 1.7. Proposed N.J.A.C. 11:2-1.4 establishes the general eligibility requirements which must be met by foreign and alien life and

health insurers to be admitted to transact the business of insurance in New Jersey. These requirements implement existing statutory requirements and include, generally, the following:

1. Proof that the applicant's financial condition and methods of operation are not hazardous;
2. Proof that the applicant possesses minimum amounts of capital and surplus;
3. Proof that the applicant satisfies NAIC solvency and annual statement requirements;
4. Proof that an applicant satisfies the seasoning requirements or can qualify for a reduction in or a waiver of such requirements; and
5. Procurement of a New Jersey certificate of authority.

Proposed N.J.A.C. 11:2-1.5 requires all applicants to submit a "letter of intent" prior to the Department's acceptance of a final application for a certificate of authority. This section also establishes the requirements for completing the "letter of intent."

Proposed N.J.A.C. 11:2-1.6 requires all applicants who have previously filed a complete and satisfactory letter of intent (proposed N.J.A.C. 11:2-1.5) to file a "final application" with the Department. This section also establishes the requirements for completing the "final application."

Proposed N.J.A.C. 11:2-1.7 establishes the Departmental procedures by which a "final application" is to be reviewed and accepted or rejected. In cases of rejection, this section establishes an appeals procedure.

Proposed N.J.A.C. 11:2-1.8 enables applicants who have filed a letter of intent with the Department prior to the operative date of this subchapter to opt for a review of their applications under the new rules.

Proposed N.J.A.C. 11:2-1.9 provides for severability.

Social Impact

The requirements established by the proposed new rules will clarify the application procedure for the admission of foreign and alien life and health insurers to transact the business of insurance in New Jersey. Applicants will be fully apprised of the types of information sought by the Department in its review of their applications for a certificate of authority. The publication of administrative rules greatly streamlines the entire application process. The expanded and clarified review procedure will fully apprise applicants of their rights and obligations upon the initial rejection of an application and affords them an opportunity to appeal to the Department for an informal review of their rejection prior to filing a formal appeal under the Administrative Procedure Act.

The clarified and generally more thorough review procedures established by the proposed new rules will provide the public with more protection against the possibility of failure of an admitted foreign or alien life and health insurer. This will in turn provide a more stable business environment.

Economic Impact

Proposed N.J.A.C. 11:2-1.6(a)10 imposes a \$5,000 nonrefundable application fee for an admissions application. This fee, however, is not new as it is already set forth at N.J.A.C. 11:1-32.5(a)1.

Additional costs of application will be incurred by applicants who attempt to waive or reduce the seasoning requirements by methods requiring satisfactory financial ratings from the rating services specified in the rule. Such a requirement and potential financial obligation is also imposed upon applicants seeking admission without a waiver or reduction of the seasoning requirements.

To the extent that the published administrative rules clarify the application procedures, the time and effort previously expended by an applicant in securing and following guidelines concerning application procedures should be reduced.

The Department will experience an increase in its workload as a result of an increase in applications due to both the publication and increased availability of its procedures, and the existence of additional conditions by which the five-year seasoning requirements can be waived or reduced. This may prompt more companies to apply for admission. Any projected increase in workload should be absorbed by the present staff and budget. Therefore, it is anticipated that no new staff will be needed by the Department.

The proposed new rules will inure to the benefit of the general public by further insuring against the possibility of the failure and insolvency of admitted foreign or alien insurers.

Regulatory Flexibility Statement

The proposed new rules will not apply to "small businesses" as that term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. By its very nature, this subchapter applies to foreign and alien corporations which are not resident in New Jersey and almost

certainly have 100 or more full-time employees. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed new rules follows:

SUBCHAPTER 1. ADMISSION REQUIREMENTS FOR FOREIGN AND ALIEN LIFE AND HEALTH INSURERS

11:2-1.1 Purpose

This subchapter establishes the procedures, requirements and standards which govern the application of foreign and alien insurers engaged in the business of life and health insurance for a certificate of authority to transact the business of insurance in this State.

11:2-1.2 Scope

This subchapter applies to all foreign and alien insurers that apply for a certificate of authority to transact the business of life and health insurance in this State. The filing requirements contained in this subchapter shall not apply to the continuation, renewal or timely reinstatement of existing certificates of authority except where the Commissioner, pursuant to law, shall otherwise require.

11:2-1.3 Definitions

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

"Commissioner" means the Commissioner of the Department of Insurance of this State.

"Committee on Admissions" means the advisory committee within the Department appointed by the Commissioner to aid in the review of applications for admission to transact the business of insurance in this State and to render to the Commissioner recommendations as to the disposition of such applications.

"Department" means the Department of Insurance of this State.

"IRIS" means the NAIC Insurance Regulatory Information System.

"NAIC" means National Association of Insurance Commissioners.

11:2-1.4 General eligibility requirements

(a) In order for a foreign or alien insurer to be admitted as a life and health insurer in this State, the requirements in this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

1. The applicant shall satisfy the Commissioner that its condition or methods of operation are not such as would render its operation hazardous to the public or its policyholders in this State. In determining whether a hazardous financial condition exists, the factors identified in N.J.A.C. 11:2-27.3 shall be considered. A hazardous financial condition shall exist when those factors indicate, either singly or in combination of two or more, that the financial condition of any applicant which has applied to transact, or is already transacting the business of insurance in any jurisdiction, is considered by the Commissioner to be hazardous to the policyholders, stockholders, claimants, creditors, or the general public. The Commissioner shall further consider any other fact or circumstance that indicates that an insurer's operations may be hazardous.

2. The applicant shall satisfy at least the minimum capital and surplus requirements of a similar domestic insurer of this State for all lines of insurance that it is authorized to write pursuant to the certificate of authority issued by its place of domicile, whether or not the applicant desires to transact any of those lines of insurance in this State, subject to the following:

i. In determining whether an applicant meets the minimum capital and surplus requirements, the following shall be deducted from unassigned funds:

(1) The statement value of any and all special deposits not held for the protection of all policyholders;

(2) Reserves and losses reinsured with companies not authorized in New Jersey, accredited as reinsurers in New Jersey, or otherwise in compliance with N.J.S.A. 17:51B-1 et seq., net of any offsets;

(3) The statement value for the portion of assets held in excess of investment limitations for life and health insurers pursuant to N.J.S.A. 17B:20-1 et seq.;

(4) Reserve shortfalls caused by the company holding reserves weaker than those mandated by N.J.S.A. 17B:19, or such other standards provided by administrative rule, actuarial guidelines, or determined necessary by actuarial analysis;

(5) The excess of the statement value over the market value of bonds held by the applicant; and

(6) Off balance sheet guarantees and contingent liabilities for which the company has not previously established a liability in an appropriate amount.

ii. Capital and surplus requirements may be reduced to the level required for the kinds of insurance actually being marketed if the applicant:

(1) Does not transact one or more of the kinds of insurance contained in the certificate of authority issued by its state or country of domicile; and

(2) Submits a resolution by its board of directors stating that it will refrain from transacting the kind(s) of insurance permitted by the certificate of authority issued by its state or country of domicile.

3. The applicant shall be deemed ineligible if any one of the following conditions exist:

i. An applicant which has received from the NAIC a "first priority" designation for the calendar year next preceding its application date shall not be considered for admission until such designation has been removed by the NAIC;

ii. An applicant which is a member of an insurance holding company system, where its parent or subsidiary has received from the NAIC a "first priority" designation, shall not be considered for admission until such designation has been removed by the NAIC; or

iii. An applicant which has total adjusted capital of less than its company action level risk-based capital or which has otherwise triggered a company action level event, as these terms are defined in N.J.A.C. 11:2-39, as of December 31 of the preceding calendar year, shall not be considered for admission until the applicant's status has improved.

4. The applicant shall be deemed to have its application deferred if any one of the following conditions exist:

i. An applicant which has been identified as "second or third priority" and/or has failed four or more IRIS tests shall have its application deferred until it has demonstrated to the Commissioner and its place of domicile that the IRIS test results are not indicative of a financial condition that may be hazardous to the policyholders, stockholders, claimants, creditors or the general public; or

ii. An applicant which has failed to file with the NAIC an annual statement for the prior year shall have its application deferred until it has filed with the NAIC such annual statement.

5. The applicant shall satisfy the following seasoning requirements:

i. Subject to the provisions of this subchapter, no applicant shall be considered for a certificate of authority to transact the business of insurance in this State unless the Commissioner has been furnished with evidence that the applicant has been authorized by its state or country of domicile to engage in the kind(s) of insurance business for which the applicant seeks a certificate of authority, and has in fact been actively, continuously and successfully engaged in such business, without a change in control, for a period of at least five years prior to the date of the application for the New Jersey certificate of authority.

ii. An applicant qualified under (a)5i above shall demonstrate that:

(1) During any three of the last five years, including therein the two most recent years of business operations, it generated a net gain from operations, after Federal taxes, as reported in the annual statement;

(2) Surplus has not decreased over the five-year period in question except for dividends to policyholders, reserve strengthening and increases in the asset valuation reserve; and

(3) It has received either an evaluation acceptable to the Department from Dun and Bradstreet or one of the top three ratings from one of the following: Standard and Poor's, Duff and Phelps, Moody's, A.M. Best or other nationally recognized rating agency.

iii. The Commissioner may, upon request of an applicant, on a case by case basis, waive in the case of (a)5iii(1), (2) and (3) below, or reduce in the case of (a)5iii(1) below, the five-year seasoning requirements of (a)5i and ii above. In determining whether a reduction or waiver is appropriate in a particular case, the Commissioner shall consider whether the requirements of this section have been satisfied, and, in addition, whether the requirements described in (a)5iii(1) through (4) below, if applicable, have been satisfied. These requirements relate, respectively, to the following circumstances:

(1) The applicant is a wholly-owned subsidiary of a life and health insurer which has been authorized to transact the business of insurance in this State for at least five years or is an affiliate of a life and health insurer which has the same ultimate parent and which has been authorized to transact the business of insurance in this State for at least five years. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer who shall effectively guaranty, by a resolution in a form prescribed by the Commissioner and passed by its board of directors, the minimum capital and surplus requirements required by law of the applicant during the first 10 years of its operation in this State. In the case of an authorized affiliate with the same ultimate parent, the Commissioner may require that the guarantee be provided by the ultimate parent. The applicant shall also be required to demonstrate a sound plan of operation and that surplus has not decreased over the five-year period in question, or such shorter time as the applicant has been operating under current control, except as provided in (a)5ii(2) above.

(2) The applicant is a wholly-owned subsidiary of an insurer which has been authorized to transact the business of insurance in this State for at least one year, and secured admission into this State by having been in operation for at least five years pursuant to (a)5i and ii above. The Commissioner shall be satisfied as to the financial condition and methods of operation of the authorized insurer, which shall effectively guaranty, by a resolution in a form prescribed by the Commissioner and passed by its board of directors, the minimum capital and surplus requirements required by law of the applicant during the first 10 years of its operation in this State. The insurer parent shall also be required to have either an evaluation acceptable to the Department from Dun and Bradstreet, or one of the top two ratings from at least one of the following: Standard and Poor's, Duff and Phelps, Moody's, A.M. Best or other nationally recognized rating agency.

(3) The applicant is the continuing corporation resulting from a merger or consolidation of insurers, at least one of which has been authorized in this State to transact the kind(s) of insurance business for which the applicant seeks a New Jersey certificate of authority and has been actively engaged in such insurance business for at least five years and is currently in good standing. The applicant shall also be required to demonstrate a sound plan of operation.

(4) The applicant, being an insurance company with a non-insurance company parent, has completed three full years of operation without a change in control, and, subsequent to its first two years of operation, has available a filed examination report conducted by its state of domicile, which report is in accordance with Department standards for examinations. The first two full years of operation covered by the examination report shall be sufficient to make the report useful and meaningful to the Department. The applicant shall also be required to have experienced profitable operations in two of the three years, including the most current year of business, and shall demonstrate a sound plan of operation. Additionally, the applicant shall obtain or satisfy all of the following:

(A) A financial guaranty from its ultimate parent, in a form prescribed by the Commissioner, that the applicant will maintain the minimum capital and surplus required by law for a period of 10 years from the date of admission;

(B) The ultimate parent must be a United States corporation actively engaged in business for a period of not less than five years prior to the date of application for the New Jersey certificate of authority;

(C) The ultimate parent shall have either an evaluation acceptable to the Department from Dun and Bradstreet or one of the top two

ratings from at least two of the following for at least three years prior to application: Standard and Poor's, Duff and Phelps, and Moody's; and

(D) The ultimate parent shall have a net worth of at least \$25,000,000, excluding investments in insurance or insurance related subsidiaries, which amount shall be set by the Commissioner upon his or her consideration of the general financial condition of the parent and relevant underwriting factors such as, but not limited to, the volume to be written and the type of risk, and any other factors which the Commissioner, in his or her discretion, shall consider to be appropriate.

iv. The Commissioner may initiate proceedings to revoke authorization for non-compliance with the requirements set forth in (a)5iii above.

6. The applicant shall procure a New Jersey certificate of authority by establishing compliance with the applicable requirements of N.J.S.A. 17B:17-1 et seq. and 17B:23-1 et seq. relating to authorization of foreign and alien insurers to transact the business of life and health insurance in this State, and by successfully completing an admissions process which shall include a detailed review by the Commissioner of the business affairs and financial condition of the applicant as provided by this subchapter.

(b) An applicant shall submit a letter of intent consisting of the preliminary information set forth in N.J.A.C. 11:2-1.5 prior to making a formal application for admission.

11:2-1.5 Letter of intent

(a) Prior to the acceptance of a final application for a certificate of authority in this State, all foreign and alien insurers who desire to transact the business of life and health insurance in this State shall submit, as a preliminary application, a letter of intent, which shall include, where applicable, the information required in (a)1 through 9 below.

1. The name of the applicant;
2. The name of any person, as defined in this subchapter, or other entity, by whom the applicant is controlled;
3. The applicant's insurance holding company registration statements including the holding company systems chart for the most recent five years;
4. The name of any insurer(s) currently licensed, or applying for admission, in this State with whom the applicant is affiliated;
5. The kind(s) of insurance proposed to be written by the applicant in this State;
6. A certified copy of the applicant's most recent annual statement, prepared on the NAIC annual statement forms used by New Jersey domestic insurers;
7. A certified copy of the applicant's current certificate of authority from its place of domicile;
8. The results of the most recent NAIC IRIS tests and related communications concerning the applicant, which shall satisfy the requirements of N.J.A.C. 11:2-1.4(a)4i-ii; and
9. The risk-based capital report as of December 31 for the calendar year next preceding its application date, as filed with the insurance regulatory official of its state of domicile. If the state of domicile does not have a risk-based capital statute or regulation substantially similar to N.J.A.C. 11:2-39, the applicant shall submit a risk-based capital report prepared in accordance with N.J.A.C. 11:2-39.

11:2-1.6 Final application

(a) After the submission of the letter of intent as required by N.J.A.C. 11:2-1.5, the applicant, upon notice from the Department, shall file the following items:

1. A copy of its charter as currently in force, certified by the lawful custodian of the original document;
2. A copy of its bylaws as currently in force, certified by a senior officer of the insurer;
3. Seven copies of the current annual statement, including all supplemental exhibits;
4. One copy of the annual statement for each of the past four years, including all supplemental exhibits;
5. An analysis of par/non-par profits and surplus;

6. A certificate of valuation, certified by the insurance commissioner of the insurer's state or country of domicile;

7. A certificate of compliance certified by the insurance commissioner of the insurer's place of domicile;

8. A certified copy of a report of the most recent examination of the insurer's affairs by the Department or its equivalent, of the place in which the insurer is domiciled;

9. A document appointing the Commissioner as attorney for service of process;

10. An application for admission, on a form to be prescribed and provided by the Department, including the payment of a non-refundable application fee of \$5,000 for an admissions application and \$2,500 for an application for an extension of authority;

11. A copy of the applicant's quarterly financial statements for the current year, in the NAIC format, and for such other periods of time as shall be required by the Commissioner;

12. Where applicable, a certified copy of the filing made pursuant to the holding company act of the place of domicile, for the last fiscal period, supplemented as necessary to meet the requirements of N.J.S.A. 17:27A-3(a) and (b) and applicable Securities and Exchange Commission filing requirements;

13. A statement of ownership of the applicant which shall include all shareholders of record who control five percent or more of the outstanding shares of the applicant, directly or indirectly;

14. A copy of any agreements by which the right to conduct or influence any of the affairs of the applicant is transferred to others;

15. Any employment or deferred compensation agreements in which any officer, director or shareholder who controls five percent or more of the outstanding shares of the applicant, directly or indirectly, participates;

16. Any tender offer materials (advertisements, invitations, etc.) if any tender offer has been made by the insurer or its parent to acquire another company within the three years preceding;

17. Biographical affidavits, to be completed by all directors and senior officers on a form prescribed and provided by the Department;

18. A calculation of adjusted surplus as described in N.J.A.C. 11:2-1.4(a)2i and completed in accordance with the instructions and worksheets provided by the Department;

19. Details of any circumstances within the past three years where the applicant has received a rating of less than one of the top three ratings from any rating agency or an indication that less than one of the top three ratings would be given if published;

20. A corporate plan of operation consisting of:

i. A schedule listing the following:

(1) All jurisdictions in which the applicant has applied for authorization to transact the business of insurance during the preceding 10 years and the dates and results of such applications;

(2) All jurisdictions from which the applicant has withdrawn during the preceding 10 years, and the reasons for withdrawal; and

(3) All administrative, civil or criminal actions, orders, proceedings and determinations thereof to which the applicant, or its affiliates, or any of its directors or principal officers has been subject, due to an alleged violation of any law governing insurance operations in any jurisdiction during the preceding 10 years. Where the alleged violation is a felony (or its equivalent in a jurisdiction which does not use this designation of a crime) such actions, orders, proceedings and determinations shall include violations not related to insurance operations. If a license has been refused, suspended or revoked by any jurisdiction, the applicant shall furnish an explanation and a copy of any orders, proceedings, and determinations related thereto;

ii. A description of the applicant's present business plan(s) for conducting an insurance business, including, but not limited to:

(1) Geographical areas in which business is being written;

(2) The types of insurance to be written;

(3) Marketing methods;

(4) A summary of the methods of establishing premium rates;

(5) Investment strategy, including a description of controls in place to ensure that the strategy is followed;

(6) Five-year financial projections including premium volume and income by line of business; capital, surplus and risk-based capital levels; and

(7) A description of agency systems, including any managing general agency contracts;

iii. A description of the applicant's proposed plan for conducting an insurance business in this State, including, but not limited to:

(1) The geographical area in which business is intended to be done;

(2) The types of insurance intended to be written;

(3) Proposed marketing methods;

(4) Proposed methods for the establishment of premium rates;

(5) A five-year forecast of anticipated premiums in this State by line of business; and

(6) Proposed agency systems;

iv. A summary of the applicant's reinsurance program on assumed business, indicating the name of the ceding insurers, retentions, maximum risks, types of business, types of agreements, and any other information which may, in the opinion of the Department, be relevant to this part of the applicant's operations. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant;

v. A summary of the applicant's reinsurance program on ceded business, indicating the name of the reinsurers, retentions, maximum risks, types of business, types of contracts, and any other information which may, in the opinion of the Department, be relevant to this part of the applicant's operations. Additional information may be requested by the Department in order to supplement or clarify information already provided by the applicant;

vi. The number and ratio of complaints as defined by the place of domicile to the number of policies in the place of domicile, for those lines of business in which the state or country of domicile makes such determinations; and

vii. Copies of all management, exclusive agency, administrative services, or any other operating contracts with affiliates or non-affiliates, where applicable, signed by the parties and certified to by the insurer's secretary and chief operating officer;

21. If the applicant is a foreign insurer, evidence of a certificate of deposit, certified by the commissioner of the place of domicile, confirming the deposit made therewith and that such deposit satisfies the requirements of the insurer's place of domicile;

22. If a United States branch of an alien insurer, the applicant shall provide the Department with:

i. A certificate of deposit certified by its insurance commissioner showing the amount in trust for policyholders which shall be sufficient to satisfy the requirements of N.J.S.A. 17B:22-3;

ii. A certified copy of power of attorney in favor of its United States manager; and

iii. A certified copy of a deed of trust to the trustee of the applicant's funds; and

23. If the applicant is an alien insurer, a statement of trustee surplus in the United States.

11:2-1.7 Review procedures; appeals

(a) Upon receipt of a final application, the Commissioner shall conduct a thorough background investigation and review which shall include the information contained in N.J.A.C. 11:2-1.4, 1.5 and 1.6, inquiries regarding claims settlement practices and any other information which, in the opinion of the Commissioner, may be necessary to make an appropriate decision regarding the application.

(b) The applicant shall ensure that all filings submitted to the Department are current. Any amendment, changes or replacements to documents on file shall be timely updated.

(c) Applications accepted after November 1 of each year shall not be reviewed until the next annual statement becomes available and is received for review. The review of such applications shall begin as of April 1 of each year, after the receipt of annual statements which shall be submitted no later than March 1 of each year.

(d) Before a decision on an application is made, the Department may request from an applicant, in writing, any additional information it may require. Failure by an applicant to respond to written inquiries by the Department within 45 days may be considered grounds for rejection of the application.

(e) Application reviews shall be conducted by the Department on a monthly basis. The Department's Committee on Admissions shall

make a recommendation to the Commissioner concerning each application which has been reviewed. The Commissioner shall consider the recommendation and make his or her decision on the application within 10 working days from receipt of the recommendation. Written notice of the decision shall be mailed to the applicant by certified mail within 10 working days of the date of the Commissioner's decision.

(f) When the Commissioner rejects an application, the notice of rejection shall include a statement specifying the reasons for the rejection. Such notice shall inform the applicant of the right:

1. To request an informal Departmental review of the rejection within 20 days of receipt of the notice of rejection; and
2. To provide the Department with a written statement, including supporting documentation, if any, disputing with specificity the reasons for rejection within 30 days of the receipt of the notice of rejection.

(g) Upon timely receipt of the request for Departmental review and the written statement of the applicant, if any, the Department shall promptly review the application, attached documents, Department records and the written statement. In appropriate circumstances, the Commissioner may provide the applicant with an opportunity to present its position in person. If, after reviewing the record, the Commissioner determines that the applicant has failed to qualify, the Commissioner shall promptly so inform the applicant.

(h) Where an application has been rejected, the applicant shall not be eligible to reapply until there is one full year or more of acceptable experience.

11:2-1.8 Compliance

This subchapter shall apply to all applicants submitting a letter of intent on or after April 1, 1995. Applicants whose applications have been received by the Department prior to April 1, 1995, may elect to proceed under this subchapter if they so notify the Department no later than May 1, 1995. Applicants whose letters of intent have been received by the Department prior to April 1, 1995, who do not timely notify the Department that they wish to proceed under this subchapter, shall have their application reviewed under the procedures preexisting this subchapter.

11:2-1.9 Severability

If any provisions of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(a)

DIVISION OF ADMINISTRATION

Market Transition Facility of New Jersey Payment Prioritization and Claims Payment Deferral Proposed Amendments: N.J.A.C. 11:3-2B

Authorized By: Andrew J. Karpinski, Commissioner Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, 17:33B-11, and P.L. 1994, c.57.

Proposal Number: PRN 1994-607.

Submit written comments by December 21, 1994 to:
Donald Bryan, Acting Assistant Commissioner
Division of Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
20 West State Street
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

These proposed amendments revise the existing rules regarding the suspension of payments by the Market Transition Facility of New Jersey ("MTF") to conform with the provisions of N.J.S.A. 17:33B-11 as amended by P.L. 1994, c.57, section 17, and to reflect the terms of "Deferral Program" incorporated in amendments to the MTF Plan of

Operation, approved by the Commissioner of Insurance ("Commissioner") on July 26, 1994.

The MTF was established pursuant to N.J.S.A. 17:33B-11 to arrange for the issuance and renewal of private passenger automobile insurance policies for the period beginning October 1, 1990 and ending September 30, 1992, in accordance with a Plan of Operation approved by the Commissioner. The Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq. ("FAIR Act"), at N.J.S.A. 17:33B-11a and 17:33B-11d, provided that any losses sustained in the operation of the MTF be apportioned to the member insurers of the MTF (that is, every insurer authorized to transact private passenger automobile insurance in New Jersey).

On December 30, 1993, the Commissioner issued Order No. A93-235 ("the Cash Call Order") pursuant to N.J.S.A. 17:33B-11d, apportioning the losses of the MTF for its first operating year (the year ended September 30, 1991) in the amount of \$439 million among the MTF member insurers. Subsequently, certain member insurers appealed the Cash Call Order to the Superior Court of New Jersey, Appellate Division. Pending a resolution of the court challenge, the Superior Court enjoined the use by the MTF of the amounts paid after January 25, 1994 by the member insurers in accordance with the Order and directed that those funds be held in an escrow account. As the MTF would have very shortly been without sufficient funds to pay claims and meet its other administrative expenses, in the absence of alternative funding, on March 1, 1994, the Commissioner promulgated emergency rules suspending further claim payments by the MTF pending resolution of the litigation or receipt of other funds. See Market Transition Facility of New Jersey Suspension of Payments, Adopted Emergency New Rules and Concurrent Proposed New Rules, N.J.A.C. 11:3-2B, 26 N.J.R. 1393(a). The emergency rules also provided that, at such time as sufficient assets are available, payment would be made pursuant to a program for the orderly disposition of claim payments. N.J.A.C. 11:3-2B.3(d).

On June 13, 1994, the Commissioner and insurance company litigants entered into a settlement agreement with respect to the above-referenced litigation. On June 29, 1994, the "Good Driver Protection Act of 1994" ("Act"), P.L. 1994, c.57, was enacted, which *inter alia* implemented the terms of this settlement agreement. The Act provides for the payment from various funding sources of the MTF deficit of approximately \$1.3 billion. In accordance with the settlement agreement, the Act limits member insurers' apportioned share of the MTF deficit to approximately \$439 million (the amount apportioned to them to date). The Act further provides that the 1996 and 1997 insurance industry payments made under the FAIR Act through the New Jersey Property-Liability Insurance Guaranty Association for the deficit of the New Jersey Automobile Full Insurance Underwriting Association ("JUA") be redirected for the purpose of paying part of the financial obligations of the MTF deficit (approximately \$320 million). Under the Act, the remaining portion of the MTF deficit will be funded from the proceeds of an MTF bond and note issue through the New Jersey Economic Development Authority.

The Act also amends N.J.S.A. 17:33B-11c to provide that the Commissioner shall amend the MTF Plan of Operation to provide for an evaluation, prioritization and disbursement of claims payable by the MTF. The Act further authorizes the Commissioner to provide for the deferral of the payment of claims for non-economic loss payable under policies issued by the MTF over a period not to exceed four years. The Act also permits the Commissioner to provide for the deferral of other claims payments. However, in providing for such a deferral, the Act requires that the Commissioner give consideration to the importance of paying claims for economic loss in relation to other claims, of maintaining the MTF's infrastructure to ensure the service and payment of claims, both pending and future, and of protecting the interests of the MTF and policyholders. The Act further provides that these amendments to the Plan of Operation shall be made "notwithstanding the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq."

On July 26, 1994, the MTF bond transaction was closed. In accordance with the settlement agreement between the parties, the MTF member company litigants consented to release the monies held in escrow. As monies then became available to pay certain MTF obligations, in accordance with N.J.S.A. 17:33B-11c as amended by P.L. 1994, c.57, section 17, the Commissioner certified amendments to the MTF Plan of Operation on July 26, 1994, which superseded the suspension of claims payments imposed on March 2, 1994 pursuant to N.J.A.C. 11:3-2B. The amendments provide for the resumption of claims payments for present economic loss and for residual bodily injury claims that were resolved and for which the releases and other necessary closing papers were

received and date stamped by the MTF servicing carrier on or before March 1, 1994. The amendments to the Plan of Operation also provide for the deferral of all other non-economic loss claims payments for 18 months from the date of deferral. Pursuant to the Plan amendments, Part IV, Section 2IF, all payments on deferred claims include simple interest at the rate of six percent per annum beginning on the date of deferral. These deferral procedures essentially mirror the deferral program provided for JUA residual bodily injury claims. See N.J.A.C. 11:3-2A.

While the Department is not required to set forth a deferral program for the MTF through rulemaking, the Department believes that it is reasonable and appropriate to revise the existing rules to reflect the current procedure. The Department believes that the prioritization schedule and the deferral of MTF claims payments for non-economic loss is reasonable, appropriate and consistent with the intent of the Legislature. Initially, the Department notes that the prioritization schedule (which establishes a priority for payments for present economic loss) and the deferral of payments for non-economic loss is consistent with the legislative intent as set forth in P.L. 1994, c.57. In that statute, the Legislature established a priority in favor of the payment of claims for present economic loss and of the MTF's administrative expenses, in preference to payments for non-economic loss. Accordingly, the Legislature has expressed a public policy preference for the payment of present economic losses over non-economic losses where sufficient funds are not available to pay all obligations in full. Economic losses have a more direct and immediate impact upon policyholders and claimants in that payments of these losses are used generally to pay current medical bills, or for income loss continuation, or to pay for costs to repair the policyholder's automobile. Payment of such claims will help ensure that MTF policyholders are able to receive necessary medical treatment or may continue to receive ongoing medical treatment. Non-economic losses, however, are not generally paid immediately in that payment occurs only after a period of time, usually involving arbitration hearings, litigation or settlement discussions. These losses generally provide compensation for "pain and suffering," rather than reimburse the claimant for "out-of-pocket" expense.

Moreover, even with the bond issue, the totality of funds earmarked to pay MTF claims are not immediately available. A substantial portion of the monies necessary to cover the MTF deficit will not be received until 1996 and 1997, after JUA claims payments are fully funded. The bond issue raises sufficient money to cover the "gap" in funding the MTF deficit (that is, the difference between the money provided by member insurers from the cash call and the JUA excess revenues the MTF will receive in 1996 and 1997). Because of existing claims patterns, however, funds will not be available throughout the run-off period to pay all claims as they are settled or adjudicated. The Legislature structured the bond issue (approximately \$705 million) to generate sufficient funds to ultimately pay off the portion of MTF deficit not covered by funds available from other sources (that is, funds from the New Jersey Automobile Insurance Guaranty Fund once the JUA deficit is retired and the funds received from the Cash Call Order). To pay all claims as they are settled or adjudicated would have required a much larger bond issue. Pursuant to P.L. 1994, c.57, section 4, the Legislature limited the amount of the bond issue to a maximum of \$750 million. Thus, the bond issue is already substantially close to the "cap," leaving only a small margin to address any potential revision to necessary funding levels. Moreover, with a much larger bond issue, a totally different funding structure would have been required since the revenues from Department of Motor Vehicles ("DMV") surcharges, which pursuant to the statute provide the sole funding source of the bond issue, would likely be insufficient to support the bond issue without additional funding sources.

Because revenues available to the MTF are insufficient to pay all claims as they are settled, in the absence of this deferral program the Commissioner could be required to suspend claim payments periodically and then resume paying claims as funds later become available. Starting and stopping claim payments would result in greater disruption than a single, orderly deferral program. A consistent deferral program provides certainty and security to claimants, as well as circumvents changes in expected payment patterns.

Finally, the MTF deferral program is identical in form and substance to the JUA deferral program, which ensures equal treatment to claimants of each entity in similar circumstances. The Department believes that it would be unfair to JUA residual bodily injury claimants to defer payment of their claims while currently paying all MTF claims, particular-

ly since any projected surplus from the funds to pay the JUA deficit would be utilized to pay MTF claims.

It must also be noted that the rules revise the procedure by which claimants may request a hardship exemption to reflect the procedures in the JUA deferral rules (N.J.A.C. 11:3-2A). These procedures mitigate against the most extreme effects that would otherwise be imposed by the deferral of payment of claims for non-economic loss.

The Department therefore believes that the deferral program adopted by the Commissioner on July 26, 1994, as reflected in these proposed amendments, provides a program for the orderly disposition of claims in accordance with the mandate of the Legislature in P.L. 1994, c.57.

Social Impact

These proposed amendments, in and of themselves, do not impact on the public or policyholders. As noted in the proposal Summary above, these proposed amendments merely codify the essential terms of the MTF deferral program, adopted by the Commissioner through amendments to the MTF Plan of Operation pursuant to N.J.S.A. 17:33B-11c, as amended by P.L. 1994, c.57, section 17. The MTF deferral program as codified through these proposed amendments, and which essentially mirrors the JUA deferral program, carries out the intent of the Legislature as set forth in the Good Driver Protection Act of 1994 for establishing a plan for the orderly payment of claims covered by the MTF in accordance with the priorities established by the Commissioner pursuant to N.J.S.A. 17:33B-11c as amended. As noted in depth above, the deferral program for residual bodily injury claims permits the payment of claims for ongoing medical treatment and other present economic loss, as well as other claims. This, in turn, will benefit MTF claimants, health care providers, and the public generally. The existing rules at N.J.A.C. 11:3-2B continue to provide for the exemption of certain individuals from deferral based on limited hardship grounds. This should ameliorate any undue burden to individuals resulting from operation of the deferral program. Finally, the deferral program provides for the payment of interest on claims that have been deferred, to compensate affected claimants for the delay in receiving payment.

Economic Impact

The MTF deferral program, as codified by these proposed amendments, will have an impact on certain individuals with residual bodily injury claims, attorneys handling those claims, the MTF, and MTF servicing carriers. MTF claimants and their attorneys will be affected by the deferred receipt of payment on certain claims. The Department notes however that the deferral period is for a specified period of time (that is, 18 months) and that interest will be paid on claims that have been deferred in order to compensate affected claimants for the delay, consistent with the JUA deferral program.

MTF servicing carriers will be required to track all existing and future claims, resume paying certain claims previously suspended, pay on a current basis all claims for present economic loss, identify claims or portions thereof subject to deferral, determine date of deferral, calculate interest to be paid, and perform other duties to implement the deferral program. The Department does not believe that this should impose any undue burden in that the servicing carriers are compensated for duties performed in accordance with the contract between the servicing carriers and the MTF. To the extent servicing carriers incur additional costs in performing duties not specifically addressed in the contract, they may petition the MTF for recoupment of those costs. Thus, no adverse economic impact should be imposed on the servicing carriers as a result of this deferral program.

Moreover, the Department notes that any economic impact is temporary and that this temporary economic impact is necessary to ensure that MTF obligations are satisfied in an orderly manner in accordance to the priorities established by the Commissioner and the MTF Plan of Operation, as codified in these proposed amendments pursuant to law.

Finally, while the burden on claimants will be mitigated by including interest on deferred payments, the Department notes that the MTF will be required to bear the attendant additional costs of interest paid on deferred claims. The Department will similarly be required to bear any additional costs attendant to the implementation of the MTF deferral program including, but not limited to, oversight of servicing carrier and MTF operations to ensure that claims are being paid or deferred in accordance with the MTF deferral program.

Regulatory Flexibility Analysis

As indicated above, these proposed amendments do not independently impose any reporting, recordkeeping or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A.

52:14B-16 et seq. Rather, these proposed amendments merely codify the existing MTF deferral program adopted by the Commissioner pursuant to P.L. 1994, c.57. In any event, few, if any, small businesses should be adversely affected by the MTF deferral program. These small businesses, to the extent they may be affected, would generally be the MTF servicing carriers. As indicated in the Economic Statement above, MTF servicing carriers would incur any costs related to the implementation of the MTF deferral program, including, but not limited to, tracking existing and future claims, determining date of deferral, determining and computing any interest payable on deferred claims in accordance with the procedures set forth in the deferral program, determining the date of ultimate payout, and providing any necessary information to the MTF or the Department necessary to implement the deferral program. The Department does not believe however that these requirements will actually impose any additional burden on the servicing carriers in that they are compensated for the duties they perform under the terms of the contract with the MTF; and they may petition the MTF for reimbursement for any "extraordinary costs" incurred in performing duties not specifically addressed in the contract.

The proposed amendments do not provide different reporting or compliance requirements based on business size. As indicated above, the proposed amendments codify the existing deferral program to provide for the orderly payment of claims for present economic losses and the temporary deferral, with interest, of payment of claims for residual bodily injury losses. Obviously, payment of these claims may not vary based on business size. Any duties imposed on the servicing carriers are those required to implement the deferral program in an orderly manner. The servicing carriers are directly compensated for the performance of these duties. Thus, it is not necessary, and it would not be feasible to provide different compliance requirements for servicing carriers based on business size. To do so could impede the effective implementation of the MTF deferral program, to the detriment of MTF claimants and the public generally. Accordingly, the proposed amendments do not provide any differentiation in compliance requirements based on business size.

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

**SUBCHAPTER 2B. MARKET TRANSITION FACILITY OF
NEW JERSEY [SUSPENSION OF CLAIMS
PAYMENTS] PAYMENT
PRIORITIZATION AND CLAIMS
PAYMENT DEFERRAL**

11:3-2B.1 Purpose and scope

(a) This subchapter provides [for the suspension of the payment of any and all claims by the MTF to any person resulting from any coverage under a policy of private passenger automobile insurance issued by the MTF, until such time as sufficient funds are available to pay such claims pursuant to a program for the orderly disposition of claims payments] **the general procedures to be utilized for the resumption of certain claims payments by the MTF that had been suspended pursuant to this subchapter, and the deferral of certain claims payments by the MTF pursuant to amendments certified to the MTF Plan of Operation by the Commissioner on July 26, 1994 pursuant to N.J.S.A. 17:33B-11c as amended by P.L. 1994, c.57, section 17.**

(b) (No change.)

11:3-2B.2 Definitions

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

...
"Closing papers" means the original, fully-executed release(s) containing the proper deferral language set forth in this subchapter and which is signed by the claimant releasing the MTF and its insured(s) from liability for the claim, or a warrant of satisfaction of judgment and/or other closing documents.

...
"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Plan of Operation" means the Plan of Operation promulgated by the Commissioner pursuant to N.J.S.A. 17:33B-11c as amended by P.L. 1994, c.57, section 17.

...
"Residual bodily injury claim" means a liability claim for the loss of any kind whatsoever, other than present economic loss, resulting from liability imposed by law for or as a result of bodily injury or death.

11:3-2B.3 Priority of claims

(a) Subject to N.J.A.C. 11:3-2B.4 and Part IV of the MTF Plan of Operation, the MTF shall have the power to make distributions from the assets of the MTF in the following order of priority:

1. Expenses of administration;
2. Claims for taxes and debts due to Federal, State or local government;
3. Covered claims by policyholders and beneficiaries thereof arising from and within the coverage of, and not in excess of, the applicable limits of insurance policies and contracts issued by the MTF, in the following order of priority:
 - i. Present economic loss;
 - ii. Collision or comprehensive loss and third party property damage loss;
 - iii. Residual bodily injury loss; and
 - iv. Other creditor claims.

[11:3-2B.3 Suspension of payment of claims by the MTF

(a) Payment to any person by the MTF of any pending or future claims resulting from any coverage under a policy of private passenger automobile insurance issued by the MTF, shall be suspended effective 12:01 A.M., March 2, 1994, regardless of the date of receipt by the MTF or servicing carrier of the claim or disposition by settlement, judgment or otherwise. No servicing carrier shall issue any check or make other payment to any person for any claim on or after that date and time.

(b) The MTF shall notify all servicing carriers of the suspension of payment of any and all pending and future claims to any person, effective 12:01 A.M., March 2, 1994 as set forth in (a) above. Such notification shall also provide that no servicing carrier may issue any check or make other payment to any person for any claim on or after that date and time. The MTF is authorized to take any necessary administrative actions to implement the provisions of this subchapter.

(c) Any checks or payments which have been actually mailed by an MTF servicing carrier as of the effective date of suspension set forth in (a) above shall be honored, provided that those checks or payments are otherwise proper and in compliance with relevant law and procedures.

(d) Notwithstanding the provisions of (a) above, upon determination by the Commissioner that there are sufficient assets available for the payment of such claims pursuant to a program for the orderly disposition of claims payments, the Commissioner may order the resumption of payment of claims either in whole or in part, and/or may also order modification of the hardship exemption standards set forth at N.J.A.C. 11:3-2B.4, resulting from coverage under a policy of private passenger automobile insurance issued by the MTF.

(e) The MTF is authorized to pay appropriate interest on any claim that has been submitted and approved but is deferred pursuant to this subchapter. No interest shall be paid on any personal injury protection coverage benefits that is not overdue, pursuant N.J.S.A. 39:6A-5.

(f) This section shall not be construed to prohibit other payments by the MTF as may be necessary to meet in whole or in part administrative expenses to maintain its infrastructure, to preserve its rights in any pending or future litigation, or to otherwise protect its interests.]

11:3-2B.4 Resumption of payment of certain claims previously suspended; deferral of payment for residual bodily injury claims

(a) The servicing carriers shall resume making claim payments previously suspended pursuant to this subchapter as follows:

1. Payments for claims that are due for payment that have been suspended shall be issued for the following coverages:

- i. Personal injury protection;
- ii. Collision;
- iii. Comprehensive;
- iv. Property damage;
- v. Other payments for present economic loss; and
- vi. Residual bodily injury claims that were resolved and for which the releases and other necessary closing papers were received and date stamped by the servicing carrier on or before March 1, 1994.

(b) The servicing carrier shall not pay interest on the suspended claims described in (a) above, except where such payment is required by law or explicitly authorized by the Commissioner.

(c) During the period when the previously suspended claims are being paid, servicing carriers shall be permitted to make payments on newly received bills for the claims described in (a) i through v above, provided that such payment of new claims does not delay the payment of suspended claims.

(d) Payments by the MTF of any residual bodily injury claims, including uninsured motorist claims and underinsured motorist claims, are deferred from payment for a period not to exceed 18 months, except such claims as may be granted a hardship exemption from deferral as provided in N.J.A.C. 11:3-2B.6.

(e) The deferral of claim payments set forth in (d) above applies to all such residual bodily injury claims, regardless of settlement date or jurisdiction, for which closing papers have not been physically received in the offices of the appropriate MTF servicing carrier before March 2, 1994. Receipt by defense counsel or facsimile transmissions shall not constitute receipt by the appropriate MTF servicing carrier.

(f) With regard to those residual bodily injury claims for which closing papers were received in the offices of the servicing carrier after March 2, 1994, but before August 31, 1994, the servicing carriers shall prepare an amended release including proper reference to the Deferral Program and send the amended release to the claimant or the claimant's attorney for execution. If the release is properly executed and received back in the offices of the servicing carrier within 60 days after it is mailed, then the deferral date shall relate back to the date on which the original release was received in the office of the servicing carrier. Failure by claimant or the claimant's attorney to return the amended release with proper reference to the Deferral Program so as to be received by the servicing carrier within 60 days shall be deemed an election that the claimant wishes to dissolve the original settlement and reopen the claim. The date of deferral for any reopened claim shall be the date described in N.J.A.C. 11:3-2B.5(c).

(g) Payment of a claim which has been deferred pursuant to this subchapter shall occur no later than the first day of the eighteenth month following the date of deferral.

(h) When claims deferred pursuant to this subchapter are paid by the MTF, the payment shall include simple interest calculated at a rate of six percent per annum beginning on the date of deferral. If claims deferred pursuant to this section are paid prior to the first day of the eighteenth month following physical receipt of the closing papers by the MTF's servicing carrier, then payment of interest shall be pro-rated to the day of payment.

(i) Payment of claims for current economic loss shall not be deferred.

11:3-2B.5 Administrative provisions

(a) Claims shall not be considered settled and ready for deferral until the servicing carrier physically receives the appropriate closing papers. Receipt by defense counsel or facsimile transmissions shall not be accepted for these purposes.

(b) Deferral releases shall contain the following language:

Payment: In consideration for making this Release, you have agreed to pay me a settlement of \$_____, plus simple interest at a rate of 6 percent per annum for a total amount of \$_____, to be paid no later than the first day of the eighteenth month after receipt of this Release by the servicing carrier or its designee. It is further understood that, if by further Order of the Commissioner of Insurance for the State of New Jersey, the settlement amount

is released earlier, the interest will be pro-rated. I further understand and agree that I will not seek anything further including any other payments from you.

1. Orders for Judgment shall include language similar to that in (b) above specifically referring to the deferral of any payment until the first day of the eighteenth month following physical receipt by the MTF's servicing carrier of the Order, the inclusion of per annum, simple interest at six percent in any final payment, and the understanding that if any payment is made early, the amount of interest will be pro-rated to the date of payment.

(c) The date of deferral shall be deemed to be the date upon which closing papers are physically received in the office of the servicing carrier, except as otherwise provided in N.J.A.C. 11:3-2B.4(f) and 2B.6. Such date shall govern the period of deferral applicable to the deferred claim.

(d) Disputes regarding the date of deferral shall be resolved in the first instance by the MTF in accordance with the following procedures:

1. A claimant who disputes the date of deferral as indicated by the servicing carrier shall notify the MTF in writing of the factual basis for the dispute and shall include therewith all supporting documentation. The servicing carrier shall also provide all relevant documentation in opposition to the date of claim settlement alleged by the claimant.

2. The MTF may adjust the ultimate pay-out date of a deferred claim upon a finding of inordinate delay by defense counsel or the servicing carrier in the handling or processing of the closing papers.

3. The MTF shall establish appropriate procedures for obtaining additional information when required during the course of review.

4. The MTF's written decision shall be mailed to the applicant by regular and certified mail, return receipt requested.

(e) Servicing carriers shall not utilize their own funds to pay claims subject to deferral unless instructed and authorized to do so by the MTF, the Commissioner or his or her designated representative. Regardless of the source of funds utilized, the MTF shall not reimburse servicing carriers for the unauthorized payment of claims subject to deferral.

(f) Servicing carriers shall continue their efforts to resolve all outstanding claims. During negotiations and/or other discussions with claimants or their attorneys, the servicing carrier and defense counsel shall advise all parties that payment will be deferred for 18 months.

(g) The Plan of Operation shall set forth uniform operating procedures necessary to implement these rules consistent with this subchapter including procedures for the implementation of hardship exemptions as provided at N.J.A.C. 11:3-2B.6.; servicing carrier procedures; and the uniform handling of deferred claim payments.

11:3-[2B.4]2B.6 Hardship exemption procedure

(a) Notwithstanding the provisions of N.J.A.C. 11:3-[2B.3]2B.4, and subject to the availability of funds, an exemption from the [suspension] deferral of a claim payment [may] shall be permitted in limited circumstances upon the filing of a written application with the MTF which:

1. Demonstrates, through a written statement and sufficient supporting documentation, the existence of an extreme immediate financial [or medical] emergency [and necessity]; and

2. Includes a statement in which the applicant attests that the emergency cannot be resolved through use of any other reasonably available financial resources. "Reasonably available financial resources" includes, but is not limited to, resources such as reimbursement or compensation through [other coverages or benefit plans] insurance coverage, reasonable liquidation of assets to the extent that liquidation would not cause further economic hardship, or borrowing from commercial sources on reasonable commercial terms.

[(b) Applicants for a hardship exemption shall demonstrate one or more of the following circumstances in order to receive payment:

1. Unable to pay for essential shelter and is being evicted from principal residence (provide foreclosure or eviction notice);

2. Has incurred at least \$15,000 of unpaid medical expenses not covered by other insurance for self, spouse or dependents, and it

is necessary to pay these bills in order to obtain continuing medically necessary treatment (provide copies of all medical bills, other insurance coverages, declinations from other insurers, if any, and a statement from treating doctor covering the necessity of further treatment);

3. Unable to meet current financial obligations in order to sustain basic living requirements such as food and utilities due to total disability (provide an attending physician's statement, a description of amounts of other sources of household income including disability payments, a list of basic living expenses and any relevant utility service notices);

4. Faces imminent removal from a hospital, nursing home or other medical care facility because of inability to pay (provide a supporting statement from the institution);

5. Suffers from a terminal illness resulting in a severely limited life expectancy (provide physician's documentation certifying the illness);

6. Inability to pay funeral expenses of spouse or dependent (provide copy of unpaid funeral bill);

7. Inability to pay Federal or State tax such that the tax authority has issued a Notice of Intent to Levy (provide Notice of Intent to Levy from federal or state taxing authority); or

8. Such other emergency or situation of an unusual nature which the Commissioner may deem appropriate (applicant shall provide written explanation on a separate sheet of paper and attach all supporting documents).

(c) Applications for a hardship exemption shall be available from the servicing carrier handling the claim and shall be submitted to the Market Transition Facility of New Jersey, Attention: Hardship Exemption, 293 Eisenhower Parkway, Livingston, NJ 07039, and shall include:

1. The name, address, telephone number and date of birth of the claimant;

2. The claim number and policy number;

3. A complete description of the basis upon which the claimant seeks a hardship as set forth at (b) above;

4. The documents required to be appended to the application as set forth at (d) below;

5. The amount of exemption being sought and the grounds for the exemption; and

6. An appropriate certification executed by the applicant.

(d) Completed applications shall be submitted directly to the MTF at the address noted above and shall include copies of all unpaid medical bills, insurance or other coverages, and any other appropriate documentation that is necessary to support or prove the request for an exemption.

(e) If a hardship exemption is granted, the amount paid shall not exceed the minimum amount required to meet the financial and medical emergency, nor the net amount due the claimant.

(f) The MTF shall establish appropriate procedures for obtaining additional information when required during the course of review.

(g) The burden of demonstrating that an exemption is warranted under this section shall be on the claimant requesting the exemption.

(h) The MTF's written decision shall be delivered to the applicant or his or her legal representative by certified mail, return receipt requested or by an express mail service of the MTF's choice.

1. Where an exemption is granted in whole or in part, the MTF shall notify the involved servicing carrier in writing, with instructions to make the appropriate payment either directly to and in the name of the claimant or to the service provider as required under the hardship circumstances. The servicing carriers shall proceed in accordance with procedures developed by the MTF.

2. The granting of a hardship exemption shall not be construed as a guarantee of payment of any future claim by the claimant. The hardship exemption shall apply only to the claim set forth in the application submitted pursuant to this section in support of the hardship exemption request.

(i) Where an exemption is either denied or only partially granted, the MTF's decision shall include directions about how to appeal to the Commissioner.]

(b) Some examples which may constitute acceptable grounds for a hardship exemption are as follows:

1. The claimant, spouse or dependant has incurred substantial medical expenses (over \$5,000) not related to the subject motor vehicle accident and not covered by insurance. Copies of all medical bills and insurance coverages must be provided.

2. The claimant, spouse or dependant cannot pay for essential food and shelter or household services. For this exemption to apply, the applicant, spouse or dependant must face imminent eviction or foreclosure from their principal residence or loss of essential household services such as utility or telephone. A copy of the imminent foreclosure eviction notice or utility shut-off notification must be provided.

3. The claimant, spouse or dependant faces immediate removal from a nursing home, hospital or other medical care institution due to the inability to pay, although continued medical care is prescribed by medical health care providers and such care is not related to the subject motor vehicle accident. Copies of bills for treatment and medical insurance coverages, along with an original written statement from the medical institution advising that removal due to the inability to pay is imminent, must be provided.

4. The applicant cannot pay funeral expenses of the claimant, spouse or dependant and the death is not related to the subject motor vehicle accident. Copies of the unpaid funeral bills must be provided.

5. Such other emergency or situation of an unusual nature which may be deemed to be appropriate based upon information provided.

(c) Applications for a hardship exemption may be obtained from the servicing carriers or by submitting a written request to the Market Transition Facility of New Jersey, 293 Eisenhower Parkway, Livingston, New Jersey 07039.

1. A hardship application shall contain the following information:

i. The name, address, social security number, telephone number and date of birth of the claimant;

ii. The claim number and policy number;

iii. The caption of the case;

iv. The name of the MTF insured;

v. The amount deferred and date deferred;

vi. A description of the examples which constitute a hardship as set forth at (b) above;

vii. The documents required to be appended to the application as set forth at (c) below;

viii. The amount of exemption being sought and the grounds for the exemption; and

ix. An appropriate certification executed by the applicant.

2. Completed applications shall be submitted directly to the MTF at the address noted in (c) above and shall include a certified-to-be-true copy of the associated judgment or fully-executed deferral release, a copy of the written acknowledgment of receipt of the deferral release or order for judgment issued by the MTF's servicing carrier, copies of all unpaid medical bills, insurance coverages, foreclosure notices, eviction notices, funeral bills and other appropriate documentation. Original documents shall be available for review upon the request of the MTF.

(d) The amount requested and the amount released from deferral, if a hardship exemption is granted, shall not exceed the minimum amount required to meet the financial emergency, nor the net amount due the claimant.

(e) The MTF shall establish appropriate procedures for obtaining additional information when required during the course of review.

(f) The MTF's written decision shall be delivered to the applicant or his or her legal representative by certified mail, return receipt requested or by an express mail service of the MTF's choice.

(g) Where an exemption is granted, the decision shall include a hardship exemption release amendment, prepared by the MTF, to be reviewed by the applicant or his or her legal representative, executed by the applicant, and forwarded directly to the MTF's servicing carrier. Additionally, where an exemption is granted, the appropriate servicing carrier shall be notified, in writing, with instructions to make the appropriate payment directly to and in the name of the claimant, upon receipt of the fully-executed hardship exemption release amendment. The servicing carriers shall proceed in accordance with procedures developed by the MTF.

(h) Where an exemption is either denied or only partially granted, the MTF decision shall enclose a copy of the appropriate documents required to file an appeal.

11:3-[2B.5]2B.7 Appeal to the Commissioner

(a) An applicant may appeal the decision of the MTF denying a request for a hardship exemption or from the MTF's decision regarding a dispute about the date of deferral within 20 days of receipt of the MTF's written decision by submitting to the Commissioner an appeal of the MTF's decision [on the hardship request] addressed to the Residual Markets Unit, Department of Insurance, 20 West State Street, CN 325, Trenton, NJ 08625.

(b) The Notice of Appeal shall include those items presented in the initial [hardship exemption] request, [pursuant to N.J.A.C. 11:3-2B.4(b),] a written statement explaining why the decision of the MTF denying the request was incorrect, and any additional documentation in support of the exemption request.

1. A copy of the appeal shall be simultaneously filed by the claimant with the MTF.

2. The MTF, upon receipt of notice of the appeal, shall forward the claimant's file to the Commissioner for his or her review.

3. Upon request of the Commissioner, the applicant shall provide additional information required during the course of review.]

(c) The Commissioner's [determination on appeal shall constitute a Final Decision, which] final decision shall be provided to the MTF and shall be mailed to the applicant or his or her legal representative by certified mail, return receipt requested and by regular mail.

11:3-[2B.6]2B.8 Confidentiality of documents

The information provided by a claimant pursuant to N.J.A.C. 11:3-[2B.4]2B.6 or [11:3-2B.5]2B.7 as part of an application for a hardship exemption or appeal from a decision of the MTF shall be confidential and not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq.

(a)

DIVISION OF UNSATISFIED CLAIM AND JUDGMENT FUND

Uninsured Motorist's Case Assignment Standards and Procedures

Insurer's Obligation to Obtain Recovery of Paid Medical Expense Benefit Claims and Paid Benefits (UCJ Claims)

Reproposed New Rule: N.J.A.C. 11:3-28.16

Proposed Amendment: N.J.A.C. 11:3-28.13

Authorized By: Andrew J. Karpinski, Commissioner,
Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e) and 39:6-64.1.

Proposal Number: PRN 1994-608.

Submit comments by December 21, 1994 to:

Donald Bryan, Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The reproposed new rule and proposed amendment establish procedures to be utilized by New Jersey private passenger automobile insurers ("insurers") when handling cases which have been assigned to them by the Unsatisfied Claim and Judgment Fund ("Fund") pursuant to N.J.S.A. 39:6-66. The proposed new rule establishes procedures to be utilized by insurers when handling cases in which the insurer may ultimately seek reimbursement from the fund. Specifically, this proposed amendment and rule address an insurer's obligation to pursue available subrogation or right of recovery actions. The amendment and rule clarify what may happen if an insurer fails to diligently pursue available subrogation or right of recovery actions in a timely manner. The amendment

and rule also require an insurer to consult with and obtain approval from the fund before settling an available subrogation or right of recovery action. N.J.A.C. 11:3-28.16 was previously proposed (see 26 N.J.R. 2190(a)) but was not adopted by the Department in order to clarify the application of N.J.A.C. 11:3-28.13 and 28.16. No comments were received on the proposed section.

N.J.A.C. 11:3-28.13 specifies an insurer's obligation to pursue all available subrogation or right of recovery actions in order to obtain reimbursement from the UCJF for paid personal injury protection medical expense benefits.

N.J.A.C. 11:3-28.16, as reproposed, specifies an insurer's obligation to pursue all available subrogation or right of recovery actions in UCJF uninsured motorist claims.

Social Impact

The proposed amendment and new rule clarify an insurer's obligation to obtain recovery of paid benefits. The implementation of these rules will have a positive social impact by ensuring that insurers pursue all available subrogation or right of recovery actions against responsible tortfeasors in a timely manner, and by requiring insurers to consult with the Fund and obtain prior approval from the Unsatisfied Claim and Judgment Fund Board in matters pending before the courts.

Economic Impact

These rules impose an affirmative obligation on insurers and their employees or representatives to pursue available subrogation or right of recovery actions in a timely manner. These rules further require an insurer to consult with the Fund and obtain approval before settling an available subrogation or right of recovery action. These rules are necessary to establish uniform procedures and to provide the Fund with proper control over its resources and management of the claims which it assigns. No additional costs are anticipated as a result of these rules.

Regulatory Flexibility Analysis

Few, if any, insurers affected by these rules are "small businesses" as defined in N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. These rules set forth requirements to which an insurer shall adhere prior to settling a subrogation or right of recovery action. They also address the consequences of an insurer's failure to diligently pursue all available subrogation or right of recovery actions in a timely manner. These rules do not impose extra recordkeeping and reporting requirements. It is not anticipated that the employment of additional professional services will be necessary for compliance with these rules. These rules set forth procedures which must be employed by all insurers regardless of size in order to establish insurers' responsibilities to investigate and pursue available right of recovery or subrogation actions.

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

11:3-28.13 Insurer's obligation to obtain recovery of payments for paid medical expense benefit claims

[(a) The Fund shall deny reimbursement to insurers for paid medical expense benefit claims if an insurer has failed to pursue any and all responsible tortfeasors within the time prescribed by law at N.J.S.A. 39:6A-13.1.

1. An insurer's failure to diligently pursue its right of recovery of medical expense benefit claim payments shall result in the denial of reimbursement by the Fund for these claims.

2. The Fund shall recover any reimbursement payments which were made to an insurer, where the insurer failed to diligently pursue its right of recovery against a tortfeasor.

3. An insurer shall obtain prior approval from the Fund before settling or compromising a claim against a tortfeasor.]

(a) An insurer eligible for reimbursement from the Fund shall pursue all available subrogation or right of recovery actions against responsible tortfeasors to obtain recovery of payments for paid medical expense benefit claims in a timely manner.

1. An insurer's failure to fully investigate the availability of and diligently pursue an available subrogation or right of recovery actions in a timely manner may result in the termination of reimbursement and/or the issuance of a declaration by the Board that the insurer is obligated to repay to the Fund an amount less than or equal to the benefits which may have been recovered had a timely subrogation or right of recovery action been pursued, plus interest.

INSURANCE

2. An insurer shall consult with the Fund and obtain prior approval from the Board before settling an available subrogation or right of recovery action.

(b) Any and all expenses and fees incurred by the insurer as a result of [the pursuit of a right of recovery against a tortfeasor] its pursuit of an available subrogation or right of recovery action shall be borne by the insurer.

11:3-28.16 Insurer's obligation to obtain recovery of paid benefits (UCJ claims)

(a) An insurer shall pursue all available subrogation or right of recovery actions against responsible tortfeasors to obtain recovery of paid benefits (UCJ claims) in a timely manner.

PROPOSALS

1. An insurer's failure to diligently pursue all available subrogation or right of recovery actions in a timely manner may result in a declaration by the Board that the insurer is obligated to repay to the Fund an amount less than or equal to any benefits which may have been recovered had a timely subrogation or right of recovery action been pursued, plus interest.

2. An insurer shall consult with the Fund and obtain prior approval from the Board before settling an available subrogation or right of recovery action.

(b) Any and all expenses and fees incurred by the insurer as a result of its pursuit of an available subrogation or right of recovery action shall be borne by the insurer.

RULE ADOPTIONS

BANKING

(a)

NEW JERSEY CEMETERY BOARD

Applications

Adopted Recodification with Amendments: N.J.A.C.

3:40-6.1 through 6.9, and 6.11 through 6.12

Adopted New Rules: N.J.A.C. 3:41-13.8 through 13.10

Adopted Repeal: N.J.A.C. 3:40-6.10

Proposed: September 19, 1994 at 26 N.J.R. 3785(a).

Adopted: October 24, 1994 by the New Jersey Cemetery Board,
William B. Waits, Executive Director.

Filed: October 26, 1994 as R.1994 d.579, **with substantive and technical changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 8A:2-2.

Effective Date: November 21, 1994.

Expiration Dates: October 11, 1995, N.J.A.C. 3:41,
November 21, 1999, N.J.A.C. 3:40.

Summary of Public Comments and Agency Responses:

No comments received.

The Board has made certain substantive changes upon adoption which do not require reproposal pursuant to N.J.A.C. 1:30-4.3. The words "or cemetery," which the proposal would have added to the title of N.J.A.C. 3:41-5.4, are not adopted because the section deals only with cemetery companies. In N.J.A.C. 3:41-5.5(a)3, after "securities," the following words are added: " , bonds, certificates of deposit, or other instruments." This reflects the fact that investments of maintenance and preservation funds are not limited to securities.

Other changes upon adoption are technical and include, at N.J.A.C. 3:41-13.1(a)6, codification corrections and at subsection (b) the correction of an internal cross reference.

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

3:41-5.4 Litigation involving a cemetery company ***[or cemetery]***

If a cemetery company is a party to any litigation, it shall file a copy of the complaint, the answer, and the judgment, order, or settlement agreement resolving the matter with the Board and the Division of Law within the Department of Law and Public Safety.

3:41-5.5 Annual reports

(a) Each year, a cemetery company shall file an annual report with the Board. The report shall be signed in the presence of a notary public and acknowledged. The report shall be filed with the board on a form established by the Board. The report shall include:

1. The extent of, and sources of augmentation to, the maintenance and preservation fund;

2. (No change.)

3. A list of the securities ***, bonds, certificates of deposit or other instruments*** in which the corpus of the fund is invested; and

4. A check for the per-interment charge as required by N.J.S.A. 8A:4-12(b), made payable to the New Jersey Cemetery Board, the proceeds from which shall be used to defray the expense of the examination, investigation and administration by the Board;

(b) The cemetery company shall file the annual report required by this section no later than 120 days after the close of the cemetery company's fiscal year.

3:41-5.6 Rules and regulations of a cemetery company

A cemetery company may amend or supplement its rules and regulations by filing with the Board such proposed amendments or supplements, or both. This filing shall be accompanied by a filing fee payable to the New Jersey Cemetery Board, in accordance with N.J.S.A. 8A:5-4c.

SUBCHAPTER 6. (RESERVED)

3:41-9.7 Application for license as a cemetery salesperson

(a) An applicant for an initial cemetery salesperson license shall submit the following:

1. A completed application form;
2. A one inch by one inch face photograph, in good condition, and taken within the last year;
3. The examination fee as provided by N.J.S.A. 8A:9-10;
4. A completed certified consent certificate consenting to the criminal history investigation;
5. An F.B.I. Fingerprint Card, with legible prints, which is signed by the applicant and the officer who took the prints;
6. The criminal history investigation fee in the form of certified check or money order as set by the Federal Bureau of Investigation through the New Jersey State Police;
7. For applicants who have been convicted of a criminal offense, a completed criminal history questionnaire; and
8. For applicants who reside outside of this State, a completed designation of agent form.

(b) An applicant for a renewal of a cemetery salesperson license shall submit the following:

1. A completed application form;
2. A one inch by one inch face photograph, in good condition, and taken within the last year;
3. The renewal fee as specified by N.J.S.A. 8A:9-10; and
4. For applicants who reside outside of this State, a designation of agent form if no designation of agent form has ever been submitted to the board or if the designation of agent form previously submitted does not list the current agent for service of process.

SUBCHAPTER 13. APPLICATIONS

3:41-13.1 Application for certificate of authority

(a) An application for a certificate of authority by a cemetery company organized on or after December 1, 1971 shall be filed as follows:

1. The Board shall establish a register of applications for certificates of authority for all cemetery companies organized on or after December 1, 1971;

2. Each application shall, upon its receipt at the office of the Board, be recorded in this register. An applicant shall submit with each application a nonrefundable fee of \$100.00 payable to the New Jersey Cemetery Board.

3. The register of applications shall be open to the inspection by the public during the normal business hours of the Board office.

4. If any member of the public files, at the office of the Board, a written objection to an application for a new cemetery company, the Board shall schedule a public hearing and shall notify the objector and the applicant of the time and the place for such hearing.

5. After the hearing has been held the grant or denial of the certificate of authority shall be filed in the register of applications.

6. An application for a certificate of authority shall include the following:

- i. A completed application form for a certificate of authority;
- ii. A completed information sheet;
- iii. An application fee of \$100.00, made payable to the New Jersey Cemetery Board;
- iv. A copy of the certificate of incorporation pursuant to Title 15A of the New Jersey Statutes;
- v. A copy of articles of incorporation and/or charter, and bylaws;
- vi. A copy of the applicant's rules and regulations;
- vii. A copy of the applicant's charges for interment spaces and services;
- viii. A map of the area (for example, a tax map) which delineates the cemetery;

[x.]**ix. A statement and supporting evidence, if any, that the cemetery company will be able to meet the requirement of N.J.S.A. 8A:4-3 to establish an Initial Balance Fund of \$25,000, except that

a cemetery company operating as a crematory wholly independent and physically separated from any cemetery shall not be required to provide such a statement, nor shall a cemetery company which has been engaged in the operation of a cemetery prior to December 1, 1971 be required to provide such a statement; and

*[xi]**x.* Any additional information which the Board may require relevant to the application.

(b) An application for a certificate of authority by a cemetery company organized before December 1, 1971 shall be filed as follows:

1. An applicant shall submit with each application a nonrefundable fee of \$100.00, payable to the New Jersey Cemetery Board, except that the applicant shall not be required to pay the application fee if it can demonstrate to the satisfaction of the Board that it no longer has cemetery land for sale and that it exists solely for the maintenance and preservation of the cemetery.

2. An application for a certificate of authority shall include the following:

- i. A completed application for a certificate of authority;
- ii. A completed information sheet;
- iii. An application fee of \$100.00, made payable to the New Jersey Cemetery Board, except as provided in *[(a)1]* *(b)1* above;
- iv. A copy of the certificate of incorporation or registration as a limited partnership, if applicable;
- v. A copy of articles of incorporation, charter, and bylaws, and other fundamental organizational documents of the entity;
- vi. A copy of the applicant's rules and regulations;
- vii. A copy of the applicant's charges for interment spaces and services; and
- viii. Any additional information which the Board may require relevant to the application.

3:41-13.2 Application for dissolution of a cemetery company

(a) A cemetery company which wishes to dissolve shall file an application with the Board. The application shall include, but not be limited to, the following:

1. A certified statement by the board of managers or trustees of the cemetery company which:

- i. Sets forth the reasons for dissolution;
- ii. Identifies all of the assets and liabilities of the cemetery company, including any outstanding legal actions or matters which may result in legal actions, and sets forth the amounts of all such assets and liabilities;
- iii. States that the cemetery company is transferring its cemetery property in good faith, and has concluded that, to the best of its knowledge, the transfer would not work an injustice on any party; and
- iv. States that, when the dissolution becomes effective, the cemetery company will surrender its certificate of authority to the Board and cease cemetery activities;

2. A certified statement of the successor in interest which states that:

- i. It agrees to accept all of the duties, liabilities, obligations, rights, and assets of the cemetery company, including the duty to maintain the cemetery;
- ii. It holds a certificate of authority issued by the Board, or it is a religious corporation organized pursuant to either Title 16 of the New Jersey Statutes or a special act of the Legislature, or it is a religious society;
- iii. If it is a religious corporation organized pursuant to either Title 16 of the New Jersey Statutes or a special act of the Legislature, or it is a religious society, burials in the cemetery will be restricted to members of the faith and families of members of the faith; and
- iv. The successor in interest is accepting the transfer of the cemetery property of the cemetery company in good faith, and has concluded that, to the best of its knowledge, the transfer would not work an injustice on any party; and

3. A copy of the resolution of dissolution approved by a majority of the board of managers or trustees and by a majority of the lot owners voting at a lot owners meeting for which adequate notice was given, in accordance with N.J.S.A. 8A:3-17.

3:41-13.3 Merger or consolidation of cemetery companies

(a) A cemetery company which wishes to merge into another cemetery company shall file an application with the Board which shall include the following:

1. A copy of the agreement which would effect the merger;
2. A copy of the plan of merger, if any;
3. A description of the benefit to each cemetery company as a result of the merger; and
4. An information fact sheet from each cemetery company reflecting the following:
 - i. A list of officers;
 - ii. A list of the board of managers or trustees;
 - iii. The total acreage of the cemetery;
 - iv. The total acreage of cemetery which is developed;
 - v. The total acreage of the cemetery which is developed but not sold;
 - vi. The total acreage of the cemetery which is undeveloped; and
 - vii. A copy of the resolution of merger approved by a majority of the board of managers or trustees of each cemetery company, and by a majority of the lot owners of each cemetery company voting at a lot owners meeting for which adequate notice was given; and
5. Any other information relevant to the application.

3:41-13.4 Application for sale of cemetery lands

(a) A cemetery company which wishes to sell any land dedicated to cemetery purposes shall file an application with the Board, which application shall include the following:

1. A statement by the board of managers or trustees setting forth the size of the parcel to be sold, whether the parcel has been developed for cemetery use, the total acres of cemetery property prior to the sale, and the total acres of developed cemetery property prior to the sale; and
2. A statement by the board of managers or trustees that the land is not in the judgment of the cemetery company necessary or suitable for interment purposes;
3. A statement by the board of managers or trustees that there are no interments within the lands requested to be sold;
4. A statement by the board of managers or trustees that when a deed is drawn for the land it will include a prohibition against using the land for any activity in which a cemetery company is prohibited from engaging by N.J.S.A. 8A:5-3;
5. A statement by the board of managers or trustees that at least 15 percent of the proceeds of the sale of the land will be paid into the maintenance and preservation fund of the cemetery;
6. A resolution approving of the sale which is approved by a majority of the board of managers or trustees;
7. A certified statement by the board of managers or trustees and the officers of the cemetery company attesting whether or not any of them has a direct or indirect interest in the purchasing entity;
8. A certified statement by the purchasing entity, its officers, and its stockholders having a 20 percent or more share of issued voting stock or a 20 percent or more share of a partnership, attesting whether any of them has a direct or indirect interest in the cemetery company;
9. One appraisal of the property by an appraiser having no interest in either the cemetery company or the purchasing entity, except that if either the cemetery company or the purchasing entity or the principals of either have an interest in the other, two independent appraisals shall be submitted; and
10. Any other information which may be required by the board regarding the application.

(b) A committee of the Board may, if it deems it necessary, visit a cemetery submitting an application pursuant to this section to verify that the land to be sold is not necessary or suitable for interment purposes.

3:41-13.5 Application for removal of unsightly monumentation

(a) If a cemetery company wishes to remove an unsightly monument, railing, box or other form of monumentation from an interment space or lot, it shall notify the interment space owner, owners or other interested parties and secure their written consent to the removal; however, if the cemetery company is unable to obtain the

written consent, either because the owner failed to consent or because the cemetery after diligent effort was unable to locate the owner, it may submit an application to the Board, which application shall include the following:

1. The reasons for removal of the monument, railing, box or other form of monumentation;
2. A statement by an officer of the cemetery company that the cemetery company was unable, after diligent effort, to obtain written permission from the owner of the interment space or lot;
3. A photograph of the monumentation sought to be removed; and
4. Any other information relevant to the application.

3:41-13.6 Application for enlargement of cemetery area by purchase

(a) A cemetery company which wishes to purchase land and dedicate that land for cemetery purposes shall file an application with the board. The application shall include the following:

1. A statement by the board of managers or trustees that the total area of the cemetery, after the new land is added, will not exceed the statutory limits set forth in N.J.S.A. 8A:6-1 and 8A:6-6, unless in the latter case the municipality has waived the limit. In the case of a merger between two or more existing cemeteries, such a statement shall not be required;
2. A copy of the contract for the purchase of the property, which shall include, but shall not be limited to, the purchase price, the method of payment, the interest rate if any, and the size of the parcel to be purchased;
3. A copy of the resolution of consent by the municipality where the cemetery is located, as required by N.J.S.A. 8A:6-5; and
4. Any other information relevant to the application.

3:41-13.7 Application to lease or license unused cemetery lands

(a) An application to lease or license unused cemetery lands shall include the following:

1. In the case of a lease to a nonprofit, religious, educational or charitable organization pursuant to N.J.S.A. 8A:6-12:
 - i. A certified statement by the board of managers or trustees that the lands to be leased will not be plotted for burial lots or, if already plotted, that burial lots therein will not be sold for burial purposes or otherwise used for cemetery purposes within two years following the meeting of the board of managers or trustees approving the application;
 - ii. A tax map, or other equivalent official map, of the land in question which indicates that it abuts a public street or highway;
 - iii. A certified statement by the prospective lessee that it is a nonprofit, religious, educational or charitable organization;
 - iv. A certified statement by the prospective lessee describing the expected use to be made of the portion of land and addressing the question of whether this use would be distasteful to those who visit that portion of the cemetery presently used for burial purposes which abuts the land in question;
 - v. Evidence that there is an access from the abutting public highway or street;
 - vi. A copy of the lease; and
 - vii. Any other information relevant to the application; and
2. With regard to a lease to a for-profit entity pursuant to N.J.S.A. 8A:6-2:

- i. A statement by the board of managers or trustees that the parcel has not been laid out into burial plots or lots;
- ii. A statement by the board of managers or trustees that the proceeds of the lease will be used to pay the debts and liabilities of the cemetery company or to improve the cemetery, or both;
- iii. A statement by the prospective lessee that it does not engage, directly or indirectly, in an activity that which a cemetery company is prohibited from engaging in pursuant to N.J.S.A. 8A:5-3; and
- iv. Any other information relevant to the application.

3:41-13.8 Applications for bulk sales of interment spaces

(a) A certified statement by an officer of the cemetery company which wishes to sell interment spaces in bulk to a membership or religious corporation or society, or to an unincorporated association

or society pursuant to N.J.S.A. 8A:9-7, shall submit an application to the board, which application shall include the following:

1. A copy of the contract of sale, which shall include the names of the parties, the number of interment spaces to be sold, the location of each, and the sales price;

2. A statement by the cemetery company that:

- i. The transaction will conform to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

- ii. It will deposit into its maintenance and preservation fund at least 15 percent of the gross sales price of the interment spaces, or \$25.00 per grave, whichever is greater, as payments are received;
- iii. It is aware that, if the purchaser resells an interment space in the future, at least 15 percent of the gross sales price for similar interment spaces established by the cemetery company at the time of resale, or \$25.00, whichever is greater, must be deposited into the maintenance and preservation trust fund of the cemetery company, except that a credit shall be given for any money previously paid into the maintenance and preservation fund in connection with the interment space; and

- iv. It is selling the interment spaces in good faith and does not have any knowledge of any speculative intent on the part of the purchaser which would violate N.J.S.A. 8A:9-7;

3. A certified statement by the purchaser that:

- i. It is a membership or religious corporation or society, or an unincorporated association or society within the meaning of N.J.S.A. 8A:1-1 and 8A:9-7;

- ii. It will purchase the spaces pursuant to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

- iii. The purchaser will resell or give the interment spaces, or the right to use the interment spaces, purchased in this bulk sale only to members, and the spaces will be provided solely for members and their families;

- iv. If the purchaser resells any interment space in the future, it will transmit to the cemetery for deposit into the maintenance and preservation fund of the cemetery company at least 15 percent of the gross sales price for similar interment spaces established by the cemetery company at the time of resale, or \$25.00, whichever is greater, but the purchaser shall receive a credit for any money previously paid into the maintenance and preservation fund in connection with the interment spaces; and

- v. The purchaser is purchasing the interment spaces in good faith and does not have any speculative intent which would violate N.J.S.A. 8A:9-7; and

4. Any other information relevant to the application.

(b) A membership or religious corporation or society, or an unincorporated association or society, which wishes to sell interment spaces in bulk to another membership or religious corporation or society, or to an unincorporated association or society pursuant to N.J.S.A. 8A:9-7, shall submit an application to the board, which application shall include the following:

1. A copy of the contract of sale, which shall include the names of the parties, the number of interment spaces to be sold, the location of each, and the sales price;

2. A certified statement by the selling organization that

- i. It is a membership or religious corporation or society, or an unincorporated association or society within the meaning of N.J.S.A. 8A:1-1 and N.J.S.A. 8A:9-7 of the New Jersey Cemetery Act;

- ii. It will sell the spaces pursuant to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

- iii. It is aware that at least 15 percent of the gross sales price of the interment spaces, or \$25.00 per grave, whichever is greater, must be deposited into the maintenance and preservation fund of the cemetery company, and that the source of such deposit has been agreed to; and

- iv. It is selling the interment spaces in good faith and does not have any knowledge of any speculative intent on the part of the purchaser which would violate N.J.S.A. 8A:9-7;

3. A certified statement by the purchasing organization that:

- i. It is a membership or religious corporation or society, or an unincorporated association or society within the meaning of N.J.S.A. 8A:1-1 and 8A:9-7;

ii. It will purchase the spaces pursuant to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

iii. It will resell or give the interment spaces, or the right to use the interment spaces, only to its members, and that the spaces will be provided solely for members and their families;

iv. If the purchaser resells an interment space, it will transmit to the cemetery company for deposit into the maintenance and preservation fund of the cemetery company at least 15 percent of the gross sales price for similar interment spaces established by the cemetery company at the time of resale, or \$25.00, whichever is greater, but the purchaser shall receive a credit for any money previously paid into the maintenance and preservation fund in connection with the interment spaces; and

v. It is purchasing the interment spaces in good faith and does not have any speculative intent which would violate N.J.S.A. 8A:9-7;

4. A statement by the cemetery company that:

i. It is aware that an amount equal to at least 15 percent of the sales price for the interment spaces must be deposited into the maintenance and preservation fund of the cemetery company when a membership or religious organization resells its interment spaces in bulk to another membership or religious organization, except that a credit shall be given for any amount previously paid into the maintenance and preservation fund in connection with each particular interment space;

ii. It is aware that, if the purchasing organization resells an interment space to a member, at least 15 percent of the gross sales price for an equivalent interment space established by the cemetery at the time of resale shall be deposited into the maintenance and preservation fund of the cemetery company, less a credit for any money previously paid into the maintenance and preservation fund in connection with that interment space; and

iii. To the best of its knowledge, the transaction is being undertaken in good faith, and neither the cemetery company, nor the selling organization, nor the purchasing organization have a speculative intent which would violate N.J.S.A. 8A:9-7; and

5. Any other information relevant to the application.

3:41-13.9 Standards for approving or disapproving applications

(a) The following factors shall militate toward approval of an application:

1. Approval will benefit the financial well-being of any cemetery company affected by the transaction;

2. Approval will result in better provision of services by any cemetery company; or

3. Approval will foster a statutory purpose, whether stated explicitly or fairly read into the statute.

3:41-13.10 Provisions applicable to all applications

(a) Applications and supporting materials shall be submitted in 12 copies, except that applications for bulk sales of interment spaces shall be submitted in three copies. One original of all certifications shall be submitted, but contracts, certificates of incorporation, articles of incorporation, and bylaws may be submitted as copies.

(b) The Board may, at its discretion, waive the submission of specified materials if it determines that the absence of those materials would have no substantial impact on its ability to make an informed decision on the application, or if the applicant submits substantially similar information in a form not specified, or if the Board already has the information in a satisfactory form.

(c) The Board may consider an application to be incomplete which lacks one or more of the items required to be submitted, and may defer processing until all of the materials have been submitted.

(d) Any misrepresentation of a material fact, or any omission of a material fact, in an application to the Board shall constitute a violation of the Act and shall make the person making the representation liable for a penalty as set forth in N.J.S.A. 8A:10-1.

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Government Financial Regulation Municipal, County and Authority Employees Deferred Compensation Programs

Adopted Repeal and New Rules: N.J.A.C. 5:37-1

Proposed: July 5, 1994 at 26 N.J.R. 2708(a).

Adopted: October 25, 1994 by Beth Gates, Director, Division of Local Government Services.

Filed: October 26, 1994 as R.1994 d.578, 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. 43:15B-1 et seq.

Effective Date: November 21, 1994.

Expiration Date: November 21, 1999.

Summary of Public Comments and Agency Responses:

A copy of the proposed rules was mailed to 30 individuals at various companies offering deferred compensation services to New Jersey local units of government.

Five comments were received regarding the proposed rules.

COMMENT: Mr. Richard Sdao with The Variable Annuity Life Insurance Company (VALIC) questioned the availability of a model resolution for use by local governmental units seeking to adopt a deferred compensation plan and execute a service agreement for the administration of the plan's investments.

RESPONSE: A document which can form the basis for a resolution will be prepared by the Director and made available to vendors and local governmental units.

COMMENT: Mr. Thomas E. Kopsie, Regional Marketing Manager with the Aetna Life Insurance and Annuity Company, requested information regarding the procedure for filing and utilizing a prototypical plan.

RESPONSE: N.J.A.C. 5:37-3.1 requires that contractors submit a prototypical plan and service agreement to the Director for approval. The Director will inform known vendors of deferred compensation services of the effective date of the rules and how to submit plan documents and service agreements for assignment of the required identifier.

COMMENT: Ms. Catherine K. Bryan, Manager of Corporate Compliance with the ICMA Retirement Corporation, recommended modifying the language of N.J.A.C. 5:37-8.1(d) to include the phrase shown here in quotation marks: The employer and a participant may execute only one joinder agreement "for purposes of enrolling in a plan" during any one calendar year. Mr. Ronnie E. Nichols, Chairman of The National Plan Coordinators of Delaware, Inc., raised a similar question.

RESPONSE: The Director agrees with this suggestion. The added text at N.J.A.C. 5:37-8.1(d) will serve to clarify a potentially confusing situation.

COMMENT: Mr. Gregory A. Kleva, Jr., Senior Vice President and Deputy General Counsel for the Mutual of America Life Insurance Company, raised a question regarding the ability of a local governmental unit to contract for the administration of part of its deferred compensation plan.

RESPONSE: This is possible under the existing rules and is carried over into the new rules.

COMMENT: Mr. Kleva believes that a clarification is needed in N.J.A.C. 5:37-10.7 to the effect that the plan balances or participant balances shall not be less than the cumulative amounts deferred less any administrative expenses agreed upon pursuant to N.J.A.C. 5:37-5.9, or applicable charges under annuity or life insurance contracts which an employer has not agreed to absorb.

RESPONSE: The Director does not agree that modification of N.J.A.C. 5:37-5.9 or N.J.A.C. 5:37-10.7 is required. Mutual of America is seeking to permit additional vendor charges to be included as part of, or in addition to, "normal administrative expenses." The rule at N.J.A.C. 5:37-5.9 provides for the employer to charge the plan for "reasonable administrative expenses." Mutual is seeking approval to go beyond administrative expenses. The amount of the administrative charge is generally set forth in the Service Agreement between the local unit

ADOPTIONS

and the vendor. If the vendor believes that addition charges for the handling of a local units investments is insufficient to meet the cost of the service, it would be up to the vendor and the local unit to agree upon the amount of the fee in the service agreement.

COMMENT: Mr. Kleva raised a concern that the termination clause required to be in all service agreements by N.J.A.C. 5:37-7.8(c) also should be reflected in annuity and insurance contracts.

RESPONSE: The Director does not agree. The only way local governmental units may invest deferred funds is through the execution of a contract or service agreement with a third party. Any such agreement would contain a termination clause. If the agreement were to be terminated, the funds would either be rolled-over into another eligible investment instrument or returned to the employee. Insurance and annuity contracts cannot stand alone.

COMMENT: Mr. Kleva raised a concern about expanding the requirement found in N.J.A.C. 5:37-7.10 which stipulates that the service agreement be subject to the rules of the Director of Local Government Services. The recommendation proposes that the solicitation, application and the issuance of insurance or annuity contracts be subject to the Director's rules.

RESPONSE: The rule addresses the overall deferred compensation process from plan development through execution of a service agreement. There is a provision for the Director's rules to be part of any service agreement. Insurance company investment instruments are subject to the rules and regulations of the State Department of Insurance. The Director sees no reason for implementing the change.

The only change to the original proposed rule is a minor addition to the language contained in N.J.A.C. 5:37-8.1(d) which serves to eliminate possible confusion between the limitation on the number of joinder agreements which a participant may execute in a calendar year and the ability of the participant to change the investment options for deferred funds more than one in a calendar year. This clarification is not substantial and does not require a reproposal.

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

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|--|------------|--|
| Old Number | New Number | Subchapter Content |
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| 5:37-1.1 | 5:37-1.1 | Definitions |
| SUBCHAPTER 2. SUBCHAPTER 2. THE DIRECTOR | | |
| 5:37-2.2 | 5:37-2.1 | Approving plans and service agreements |
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| SUBCHAPTER 4. SUBCHAPTER 3. DEFERRED COMPENSATION PLAN | | |
| 5:37-4.1 | 5:37-3.1 | Prototypical plans and service agreements |
| 5:37-4.1 | 5:37-3.2 | Self-administered plan |
| 5:37-10.1 | 5:37-3.3 | Uniform system of accounting |
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| SUBCHAPTER 11. SUBCHAPTER 4. AMENDMENT OF PLAN | | |
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| 5:37-11.2 | 5:37-4.2 | Notification of amendment |
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| CHAPTER 3. SUBCHAPTER 5. THE EMPLOYER | | |
| 5:37-3.1 | 5:37-5.1 | Institution of plan |
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| 5:37-5.2 | 5:37-6.1 | Responsibilities of administrator |
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| SUBCHAPTER 13. SUBCHAPTER 7. THE CONTRACTOR | | |
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CHAPTER 37

MUNICIPAL, COUNTY AND AUTHORITY EMPLOYEES DEFERRED COMPENSATION PLANS

SUBCHAPTER 1. DEFINITIONS

5:37-1.1 Definitions

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

“Accounting date” means the annual date at the close of the fiscal year when the employer provides an accounting of its deferred compensation plan and appraises all participants of the value of their accounts.

“Administrator” means the person or group of local public officials or employees, including the local governing body, appointed by the

governing body of the local unit as fiduciary responsible for the administration of the deferred compensation plan and for the investments and the accounting of funds maintained under the plan.

"Approved plan" means a deferred compensation plan which has been approved by the Director.

"Beneficiary" means the person, persons or legal entity designated by a participant to receive any undistributed deferred compensation which becomes payable in the event of the participant's death.

"Complete application package" means the documentation to be submitted to the Director by an employer for approval of a self-administered deferred compensation plan or by a contractor for a prototypical deferred compensation plan which may include, but not be limited to, the deferred compensation plan document, service agreement and resolution.

"Contractor" means any organization, firm, corporation, partnership, or individual, whether profit making or non-profit, which is not a governmental entity and provides a deferred compensation plan or administers it for an employer.

"Deferred compensation" means future benefits for present services payable pursuant to a contract with an employee.

"Deferred compensation plan" or "plan" means a document consistent with the requirements of Section 457, as amended, of the United States Internal Revenue Code under which an employee may defer payment of a specified amount of compensation until the future receipt thereof.

"Director" means the Director of the Division of Local Government Services in the Department of Community Affairs.

"Employee" means any person, including elected, appointed and salaried persons working for the employer.

"Employer" means a local unit, either municipal, county, or an authority created by one or more counties or municipalities.

"Independent auditor" means a registered municipal accountant for a municipality or county pursuant to N.J.S.A. 40A:5-4 or a registered municipal accountant or a certified public accountant for an authority or fire district pursuant to N.J.S.A. 40A:5A-15.

"Joinder agreement" means the agreement signed by an employee to become a participant in the deferred compensation plan.

"Participant" means a local unit employee who is participating in a deferred compensation plan.

"Pay period" means the period of time for which the employer computes compensation for the employee.

"Prototypical plan" means a deferred compensation plan prepared by a contractor and approved by the Director.

"Self-administered plan" means a deferred compensation plan prepared and administered by the local unit and approved by the Director.

"Service agreement" means a contract between the employer and a third party for the administration of the employer's deferred compensation plan.

SUBCHAPTER 2. THE DIRECTOR

5:37-2.1 Approving plans and service agreements

(a) The Director shall approve or reject any deferred compensation plan or service agreement or amendment thereto prior to its implementation by an employer.

(b) The Director shall approve or reject a self-administered plan or prototypical plan or service agreement or any amendment thereto within 20 working days of receipt of a complete application package. The Director shall explain in writing, the reasons for rejection. Any modifications required by the Director shall be made within 60 days from the time of notification. Failure to submit the modifications within the time provided shall result in the plan being disapproved.

5:37-2.2 Review investments

Any investments made pursuant to an approved deferred compensation plan are subject to review by the Director. With the exception of investments made by domestic insurance companies licensed to sell life insurance and annuities in this State and subject to review by the Commissioner of the Department of Insurance pursuant to Chapter 20 of Title 17B of the New Jersey Statutes, the Director may review and reject any such investment. In making

such determinations, the Director shall utilize the standards applicable to the prudent investor as provided in Section 13 of P.L. 1981, c.405 (N.J.S.A. 3B:20-13).

SUBCHAPTER 3. DEFERRED COMPENSATION PLAN

5:37-3.1 Prototypical plans and service agreements

(a) A contractor shall submit to the Director for approval a prototypical plan or service agreement and any amendment thereto to be made available to employers. The plan and service agreement shall contain, but not be limited to, the policies and procedures to be used in operating a deferred compensation plan as set forth in these rules.

(b) The Director shall assign a separate identifier to each approved prototypical plan and service agreement and any amendment thereto. This identifier shall appear in a prominent position on each plan and agreement offered to an employer.

(c) The approval of a prototypical plan or a service agreement by the Director shall not constitute an endorsement of the plan or service agreement.

5:37-3.2 Self-administered plan

The employer may prepare and administer a deferred compensation plan. The plan shall contain, but not be limited to, the policies and procedures to be used in operating a deferred compensation plan as set forth in these rules. Such a plan may be prepared in consultation with representatives of the potential participants.

5:37-3.3 Uniform system of accounting

The plan shall provide for a uniform system of accounting for each participant and for the investment of the deferred compensation funds.

5:37-3.4 Certification of Internal Revenue Service compliance

The resolution of an employer adopting a self-administered plan or a prototypical plan shall certify that an application has been filed with the Internal Revenue Service for a private letter ruling that the plan meets the requirements of Section 457 of the Internal Revenue Code, as amended, and that such ruling will be forwarded to the Director when received.

5:37-3.5 Alternative certification of Internal Revenue Service compliance

As an alternative to the Internal Revenue Service private letter ruling required pursuant to N.J.A.C. 5:37-3.4, the resolution of an employer adopting a prototypical plan shall certify that the employer is adopting a plan substantially similar to one on which a satisfactory Internal Revenue Service private letter ruling has been obtained. The certification shall also indicate the use of the ruling is for guidance only and the realization that for Internal Revenue Service purposes, the ruling of another employer is not to be considered precedent.

SUBCHAPTER 4. AMENDMENTS OF PLAN

5:37-4.1 Reasons for amendment

The employer may amend the plan to accommodate changes in the Internal Revenue Code, Federal statutes, State laws or rules or operational experience.

5:37-4.2 Notification of amendment

The employer shall notify all participants in writing prior to making any amendment to the plan. The notice shall state that an amendment will be made, what the amendment will be, why the plan is being amended, and what the impact, if any, will be on the participants. The participants shall have the right to modify the joinder agreement to reduce or eliminate any adverse impact on their accounts.

5:37-4.3 Internal Revenue Service amendment

(a) An amendment to a deferred compensation plan necessary to maintain the plan as an eligible deferred compensation plan within the meaning of the Internal Revenue Code does not require approval by the Director prior to implementation; however, any such amendment shall be filed with the Director.

(b) The documentation submitted to the Director shall identify the regulatory authority for the amendment and the specific language of the change.

5:37-4.4 Non-Internal Revenue Service amendment

(a) An amendment to a deferred compensation plan which is not necessary to maintain the plan as an eligible deferred compensation plan within the meaning of the Internal Revenue Code shall be submitted to the Director for approval prior to implementation.

(b) The employer shall adopt the amendment by resolution of the governing body. A certified copy of the resolution shall be forwarded to the Director.

(c) The documentation submitted to the Director shall identify the specific language of the change.

SUBCHAPTER 5. THE EMPLOYER

5:37-5.1 Institution of plans

(a) The employer shall decide whether to institute a deferred compensation plan for its employees.

(b) An employer may at its option exclude certain classes or types of employees from participation in the plan.

5:37-5.2 Plan and service agreement adoption

(a) The employer shall adopt a self-administered plan by resolution. A certified copy of the resolution shall be forwarded to the Director.

(b) The employer shall adopt a prototypical plan or by resolution of the governing body. The resolution shall include, but not be limited to:

1. A formal adoption of the plan;
2. A description of the method used to solicit proposals pursuant to N.J.A.C. 5:37-7.1;
3. An identification of a local plan administrator pursuant to N.J.A.C. 5:37-5.4;
4. An authorization to execute a service agreement with the contractor;
5. A statement of non-collusion pursuant to N.J.A.C. 5:37-5.7;
6. Certification of plan compliance with the rules of the Internal Revenue Service pursuant to N.J.A.C. 5:37-3.4 or 3.5 for a prototypical plan adoption only; and
7. The identification of the contractor and the plan or service agreement identifier.

(c) The Director shall make available a sample resolution for use by employers.

(d) A certified copy of the resolution shall be forwarded to the Director.

5:37-5.3 Additional service agreement(s)

(a) An employer which has adopted a prototypical plan may award a supplementary service agreement to offer the investment options of another contractor. The service agreement shall be adopted by resolution. The resolution shall include, but not be limited to:

1. A description of the method used to solicit proposals pursuant to N.J.A.C. 5:37-7.1;
2. An authorization to execute a service agreement with the contractor;
3. A statement of non-collusion pursuant to N.J.A.C. 5:37-5.7; and
4. The identification of the contractor and the identifier of the service agreement.

(b) A certified copy of the resolution shall be forwarded to the Director.

5:37-5.4 Responsible for administration

The employer shall ensure the sound and proper administration of the plan, which shall include, but not limited to, the proper, accurate and adequate accounting and reporting of all funds by appointing a plan administrator by resolution.

5:37-5.5 Employer retaining assets

Compensation deferred under the plan shall remain the asset of the employer. The obligation of the employer to participating employees shall be contractual only, and no preferred or special interest in the deferred money shall accrue to such participants.

5:37-5.6 Conflict of interest

In undertaking any activities related to the establishment or administration of a deferred compensation plan, including but not limited to, any activities related to contracting for the administration of such a plan, local government officers and employees shall be governed by and subject to the requirements of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., and any county or municipal code of ethics promulgated pursuant thereto.

5:37-5.7 Non-collusion

There shall be no collusion, or evidence or appearance of collusion, between any official or employee of the employer and any official or employee or representative of the contractor, vendor, insurance company, bank, consultant, brokerage firm, or any other profit making or non-profit firm in solicitation or award of a service agreement with the employer. The employer shall so certify to the Director in the resolution implementing each service agreement.

5:37-5.8 No personal liability

The employer or administrator shall not be held personally liable for any returns on investment of plan funds which are less than any participant or group of participants expected. The employer shall require a hold harmless provision in service agreements with contractors which includes an indemnification of the employer from any cause of action, together with the reasonable costs of litigation from acts or omissions by the contractor.

5:37-5.9 Administrative expenses

The employer may charge the plan fund for reasonable administrative expenses in an amount agreed upon between the employer and the employees.

5:37-5.10 Minimum amounts

The employer shall establish minimum deferral amounts.

5:37-5.11 Inactive plan or service agreement

When an employer terminates a plan or a service agreement with a contractor or plan, such action shall be by resolution. The resolution shall include the name of the contractor and the plan or service agreement identifier. A copy of the resolution shall be filed with the Director.

SUBCHAPTER 6. THE ADMINISTRATOR

5:37-6.1 Responsibilities of administrator

The administrator shall have responsibility for all functions of the plan, including, but not limited to, enrollment, deductions, investments, accounting, reporting, and distribution of compensation.

5:37-6.2 Bonding and evidence of insurance—self-administered plan

(a) The administrator of a self-administered plan shall post a bond obtained from an organization duly authorized and licensed to provide such bond in the State of New Jersey, to protect the plan and the employer from any loss resulting from fraud or dishonesty. Evidence of such bond or ability to obtain such bond shall be provided to the employer and to the Director.

(b) The amount of the bond shall not be less than 100 percent of the amount of funds managed by the administrator.

5:37-6.3 Document retention

The administrator shall retain in a safe place the original policies, contracts or other legal documents executed by the employer and the contractor.

5:37-6.4 Quarterly report

The administrator shall make available at least quarterly a report to each participant which shall indicate the value or balance of each participant's account, as well as, the value or balance of the entire plan. This report shall indicate for each participant the balance of the participant's account as of the last accounting date, the amount of compensation deferred and any return on investment credited to the participant's account since the last report or accounting date.

SUBCHAPTER 7. THE CONTRACTOR

5:37-7.1 Award of service agreements

(a) In seeking a contractor, the employer shall solicit written proposals from two or more contractors offering prototypical plans or service agreements. After reviewing the proposals, a service agreement shall be awarded by resolution of the governing body. The resolution shall include a description of the method used to solicit proposals, identify the responding vendors and state the rationale for selecting a specific contractor.

(b) The term of the service agreement shall be determined by the employer and the contractor.

5:37-7.2 Ban on solicitation prior to award of contract

An organization seeking a contract shall not solicit employee participation in any deferred compensation plan or solicit employees to support the efforts of the organization to secure such a contract. A representative of an organization under contract shall not communicate with any prospective participant without the expressed consent and knowledge of the employer.

5:37-7.3 Insurance companies

An insurance company offering deferred compensation plans or investment options to local governments shall be authorized by the Commissioner of Insurance to do business in the State of New Jersey.

5:37-7.4 Mutual fund companies

An entity offering a mutual fund or other type of security as part of a deferred compensation plan shall be registered with the Security and Exchange Commission and shall submit to the Director a copy of a "Certification of Good Standing" from the New Jersey Secretary of State.

5:37-7.5 Non-profit corporations

A non-profit, tax-exempt corporation offering deferred compensation plans to local governments shall provide to the Director a copy of their Internal Revenue Service tax exemption certification.

5:37-7.6 Banking institutions

A banking institution serving as a depository for local government controlled program funds or offering deferred compensation plans to local governments shall be a New Jersey State-chartered bank, savings bank, or savings and loan or Federally-chartered bank, savings bank, or savings and loan located in New Jersey; hereinafter referred to as "banking institution." Such banking institution shall be in compliance with capital requirements for State-chartered banking institutions as set forth in N.J.A.C. 3:4, or capital requirements for Federally-chartered banking institutions as set forth in 12 CFR Part 325.

5:37-7.7 Non-discrimination

An organization, person, company, corporation, partnership, or other entity offering deferred compensation plans to local governments shall be in full compliance with all Federal and State laws regarding discrimination in its employment or investment policies and practices and shall so certify to the Director.

5:37-7.8 Contractor disclosure

(a) A potential contractor shall fully disclose to the employer in writing at the time a proposal is submitted for consideration, any arrangement it may have to pay endorsement fees to organizations whose membership includes local public employees of the employer.

(b) A potential contractor shall disclose to the employer and to the employees the fees charged, the fee and commission structure, the investment plan offered, and any other pertinent information which the employer may need in evaluating the contractor's fee and service.

(c) All service agreements shall contain termination clauses with respect to transfers of assets or responsibility under the plan.

5:37-7.9 Bonding and evidence of insurance—prototypical plan

(a) A contractor who provides a prototypical plan shall post a bond obtained from an organization duly authorized and licensed to provide such bond in the State of New Jersey, to protect the plan and the employer from any loss resulting from fraud or dishonesty

by such contractor. Evidence of such bond or ability to obtain such bond if the service agreement is awarded shall be provided to the employer and to the Director.

(b) The amount of bond shall not be less than 100 percent of the amount of funds managed by such contractor.

(c) A contractor providing services in accordance with these rules shall provide the employer and Director with evidence of appropriate liability insurance and errors and omissions insurance.

5:37-7.10 Provisions for rule to be part of service agreement

A service agreement entered into by an employer shall contain a provision that the service agreement is subject to the rules of the Division of Local Government Services and the rules are made a part thereof.

SUBCHAPTER 8. ENROLLMENT

5:37-8.1 Joinder agreement

(a) An eligible employee may enroll in the plan by executing a joinder agreement.

(b) The amount to be deferred shall be specified in the joinder agreement. The amount deferred may be changed by the participant with prior notice to the administrator at times designated by the employer.

(c) Once a joinder agreement is signed, the participant and beneficiary waive all claims and rights to commute, sell, assign, or otherwise use or transfer rights to receive any payments under the plan, which payments and rights are expressly declared to be non-assignable and non-transferable.

(d) The employer and a participant may execute only one joinder agreement *for the purpose of enrolling in a plan* during any one calendar year. The joinder agreement expires upon termination of service or a revocation of deferrals.

5:37-8.2 Leave of absence

A participant on an authorized leave of absence remains a participant.

SUBCHAPTER 9. INVESTMENT POLICIES

5:37-9.1 Eligible investments

(a) The funds deferred shall be invested in one or more of the following types of investments to the exclusion of all others:

1. Interest bearing accounts or securities, in which savings banks of New Jersey are authorized to invest their funds;
2. State of New Jersey Cash Management Fund;
3. Individual or group annuity contracts, whether fixed or variable;
4. Mutual fund shares; or
5. Life insurance contracts, whether fixed or variable.

5:37-9.2 Choice of investments

It shall be at the option of the employer to include in the plan as many of the investment choices identified in N.J.A.C. 5:37-9.1 as deemed prudent.

5:37-9.3 Investment certification

(a) A contractor providing deferred compensation services to an employer shall file with the Director in a form prescribed by the Director on or before the 15th day of January of each year a certification that the investment options offered comply with N.J.S.A. 43:15B-3c.

(b) The chief financial officer of a local unit with a self-administered plan shall file with the Director in a form prescribed by the Director on or before the 15th day of January of each year a certification that the investment options offered comply with N.J.S.A. 43:15B-3c.

5:37-9.4 Timing of investments

All funds from amounts deferred other than those needed to pay benefits shall be invested by the administrator or contractor responsible for investments within 72 hours, exclusive of Sundays and holidays, from the time the administrator or contractor receives the funds or is notified that the funds are available for investment or is in any other manner aware that the amounts deferred have been made and are available for investment.

SUBCHAPTER 10. ACCOUNTING PROCEDURES

5:37-10.1 Pooling of funds

Except for individual annuities and life insurance contracts, the plan shall provide for investments in authorized investment options by pooling the amounts deferred. The return on investments shall be apportioned on a prorated basis among all participants in the plan after deductions for reasonable administrative costs.

5:37-10.2 Audit or review

(a) The employer shall have an audit of all plan funds for a self-administered plan or a review of a contractor administered prototypical plan submitted as part of the annual audit of its books, accounts and financial transactions.

(b) The initial audit or review of the plan shall cover the period from plan initiation to the end of the fiscal year for the local unit and thereafter, the fiscal year of the plan shall conform to the fiscal year of the local unit.

5:37-10.3 Review of prototypical plan

(a) The review of a plan shall be made in accordance with the AICPA's Statements on Standards for Accounting and Review Services, subject to such qualitative inquiry and analytical procedures selected and performed, causing attention to questionable items, procedures or practices of a material nature, constituting a need for balances to be adjusted or creating a need for further auditing.

(b) The contractor shall transmit to the employer a compilation of financial data in statement form providing a full accounting of all plan transactions occurring during the employer's fiscal year, including beginning transactions and ending fund balance. The accounting for the transactions must reflect each participant's amount and date of each contribution received, the beginning fund balance by investment option, earnings or losses incurred, administrative charges and fees assessed, any transfers made among funds, all deposits and withdrawals, and the ending fund balance, including any and all adjustments made to such plan. The contractor must also submit to the employer applicable plan statements together with the opinion from its latest firm audit report prepared by its independent public accountant.

(c) The contractor shall furnish a letter to the Director, from its independent accountant attesting to the adequacy of the contractor's internal controls.

(d) The contractor shall certify to the Director that the annual accounting data supplied to the employer is accurate and complete.

(e) The independent auditor of the employer shall then evaluate the employer payroll records and joinder agreements against the information transmitted by the contractor.

(f) The independent auditor of the employer shall make an appropriate statement and express limited assurances thereon. These assurances shall be made part of the employer's annual audit, pursuant to N.J.S.A. 40A:5-4 or N.J.S.A. 40A:5A-15. The expense of the review shall be incurred by the employer or contractor as agreed upon at the time the service agreement is drawn.

5:37-10.4 Audit of a self-administered plan

If the plan is self-administered, the employer shall conduct an audit of all plan funds. The audit shall be performed pursuant to N.J.S.A. 40A:5-4 or N.J.S.A. 40A:5A-15. A copy of each audit report shall be transmitted to the Director in accordance with N.J.A.C. 5:37-10.2.

5:37-10.5 Deferrals

(a) The amount of compensation deferral specified by each participant in the joinder agreement shall be deferred by the employer at the end of each pay period.

(b) The amount deferred shall not be treated as compensation subject to Federal income tax withholding, but shall be treated as compensation subject to withholding for New Jersey Gross Income Tax, pensions, social security, insurance, and other fringe benefits, except to the extent that applicable law may provide.

5:37-10.6 Credit to accounts

The administrator shall credit to the plan and to each participant's account the return or loss on investment no less than once per month, except for annuity programs.

5:37-10.7 Return to participants

(a) Plan funds, less administrative expenses, including all amounts deferred and any and all return on investment of the plan funds shall be credited to the participants' accounts. Such credit shall be made in a manner that is prorated in a non-discriminatory manner. After the first year of program operation, the administrator shall not permit the cumulative plan balance to be less than the total cumulative sum of all amounts deferred by all participants, or any participant's account to have a balance less than the cumulative sum of all of the individual participant's deferrals since participation in the plan commenced. The only exceptions to this last statement shall be:

1. Variable annuities which guarantee that during the first three years of fund accumulation a participant will have distributed, upon withdrawal from the plan, an amount equal to the amount deferred;
2. A variable annuity with no such guarantee which is offered as part of a fixed and variable product line; and
3. Life insurance contracts.

5:37-10.8 Participant records confidential

All records regarding participation, amounts deferred, account balances, withdrawals, and any other information regarding a participant's account shall be held confidential by the administrator or the contractor.

5:37-10.9 Plan records

The administrator shall make available upon a written request from a participant or the Director, all records, reports or other information relating to the plan as a whole, including, but not limited to cash flow analysis, investment reports, audits and quarterly reports.

SUBCHAPTER 11. ENFORCEMENT

5:37-11.1 Compliance

The employer and contractor shall comply with the provisions of this chapter. Any employer or contractor deemed by the Director to be in noncompliance shall be notified by certified mail to appear before the Director, or designee. Notice shall be given at least 14 days prior to the date of the appearance and shall detail the nature of the alleged non-compliance. Failure to appear shall result in appropriate penalties pursuant to N.J.A.C. 5:37-11.4.

5:37-11.2 Director determination

No later than 10 days after an appearance required by N.J.A.C. 5:37-11.1, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the employer or contractor, as appropriate.

5:37-11.3 Grace period

A Director determination of non-compliance shall result in the immediate commencement of a 60 day grace period. During this time, the employer or contractor shall rectify all items of non-compliance to the satisfaction of the Director.

5:37-11.4 Penalties

Failure to satisfactorily address non-compliance during the grace period shall result in the immediate ineligibility of a contractor to qualify for Division approval of any additional deferred compensation plans. In addition, the Director may take such other actions as provided for by law.

SUBCHAPTER 12. PLAN VERIFICATION

5:37-12.1 Plan list

(a) Each January the Director shall prepare and distribute to the appropriate contractor a list of its approved local units. The list shall clearly identify local units and the date of approval.

(b) The contractor shall have 30 days from the date of mailing of the list by the Director to confirm in writing that the list is accurate.

ENVIRONMENTAL PROTECTION

(a)

ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Worker and Community Right to Know Regulations Designation of Environmental Hazardous Substances; Completion of Community Right to Know Survey Portion of the Environmental Survey Adopted Amendments: N.J.A.C. 7:1G-2.1 and 3.1

Proposed: July 18, 1994 at 26 N.J.R. 2833(a).

Adopted: October 19, 1994 by Robert C. Shinn, Jr.,

Commissioner, Department of Environmental Protection.

Filed: October 25, 1994 as R.1994 d.576, **with substantive and technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 34:5A-1 et seq. and 13:1D-1 et seq.

DEP Docket Number: 29-94-06/462.

Effective Date: November 21, 1994.

Expiration Date: June 16, 1999.

On July 18, 1994, the Department of Environmental Protection proposed amendments to the Community Right to Know regulations at N.J.A.C. 7:1G-2.1 and 3.1. The amendments proposed to increase the Community Right to Know reporting threshold from the current 100 pounds to 500 pounds and to add to the Environmental Hazardous Substance (EHS) list the regulated substances for accidental release prevention found at 40 CFR 68.130 promulgated by the United States Environmental Protection Agency (USEPA) to meet the mandates of Section 112(r) of the 1990 amendments to the Clean Air Act.

Summary of Hearing Officer Recommendation and Agency Response:

The Department held a hearing on the proposed amendments on August 16, 1994, in Trenton. Gerald P. Nicholls, Director of the Division of Environmental Safety, Health and Analytical Programs, served as the hearing officer. After reviewing the testimony given at the public hearing, Director Nicholls recommended that the proposed rules be adopted. The Department accepts the recommendation.

Interested persons may inspect a copy of the record of the public hearing, or obtain a copy for a fee, by contacting:

Janis E. Hoagland
Office of Legal Affairs
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625

Summary of Public Comments and Agency Responses:

The public comment period closed on August 17, 1994. Seven persons presented oral testimony at the public hearing in Trenton on August 16, 1994. Five of these persons also submitted written comments. An additional 560 persons submitted written comments. The commenters were as follows:

1. Alan Bogard, Exxon Chemical Company
2. Jerry Chanon, Homestead at Mansfield, Civic Association, Inc.
3. Michael Egerton, New Jersey Chamber of Commerce
4. Wynne Falkowski, Coalition Against Toxics
5. Curtis Fisher, New Jersey Public Interest Research Group
6. Thomas Detweiler, Chemical Industry Council of New Jersey
7. Robert Freidenrich, Finite Industries, Inc.
8. Robert Geiger, Public Service Electric and Gas
9. Michael Gochfeld, Environmental & Occupational Health Sciences Institute
10. Sharon Gray, Atlantic Electric
11. Henry Gventer, Hoechst Celanese Corporation

12. Donald Hoven, Hackensack Water Company
13. Don Huber, NJ State Firemen's Mutual Benevolent Association
14. Richard Latta, YesPress
15. Frank Mara, Fragrance Resources, Inc.
16. Jane Nogaki, Right to Know and Act Coalition, Coalition Against Toxics
17. Geoffrey Oberhaus, Occidental Chemical Corporation
18. Amy Bahruth-O'Halloran, Communications Workers of America, Local 1031
19. Dolores Phillips, NJ Environmental Federation
20. William Roth
21. John Sandstedt, Sybron Chemicals, Inc.
22. Daniel Schweitzer, Transcontinental Gas Pipe Line Corporation
23. James Shissias, Public Service Electric & Gas
24. Jim Sinclair, New Jersey Business & Industry Association
25. Peter Smith, Fire Fighters Association of New Jersey
26. John Turi, Colonial Graphics
27. Donald Warren, Biocompression Systems, Inc.
28. Barry Weissman, Ausimont USA, Inc.
29. Robert Williams, Sandy Alexander
30. Teresa O'Meara, Hoffman-La Roche
31. Glenn Roberts, Fragrance Materials Association of the United States

The following commenters submitted form letters supporting the proposed increase in reporting threshold.

32. Alan Kesten, Belmay, Inc.
33. Peter Lombardo, Robertet, Inc.
34. Nick Mentonelli, Beacon, Ltd.
35. Roger Rich, Bush Boake Allen, Inc.
36. Hector Rotmistrovsky, Mane, Inc.
37. Damas Thoman, Quest International Fragrances Company
38. Raymond Hughes, Dragoco
39. Donald Latici, Drom International, Inc. USA
40. Charles Manley, Takasago International Corporation (U.S.A.)
41. Laure Moutet, J P M Imports, Inc.
42. William Troy, Firmenich Inc.
43. Karl Brand, General Spice
44. Vivian Glueck, Eastcoast Flavors, Inc.
45. Werner Hiller, General Spice
46. Carlos Miguens, Citroil Aromatic, Inc.
47. Claudia Blum, Chart Corporation, Inc.
48. Kenneth Wessel, Wessel Fragrances, Inc.
49. Kevin Eland
50. Phillip Meyer
51. John Lopez
52. Joseph Il Vento
53. George Nicole
54. C. Dvorak
55. Greg Altamura
56. Catherine Jeszenszky
57. Gary Gough
58. Betty Wells
59. C. Wenger
60. Michele Zakreski
61. William Heely
62. Diane Covallo
63. Henri Otteau
64. Joseph Nuppi
65. Steve Sposat
66. Eileen Palmer
67. Deborah Martin
68. Rae Dohl
69. Martha Stevens
70. Maximino Irejarry
71. JoAnn Christian
72. James Alford, Jr.
73. Daniel McColligan
74. James Galb
75. Michael Tavajh
76. Roy Royal
77. Charles Morris
78. C. Sandford
79. R. Cuft
80. Robert Phillips
81. Allen Oviatt

ADOPTIONS

82. Edgar Pena
83. Joe Fredo, Jr.
84. Roy Johan
85. Keith Wilmot
86. Michael Diehl
87. E. Mae
88. George Strang
89. Mary Jane Maida
90. Thomas Whaler
91. Hector Pena
92. Gabriel Edwards
93. Jeff Mower
94. Douglas Faceudo
95. Genva Averiett
96. Allen Larsen
97. Robert Sander
98. Christopher Ferbero
99. George Talarico, Alaric Enterprises
100. William V., Meen Computer
101. Eric Degesem, Fuel Merchants Association of New Jersey
102. Angelo Morresi
103. John Korvaz
104. Martin Kelly
105. Ester Petercsal
106. G.T. Blair, Haarmann & Reimer Corporation
107. Herb Kelhoffer, Quest International
108. Barry Dowles, BERJE
109. Michael Boudjouk, Medallion International, Inc.
110. Joseph Watkins, Jr., Hagelin & Company, Inc.
111. Richard Santangelo, Sr., Flavorite Laboratories, Inc.
112. Peter Shah, General Spice
113. George Elliott, Madison Printing Company, Inc.
114. Robert Wood, Graphic Arts Services, Inc.
115. Girsh Menon, Fuji Photo Film U.S.A., Inc.
116. Ken Fischer, Fischer Printing Corporation
117. E. Ulbrecht
118. Alvan Burn, Wood Press, Inc.
119. C. Kirchner
120. Ted Stewart
121. Lee McCombs
122. L.C. Pereira
123. Joseph Dino
124. Robert Stermole
125. Patricia Hopkins
126. Alan Chalk
127. Ed Niederhaus
128. Carl Pezzullo
129. Cheryl Morano
130. Harold Kopp
131. Maria Ranges
132. James Bell
133. R. Huorenthauer
134. Chester Makowski
135. Peter Mazzaroni
136. Stephen Grossman
137. Jack Agran
138. Hans Hanke
139. Dennis Carlock
140. Gladys Jackson
141. Arnold Martinez
142. Lawrence Gremer
143. Jeanine Szweda
144. Jerome Lombardo
145. Curtis Bable
146. Nancy O'Shea
147. E. Lucey Blum
148. Catherine Ponzo
149. Lorraine Clark
150. James Krucher
151. F. Christensen
152. Frederick Titor
153. Robert Malson, Jr.
154. John Herban
155. Raymond Pojank
156. Herman Spencer

ENVIRONMENTAL PROTECTION

157. Robert Caroll, Jr.
158. Mildred Reduy
159. Danielle Cook
160. John Tighe
161. Aticia Jarria
162. Ethan Moella
163. Susan Dwitt
164. Edward Brown
165. Frank Russnah
166. Lolita Villamaria
167. J.F. Perini
168. D. Manning
169. Ruben Pagan, Jr.
170. Frank Simonetti
171. Arthur Lake
172. Robert Getto
173. Edward Wallace
174. Larry Geardelli
175. Robert Rusel
176. Howard Smith
177. Harold Thompson
178. Stephen Wolff
179. Michael Johnson
180. Lori Jandrera
181. Philip Christenson
182. Andrew Soos
183. Charles Hendricks
184. Harish B. Diwan
185. Pauline Bochenek
186. Raymond Rebeck
187. Kent Lombard
188. John Newton
189. John Boles
190. M. Vacca
191. Daniel Stebbins
192. Diane Koeneg
193. Katie Cook
194. Charles Gounod
195. Mohan Pradhan
196. Rodd Bray
197. Robert Glassman
198. Muriel Lehrer
199. Kenneth Pruzyski
200. Gary Yeager
201. Leslie Kraus
202. Peter Suere, Sr.
203. Cornell Davenport
204. Harold Ripper
205. Chris Pink
206. M. Munroe
207. Cynthia W'Epice
208. Grey Haitua
209. Richard Thabit
210. Scott Carson
211. Charles Youmatzo
212. Vincent Francalla
213. James Hassel
214. John Vernieri
215. P. Fog
216. Mary Wiehmann
217. H.R. Ansari
218. W. Orefice
219. Cary Tenenbaum
220. J. Finnerty
221. P. Dodd
222. G. Mansell
223. M. Girard
224. Diana Breglio
225. Betty Brighley
226. Katie Cook
227. Gary Kost
228. Allan Streit
229. Jeffrey Broga
230. Daryl Montgomery
231. John Taggart

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232. Ruth Lorgo
233. Ginny Butrico
234. G.R. Webster
235. Jeanette Malene
236. Diane Alvine
237. William Ductric
238. Prisalla Gaurian
239. Sandra Lanchett
240. Veronica Olskefski
241. Amarita Virticio
242. Harry Dandsor
243. Eleann Wiesenfeld
244. Laura Ferrara
245. Kim Bigh
246. Carmen Acosta
247. Barbara Motzek
248. Deirdre Fearor
249. Catherine McLea
250. Marion Airel
251. Daniel Carey
252. V.P. Comerfred
253. Stephanie Carey
254. Uromos Motyliski
255. Celene Wanner
256. Thomas Lemlia
257. Michael McLun
258. Ellen Kissler
259. Marian Fearon
260. Ed Green
261. Lionel Sathoo
262. Martha Witt
263. Christian Fundaro
264. Lona Gadoyar
265. Ken Baynck
266. Paula Duva—Quest International
267. Kenneth Saloway
268. Franklin Radicun
269. John Porter
270. Joseph Myer
271. Eladio Vazquz
272. Jeffery Fichmann
273. L. Bagnato
274. Joan Orsland
275. John Zanore
276. Dennis Rezzonico
277. Elaine McGale
278. E. Hellells
279. Maria Exreq
280. Donald Hughe
281. Robert Eloswhite
282. Patrick Tauriello
283. Andrea Harslee
284. Lin Lewis
285. Susan Verla
286. Susan Nilsen
287. Bryn Cooger
288. Stephanie Messing
289. Paul Bambama
290. Vincent Presepe
291. Dian Dovian
292. Earl Fegely
293. Robert Bentor, Jr.
294. Maria Moran
295. Elizabeth Calandrelle
296. Barbara Carpenter
297. Dominic Parada
298. A. Imparato
299. F. Asaro
300. L. Tousignant
301. Joseph Virgillio
302. Harold Pietrucha
303. Thomas Bucu
304. Klaus Bauer
305. H. Bell
306. Carol and Giuseppe D'Urso

ADOPTIONS

307. B. Moore
308. R. Ardis
309. John Torbett
310. Thomas Malone
311. Jacqueline Kovacs
312. Annette Kovacs
313. Beverly Kivasnik
314. Carol Lombardi
315. Patricia Glassi
316. Rose Hzskins
317. Herbert Osborne
318. Omnenul Fritto
319. Robert Bagiato
320. William O'Reilly, Sr.
321. Lloyd Tassej
322. Robert Hale
323. James Dordon
324. Edward Salmoor, Jr.
325. Janet Pisyler
326. Gary Johartor
327. Gail Brodeuek
328. Susan Carroll
329. Morton Begun
330. Kyla Willis
331. Michele Prumph
332. Sheltal Desui
333. Rainer Hartmann
334. Patricia Mouia
335. Jeryl Rubin
336. Joseph Giaimo
337. Stacy Skorupski
338. Maria Van Eck
339. Stephen Johnson
340. Bipin Shukla
341. James Dietz
342. Norma Flousca
343. Maryann Fucri
344. Pat Tomasi
345. Carolyn Krieger
346. Janet Zupanovick
347. Stephanie La Fiura
348. Earlhane Eugenler
349. Barbara Grattagliano
350. Vincent Caialano
351. Kelly Butcher
352. Shane Gerber
353. Harry Moore
354. Dennis Zawadzki
355. Victor J. Giudice
356. William R. Davis—Ganes Chemical
357. Juel West—Ganes Chemicals
358. Dennis Fagore
359. L. Weitheimet
360. Stephanie Olnhausen
361. Orrin Viele III
362. Bill Federowic
363. Ann Benson
364. Michael Napolsky
365. Linda Simmons
366. Michael Murphy
367. Joseph Andolph
368. Jan Van Denburg
369. Nicholas Moore
370. O. Kolak
371. Stephen Somers
372. J. Zgurzznski
373. Anton Anjelrik
374. Richard Naijearver
375. D. Merdler
376. Robert Taracer
377. Elio Kraheeu
378. V.H. Al
379. P. Waules
380. Col. O'Neil
381. Gilbert Virtus

ADOPTIONS

- 382. Bruce Boris
- 383. Lawrenco Posey
- 384. Philip Hitchur
- 385. H. Boy
- 386. Kris Kutyla
- 387. R. Desai
- 388. Joseph Gruber
- 389. Gobe Smith
- 390. Daniel Engh
- 391. Leo Lombard
- 392. Manuel Richards
- 393. Charles Skip
- 394. Robert Taylor
- 395. Richard Doubt
- 396. Ronald Saus
- 397. Derral Salin
- 398. Fred Iarcery
- 399. Janet Nice
- 400. Dalila Alorra
- 401. Donna Pobiasz
- 402. Ed Morris
- 403. Martin Vander Molen
- 404. G. Netettle
- 405. David Pain
- 406. A. Dearu
- 407. Theodore Dileto
- 408. B. Genler
- 409. Edward Antoures
- 410. William Beyhara
- 411. Jeffrey Misko
- 412. D.G. Bey
- 413. W. Melofchik
- 414. James O'Dwyer
- 415. Poland Olate, Jr.
- 416. Evelyn Saulsen
- 417. R. Lairake
- 418. Jean-Pierre Decosterd
- 419. Charles Steinel
- 420. J. Sebban
- 421. Greg Gitamura
- 422. F. Hucey
- 423. Donald Cedersh
- 424. G.R. Wing, Jr.
- 425. Kenneth Le Guth
- 426. Richard DePinti

The following commenters submitted a form letter on letterhead stationery of the Takasago International Corporation (U.S.A.).

- 427. Albert M. Andrew
- 428. Ofelia Trimdod
- 429. Vepashi Feindi
- 430. Marilyn Saias
- 431. Felomine Carto
- 432. J. Newter
- 433. Vicki Cipriano
- 434. John Gilk
- 435. Herman Elliott
- 436. Niaire Sidor
- 437. Shivaugi Somau
- 438. Mirka Madhere
- 439. John Ricco
- 440. Jon Juot
- 441. Anna Saken
- 442. Michael Edge
- 443. Jim Steffers
- 444. Joseph Pinzui
- 445. Christina Vasquz
- 446. Anthony Montanau
- 447. Albe Cilie
- 448. Nadeline DiMauro
- 449. C. Davis
- 450. Meruit Wenir
- 451. Wendy Vinti
- 452. Karen Scheck
- 453. Trudy Vanderuball
- 454. Carol Keller

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- 455. Mildred Rodriguez
- 456. Kim Bardreau
- 457. Stephen Gatis
- 458. Clemenio Miluohon
- 459. Michael Phillips
- 460. Eric Guevaro
- 461. Joseph Yushaitis
- 462. Joseph Bellis
- 463. Michael Jacob
- 464. Myion Maher
- 465. Rizelolo Manaselo
- 466. Kathy Grossi
- 467. Josephine Fugazzotto
- 468. Shuanna Tate
- 469. Kathleen Cameron
- 470. Nancy Fair
- 471. Susan Harrison
- 472. Han Sorsorki
- 473. M. Soolloo
- 474. N. Murray
- 475. Elizabeth Hazlett
- 476. Elizabeth Karakus
- 477. Donald Hainggi
- 478. S. Panosian
- 479. Ed Butti
- 480. Mary Ann Costa
- 481. Stan Pawelozyk
- 482. Tracy Javin
- 483. Vick Lantizs
- 484. Jon Mearse
- 485. Jose Carliter
- 486. Hun Rascaer

487.-567. These commenters submitted the form letters supporting the increase in the reporting threshold but their signatures were illegible.

1. COMMENT: The commenters supported the increase in the reporting threshold to 500 pounds. (3, 7, 8, 10-12, 14, 17, 20, 22, 23, 27-29, 31, 32-567)

RESPONSE: The Department appreciates the support of these commenters.

2. COMMENT: Several commenters disagreed with the increase in the reporting threshold from 100 pounds to 500 pounds. The higher threshold will not allow the community and emergency responders to be fully informed of the hazards that exist in the community, and will lead to a false sense of security in the community regarding the chemical hazards that are present. (4, 5, 13, 16, 18, 19, 25)

3. COMMENT: The Department should conduct the Community Right to Know (CRTK) Survey for one year with a 100 pound threshold and analyze the impact of the 100 pound threshold on the number of substances reported on the Survey at the end of the one year trial period. (18, 19)

4. COMMENT: Since a company will still be required to review inventories and purchase records in order to make a threshold determination for completion of the survey, only companies that do not need to report any chemicals will benefit from increasing the threshold to 500 pounds. (9)

5. COMMENT: The Department should adopt the Federal reporting thresholds of 10,000 pounds (500 pounds or the Threshold Planning Quantity (TPQ)) for Extremely Hazardous Substances. (1, 3, 6, 21, 24, 28, 30)

RESPONSE: The Department believes that a 500 pound threshold will reduce the burden on industry of reporting small quantities of Environmental Hazardous Substances (EHSs) with a minimal increase in the potential risk to public safety or the environment, since the Federal Extremely Hazardous Substances having thresholds lower than 500 pounds will continue to be reported at the lower thresholds. The change will also better align the State and Federal Right to Know programs and will allow citizens, emergency responders and the Department to focus their resources on the greatest risks to public health and safety, thereby making the collected data more meaningful. The Department believes that increasing the 100 pound threshold to 500 pounds after a one year trial period would be confusing to the regulated community and emergency responders. By adopting the 500 pound threshold for the 1994 reporting year, regulated companies and users of the information will become accustomed to one reporting threshold allowing for consistency of the data collected. Although regulated companies will still

need to review inventories and purchase records, they will benefit by having to report fewer environmental hazardous substances and fewer reports will need to be filed with, and processed by, the Department. Since chemical inventory review is a routine industry practice the increased threshold imparts no additional burden on industry and will actually reduce reporting.

The Department believes that the 10,000 pound threshold is too high for New Jersey, which is highly industrialized and densely populated. The Federal threshold is a minimum standard developed to serve all states, including those which have low industrial and population densities. The Department believes that the federal threshold is not consistent with the public safety needs and concerns of New Jersey citizens.

6. COMMENT: Reducing the burden on industry and aligning the program with the Federal law is not adequate justification for the 500 pound threshold. (19)

RESPONSE: One of the benefits of the increase in the threshold will be an increase in the effectiveness of the Community Right to Know program. By eliminating the collection of data about small quantities of chemicals, the Department will be able to more timely process and disseminate the information. Thus, the Department believes the 500 pound reporting threshold will benefit emergency responders as well as industry.

7. COMMENT: The Department has not justified the adoption of the Section 112(r) substances as environmental hazardous substances. The Federal reporting quantities for these substances exceed the Department's proposed 500 pound threshold, which contradicts the Department's stated goal of consistency with the Federal guidelines. The commenters cite the higher thresholds of Section 312 of the Emergency Planning and Community Right to Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act (SARA), and of Section 112(r) of the 1990 Clean Air Act Amendments to support their statement. (1, 6, 21, 24, 30)

RESPONSE: The USEPA was required under Section 112(r) of the Clean Air Act Amendments to promulgate a list of substances known to cause, or reasonably anticipated to cause, death, injury, or serious adverse effects to human health or the environment if accidentally released. The Department has relied upon the USEPA's analysis in including the Section 112(r) substances in the EHS list. In developing the Section 112(r) list, the USEPA was required to consider, but was not limited to consideration of, the list of Extremely Hazardous Substances promulgated under Section 302 of the Federal Emergency Planning and Community Right to Know Act (EPCRA). For toxic substances, the USEPA also reviewed the Occupational Safety and Health Administration (OSHA) highly hazardous chemical list. Toxic substances were included in the Section 112(r) list based on their toxicity, physical state, vapor pressure, production volume and accident history. Only toxic chemicals in commercial production, verified through USEPA's Toxic Substances Control Act (TSCA) Chemical Inventory were included. Flammable gases and volatile flammable liquids were included in the Section 112(r) list based on the flash point and boiling point criteria used by the National Fire Protection Association (NFPA) for its highest flammability hazard ranking. Only flammable substances in commercial production were listed. Explosives defined by the Department of Transportation (DOT) as Class 1, Division 1.1 (explosives with mass explosion hazard) were included in the Section 112(r) list based on their detonation potential.

The threshold quantities of the Section 112(r) substances were established for purposes of the federal Accidental Release Prevention program, under which facilities must comply with planning requirements to prevent accidental releases of selected substances known to pose a risk to public safety. These threshold quantities are based on the total quantity of a substance in a process, using the same process definition as the Process Safety Management (PSM) standard of OSHA, focusing on the quantity of a substance that might be released in a single accident. In New Jersey, a similar release prevention planning program is implemented pursuant to the Toxic Catastrophe Prevention Act of 1986. Accidental release prevention planning is a more complex activity than inventory reporting. Thus it can be expected that a higher threshold would trigger the planning activity. This is analogous to cases where the Extremely Hazardous Substances listed in federal EPCRA Section 302 are reportable at lower thresholds (500 pounds) than the threshold planning quantity which mandates emergency planning activities. The commenters apparently are confusing the thresholds for accidental release planning with those that trigger Community Right to Know reporting.

The Department believes that the Section 112(r) list of substances is closely aligned with the community safety aspects of the New Jersey Worker and Community Right to Know Act because these substances pose a threat to the community if accidentally released. Therefore, the Department believes it is appropriate to adopt the Section 112(r) substances as environmental hazardous substances.

8. COMMENT: The commenter had concerns about reporting difficulties for quality control laboratories that maintain small quantities of raw materials and finished products in a facility. The current format for reporting requires that when a substance meets the reporting thresholds, all container types must be reported as separate and distinct entries. This is an unnecessary and duplicative reporting burden. (15)

RESPONSE: The Department agrees and has added on adoption a provision at N.J.A.C. 7:1G-3.1(c)7 that allows for simplified reporting of quality control laboratory samples of environmental hazardous substances which have already been reported on the Community Right to Know Survey.

9. COMMENT: The threshold determination should be by container type rather than an aggregate quantity of an environmental hazardous substance found at a facility. (11)

RESPONSE: The Department is attempting to conform the State Community Right to Know program to the Federal program under the Emergency Planning and Community Right to Know Act (EPCRA) to the maximum extent practicable. Thus, the language used for threshold determination in these rules mirrors the Federal language used for threshold determination at 40 CFR 370 where the threshold determination is calculated by "facility." The Department also believes that basing threshold determination on location or container type may encourage employers to store small quantities of EHSs in various types of containers or in many places to avoid reporting. Thus, these substances could be exempt from reporting although actually present at a facility in significant quantities. For these reasons, the Department cannot support a container-based threshold for reporting.

10. COMMENT: A de minimis concentration for mixtures should be established. (11)

RESPONSE: On December 2, 1993, the Department adopted at N.J.A.C. 7:1G-3.1(c) the Federal de minimis EHS concentration for mixtures of 1 percent, or of 0.1 percent for carcinogens as defined at 29 CFR 1910.1200(d)4 of the Occupational Safety and Health Standard. See 26 N.J.R. 200(a) (January 3, 1994).

11. COMMENT: The threshold should be based on the hazards of the chemical. (13, 19)

RESPONSE: The Department is adopting as environmental hazardous substances the Federal EPCRA Section 302 list of Extremely Hazardous Substances which are reportable at 500 pounds or the threshold planning quantity (TPQ), whichever is less. The USEPA has determined that these substances pose a substantial enough risk to warrant reporting them at lower thresholds than most hazardous chemicals. All other hazardous chemicals are reportable, for the Federal program, at the 10,000 pound threshold set by Section 312 of EPCRA. The Department's program requires reporting of all environmental hazardous substances at 500 pounds (or the TPQ if it is lower). The Department believes that having hazard based multiple thresholds would complicate, rather than simplify, reporting. Furthermore, it would be resource intensive to determine the relative hazard of each environmental hazardous substance for ranking and assigning a threshold. The Department believes that establishing one reporting threshold of 500 pounds for environmental hazardous substances (unless a lower Federal threshold exists) sufficiently balances the reporting burden on industry with the need to adequately safeguard the public health and safety.

12. COMMENT: The Department should publish one master list of environmental hazardous substances which are listed by and found in other Federal and State regulations, and to reference the list(s) each particular chemical is from. (10)

RESPONSE: The Department will continue to provide the list of reportable environmental hazardous substances in the Community Right to Know Survey booklets that it transmits to covered businesses. The EPCRA Section 302 Extremely Hazardous Substances will be identified and the threshold planning quantities (TPQs) will also be indicated in that list. A master list that includes the source of each listed environmental hazardous substance will be available from the Department upon request.

13. COMMENT: The commenter requested implementation of electronic transfer of Community Right to Know Survey data to the Department. (10)

ADOPTIONS

RESPONSE: The Department is developing computer programs to facilitate the electronic submission of Community Right to Know Survey data and will be testing the effectiveness of these programs over the next few months. The Department has asked the commenter to participate in a pilot project for electronic transmission of Community Right to Know data.

Summary of Agency-Initiated Changes:

The Department is making two minor changes in the rules on adoption. In N.J.A.C. 7:1G-3.1(b), the word "of" is being replaced by "or" to correct a typographical error in the published proposal. At N.J.A.C. 7:1G-3.1(c)1, a change in punctuation is being made to correct the omission of a comma in the recent re-adoption of N.J.A.C. 7:1G (see 26 N.J.R. 2920(a)).

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

7:1G-2.1 Designation of environmental hazardous substances (EHSs)

(a) The list of EHSs shall be comprised of the substances listed below:

1.-5. (No change.)

6. Regulated Substances on the list at 40 CFR 68.130 established by the United States Environmental Protection Agency for accidental release prevention under Section 112(r) of the Federal Clean Air Act Amendments, incorporated herein by reference, as from time to time supplemented or amended.

(b)-(c) (No change.)

7:1G-3.1 Completion of Community Right to Know Survey Portion of the Environmental Survey

(a) (No change.)

(b) A threshold of 500 pounds ***[of]* *or*** the Federal SARA 302 threshold planning quantity, whichever is lower, shall apply to all EHSs present in aggregate at the facility at any one time. These thresholds for reporting do not apply to container labeling pursuant to N.J.A.C. 8:59-1 et seq.

(c) For each EHS that met or exceeded the thresholds listed in (b) above, an employer shall provide all information on a Community Right to Know Survey form approved by the Department, which shall include, but is not limited to, the following:

1. The chemical name, Chemical Abstracts Service registry number, if available, and the EHS number and USDOT number, if available, of each EHS which is present at the facility in a pure state or mixture;

2.-6. (No change.)

7. Quality control samples of substances that are elsewhere reported on the Community Right to Know Survey may be listed as a single entry: "samples of reported substances."

(d) (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Fish and Game Council

1995-96 Fish Code

Adopted Amendments: N.J.A.C. 7:25-6

Proposed: July 18, 1994 at 26 N.J.R. 2835(a) and 3258(a).

Adopted: September 13, 1994 by the Fish and Game Council,
Cole Gibbs, Chairman.

Filed: October 25, 1994 as R.1994 d.577, **without change**.

Authority: N.J.S.A. 13:1B-29 et seq. and 23:1-1 et seq.

DEP Docket Number: 31-94-06/457.

Effective Date: November 21, 1994.

Operative Date: January 1, 1995.

Expiration Date: February 15, 1996.

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Summary of Public Comments and Agency Responses:

Secondary notice was achieved by mailing news releases to 72 newspapers of general circulation and approximately 50 outdoor writers and specialty publications.

A public hearing concerning the proposal was held before the Fish and Game Council on August 9, 1994, at the Assunpink Wildlife Conservation Center of the Division of Fish, Game and Wildlife (Division) located on Eldridge Road within the Assunpink Wildlife Management Area, Robbinsville, New Jersey. Notice of the hearing was filed with the Secretary of State on July 18, 1994, was posted on the Secretary of State's bulletin board and was delivered to the Newark Star-Ledger and Atlantic City Press. The hearing was attended by 35 members of the general public of which 19 presented verbal comment. Only one letter relevant to the proposal was received by the Division during the public comment period which closed on August 17, 1994, and the contents of that letter were stated by its author at the public hearing. Several phone calls relative to the proposal were made directly to the Chairman of the Fish and Game Council. The record of the public hearing may be inspected or a copy obtained by contacting Robert McDowell, Director, New Jersey Division of Fish, Game and Wildlife, CN 400, Trenton, NJ 08625.

The commenters at the public hearing were:

1. August Gudmundsson, Central Jersey Trout Unlimited
2. Joe Kasper, Delaware River Fisherman's Association
3. Joe Wildberg, Delaware River Fisherman's Association
4. Jack Edwards, North Jersey Trout Unlimited
5. David P. Steward, New Jersey Chapter, BASS Federation
6. Tom Lopezzo, New Jersey State Council of Trout Unlimited
7. Aaron Sandus, Hacklebarney Chapter, Trout Unlimited
8. Sam Sandus, Hacklebarney Chapter, Trout Unlimited
9. John Ciccarella, North Jersey Trout Unlimited
10. Frederick Ege, North Jersey Trout Unlimited
11. Ben Glashan, New Jersey State Federation of Sportsmen
12. Paul Krylowski, Washington Township Environmental Commission
13. Eric Drammeyer, Hacklebarney Chapter, Trout Unlimited
14. Ryan Richardson, Toms River Chapter, Trout Unlimited
15. Edwin Booth, Assunpink Bait and Tackle
16. Charles Matha, Jr., North Jersey Trout Unlimited
17. Al Aloja, North Jersey Trout Unlimited
18. Frank N. Vigani
19. Micah Drammeyer, Central Jersey Trout Unlimited

N.J.A.C. 7:25-6.7

COMMENT: Fifteen commenters spoke in favor of regulating the "Claremont Stretch" of the South Branch of the Raritan River as a year-round Trout Conservation Area.

RESPONSE: The Council acknowledged the support for this proposal.

COMMENT: Creation of a year-round Trout Conservation Area at the "Claremont Stretch" of the South Branch of the Raritan River will only serve the needs of special interest group of anglers at the expense of the total angling population.

RESPONSE: The Council acknowledged that the regulatory change will cause the displacement of a number of fishermen that traditionally fish this area. However, they noted that the number of waters so regulated amounts to only a few miles of stream and that the vast majority of waters are not subject to the restrictive regulations that apply to Trout Conservation Areas. The Council is aware that there is an increasing demand for the type of quality, year-round trout fishing that results from the application of restrictive regulations. The area's naturally reproducing trout population, and the concern for its preservation, was also taken into consideration.

N.J.A.C. 7:25-6.13

COMMENT: Three commenters spoke in favor of the proposal to implement "Lunker Bass" regulations at Assunpink Lake and Parvin Lake.

RESPONSE: The Council acknowledged the support for this proposal.

N.J.A.C. 7:25-6.20

COMMENT: Two commenters felt that there should be a six fish daily bag limit on shad.

RESPONSE: No daily bag limit changes were proposed for this section of the Code. The number of shad that would be protected by a six fish daily bag limit would be insignificant in respect to the total population. However, there may be sociological benefits related to limiting the take of shad and the Council will take this comment into consideration when developing future codes.

Full text of the adoption follows:

SUBCHAPTER 6. 1995-96 FISH CODE

7:25-6.3 Trout Season and Angling in Trout-Stocked Waters

(a) Except as provided in N.J.A.C. 7:25-6.4, 6.6 to 6.9, 6.18, 6.19 and (i) below: the trout season for 1995 shall commence 12:01 A.M. January 1, 1995 and extend to midnight March 19, 1995. The trout season shall re-open at 8:00 A.M. Saturday, April 8, 1995 and extend to include March 17, 1996.

(b) Except as provided in N.J.A.C. 7:26-6.4, 6.6 and 6.7 and (i) below, it shall be unlawful to fish for any species of fish from midnight March 19, 1995 to 8:00 A.M. on April 8, 1995 in ponds, lakes or those portions of streams that are listed herein for stocking during 1995.

(c) (No change.)

(d) Except as provided in N.J.A.C. 7:25-6.6 to 6.9, in trout-stocked waters for which in-season closures will be in force, waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated, provided that in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April 14, 21, 28; May 5, 12, 19, 26.

2. Black River—Route 206 Chester, to the posted Black River Fish and Game club property at the lower end of Hacklebarney State Park—April 13, 20, 27; May 4, 11, 18, 25.

3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April 10, 17, 24; May 1, 8, 15, 22.

4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April 10, 17, 24; May 1, 8, 15, 22.

5. Metedeconk River, S. Br.—Bennetts Mills dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April 10, 17, 24; May 1, 8, 15, 22.

6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April 14, 21, 28; May 5, 12, 19, 26.

7. Paulinskill River and E. Br. and W. Br.—Limecrest Railroad Spur Bridge on E. Br., Sparta Township, and Warbasse Junction Road, Route 663, on W. Br., Lafayette Twp., to Columbia Lake—April 13, 20, 27; May 4, 11, 18, 25.

8. Pequest River—Source to Delaware River—April 14, 21, 28; May 5, 12, 19, 26.

9. Pohatcong Creek—Route 31 to Delaware River—April 11, 18, 25; May 2, 9, 16, 23.

10. Ramapo River—State line to Pompton Lake—April 13, 20, 27; May 4, 11, 18, 25.

11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April 12, 19, 26; May 3, 10, 17, 24.

12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April 11, 18, 25; May 2, 9, 16, 23.

13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April 10, 17, 24; May 1, 8, 15, 22.

14. Toms River—Ocean County Route 528, Holmansville, to confluence with Maple Root Branch and Route 70 to County Route 571—April 10, 17, 24; May 1, 8, 15, 22.

15. Wallkill River—Lake Mohawk Dam to Route 23, Hamburg—April 10, 17, 24; May 1, 8, 15, 22.

16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir, Monksville Reservoir and Lake Inez—April 14, 21, 28; May 5, 12, 19, 26.

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force. Figure in parenthesis indicates the anticipated number of stockings to be carried out from April 10 through May 31, provided that, in the event of emergency conditions, the Division may suspend stocking of any or all of the following:

1.-12. (No change.)

13. Monmouth County

Englishtown Mill Pond—Englishtown—(3)

Garvey's Pond—Navesink—(3)

Hockhocks Brook—Hockhocks Road to Garden State Parkway Bridge (northbound)—(5)

Holmdel Park Pond—Holmdel—(3)

Manasquan Reservoir—Howell Township—(3)

Mingamahone Brook—Farmingdale, Hurley Pond Road to Manasquan River—(5)

Mohawk Pond—Red Bank—(4)

Pine Brook—Tinton Falls, Jersey Central Railroad to Hockhocks Brook—(2)

Shadow Lake—Middletown—(3)

Shark River—Hamilton, Route 33 to Remsen Mill Road—(5)

Spring Lake—Spring Lake—(3)

Takanassee Lake—Long Branch—(4)

Topenemus Lake—Freehold—(3)

Yellow Brook—Heyers Mill Road to Muhlenbrink Rd., Colts Neck Township—(2)

14.-21. (No change.)

(g) (No change.)

(h) A person shall not take, kill or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April 8, 1995 until midnight May 31, 1995 or more than four of these species during the periods of January 1, 1995 to midnight March 19, 1995 and June 1, 1995 through midnight March 17, 1996 except as designated in N.J.A.C. 7:25-6.4 to 6.9.

(i) Spruce Run Reservoir, Hunterdon County, Lake Hopatcong, Morris/Sussex County, and the Manasquan Reservoir, Monmouth County, will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March 19, 1995 and extending to 8:00 A.M. April 8, 1995 must be returned to the water immediately and unharmed.

7:25-6.4 Special Regulation Trout Fishing Areas—Fly Fishing Waters

(a) Beginning January 1, 1995 to midnight March 19, 1995 and from 5:00 A.M. on Monday, April 17, 1995 to and including March 17, 1996 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, 1995 to midnight March 19, 1995 and from 8:00 A.M. on April 8, 1995 to midnight March 17, 1996 the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:

1. (No change.)

(c)-(d) (No change.)

7:25-6.5 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas

(a) The following stream segments are designated as Seasonal Trout Conservation Areas and are subject to the provisions at (b) below governing these areas during the period of May 22, 1995 through March 17, 1996.

1.-2. (No change.)

(b) The following shall apply to the Seasonal Trout Conservation Areas designated at (a) above:

1.-4. (No change.)

5. A person shall not have in possession, while fishing, any more than one dead, creeled or otherwise appropriated trout, except that no trout may be retained during in-season closures which apply to the remainder of the respective rivers where these areas exist. Additional trout may be caught providing they are returned to the water immediately and unharmed; and

6. (No change.)

7:25-6.6 Special Regulation Trout Fishing Areas—Wild Trout Streams

(a) (No change.)

(b) The following regulations shall apply to the Wild Trout Streams designated at (a) above:

1.-4. (No change.)

ADOPTIONS

5. During the period extending from 8:00 A.M. April 8, 1995 to September 15, 1995, no person shall have in possession while fishing any more than two legally sized dead, creeled or otherwise appropriated trout. No trout may be killed or possessed during other times of the year. Any number of trout may be caught provided they are immediately returned to the water unharmed.

6. (No change.)

7:25-6.7 Special Regulation Trout Fishing Areas—Year-Round Trout Conservation Areas

(a) The following stream segments are designated as Year-Round Trout Conservation Areas and are subject to the provisions at (b) below governing these areas on a year-round basis:

1. Toms River, Ocean County—a one mile stretch of river from the downstream end of Riverwood Park in Dover Township, defined by markers, downstream to the Route 571 bridge;

2. East Branch of Paulinskill River, Sussex County—from the Limecrest Railroad Spur Bridge downstream to its confluence with the West Branch of the Paulinskill at Warbasse Junction, a distance of approximately 2.25 miles; and

3. South Branch Raritan River, Morris County—an approximate 1.1 mile stretch of river, locally known as the Claremont Stretch extending from the downstream end of the posted Anglers Anonymous property downstream to its junction with Electric Brook.

(b) (No change.)

7:25-6.8 Special Regulation Trout Fishing Areas—Trophy Trout Lakes

(a) The following lakes are designated as Trophy Trout Lakes:

1. Round Valley Reservoir;
2. Merrill Creek Reservoir; and
3. Lake Aeroflex.

(b) The following shall apply to the Trophy Trout Lakes designated at (a) above:

1.-3. (No change.)

4. The season for lake trout shall extend from 12:01 A.M., January 1, 1995 to midnight, September 15, 1995 and from December 1, 1995 to midnight, September 15, 1996.

5. (No change.)

7:25-6.9 Special Regulation Trout Fishing Areas—Holdover Trout Lakes

(a) The following lakes are designated as Holdover Trout Lakes:

1. Clinton Reservoir;
2. Swartswood Lake;
3. Monksville Reservoir;
4. Wawayanda Lake; and]
5. Sheppard's Lake, Passaic County.

(b) The following shall apply to the Holdover Trout Lakes designated at (a) above:

1.-2. (No change.)

3. A person shall not take, kill or have in possession, in one day, more than four in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof, during the period extending from 8:00 A.M. April 8, 1995 until May 31, 1995 or more than two of these species during the periods of January 1, 1995 to midnight March 19, 1995 and June 1, 1995 through midnight March 18, 1996. Trout, if taken during the period commencing at midnight, March 19, 1995 and extending to 8:00 A.M., April 8, 1995 must be returned to the water immediately and unharmed.

7:25-6.12 Snagging prohibited

The foul hooking of largemouth bass, smallmouth bass, striped bass, chain pickerel, northern pike, muskellunge, walleye, brook trout, brown trout, lake trout and rainbow trout or any of the hybrids thereof, shall be prohibited in open waters. Any of the aforementioned fish so hooked must be immediately returned to the water. This shall not apply to fish so taken through the ice during the ice fishing season. Snagging of any species is prohibited in Monksville Reservoir and its tributaries, including the Wanaque River.

7:25-6.13 Warmwater fish

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

ENVIRONMENTAL PROTECTION

(e) The minimum size of largemouth bass shall be 12 inches, except for Parvin Lake and Assunpink Lake where it shall be 15 inches.

(f) The daily creel and possession limit for largemouth bass and smallmouth bass shall be five in total, except for Parvin Lake and Assunpink Lake where it shall be three. During the period of April 15 through June 15 the possession of these bass is prohibited and all bass caught shall be immediately returned to the water unharmed.

(g)-(l) (No change.)

(m) The daily creel and possession limit for walleye shall be five, except for Monksville Reservoir, Wanaque Reservoir and the Wanaque River between Greenwood Lake and Monksville Reservoir where it shall be two with a closed season during the period of March 1, 1995 to April 30, 1995.

(n) The minimum length for striped bass × white bass hybrid shall be 16 inches and the daily creel and possession limit shall be two, except for the Raritan River downstream of the Duke Island Park dam where the minimum length shall be 34 inches and the daily creel and possession limit shall be one.

(o)-(p) (No change.)

(q) The minimum length for striped bass shall be 34 inches. The daily creel and possession limit shall be one.

(r) Striped bass may not be taken or possessed during the period of January 1, 1995 to February 28, 1995.

7:25-6.14 Ice fishing

(a) (No change.)

(b) A person, while fishing through the ice, may use not more than five devices for the taking of fish. The types of devices that may be used are:

1. Ice supported tip-ups or lines with one single hook attached;
2. An artificial jigging lure with not more than one burr of three hooks that measure not more than ½ inch from point to point;
3. An artificial jigging lure with not more than three single hooks measuring not more than ½ inch from point to shaft;
4. An artificial jigging lure with a combination of the hook limitations described in (b)2 and 3 above.

(c) Expressly prohibited are any devices with automatic hook setting capability. Natural bait may be used on the hooks of the artificial jigging lure. All devices that are not hand-held must be clearly marked with the name and address of the user and shall not be left unattended.

7:25-6.20 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

| | 1. Trout | Season April 8- Sept. 30 | Size Limit no minimum | Daily Bag Limit 5 |
|--|-------------|--|--------------------------|----------------------|
| ... | | | | |
| Striped bass and Striped bass × white bass hybrid | | Downstream of Trenton Falls— March 1-30 and June 1- Dec. 31 Upstream of Trenton Falls March 1- Dec. 31 | 34 inch minimum | 1 in total |
| All other freshwater species | | no closed season | no minimum | no limit |

Recodify existing 3.-7. as 2.-6. (No change in text.)

7:25-6.22 Snapping Turtles, Bull Frogs and Green Frogs

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

(c) The open season for taking of snapping turtles shall extend from January 1, 1995 through April 30, 1995 and from June 16, 1995

through April 30, 1996. The open season for the taking of bull frogs and green frogs shall be from January 1, 1995 through March 31, 1995 and from July 1, 1995 through March 31, 1996.

(d) Snapping turtles, bull frogs and green frogs may be taken in numbers greater than the daily limit under special permit issued by the Division at its discretion.

1.-2. (No change.)

3. The following information will be needed by the Division to grant the permit:

- i. Why is the extension necessary;
- ii. How long will the extension be needed;
- iii. Where will the trapping activity take place; and
- iv. What method will be used.

4. (No change.)

(e) (No change.)

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(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Case Management Services

Billing for Case Management Services

Adopted Amendments: N.J.A.C. 10:73-1.1, 1.2, 2.1, 2.6, 2.8, 2.9, 2.10, 2.11, 2.12, 3.1 and 3.2

Proposed: August 15, 1994 at 26 N.J.R. 3350(a).

Adopted: October 27, 1994 by William J. Waldman,

Commissioner, Department of Human Services.

Filed: October 27, 1994 as R.1994 d.585, **with substantive changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-4.3).

Agency Control Number: 93-A-30.

Authority: N.J.S.A. 30:4D-6b(17); 30:4D-7, 7a, b, and c; 30:4D-12; Section 1905(a)19, codified as 42 U.S.C. 1396d; and Section 1915g(1) and (2) of the Social Security Act codified as 42 U.S.C. 1396n.

Effective Date: November 21, 1994.

Operative Date: December 1, 1994.

Expiration Date: July 15, 1996.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on August 15, 1994 at 26 N.J.R. 3350(a). During the comment period, the Division received written comments from Mr. Leonard S. Altamura, DSW, Executive Director, New Jersey Association of Mental Health Agencies, Inc., and Mr. William E. Merritt, ACSW, President, New Jersey Association for Clinical Case Management, the Community YMCA Bayshore Youth and Family Services.

COMMENT: Both commenters stated that the proposal to limit provider billing to discrete 15 minute units will result in a loss of billable time, estimated by one commenter as a reduction of five to six percent. One commenter would like to see authorization being given to round up or down to the nearest 15 minutes. Both commenters recommended that the time continue to be aggregated as it has been in the past.

RESPONSE: After careful consideration of the comments, the Division does not agree that this amendment will lead to a reduction in reimbursement. The proposed billing methodology stemmed from provider requests to eliminate the reconciliation process at the end of a given prior authorization period. To accomplish this end, the Division of Medical Assistance and Health Services, in consultation with the Division of Mental Health and Hospitals, proposed 15-minute billing units. It is the opinion of both Divisions that the streamlining and cost-effectiveness which prompted this proposal can only be achieved by adopting a discrete 15-minute billing methodology and not rounding up or down to the nearest 15 minutes. Therefore, the ability of providers to bill in 15-minute increments, rather than receiving payment for an estimated average of hourly services, will increase program administration efficiency, and, in some cases, may actually increase the reimbursement amount.

COMMENT: Both commenters stated that the proposed amendment reduces potential reimbursement for seven hours of service from the current \$350.00 to \$250.00, and may result in an inappropriate reduction of Medicaid reimbursement to the provider organization.

RESPONSE: Upon review of these comments, both DMAHS and DMH&H agree that in the interest of providing service to the client population, the number of reimbursable units for initial evaluation services will not be reduced. The Division will revise the rules at N.J.A.C. 10:73-2.9(b)4 to read as follows: "Reimbursement for initial evaluation services shall not exceed 28 units of service." The 28 units are the equivalent of the currently allowable amount of initial case management services.

COMMENT: Mr. William E. Merritt would like to see the maximum number of units per risk level, and their corresponding reimbursement amounts, specified in the rules.

RESPONSE: The pre-authorization process carefully assesses the needs of each individual for whom pre-authorized services are sought. By codifying the number of units of service for each risk level, both the Division and the provider would unnecessarily be limiting the units of service that an individual client might need. This would reduce the flexibility needed by both the Division and the provider to tailor the services to best meet the individual client's needs.

Summary of Changes Upon Adoption:

The Division had originally proposed a reduction in the amount of time for initial evaluation services. Upon consideration of public comments, and in consultation with the Division of Mental Health and Hospitals, the Division is restoring initial evaluation services to its current status. The revised language reflects the conversion of the initial evaluation month into units in order to conform with the new billing methodology.

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

10:73-1.1 Purpose and scope

(a) This chapter outlines information about targeted case management services provided by approved New Jersey Medicaid Program providers.

1. There are various types of case management providers who will provide different types of case management services to targeted groups of Medicaid recipients, as allowed under Federal statute.

i. The first case management provider type described in this chapter is the Case Management Program/Mental Health (CMP/MH) provider (see N.J.A.C. 10:73-2). Other case management provider types may be added to the chapter as programs are developed.

(b)-(c) (No change.)

10:73-1.2 Definitions

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

... "Initial evaluation services" means the initial contact, evaluation, completion of a risk assessment and initiation of services.

... "Unit of service" under CMP/MH means a face-to-face contact with an enrolled client, or on behalf of an enrolled client, which lasts 15 minutes in duration. Travel time shall not be included as part of the face-to-face time. Contacts of less than 15 minutes can not be aggregated to produce one unit of service.

10:73-2.1 Case Management Program/Mental Health (CMP/MH); general

(a) (No change.)

(b) Case management services are not available to recipients of the Medically Needy Program, except pregnant women, nor recipients served in the DMAHS' Home and Community Based Services Waiver Program, Model Waivers, DDD Waiver, ABC Waiver, Traumatic Brain Injury Waiver, or the Home Care Expansion Program.

1. (No change.)

10:73-2.6 Staff members of a CMP/MH provider; responsibilities

(a) The following apply to the case manager (CM):

1. (No change.)

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2. Regarding his or her duties, the CM providing liaison case management services shall:

- i. (No change.)
- ii. Develop discharge plans, in conjunction with other State or county psychiatric hospital or short term care facility treatment team members, for clients assessed as able or willing to access or engage in necessary community mental health services within 60 days after hospital discharge;
 - (1) (No change.)
- iii. Ensure that planned community mental health and non-mental health service linkages occur for clients assessed as willing or able to link within 60 days after hospital discharge; and
- iv. Monitor the clients linkage to the primary mental health provider for 60 days post discharge.

10:73-2.8 Basis of payment for CMP/MH services

(a) Reimbursement for services covered under the CMP/MH shall be determined by the Commissioner of the Department of Human Services. The provider of CMP/MH services shall be compensated on a fee-for-service basis. Reimbursement is based upon HCPCS Codes as specified in N.J.A.C. 10:73-3.

1. The provider shall submit a claim form and identify the services performed by the use of procedure codes based on the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). Three HCPCS codes are assigned for the services provided under CMP/MH. If the services were provided to a child, the provider shall add a modifier (ZC) to the code to signify that the services were provided to a child. For CMP/MH purposes, a child is an individual under the age of 18.

2. The three CMP/MH services that shall be identified on a claim form and submitted for reimbursement are:

- i. Initial Evaluation Services.
- ii. Clinical Case Management; and
- iii. Liaison Case Management.

3. For rules regarding the three case management services (initial evaluation, clinical case management, and liaison case management) see N.J.A.C. 2.9, 2.10 and 2.11.

(b) A provider may only render one type of case management service to the same recipient within the same time period. A recipient who receives case management services is entitled to receive other approved mental health services that are rendered by authorized providers.

(c)-(e) (No change.)

10:73-2.9 Procedures for providing initial risk assessment and evaluation for CMP/MH services

(a) Under clinical case management, the provider shall conduct an initial risk evaluation on a prospective CMP/MH client during the initial client contact(s) to determine the "risk category" using a form approved by the Division of Mental Health and Hospitals (DMH&H). If the prospective client is found to be eligible for CMP/MH services, he or she shall be assigned to a risk category described in (a)1-3, below. The provider shall immediately initiate a request for authorization to provide services beyond the initial evaluation services.

1.-3. (No change.)

(b) The following apply to the initial evaluation services:

1. In order to facilitate the provision of services to the client while the initial risk evaluation is completed and the request for prior authorization is being evaluated, the initial evaluation services may be provided without prior authorization. Initial evaluation services shall only be provided to clients who appear to be in need of these services.

2. A claim for initial evaluation services, may be submitted following the initial assessment process performed on a prospective clinical case management client. Initial evaluation services may be billed once per recipient per provider. In the event a recipient changes providers, initial evaluation services can be reimbursed to the new provider.

i. Initial evaluation services may be billed by the same provider for the same recipient if there has been a lapse of more than 12

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calendar months since the last case management service was provided.

3. During the initial evaluation services, the provider should submit form FD-365 (Prior Authorization Request) to DMH&H for future service units.

i. The request for prior authorization must be received by DMH&H not later than 45 days after providing the first initial evaluation service for which reimbursement is requested.

4. Reimbursement for initial evaluation services shall not exceed *20* *28* units of service.

10:73-2.10 Clinical case management services under CMP/MH

(a) (No change.)

(b) There are three levels (risk category) of clinical case management involvement based upon assessed risk of hospitalization, functional level, and willingness and/or ability to access needed services as defined by DMH&H. The three risk categories are: high risk, or intensive case management; at risk, or supportive case management; and low risk, or maintenance level case management (see N.J.A.C. 10:73-2.9). The Risk Levels determine the number of units of service approved by DMH&H during a prior authorization period.

1. The following apply in recipient hospitalization or residency in Nursing Facility (NF) circumstances:

i. In the event a clinical case management recipient is hospitalized or admitted to a NF during a prior authorization period, the Medicaid program shall not be charged for CMP/MH services rendered during the hospitalization or residency in a NF.

(1) (No change.)

(2) In the event a reassessment occurs following hospitalization, or residency in a NF, appropriate documentation must be placed in the case file and, if the risk level has changed, a request for prior authorization for the new level of case management services must be forwarded to DMH&H, no later than 10 days after discharge. Until then, the case manager must bill for continued services at the previously authorized risk level.

ii. In the event a CMP/MH recipient's hospitalization or residency in a NF extends beyond a prior authorization period, the provider shall request authorization from DMH&H to provide services post-discharge. Claims for initial evaluation services will not be processed if the recipient continues with the same provider. Claims for services post-discharge will not be honored without prior authorization.

2. For services rendered prior to December 1, 1994, each provider shall, within two months following the end of each prior authorization period, complete a reconciliation of services provided and payment received.

i.-iv. (No change.)

10:73-2.11 Liaison case management services under CMP/MH

(a) Services provided under liaison case management include, but are not limited to:

1.-4. (No change.)

(b) Services listed in (a)1 to 4 above are reimbursed on a fee-for-service basis, not to exceed 16 units.

(c) Liaison case management services do not require prior authorization.

(d) Liaison case management services may be provided within 60 days of discharge from a hospital or inpatient psychiatric program.

(e) Liaison case management services may be billed for each discharge from a hospital, if services are provided.

(f) Liaison case management shall not be billed in conjunction with any other CMP/MH service.

(g) (No change in text.)

(h) The reconciliation process described at N.J.A.C. 10:73-2.10(b)2 with respect to clinical case management shall be required for liaison case management. The minimum average units of service to be provided are two units per month, post hospital discharge.

10:73-2.12 Recordkeeping for CMP/MH services

(a) Case management providers shall keep such individual records as are necessary to fully disclose the kind and extent of services provided to make sure such information is available as the DMA&HS or DMH&H, or its agents, may request.

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1. The CMP/MH provider shall maintain the following data in support of all payment claims as required by the rules.

- i.-iii. (No change.)
- iv. The units of service;
- v.-vii. (No change.)

10:73-3.1 Introduction

(a) The New Jersey Medicaid Program adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). The HCPCS codes as listed in this subchapter are relevant to Medicaid case management services and must be used when filing a claim.

1.-3. (No change.)

4. HCPCS codes Z5000 through Z5004 shall not be billed for services rendered after December 1, 1994.

10:73-3.2 HCPCS codes for case management services

| IND | HCPCS CODE | MOD | DESCRIPTION | MAXIMUM FEE ALLOWANCE |
|-----|---------------------|-----|---|-----------------------|
| P | Z5000 through Z5004 | ZC | (No change.) | |
| | | | | Each Service Unit |
| | Z5005 | | Initial Evaluation Services, Case Management Program/Mental Health (CMP/MH) Adults | \$ 12.50 |
| | Z5005 | ZC | Initial Evaluation Services, Case Management Program/Mental Health (CMP/MH), Children | \$ 12.50 |
| | Z5006 | | Clinical Case Management Program/Mental Health (CMP/MH), Adults | \$ 12.50 |
| | Z5006 | ZC | Clinical Case Management Program/Mental Health (CMP/MH), Children | \$ 12.50 |
| | Z5007 | | Liaison Case Management Program/Mental Health (CMP/MH) Adults | \$ 12.50 |
| | Z5007 | ZC | Liaison Case Management Program/Mental Health (CMP/MH), Children | \$ 12.50 |

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

Child Support Hotline

Adopted Amendment: N.J.A.C. 10:81-11.15

Adopted New Rules: N.J.A.C. 10:81-11.6A and 11.6B

Proposed: August 15, 1994 at 26 N.J.R. 3353(a).

Adopted: October 18, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: October 20, 1994 as R.1994 d.566, **without change.**

Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 C.F.R. 302.54(c)(1)(i) and (ii), 303.3(b)3 and 303.70(e).

Effective Date: November 21, 1994.

Expiration Date: July 25, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

10:81-11.6A Access to child support information

(a) The New Jersey Child Support Hotline's 800 number will allow interested parties to obtain child support information 24 hours a day, seven days a week, in English or Spanish.

1. By dialing 1-800-621-KIDS, individuals can access the following:

- i. Description of support services and how to apply;
- ii. Information regarding emancipation, custody and visitation;
- iii. Information regarding direct payments;
- iv. Information regarding credit reporting;
- v. Information regarding the \$50.00 disregard check;

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- vi. Tax offset information;
- vii. Check and payment information; and
- viii. A message voice mail system, whereby callers may leave a message for a specific worker.

10:81-11.6B County payment of fees for services

(a) Each CWA will be billed quarterly, according to its usage, for the service provided by the New Jersey Child Support Hotline's 800 number.

(b) Each county will be billed for submitting the following types of cases to the Federal Parent Locator Service (FPLS):

- 1. Child support cases in which an assignment of support rights to the State is not required;
- 2. Non-IV-D locate-only cases;
- 3. Parental kidnapping cases; or
- 4. Child custody cases.

(c) The counties will be billed quarterly, per case, at a rate determined by the Office of Child Support Enforcement of the United States Department of Health and Human Services. FPLS fees paid by the counties will be used to reimburse the Federal government for the expense of operating the FPLS.

10:81-11.15 State PLS/Federal Parent Locator Service (PLS)

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

(d) The "quick locate" process may be used for those interstate cases in which information indicates that the absent parent could be in one of several states.

1. A request for "quick locate" shall be made directly to the State Parent Locator of each of the states the absent parent could be in. The "quick locate" request shall not be made to another state's central registry.

2. A "quick locate" request does not constitute an official interstate case.

3. The "quick locate" request should be sent to the other state's SPLS in whatever format the requesting state chooses, with the exception of the Child Support Enforcement Interstate Transmittal (FSA-200). The FSA 200 shall not be used because it constitutes an official interstate request.

4. It is the responsibility of the requesting state to complete location activity within the 75 calendar day time frame as required by Federal regulations at 45 C.F.R. 303.3(b)(3).

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(b)

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance

Personal Injury Protection and Motor Bus Medical Expense Insurance Coverage

Order of Benefit Determination Between Automobile Personal Injury Protection and Health Insurance

Adopted Amendments: N.J.A.C. 11:3-29.2, 11:3-29.4 and 37.10

Proposed: October 18, 1993 at 25 N.J.R. 4706(a).

Adopted: October 18, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: October 18, 1994 as R.1994 d.564, **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. 39:6A-4.3 and 4.6.

Effective Date: November 21, 1994.

Operative Date: January 1, 1995.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department received a total of 40 written responses from lawyers, insurers, claim review services, hospitals, trauma centers, medical centers, rehabilitation facilities and agencies, associations and societies that

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represent these varied interests. Many of the comments that follow reflect concerns that were expressed by more than one commenter. A list of the commenters follows:

Allstate Insurance Company
American College of Surgeons
American Insurance Association
Bergen Pines County Hospitals
Burdette Tomlin Memorial Hospitals
Children's Specialized Hospital
Cohen, Shapiro, Polisher, Shiekman and Cohen
Community Medical Center, Toms River
CorVel Corporation
Dover General Hospital & Medical Center
Elizabeth General Medical Center
Hanover Insurance
The Harleysville Insurance Companies
Headways, Inc.
Jersey Shore Regional Trauma Center
JFK Medical Center
Material Damage Adjustment Corp.
Medical Management Techniques, Inc.
Med Fax Consultants, Inc.
The Mountainside Hospital
Newcomb Medical Center
New Jersey Chapter American Physical Therapy Association
New Jersey Hospital Association
New Jersey Podiatric Medical Society
Newton Memorial Hospital
Overlook Hospital
The Prudential
PSI Auditing Services
Robert Wood Johnson Medical School
Robert Wood Johnson University Hospital
Selective Insurance
State Farm Insurance Companies
St. Elizabeth Hospital
St. Francis Medical Center
St. Peter's Medical Center
University Health System of New Jersey
University of Medicine & Dentistry of New Jersey University Hospital
The Valley Hospital
Wallkill Valley Hospital and Health Centers
Zurbrugg Hospital

COMMENT: Although elimination of the DRG system was intended to promote competitiveness and create a cost-efficient environment, there has been a dramatic increase in fees charged by acute care hospitals. Since the elimination of the DRG system, some fees charged for services provided to classes of patients and third party payors have risen drastically—as much as 300 percent. Moreover, insurers have been experiencing significant increases in expenses incurred to evaluate hospital bills since the abolition of the DRG rating method. Clearly, the increase in hospital fees coupled with the increase in expenses incurred with respect to evaluation of hospital bills has had an impact on the cost of auto insurance to the detriment of New Jersey drivers. By incorporating hospital services into the fee schedules, it is expected that insurers paying Personal Injury Protection (PIP) claims will be in a stronger position to manage PIP costs.

RESPONSE: Since hospital rate deregulation pursuant to the Health Care Reform Act, P.L. 1992, c.160, became effective January 1, 1993, the Department has received many examples of substantially increased charges levied by acute care hospitals. This is why the Department agrees with the commenters that it is necessary for charges by acute care hospitals and other similar facilities to be expressly included within the scope of the New Jersey medical fee schedules and rules. The fee schedules and rules should be viewed as a limitation on what auto insurers are obligated to pay under the PIP coverage provisions of auto insurance policies, not as a regulation of the medical community in general or medical fees in particular. Insurers should be obligated to reimburse only reasonable fees for medically necessary services. The ultimate objective of the medical fee schedules and rules is to contain the cost of automobile insurance in New Jersey by placing a reasonable cap on the payment or reimbursement of PIP medical expenses.

COMMENT: As appropriately noted in the proposal, the rate setting methodology administered by the Department of Health was eliminated by the enactment of P.L. 1992, c.160 as a means of deregulating the

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hospital reimbursement system effective January 1, 1993. In enacting such legislation it was the expressed intent of the Legislature to deregulate the reimbursement system. The imposition of controlled rates for PIP patients will have the effect of reregulating at least a portion of the reimbursement system in direct conflict with the intent of P.L. 1992, c.160.

RESPONSE: The Department does not believe that the Health Care Reform Act affected its statutory responsibility under the No-Fault Act, as amended by the FAIR Act, to contain the cost of automobile insurance by providing medical fee schedules and rules whereby PIP insurers pay no more than usual, customary and reasonable charges, or applicable fee caps, whichever is lower, and whereby consumers are protected from balance billing by providers.

COMMENT: The proposal lists one of the primary reasons for the enactment of a fee schedule as "relieving auto accident injured patients from the trauma of escalating hospital costs by preventing hospitals and similar facilities from cost shifting and balance billing practices." What the authors of the proposal fail to account for is that it is similar limitations on charging patients reasonable and fair rates that causes cost shifting in the first place.

Since there is no "free lunch," who does the Department of Insurance propose that hospitals collect the unpaid balances from? Medicaid? Medicare? Regretfully, it is their enactment of similar "below cost" reimbursement schemes that has resulted in cost shifting. In fact, if more effort was placed on allowing hospitals and similar facilities to collect fair charges for the services rendered from all payors, there would be no need to cost shift for any patient.

RESPONSE: New Jersey's medical fee schedules and rules cannot be accurately described as a "below cost reimbursement scheme." In New Jersey, health care providers are expected to charge their usual, customary and reasonable fee for medical services or equipment provided to auto accident injured New Jersey residents. (See N.J.A.C. 11:3-29.4(a) and (e) and the definition of "eligible charge" at N.J.A.C. 11:3-29.2.) This generic standard was in place long before the fee schedules and rules were promulgated, and does not require below cost reimbursement.

By adopting these proposed amendments, the Department intends to eliminate the practice of "balance billing" when applied to auto accident injured New Jersey residents. To that extent, it may eliminate "cost shifting." The Department does not see this as a matter of re-regulation, nor does it believe that the Legislature's FAIR Act mandate for the promulgation of medical fee schedules and rules is inconsistent or incompatible with its stated intent to move toward hospital deregulation specifically through the elimination of the DRG rate setting system.

COMMENT: A fee schedule for hospitals promulgated by the Department of Insurance would preclude hospitals and insurers from negotiating rates for services. By allowing market forces to shape reimbursement arrangements, over time both insurers and hospitals (and the patients) will benefit. A State-mandated fee schedule eliminates this positive dynamic.

RESPONSE: The Department disagrees. Once adopted on the basis of appropriate data, a fee schedule for hospitals would not establish fixed charges but rather a ceiling, just as the fee schedules for other affected providers do. The dollar amounts appearing on the schedule would define the insurer's upper limit of liability for purposes of reimbursement. Nothing would preclude hospitals and insurers from negotiating rates for services within the upper limits on the fee schedule. Based on a number of factors including provisions in the PIP law and cases construing it, auto insurers (and their insureds) have been in a poor negotiating position as indicated by current cost shifting practices. Adoption of the proposed amendments will help produce a more equitable climate for negotiation.

COMMENT: These proposed amendments would re-institute the DRG system for hospitals rendering care for those injured in motor vehicle crashes, a system which has been eliminated in the State for other private hospital reimbursement and has been shown to be inadequate, in scientific literature, for hospital reimbursement for trauma care. Although the personal injury protection fee schedule has not caused hardship for physicians involved in the care of injured patients, there are financial issues which affect institutions, other than those affecting physicians.

Since the information upon which the 1992 DRG rates were based was collected, there have been six new operational trauma centers established in the State. These institutions are designated by the State of New Jersey Department of Health, under regulations established by the Department of Health. These institutions are required to maintain

an in-hospital surgeon, operating room team, CT scan technician, blood bank technician, anesthesiologist, and radiographer, 24 hours a day. They are also required to keep a neurosurgeon and an orthopedic surgeon available within 20 minutes, and these surgeons are unable to take calls at other institutions at the same time. The standards were set by the state, based on national standards of the American College of Surgeons. They have been established as necessary for the optimal care of the severely injured patient. Without these personnel in the hospital, awaiting the arrival of patients, care suffers and death rates and complications and rehabilitation requirements increase. The value of these systems of care have been established in other regions of the United States, and there is significant scientific evidence to demonstrate the improvement in care and survival.

Additional administrative personnel and clinical personnel are required for trauma center designation. A trauma nurse coordinator (an individual who oversees the care of all trauma patients within the hospital) is mandatory, as are ongoing educational programs for nurses, physicians, and pre-hospital care personnel as well as the lay public. None of these programs occur without cost.

In view of the increased cost of operation for personnel and equipment, and capital programs required to institute and maintain a trauma center, it appears inappropriate to base reimbursement for such institutions in the same manner as those institutions which do not maintain those additional resources. It would seem appropriate to maintain two reimbursement categories under the PIP system: one for institutions which are trauma centers and one for other acute care hospitals. This would allow the use of a prospective reimbursement system and still allow those institutions which have become trauma centers to maintain that commitment.

RESPONSE: The Department has no intention of reinstating the DRG system for any purpose whatsoever. The Department merely suggested in its proposal that insurers refer to hospital charges for medical services and equipment as of December 31, 1992, as a benchmark for determining usual, customary and reasonable fees in cases involving hospitals. Nothing more was intended than use of these fees as a guideline to be modified over time. The Department notes that the fees set forth at N.J.A.C. 11:3-29.6 do not presently incorporate the reasonable and prevailing fees of hospitals and other similar providers of services to inpatients. Therefore, the Department has amended N.J.A.C. 11:3-29.4(a) to clarify that the limit of reimbursement to such providers for services to inpatients is their usual, customary and reasonable fees.

However, outpatient services of the type that may be provided in other settings, and were generally never covered by the DRG System, will be subject to the current medical fee schedules and rules including the upper limit dollar amounts.

In any event, hospitals and other health care providers will be expected to charge their usual, customary and reasonable fees for medical services and equipment provided to auto accident injured New Jersey residents, and it is upon this standard that reimbursement by insurers will be based.

The Department recognizes that usual, customary and reasonable fees charged by trauma centers may reasonably exceed fees for similar services charged by other acute care hospitals. The Department understands and appreciates the special services and expertise provided by New Jersey's network of trauma center facilities. As long as trauma centers charge usual, customary and reasonable fees for their services, they need not be overly concerned with the adoption of the proposed amendments.

COMMENT: The proposed expansion of the term "provider" to include nursing homes, as set forth in the definitions section of the regulation, represents an extraordinary step by the Department of Insurance. Should this expanded definition be adopted, the end result would be the first and only time any New Jersey State agency has regulated private payment for nursing home services. Heretofore, only governmental programs, such as Medicaid or Medicare, have established reimbursement levels for governmental contractors under those programs. Indeed, there is no existing system of rate reimbursement in New Jersey applicable to private nursing facilities rendering services to private individuals with or without insurance. Unless specifically authorized and needed, the Department should not seek to regulate nursing home charges. This proposal is neither necessary nor authorized.

RESPONSE: The Department disagrees. To the extent a nursing home provides reimbursable medical services and equipment to auto accident injured New Jersey residents, it is a health care provider within the meaning and intent of N.J.S.A. 39:6A-4.6 and therefore subject to the medical fee schedules and rules set forth at N.J.A.C. 11:3-29.

PIP medical expense benefits include all medical expenses covered by the PIP portion of the automobile insurance policy. Neither the statute nor the regulation make any exceptions for nursing homes that receive reimbursement for medical services through PIP coverage.

Nursing homes, like any other health care provider, are expected to charge their usual, customary and reasonable fee for medical services or equipment provided. Reimbursement by insurers will not exceed the upper limit amount appearing on the fee schedules. For services and equipment not appearing on the schedules, reimbursement will be based on the provider's usual, customary and reasonable charge. Automobile insurers should be charged the same rates as any other payors.

COMMENT: We strongly support application of the medical fee schedules to all providers, including acute care facilities, as proposed in PRN 1993-571. It is critically important that the Department promulgate a new comprehensive fee schedule for acute care hospital services as it suggests in its Summary to the instant proposal. Without the new comprehensive fee schedule, providers may challenge insurers' reliance on former DRG rates, notwithstanding the Department's position that this methodology is an appropriate procedure for determining "usual, customary, and reasonable" fees. Finally, we would respectfully request that the Department seek to make the new fee schedule as comprehensive as possible in order to further the goal of containing costs and avoiding disputes over what is "usual, customary and reasonable."

RESPONSE: The Department believes that the Legislature intended the PIP medical fee schedules and rules to apply to all persons and facilities providing medical services and equipment for medical expense benefits to auto accident injured New Jersey residents covered by PIP automobile insurance. N.J.S.A. 39:6A-4.6 makes no exceptions.

Hospitals and other similar facilities are expected to charge their usual, customary and reasonable fees. Automobile insurers and their insureds should not be treated any differently than any other payors. Hospitals should be precluded from charging more to PIP covered patients than others for the same services.

COMMENT: The medical fee schedule rules should be amended to add a definition of usual, customary and reasonable (UCR) charge for hospitals. One problem insurers anticipate having in dealing with acute care hospital charges is that there is no non-DRG basis for determining UCR charges that the insurers can use in evaluating the reasonableness of such charges. The DRG charge should be used as the basis for determining the UCR charge. The DRG charge was the usual, customary, and reasonable charge used by hospitals on December 31, 1992, so it fits what a UCR charge is. The Department is supporting this position where it said, "The Department suggests that upon adoption of these proposed amendments, insurers use the rates acute care hospitals billed for medical services and equipment as of December 31, 1992, as a basis for comparison in their determination of 'usual, customary and reasonable' fees in cases involving those hospitals." 25 N.J.R. 4706. Because of the large number of claims for which this will be a critical point, this position should be made part of the regulation itself. Proposed N.J.A.C. 11:3-29.4 should be amended to add a new subsection (j) stating,

(j) The usual, customary and reasonable fee for a hospital shall be the DRG charge of that hospital on December 31, 1992, adjusted for normal inflation.

RESPONSE: The Department does not intend to reimpose the DRG rate setting system on hospitals and therefore rejects the proposal that a new subsection (j) be added as stated above. The Department notes that there is no reference to the DRG system either in N.J.S.A. 39:6A-4.6 or the rules. Clearly, as frequently stated in the medical fee schedule rules, the standard for reimbursement of PIP medical expenses and equipment is "usual, customary and reasonable." The DRG system was cited by the Department as a benchmark because of the dramatic increases charged to PIP insurers by some hospitals beginning January 1, 1993—when deregulation became effective. Hospitals should charge PIP insurers the same as other payors and expect to be reimbursed at the usual, customary and reasonable level.

A definition of "usual, customary and reasonable" cannot be added upon adoption of this proposal but must be proposed and subject to public comment. The Department will consider that suggestion for possible future amendment, but notes that this is a generic term of long standing—the meaning of which is generally well understood by insurers and health care providers alike.

COMMENT: Will the multiple procedure guidelines be applied to services performed in the hospital?

RESPONSE: The present fee schedules set forth at N.J.A.C. 11:3-29.6 will have no application to inpatient hospital services since the data bases

from which the schedules were derived do not include inpatient hospital charges which at the time were paid under the DRG system. It follows that the multiple procedure reduction formula of 100/50/25 percent set forth at N.J.A.C. 11:3-29.4(f)1 will not apply to inpatient hospital services since the rule requires that the 50 and 25 percent factors be applied to the upper limit dollar amounts on the fee schedules to determine whether a reduction in the total charges is required. The multiple procedures reduction formula will, however, be applicable to outpatient hospital services consistent with the provisions of N.J.A.C. 11:3-29.4(f).

COMMENT: The development of the current fee schedules for physical rehabilitation services did not include equipment/cost/acuity factors often associated with providing such services in the acute care hospital setting. Hopefully, expenses unique to the hospital setting will be considered when establishing fee schedules for hospital services.

RESPONSE: The referenced factors should be taken into consideration when usual, customary and reasonable fees are determined for physical rehabilitation services performed in the hospital setting.

COMMENT: Since elimination of the DRG system, hospitals are no longer required to bill within stated parameters. Adding maximum charges for the services in question will provide guidance to the hospitals that provide these services. The present system in which hospitals are exempt from fee schedules confuses consumers. Without the proposed change, they are subject to balance billing by the hospital for any amount over the usual, customary and reasonable charges that would be paid by the carrier.

RESPONSE: The adoption of the proposed amendments will have the effect of bringing hospitals and other facilities now to be specifically included in the definition of "provider" (see N.J.A.C. 11:3-29.2) within the purview of the medical fee schedule rules, including the prohibition against balance billing at N.J.A.C. 11:3-29.5.

COMMENT: Will insurers prorate equipment rental for inpatient hospital use in the same fashion as they do for outpatient services?

RESPONSE: Insurers are expected to continue to reimburse equipment rental in the inpatient hospital setting as they have in the past, subject to the usual, customary and reasonable standard.

COMMENT: Does staff nursing apply in this proposal? If so, would it apply in the same manner as private duty nursing?

RESPONSE: The medical fee schedule for nursing and allied professional health services at N.J.A.C. 11:3-29.6(c) should not be applied to hospital nursing since the data base from which that schedule was derived did not include nursing charges in the hospital setting. For such charges, however, the usual, customary and reasonable standard should be applied in determining appropriate levels of reimbursement.

COMMENT: The proposal states that the amendments will not impose new reporting or recordkeeping requirements. We strongly disagree with this statement. The hospitals will have to adjust their billing and computer systems to adjust for the proposed rate schedules which will cost thousands of dollars. The purpose of removing the DRGs was to simplify the billing process and make it understandable. Unfortunately, this proposal will make it complicated and regulate the hospitals again.

RESPONSE: The Department agrees that some adjustments will be required in the billing practices of hospitals (and other facilities affected by the adoption of this proposal) particularly with regard to outpatient services. But this should involve nothing more than adjusting fees to reflect usual, customary and reasonable charges so that PIP insurers are billed no differently than other payors. The Department anticipates that little or no change will be required so far as the billing of inpatient hospital services are concerned so long as providers adhere to the "usual, customary and reasonable" standard.

COMMENT: The proposal states that the consumer should experience lower auto insurance rates because of these amendments. Unfortunately, the consumer will probably never see any reduction in their rates. What studies were performed to determine the amount of savings for the consumer?

RESPONSE: It is difficult to measure the effect of the medical fee schedule in auto insurance rates since it is generally applicable and therefore there is no separate "control group" against which to make comparisons. It is axiomatic, however, that the cost of auto insurance will be less if PIP insurers are precluded from paying hospital bills that are significantly higher than what the hospital charges other payors for the same service.

COMMENT: The definition of "provider" at N.J.A.C. 11:3-29.2 should be further amended to include podiatric physicians in the list of providers. N.J.S.A. 45:5-7 provides that a podiatrist is a physician and may be referred to as a "podiatric physician."

RESPONSE: The Department believes that podiatric physicians are among the "persons who furnish services or equipment for medical expense benefits" for which payment is made pursuant to PIP coverage, and are, thus, "providers" within the meaning of N.J.S.A. 39:6A-4.6. Podiatric physicians, along with other practitioners whose disciplines are not specifically included in the definition of "provider," are automatically included by use of the phrase "not limited to" if they furnish PIP medical services to auto accident victims.

COMMENT: To evaluate their own operations, hospitals need to know exactly how much they will be paid. Therefore, any fee limits should be specific and prospective; implementing limits before the fee schedules are published is not advisable.

RESPONSE: Hospitals need only charge PIP insurers what they bill other payors providing similar services at a cost which should be usual, customary and reasonable rates.

COMMENT: The fee schedules for hospitals should be specific to acute care hospital services. Hospitals have a unique blend of administrative overhead, charity services to the community, and regulatory constraints which preclude comparing the cost of services to other non-acute providers.

RESPONSE: The factors mentioned should be taken into account by the hospital in the process of determining what its usual, customary and reasonable rates will be. These factors will be reflected in any fee schedules that may be developed specifically for hospitals.

COMMENT: The fee schedules should be updated annually for inflation.

RESPONSE: All fee schedules are continuously under review by the Department. Revisions are proposed and adopted on a needs basis, taking into account a number of factors including inflationary trends. Updating annually for inflation, however, is not a simple process. The fee schedule is intended to be market-based and, therefore, the impact of inflation on individual fees is not uniform.

COMMENT: In medical fee schedules applicable to hospitals, the cost of room and board (in addition to medical services and equipment) should be included.

RESPONSE: The Department is not prepared at the present time to propose specific fee schedules applicable to hospitals, including upper limit levels for room and board. However, it is expected that when charging for such services, hospitals will not exceed their usual, customary and reasonable charges. The medical fee schedule rules clearly state that this is the standard on which such charges will be reimbursed.

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

11:3-29.2 Definitions

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

...
 "Provider" includes all persons who furnish services or equipment for medical expense benefits for which payment is required to be made under PIP coverage in automobile insurance policies or medical expense benefits coverage pursuant to N.J.S.A. 17:28-1.6 including, but not limited to, medical doctors, osteopathic physicians, medical laboratories, chiropractors, physical therapists, dentists, nurses, home health aides, home health agencies, live-in attendants, speech therapists, occupational therapists, ambulance service providers, medical equipment suppliers, acute care hospitals, trauma centers, rehabilitation facilities, other specialized hospitals, residential alcohol treatment facilities and nursing homes.

11:3-29.4 Application of Medical Fee Schedules

(a) Every policy of automobile insurance and motor bus insurance issued in this State shall provide that the automobile insurer's limit of liability for medically necessary expenses payable under PIP coverage, and the motor bus insurer's limit of liability for medically necessary expenses payable under medical expense benefits coverage, is the fee set forth in this subchapter. Nothing in this subchapter shall, however, compel the PIP insurer or a motor bus insurer to pay more for any service or equipment than the provider's usual, customary and reasonable fee, even if such fee is well below the automobile insurer's or motor bus insurer's limit of liability as set forth in the fee schedules. *N.J.A.C. 11:3-29.6 shall not apply

to inpatient services provided by acute care hospitals, trauma centers, rehabilitation facilities, other specialized hospitals, residential alcohol treatment facilities and nursing homes, reimbursement to which shall be limited to the provider's usual, customary and reasonable fees.* Insurers will not be required to pay for services or equipment which are not medically necessary.

(b)-(i) (No change.)

11:3-37.10 Explanation of Benefits

(a) Automobile insurers shall develop and utilize an explanation of benefits form to be provided with the payment of benefits for expenses incurred for treatment of injuries which clearly identifies and explains the following:

1.-3. (No change.)

4. Any deductible or copayment applied;

5. (No change.)

6. A statement to insureds that no health care provider may demand or request any payment from any person in excess of those permitted by *[the medical fee schedules]* *N.J.A.C. 11:3-29*, and that no person is liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by *[the medical fee schedules]* *N.J.A.C. 11:3-29* pursuant to N.J.S.A. 39:6A-4.6.

(a)

SMALL EMPLOYER HEALTH BENEFITS PROGRAM

Nonstandard Health Benefits Plan Filings with the Commissioner: Form Filings and Requests to Withdraw Plan Forms
Informational Rate Filing Requirements Pursuant to the Small Employer Health Benefits Program
Declaration and Approval of Reinsuring or Risk-Assuming Carrier Status
Withdrawals of Small Employer Carriers from the Small Employer Health Benefits Plan Market
Adopted New Rules: 11:21-11 and 16.7 and Exhibit BB, Parts 3 and 4
Adopted Amendments: N.J.A.C. 11:21-9.1, 9.2, 9.3, 9.4, 9.5, 14.2, 14.4, 14.5, 16.2, 16.3, 16.4, Exhibit U, Parts 1 and 3, and Exhibit BB, Part 1

Proposed: August 1, 1994 at 26 N.J.R. 3118(a).

Adopted: October 26, 1994 by Andrew J. Karpinski, Commissioner, Department of Insurance.

Filed: October 26, 1994 as R.1994 d.580, 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. 17:1-8.1, 17:1C-6(e), 17B:27A-17 et seq., P.L. 1994, c.11.

Effective Date: November 21, 1994.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:

The Department of Insurance received written comment from two commenters: First Option Health Plan and LeBoeuf, Lamb, Greene and MacRae on behalf of American Family Life Assurance Company of New York (AFLAC).

COMMENT: One commenter stated that there appears to be inequities in the rule at N.J.A.C. 11:21-14.4, Declaration to be a reinsuring or risk-assuming carrier, in that new entrants into the small employer market that elect to become risk-assuming carriers must await Commissioner approval of the election before entering the market, whereas it appears that current reinsuring carriers that elect to become risk-assuming carriers may do so without having to await the Commissioner's approval. The commenter suggested putting all carriers on a level playing field by either requiring reinsurers to obtain permission from the Commissioner to switch before they can issue policies as a risk-assuming

carrier, or deleting that requirement for new entrants, since new entrants will have only recently received their licenses and therefore already have been subject to a rigorous examination during that review process.

RESPONSE: Although the Department understands the commenter's concerns, the Department believes that the commenter is comparing and contrasting new N.J.A.C. 11:21-14.4(b) and recodified N.J.A.C. 11:21-14.4(c) inappropriately. Rather, new subsection (c) should be read as a mirror to recodified N.J.A.C. 11:21-14.4(d), where, in fact, equivalent 90-day prior application periods apply.

New N.J.A.C. 11:21-14.4(b) is intended to address a very specific situation set forth by N.J.S.A. 17B:27A-35, as amended by P.L. 1994, c.11, section 6b. It does not represent an ongoing situation, but instead reopens the original election instituted in 1993. It may be noted that during the initial election period (as now), carriers electing to be risk-assuming that already operated as small employer carriers were not required to wait 90 days before issuing health benefits plans.

The Department recognizes that the commenter's concerns are beyond the technical language of N.J.A.C. 11:21-14.4(b), (c) and (d), but really go to the concept of treating currently operating carriers differently from carriers just proposing to enter the small employer market. The commenter assumes that a carrier's financial situation is the only thing about which the Department is truly concerned. That is incorrect. The Department is also required to consider a carrier's history of assuming and managing risk, and the carrier's experience in managing small group business. The Department recognizes that some carriers will be new to the small employer market, but not to New Jersey; some will be new to New Jersey, but will have experience with small employers by virtue of their operations in other states; some carriers will be new to the entirety of the health insurance business. The Department believes it is reasonable to treat the various new entrants differently from current small employer carriers on this basis, because it is related to a legitimate State purpose.

Finally, the Department notes that the provisions of recodified N.J.A.C. 11:21-14.4(c) do not prohibit a carrier from marketing its health benefits plans between the time it applies for risk-assuming status and the end of the 90-day period. Given the standard industry practices for start-up, new business, and renewal business, the Department believes that the differing requirements for current small employer carriers and new entrants imposed by the rules will have an insignificant impact upon a new entrant's business. The Department does not believe any change upon adoption is necessary.

COMMENT: One commenter had several comments regarding supplemental limited benefit insurance. The commenter stated that the purpose and scope of N.J.A.C. 11:21-9.1(a) was amended to refer to "all supplemental limited benefit insurance delivered or issued for delivery to a small employer," but that that language is not consistent with P.L. 1994, c.11, section 10b (as codified, N.J.S.A. 17B:27A-19.1). The statutory provision refers to supplemental limited benefit insurance plans issued to a small employer "or other group health benefits plan provider or to individual employees of a small employer or other group health benefits provider."

The commenter also stated that N.J.S.A. 17B:27A-19.1 provides that supplemental limited benefit insurance plans shall be subject to the rating requirements that apply to health benefits plans issued pursuant to paragraph (2) of subsection a. of section 9 of P.L. 1992, c.162 (N.J.S.A. 17B:27A-25), meaning that the premiums for these types of plans are allowed to be based in all future years on a premium rate using a 3:1 ratio for covered groups. However, the proposed amendment to N.J.A.C. 11:21-9.3 would ultimately require a rating band of 2:1 for covered groups. Additionally, the commenter notes that the amendments to N.J.A.C. 11:21-9.3 do not clearly state that the criteria for loss ratios, medical underwriting and eligibility requirements, and preexisting condition exclusions will continue to be regulated under N.J.A.C. 11:4-16 and N.J.A.C. 11:4-18, "Minimum Standards (for individual policies)" and "Individual Health Insurance Rate Filings," respectively.

Finally, the commenter stated that N.J.A.C. 11:21-9.3(f) requires supplemental limited benefit plans to be filed in compliance with N.J.A.C. 11:21-9.3(c), which refers to out-of-State trusts, but that N.J.S.A. 17B:27A-19.1 does not apply to supplemental limited benefit insurance plans issued to an out-of-State trust. The commenter notes that the provisions of N.J.S.A. 17B:27A-17 et seq. that refer to out-of-State trusts apply to a health benefits plan as defined in N.J.S.A. 17B:27A-17, which specifically excludes hospital confinement or other supplemental limited benefits insurance coverage.

RESPONSE: The Department neither necessarily agrees nor disagrees with the commenter's statements and observations. The Department has determined, however, that separate rules specific to supplemental limited benefit insurance are more appropriate than mixing regulation of such policies in with regulation of general health benefits plans offered to small employers. Therefore, all references to supplemental limited benefit insurance are being removed upon adoption of these rules. While the commenter's statements are not being addressed upon adoption, they will be taken into consideration when the Department proposes rules for supplemental limited benefit insurance in the future.

Summary of Agency-Initiated Changes:

At N.J.A.C. 11:21-9.5, regarding public disclosure of filed information, the Department of Insurance is adding the following language upon adoption: "All informational rate filings shall separately identify the confidential actuarial information from all other information required by this regulation. If not so identified, all information shall be considered public information and subject to disclosure."

The Department does not believe this is a substantive change, but rather a technical change, expanding upon and further explaining the provisions of N.J.A.C. 11:21-9.5. In essence, the new language merely reminds carriers that if there is something in their filings which is confidential, they need to identify it. The Department does not believe it should be in the position of determining what information is and is not confidential for each carrier, but rather, that it is the responsibility of the carrier. If the carrier fails to identify information as confidential, it will be treated as though it is not, and will be available for general public inspection.

References to time periods have been revised to reflect specific dates upon adoption within the following: N.J.A.C. 11:21-11.8, 9.3, 14.2, 14.4, 16.7, Exhibit U, Part 1, and Exhibit BB, Parts 3 and 4.

Additionally, the Department is removing the requirement that carriers submit Exhibit BB, Parts 3 and 4 in triplicate to the SEH Board, while retaining the requirement for filing the exhibits in triplicate with the Department. The SEH Board has indicated to the Department that single filings will be sufficient.

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 9. INFORMATIONAL RATE FILING REQUIREMENTS PURSUANT TO THE SMALL EMPLOYER HEALTH BENEFITS PROGRAM

11:21-9.1 Purpose and scope

(a) The purpose of this subchapter is to establish informational rate filing requirements and procedures applicable to health benefits plans, including riders or endorsements, issued, renewed, reinstated or continued pursuant to the Act^{*}, and to all supplemental limited benefit insurance delivered or issued for delivery to a small employer^{*}.

(b) This subchapter applies to all carriers issuing, renewing, reinstating or continuing health benefits plans ^{*}[or supplemental limited benefit insurance]^{*} to small employers pursuant to the Act.

11:21-9.2 Definitions

Words and terms, when used in this subchapter, shall have the meanings as defined at N.J.S.A. 17B:27A-17 or N.J.A.C. 11:21-1.2 unless defined below or the context clearly indicates otherwise.

"Classification factor" means a factor used to vary rates based upon characteristics of the employee, employer or policyholder.

"Health benefits plan" means any standard health benefits plan or nonstandard health benefits plan including any rider or endorsement thereto.

"Nonstandard health benefits plan" means a health benefits plan issued prior to January 1, 1994, which was in effect on February 28, 1994, and which has been reinstated, renewed or continued at the option of a small employer pursuant to the requirements of the Act.

"Nonstandard rider" means a rider or endorsement developed by a carrier to be offered with one or more of the standard health benefits plans.

"Plan" means a policy or contract form under which policies, contracts or certificates are issued evidencing benefits for expenses incurred or coverage of services rendered when referring to a type of health benefits plan.

"Standard health benefits plan" means a health benefits plan promulgated by the SEH Board subject to the review and approval of the Commissioner.

"Standard rider" means a rider or endorsement promulgated by the SEH Board to be offered with one or more of the standard health benefits plans.

["Supplemental limited benefit insurance" means coverage that is provided in addition to a health benefits plan, whether as a separate contract, a rider or an endorsement, on an indemnity nonexpense incurred basis, and includes, but is not limited to, a hospital confinement plan.]

11:21-9.3 Informational rate filing requirements for health benefits plans ^{*}[and supplemental limited benefit insurance issued or]^{*} renewed between January 1, 1994 and January 1, 1997

(a) All carriers issuing policies, contracts or certificates under standard health benefits plans, including any standard or nonstandard rider option, on or before ^{*}[the 60th day following the effective date of N.J.A.C. 11:21-7.15]^{*} ***September 11, 1994***, prior to issuing any policy, contract or certificate under such plan, shall file with the Commissioner an informational rate filing which shall include the following data:

1.-3. (No change.)

4. A certification signed by a member of the American Academy of Actuaries attesting to the accuracy and completeness of the information provided pursuant to (a)1, 2 and 3 above and of the following information which shall also be included:

i.-iv. (No change.)

v. For rates to be charged for policies, contracts or certificates issued or renewed on and after January 1, 1994 through December 31, 1995, a statement that the rating classification will not produce rates (for an individual and for each family status) for the highest rated group which are greater than 300 percent of rates (for an individual and for each family status) produced for the lowest rated group for each policy form (plan and deductible);

vi. For rates to be charged for policies, contracts or certificates issued or renewed on or after January 1, 1996 through December 31, 1996, a statement that the rating classification will not produce rates (for an individual and for each family status) for the highest rated group which are greater than 200 percent of rates (for an individual and for each family status) produced for the lowest rated group for each policy form (plan and deductible option);

vii. For rates to be charged for policies, contracts or certificates issued or renewed on and after January 1, 1997, a statement that each policy form (plan and deductible option) is community rated for each rating tier (individual, husband/wife, parent/child(ren) and family).

Recodify existing vii. and viii. as viii. and ix. (No change in text.)

(b) All carriers issuing or renewing policies, contracts or certificates under a standard health benefits plan, including any standard or nonstandard rider option, after ^{*}[the 60th day following the effective date of N.J.A.C. 11:21-7.15]^{*} ***September 11, 1994***, prior to issuing or renewing any policy, contract or certificate under such plan, shall file with the Commissioner an informational rate filing which shall include the data set forth in (a) above, except that the classification factors utilized in the calculation of a group's premium rate or rates pursuant to (a)4v and vi above shall be limited to age, gender and geography in accordance with N.J.A.C. 11:21-7.15.

(c) All carriers renewing policies, contracts or certificates under a nonstandard health benefits plan (or issuing policies, contracts or certificates under a nonstandard health benefits plan through an association, multiple employer arrangement or out-of-State trust) after ^{*}[the 60th day following the effective date of N.J.A.C. 11:21-7.15]^{*} ***September 11, 1994***, prior to renewing (or issuing) any policy, contract or certificate under such plan, shall file with the Commissioner an informational rate filing which shall include

the data set forth in (a) above, except that the classification factors utilized in the calculation of a group's premium rate or rates pursuant to (a)4v and vi above shall be limited to age, gender and geography in accordance with N.J.A.C. 11:21-7.15.

*(d) All carriers issuing or renewing policies, contracts or certificates for supplemental limited benefit insurance on or before the sixtieth day following the effective date of N.J.A.C. 11:21-7.15 shall file with the Commissioner an informational rate filing in accordance with (a) above.

(e) All carriers issuing or renewing policies, contracts or certificates for supplemental limited benefit insurance after the sixtieth day following the effective date of N.J.A.C. 11:21-7.15 shall file with the Commissioner an informational rate filing in accordance with (a) above, except that the classification factors utilized in the calculation of a group's premium rate or rates pursuant to (a)4v and vi above shall be limited to age, gender and geography in accordance with N.J.A.C. 11:21-7.15.*

*(f)**(d)* Any carrier which seeks to change its rates for its health benefits plans *[or its supplemental limited benefit insurance]* shall, prior to the effective date of the revised rates, submit to the Commissioner an informational filing which shall include all of the data set forth in (a) above, except that any change in rates intended to occur after *[the sixtieth day following the effective date of N.J.A.C. 11:21-7.15]* *September 11, 1994* shall be filed in compliance with (b)*[, (c) or (e)]* *or (c)* above, as appropriate.

11:21-9.4 Informational filing procedures

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

(d) If the informational filing is incomplete and not in substantial compliance with the requirements of N.J.A.C. 11:21-9.3, the Commissioner shall provide written notice to the carrier specifying the portions of the filing which are deficient and the information required to be submitted by the carrier. Upon receipt of notice from the Commissioner that the filing for any health benefits plan *[or supplemental limited benefit insurance]* is not in substantial compliance, no contract, policy or certificate shall be entered into or renewed using the submitted rates until the Commissioner has determined that the informational filing is in substantial compliance or complete, and has provided written notice of that fact to the carrier. If the Commissioner takes no action within 30 days of the carrier's submission of information in an effort to render the filing in substantial compliance, the filing shall be deemed to be in substantial compliance.

(e) (No change.)

11:21-9.5 Public disclosure of filed information

(a) All data or information filed with the Department pursuant to N.J.A.C. 11:21-9.3(a) are public records and may be disclosed in accordance with N.J.S.A. 47:1A-1 et seq., except that actuarial memoranda which contain confidential and proprietary information pursuant to N.J.A.C. 11:21-9.3(a)3 shall not be disclosed by the Department to any person other than employees and representatives of the Department.

(b) A carrier shall separately identify in all informational rate filings the confidential actuarial information from all other information required by this regulation. If not so identified, all information shall be considered public information and subject to disclosure.

SUBCHAPTER 11. NONSTANDARD HEALTH BENEFITS PLAN FILINGS WITH THE COMMISSIONER: FORM FILINGS AND REQUEST TO WITHDRAW PLAN FORMS

11:21-11.1 Purpose and scope

(a) This subchapter defines those health benefits plans that were in effect on December 31, 1993 which a carrier, association, multiple employer arrangement or out-of-State trust shall not withdraw with respect to small employer policy or contractholders prior to February 28, 1997, without the approval of the Commissioner in accordance with P.L. 1994, c.11, except as N.J.S.A. 17B:27A-23 may apply.

(b) This subchapter defines those health benefits plans which were in effect on December 31, 1993 and have been or will be

renewed, continued or reinstated that shall be filed with the Commissioner for informational purposes in accordance with P.L. 1994, c.11, §3j.

(c) This subchapter establishes the procedures for making a request to the Commissioner to withdraw a nonstandard health benefits plan for reasons other than those specified at N.J.S.A. 17B:27A-23, and the standards for review and approval of the request.

(d) This subchapter establishes the procedures for making a complete informational filing of nonstandard health benefits plans with the Commissioner, and the standards for review of the filings submitted.

11:21-11.2 Definitions

Words and terms, when used in this subchapter, shall have the meanings as set forth in the Act and N.J.A.C. 11:21-1.2, unless defined below or the context indicates otherwise.

"Market" or "marketed" means to offer or have offered or advertised as available a nonstandard health benefits plan for initial purchase by small employers.

"Nonstandard health benefits plan" means a health benefits plan policy or contract form under which policies or contracts were issued on or before December 31, 1993 to small employers or to one or more employees of a small employer by virtue of the employment arrangement.

"Substantial threat to a carrier's financial condition" means that a carrier is in a hazardous financial condition as specified in N.J.A.C. 11:2-27, or that a carrier is financially impaired, meaning that a carrier, after the effective date of this subchapter, is not insolvent, but is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations, or is placed under an order of receivership, rehabilitation or conservation by a court of competent jurisdiction.

"Withdraw" or "withdrawal" means a cancellation or nonrenewal initiated by a carrier, association, multiple employer arrangement or out-of-state trust of all inforce policies, contracts or certificates issued under a nonstandard health benefits plan.

11:21-11.3 Restricted withdrawal and marketing

(a) A carrier, association, multiple employer arrangement or out-of-State trust shall not withdraw a nonstandard health benefits plan before March 1, 1997 without prior approval of the Commissioner if there was one or more policies or contracts inforce under that nonstandard health benefits plan on December 31, 1993, and the nonstandard health benefits plan was marketed to small employers as of December 31, 1993, except as (b) below applies.

(b) A carrier may withdraw a nonstandard health benefits plan without obtaining prior approval pursuant to this subchapter if the carrier is effecting withdrawing from the small employer market in accordance with N.J.A.C. 11:21-16.

(c) A carrier shall not market a nonstandard health benefits plan subject to (a) above except as (d) below applies.

(d) An association, multiple employer arrangement or out-of-State trust shall not be required to market a nonstandard health benefits plan subject to (a) above; however, an association, multiple employer arrangement or out-of-State trust that does market a nonstandard health benefits plan to its members' employees and dependents shall offer coverage to all eligible employees and their dependents within the membership of the association, multiple employer arrangement or out-of-State trust, and in no instance shall actual or expected health status be used in determining membership.

11:21-11.4 Request to withdraw nonstandard health benefits plans

(a) A carrier may submit to the Commissioner a completed request to withdraw one or more nonstandard health benefits plan(s) at any time except that a carrier shall not:

1. Submit more than one request to withdraw at any one time, but may amend its request to withdraw, if necessary; or

2. Submit a request to withdraw while a request for relief pursuant to N.J.A.C. 11:20-11 or 11:21-15 is pending.

(b) A carrier may submit a single filing to request withdrawal of more than one nonstandard health benefits plan, but shall clearly

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specify each nonstandard health benefits plan for which a withdrawal is sought.

(c) A carrier shall submit five copies of each request to withdraw in loose leaf form, inserted into two-ring or three-ring binders, tabbed or otherwise indexed to correspond to the exhibits set forth below; and shall include:

1. A cover letter stating:
 - i. The name of the carrier, and the name, title, telephone number and telefax number of a contact person familiar with the filing to whom the Department may direct any additional questions;
 - ii. A clear specification of the nonstandard health benefits plan(s) which the carrier is seeking to withdraw, including the market name(s), form number(s), and the date(s) the form filing was approved by the Department, if any; and
 - iii. A statement of facts relied upon as the basis under which the request is sought, including the specific factor(s) upon which the Commissioner may find that there is a substantial threat to the carrier's financial condition, specifically using the criteria set forth in N.J.A.C. 11:2-27.3(a)1 to 29;
2. A detailed explanation, with supporting documentation, of the projected effect that fulfillment of the obligation not to withdraw the nonstandard health benefits plan(s) prior to March 1, 1997 would have on the immediate and long term financial condition of the carrier unless the request to withdraw is approved;
3. The most recent financial examination report, whether conducted by the carrier's state of domicile or other state;
4. A statement addressing whether the carrier is planning to modify its method of doing business in any way, including, but not limited to, new acquisitions or new restructuring;
5. If the carrier is a member of a holding company system:
 - i. A list of all members of the holding company system;
 - ii. A list of all intercompany transactions for the period beginning January 1 in the year of the filing to the date of the quarterly statement immediately preceding the date of the filing, in the format set forth in the statutory annual statement filed by the carrier; and
 - iii. A copy of the registration statement filed pursuant to 17:27A-3 and the carrier's organizational chart;
6. An actuarial opinion attesting to the adequacy of reserves specifically for all accident and health lines of business, and for all lines of business which the carrier transacts, in the format of and satisfying all requirements for the actuarial opinion and memorandum required to be submitted as a part of the annual statement filed by the carrier (if the carrier is a health maintenance organization, the carrier shall obtain and file an actuarial opinion which complies with these requirements);
7. A report signed by the attesting actuary which includes, in summary form if necessary, all data utilized, a complete explanation of methods and assumptions and sufficient additional narrative to account for any features of the data or circumstances necessary for proper interpretation;
8. A copy of the annual statement of the carrier, including all accompanying exhibits, filed with this State immediately preceding the date of the request to withdraw;
9. Copies of all quarterly statements for the period beginning January 1 in the year of the filing to the quarterly statement immediately preceding the date of the filing;
10. Three-year financial projections beginning with the calendar year of the date of the filing assuming both that the request to withdraw is granted and that it is denied. The projections shall include the following:
 - i. In summary form if necessary, all data utilized, and a complete explanation of methods and assumptions utilized and relied upon by the carrier in making the projections;
 - ii. Results for the carrier's operations worldwide by line of business and for the carrier's operations in New Jersey only for health benefits plans issued, renewed, continued or reinstated pursuant to N.J.S.A. 17B:27A-17 et seq.;
 - iii. Assumptions that the rate of assessments for the carrier in the three year projections shall be the same as the assessments received by the carrier in the year in which the request to withdraw is filed; and

iv. Projections of the carrier's operating results containing the information and in the format set forth in the following:

- (1) For life and health insurers, the balance sheet and summary of operations exhibits of the statutory annual statement filed by the carrier;
 - (2) For property and casualty insurers, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the carrier;
 - (3) For health service corporations, hospital service corporations and medical service corporations, the balance sheet and Underwriting and Investment Exhibit of the statutory annual statement filed by the service corporation; and
 - (4) For health maintenance organizations, the balance sheet and statement of revenue, expenses and net worth of the annual statement filed by the health maintenance organization;
11. A description of any relief from obligations imposed by this State or any other state granted or in effect within the preceding 12 months, and the basis upon which such relief was granted;
12. A statement specifying the method (either cancellation or nonrenewal) to be used for the withdrawal, with a certification that the withdrawal shall comply with the standards of N.J.A.C. 11:21-11.6; and
13. Any other information the Commissioner may deem relevant to the consideration of the request.

(d) A carrier asserting that the Department's review of its request be evaluated on a specific basis (that is, pre-pooled, post-pooled, consolidated, or unconsolidated), shall submit a written statement which sets forth the specific reasons, with supporting documentation, if any, for which it believes evaluation on a specific basis is appropriate to that carrier, and the specific reasons, with supporting documentation, if any, for which evaluation on other bases would be inappropriate.

(e) All requests to withdraw shall be accompanied by the following certification signed by the chief financial officer of the carrier: "I, (the signatory's name), hereby certify that the attached filing complies with all requirements set forth in N.J.A.C. 11:21-11.4 and that all of the information it contains is true and accurate. I further certify that I am authorized to execute this certification on behalf of (the Company name)."

(f) All requests to withdraw shall be accompanied by a non-refundable filing fee of \$1,000, unless the carrier is in rehabilitation or conservation at the time of filing pursuant to N.J.S.A. 17B:32-31 et seq. or such similar law of the carrier's state of domicile, and the submission includes a statement to that effect, and shall be filed with the Department at the following address:

SEH Program
Request to Withdraw Nonstandard Plans
Division of Financial Solvency
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625

(g) Carriers requesting to withdraw a nonstandard health benefits plan shall concurrently provide notice of the request to the SEH Program at the address specified at N.J.A.C. 11:21-1.3.

11:21-11.5 Review and approval of a request to withdraw

(a) The Department shall deny a request to withdraw if the request fails to substantially comply with the filing format and information requirements set forth in N.J.A.C. 11:21-11.4. The Department shall notify the carrier in writing that its request to withdraw is deficient on such grounds. The notice shall also set forth any information or other action required to cure the deficiency(ies). If the carrier intends to pursue its request to withdraw, the carrier shall submit the additional information specified or otherwise submit a filing in accordance with the format requirements specified in N.J.A.C. 11:21-11.4 within 15 days of receipt of the Department's notice of deficiency. Failure to submit within 15 days the required information shall result in the carrier's request being denied without prejudice.

(b) When the Commissioner determines pursuant to (c) below that the carrier is or would be placed in a financially impaired condition because of the requirement to continue servicing the

nonstandard health benefits plan(s) specified in the request to withdraw, the Commissioner shall notify the carrier in writing that it may withdraw the specified nonstandard health benefits plan(s), subject to the standards of N.J.A.C. 11:21-11.6.

(c) The Commissioner shall find that there is a substantial threat to a carrier's financial condition if:

1. The carrier has been placed in rehabilitation or conservation pursuant to N.J.S.A. 17B:32-31 et seq., or such similar law of the carrier's state of domicile;

2. The Commissioner finds that the carrier is in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27; or

3. The Commissioner finds that a denial of the request to withdraw the specified nonstandard plan(s) would place the carrier in a hazardous financial condition, as determined pursuant to N.J.A.C. 11:2-27.

(d) If the Commissioner denies a carrier's request to withdraw made pursuant to the provisions of N.J.A.C. 11:21-11.4, the carrier may request a hearing on the Commissioner's determination within seven days from the date of receipt of such determination as follows:

1. A request for a hearing shall be in writing and shall include:

i. The name, address, and daytime telephone number of a contact person familiar with the matter;

ii. A copy of the Commissioner's determination;

iii. A statement requesting a hearing; and

iv. A statement describing in detail the basis for which the carrier believes that the Commissioner's denial is erroneous.

2. The Commissioner may, after receipt of a properly completed request for a hearing, provide for an informal conference between the carrier and such personnel of the Department as the Commissioner may direct, to determine whether there are material issues of fact in dispute.

3. The Commissioner shall, within 30 days of a properly completed request for a hearing, determine whether the matter constitutes a contested case, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

i. In a matter which has been determined to be a contested case, if the Commissioner finds that there are no good-faith disputed issues of material fact and the matter may be decided on the documents filed, the Commissioner may notify the applicant in writing as to the final disposition on the matter.

ii. If the Commissioner finds that the matter constitutes a contested case, the Commissioner shall transmit the matter to the Office of Administrative Law for a hearing consistent with the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) All data or information contained in the request to withdraw shall be confidential and shall not be subject to public disclosure or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq., except for the following items which shall only be released upon written, specified request and following 10 days written notice by the Department to the carrier:

1. The cover letter naming the carrier and describing the request to withdraw;

2. The name, title, telephone number and telefax number of a person familiar with the filing;

3. The most recent financial examination report;

4. The list of members of holding company systems and intercompany transactions for the period preceding the date of the filing;

5. The annual statement filed immediately preceding the date of the filing; and

6. The non-refundable filing fee.

11:21-11.6 Standards for the process of withdrawal of a nonstandard health benefits plan either by cancellation or nonrenewal

(a) Carriers shall specify in their request to withdraw, as required by N.J.A.C. 11:21-11.4(c)12, whether they shall effect the withdrawal of the specified nonstandard health benefits plan(s), if the request is granted, through nonrenewal or cancellation of the policies, contracts or certificates issued under the nonstandard health benefits plan(s). A carrier shall effect its withdrawal through only one of the two methods.

(b) Carriers may elect to withdraw by nonrenewing policies, contracts or certificates at the time of the 12-month anniversary date of each such policy, contract or certificate, provided that:

1. Each policyholder, contractholder or certificateholder is given 60 days written notice prior to the date of the nonrenewal;

2. The notice specifies the reasons for the nonrenewal (that is, that withdrawal of the health benefits plan has been approved by the Commissioner pursuant to this subchapter);

3. The notice includes an offer to obtain coverage under the standard health benefits plans issued by the carrier if the policyholder, contractholder, or certificateholder is a small employer (unless the carrier has been granted relief by the Commissioner pursuant to 17B:27A-26) or specifies that coverage may be available under an individual health benefits plan if the policyholder, contractholder or certificateholder is not a small employer;

4. The notice contains the name, address and telephone number of the employee or agent of the carrier who may be contacted for assistance and information concerning the withdrawal;

5. Notice of the withdrawal is provided to the producer of record for each policy, contract or certificate within 60 days of the date that the request to withdraw is granted;

6. The withdrawal of the nonstandard health benefits plan shall be completed within 14 months of the date that the request to withdraw is granted; and

7. The nonstandard health benefits plan that is the subject of the request to withdraw shall not be offered by the carrier or through an association, multiple employer arrangement or out-of-State trust to any new small employer from the date that the request to withdraw is granted.

(c) A carrier may elect to withdraw by cancelling the policies, contracts or certificates issued under a nonstandard health benefits plans, provided that:

1. Each policyholder, contractholder or certificateholder is given no less than 60 days written notice prior to the date of the cancellation;

2. The notice specifies the reason for the cancellation;

3. The notice offers the opportunity to obtain coverage under the standard health benefits plans issued by the carrier if the policyholder, contractholder or certificateholder is a small employer (unless the carrier has been granted relief by the Commissioner pursuant to N.J.S.A. 17B:27A-26), or specifies that coverage may be available under an individual health benefits plan if the policyholder, contractholder or certificateholder is not a small employer;

4. The notice includes the name, address and telephone number of the employee or agent of the carrier who may be contacted for assistance and information regarding the withdrawal;

5. Notice of the withdrawal is provided to the producer of record for each policy, contract or certificate within 60 days of the date that the request to withdraw is granted;

6. The date of cancellation shall be uniform for all policyholders, contractholders and certificateholders under a nonstandard health benefits plan;

7. The date of cancellation of each nonstandard health benefits plan that is the subject of the request to withdraw shall be no later than six months following the date that the request to withdraw is granted; and

8. The nonstandard health benefits plan that is the subject of the request to withdraw shall not be offered to any new small employer by the carrier or through an association, multiple employer arrangement or out-of-State trust from the date that the request to withdraw is granted.

(d) At the time of the filing of the request to withdraw, a carrier shall specify which of the two methods it shall use, and shall include in the filing the notice that it will provide to its policyholders, contractholders, and certificateholders.

(e) At the time of the filing of the request to withdraw, the carrier shall specify the number of policies, contracts and certificates issued under each nonstandard health benefits plan that is the subject of the request to withdraw, the approximate number of lives covered

under each such nonstandard health benefits plan, and the approximate number of small employers covered under each such nonstandard health benefits plan.

11:21-11.7 Other policyholder rights unaffected

Nothing in this subchapter shall be construed to contravene any rights of policyholders concerning cancellation requirements or obligations set forth in a policy or contract of a health benefits plan that is the subject of a request to withdraw.

11:21-11.8 Informational filing of nonstandard health benefits plans

(a) A carrier shall submit a Certification of Prior Filing and Compliance with P.L. 1994, c.11, as set forth in Part 3 of Exhibit BB of the Appendix to this chapter, incorporated herein as part of this subchapter, for all nonstandard health benefits plans continued, renewed or reinstated pursuant to P.L. 1994, c.11, if the carrier has previously submitted the nonstandard health benefits plans to the Commissioner for filing and the nonstandard health benefits plans were so filed.

(b) A carrier shall submit a Certification of Informational Filing and Compliance with P.L. 1994, c.11, as set forth in Part 4 of Exhibit BB of the Appendix to this chapter, incorporated herein as part of this subchapter, for all nonstandard health benefits plans continued, renewed or reinstated pursuant to P.L. 1994, c.11, if those nonstandard health benefits plans were not previously submitted to the Commissioner for filing.

(c) A separate certification shall be submitted for each nonstandard health benefits plan no later than *[60 days following the effective date of this subchapter]* ***January 20, 1995*** if any policy, contract or certificate under the nonstandard health benefits plan was renewed in 1994 prior to *[the effective date of this subchapter]* ***November 21, 1994***, or no later than 30 days after the date that the first policy, contract, or certificate under the nonstandard health benefits plan shall be first renewed after the effective date of this subchapter, whichever date is earlier.

(d) A certification submitted pursuant to this section shall not be filed by the Commissioner until it is complete.

1. The Commissioner shall notify a carrier when a certification is determined by the Commissioner to be deficient, specifying the reasons therefor in writing.

2. The Commissioner shall determine a certification to be deficient if the certification in any way deviates from the forms as set forth in the Appendix, fails to provide answers to any of the questions contained therein, or the form fails to be certified by a duly authorized officer of the carrier. A certification shall continue to be considered deficient until the carrier submits information satisfactory to the Department to render the certification complete.

3. A carrier shall submit the information necessary to cure any deficiency(ies) or incompleteness specified within 30 days of the date of the notice, or shall become subject to fine.

(e) The completed certification shall include all amendments necessary to bring the nonstandard health benefits plan into compliance with N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11. The amendments shall include all necessary language changes, and shall clearly indicate (for ease of reference) all additions and deletions in language necessary for both the nonstandard health benefits plan and any riders and endorsements which may have been issued with or for the nonstandard health benefits plan.

11:21-11.9 Penalty and fines

(a) A carrier failing to obtain prior approval of a withdrawal of a nonstandard health benefits plan in accordance with this subchapter, or initiating a withdrawal of a nonstandard health benefits plan that fails to conform with the requirements of N.J.A.C. 11:21-11.6 shall be subject to penalties and fines as follows:

1. The carrier shall offer to reinstate any and all policyholders, contractholders and certificateholders under each nonstandard health benefits plan, including any riders or endorsements which may have attached thereto, that is the subject of a violation under this subchapter; and

2. The carrier shall incur and remain liable for, until paid in full, a fine of \$1,000 per each policyholder, contractholder or certificateholder nonrenewed or cancelled.

(b) A carrier failing to submit any completed certification required by N.J.A.C. 11:21-11.8 shall be subject to payment of a fine not less than \$2,000 nor more than \$5,000 per violation.

(c) Carriers assessed penalties or fines may request a hearing in accordance with N.J.A.C. 11:21-11.5(d).

SUBCHAPTER 14. DECLARATION AND APPROVAL OF REINSURING OR RISK-ASSUMING CARRIER STATUS

11:21-14.2 Definitions

(a) (No change.)

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

...

“Permissive election” means that election which carriers may make to be a risk-assuming carrier or reinsuring carrier, notwithstanding any previous affirmative or deemed election, pursuant to P.L. 1994, c.11, and as specified at N.J.A.C. 11:21-14.4(b). The “permissive election period” is that period which runs from *[the effective date of N.J.A.C. 11:21-7.15 until the 60th day thereafter]* ***July 15 through December 21, 1994***.

“Reinsuring carrier” means a small employer carrier issuing small employer health benefits plans on a guaranteed issue basis that has elected pursuant to N.J.S.A. 17B:27A-34 or P.L. 1994, c.11, §6 and this subchapter to be eligible for reimbursement of losses it may incur under those small employer health benefits plans as well as to be responsible for payment of assessments for reimbursable losses incurred by other reinsuring carriers.

...

“Risk-assuming carrier” means a small employer carrier issuing small employer health benefits plans that has elected and been approved by the Commissioner pursuant to N.J.S.A. 17B:27A-34 or P.L. 1994, c.11, §6 and this subchapter to cover risks on a guaranteed issue basis without being subject to assessments for net reimbursable losses of the SEH Program incurred by reinsuring carriers which total the first four percent or less of the aggregate premiums from health benefits plans issued by reinsuring carriers, and is not eligible for reimbursement of any losses it may incur under its small employer health benefits plans.

“Statutory election period” means the period of time specified at N.J.S.A. 17B:27A-35b, or P.L. 1994, c.11, §6 with respect to elections made pursuant thereto, for which an election to be a reinsuring carrier is binding. The initial “statutory election period” is that period in which carriers made their election on or before October 4, 1993, or within 30 days following the date that the Board submitted its Plan of Operation to the Commissioner, whichever date was later, which election shall be effective for two years. The secondary “statutory election period” is that period authorized by P.L. 1994, c.11, §6, in which carriers make their permissive election which election shall be effective for two years. Otherwise, the “statutory election period,” which shall be binding for five years, is that period that shall be applicable to any reinsuring carrier election made on or after the initial or secondary statutory election period.

11:21-14.4 Declaration to be a reinsuring or risk-assuming carrier

(a) (No change.)

(b) A small employer carrier may make a permissive election pursuant to this subsection, notwithstanding either an affirmative or deemed filing by that carrier pursuant to (a) above. A small employer carrier that makes a permissive election pursuant to this subsection shall file a declaration with the Board and the Commissioner on or before *[the 30th day following the effective date of this subsection]* ***December 21, 1994***, stating whether the small employer carrier elects to operate as a risk-assuming carrier or as a reinsuring carrier for purposes of compliance with the Program.

1. Any small employer carrier that is disapproved as a risk-assuming carrier pursuant to its permissive election shall be deemed to have elected to operate as a reinsuring carrier as of the close of the permissive election period under this subsection.

2. Any carrier that is determined by the Department to have been a small employer carrier as of the close of the permissive election period under this subsection, which was not a small employer carrier at the time that the election pursuant to (a) above was required to be made, and that has not made an election before the close of the permissive election period under this subsection, shall be deemed to have elected to operate as a reinsuring carrier as of the final date of the permissive election period under this subsection.

3. A small employer carrier that has either affirmatively filed or has been deemed to have filed pursuant to (a) above that fails to submit a separate filing during the permissive election period, pursuant to this subsection, shall continue to be considered by the Board and the Commissioner to have filed pursuant to (a) above.

4. The statutory election period for any affirmative or deemed permissive election shall be deemed to begin on January 1, 1994. Recodify existing (b) through (d) as (c) through (e) (No change in text.)

11:21-14.5 Application to be a risk-assuming carrier

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

(c) Every carrier filing for risk-assuming carrier status shall complete in full the Risk-Assuming Application Form set forth in Exhibit U, Part 3 of the Appendix to this chapter, incorporated herein by reference.

1.-2. (No change.)

3. The Risk-Assuming Application Form shall be supported by an actuarial opinion that the carrier's portfolio is of good and sufficient value, liquidity and diversity to assure the carrier's ability to meet its outstanding obligations as they mature. As an alternative, the carrier may submit an actuarial opinion that complies with the Model Actuarial Opinion and Memorandum Regulation adopted by the National Association of Insurance Commissioners (Volume IV, Page 822-1, available by calling (816) 374-7259). A carrier need not submit the actuarial memorandum specified by the Model Actuarial Opinion and Memorandum Regulation for purposes of this subchapter.

4.-5. (No change.)

(d)-(e) (No change.)

SUBCHAPTER 16. WITHDRAWALS OF SMALL EMPLOYER CARRIERS FROM THE SMALL EMPLOYER HEALTH BENEFITS PLANS MARKET

11:21-16.2 Definitions

Words and terms, when used in this subchapter, shall have the meanings set forth in the Act or at N.J.A.C. 11:21-1.3 unless defined below or unless the context clearly indicates otherwise:

"Affiliate" or "affiliated company" means a carrier that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the carrier that initiates a withdrawal.

"Cease doing business" for purposes of these rules means withdrawal or withdrawal.

"Nonstandard health benefits plan" means a health benefits plan policy or contract form under which policies, contracts or certificates were issued on or before December 31, 1993 to small employers or to one or more employees of a small employer by virtue of the employment arrangement.

"State" means the State of New Jersey.

"Withdraw" or "withdrawal" means the cancellation on a date certain or the termination on the anniversary date of all in force nonstandard health benefits plans or small employer health benefits plans, or both as appropriate, issued to small employers without offering replacement with a small employer health benefits plan (or a nonstandard health benefits plan, if offered through an association, multiple employer arrangement or out-of-State trust that continues to market its nonstandard health benefits plans pursuant to P.L. 1994, c.11), except where such action is taken pursuant to N.J.S.A. 17B:27A-23a through d, f and g or is approved by the Commissioner in accordance with N.J.A.C. 11:21-11.

11:21-16.3 General provisions

(a) (No change.)

(b) No small employer carrier shall cancel, nonrenew, or terminate any nonstandard health benefits plan prior to February 28, 1997, except in accordance with N.J.S.A. 17B:27A-23a through d, f and g, or upon prior approval of the Commissioner in accordance with N.J.A.C. 11:21-11, unless the small employer carrier withdraws from the small employer market in New Jersey in accordance with the provisions of this subchapter.

(c) (No change in text.)

(d) The notice of withdrawal to the Commissioner shall be sent to the attention of: SEH Withdrawal Notice, Division of Financial Solvency, New Jersey Department of Insurance, CN 325, Trenton, NJ 08625, and shall include an original and two copies of the following information:

1.-4. (No change.)

5. A statement specifying the date or dates upon which the small employer health benefits plans and nonstandard health benefits plans, as applicable, shall be terminated, specifying either:

i.-ii. (No change.)

6. The date upon which the carrier shall cease writing any new nonstandard health benefits plans (if through an association, multiple employer arrangement or out-of-State trust) or small employer health benefits plans, as applicable, which shall be no later than two months after the date the carrier has filed its notice with the Commissioner; and

7. A copy of the form of notice required pursuant to (f) below, which is to be mailed to each affected small employer.

(e) The Commissioner shall review the notice of withdrawal to determine whether it complies with (d) above and whether sufficient notice will be provided to policyholders. The Commissioner shall notify, in writing, the small employer carrier of any deficiencies and the requirements which are necessary to bring it into compliance with N.J.S.A. 17B:27A-23 and this subchapter.

1. A carrier which submitted a notice to the Commissioner pursuant to N.J.S.A. 17B:27A-23e prior to December 9, 1993 shall file the information requested in (d) above, no later than February 7, 1994.

i. Where the carrier complies with (e)1 above, the carrier's notice to the Commissioner shall relate back to the date of the carrier's original submission to the Commissioner. Notwithstanding the date of notice to the Commissioner, a carrier shall provide at least six months written notice to a small employer that its contract or policy shall be cancelled on a date certain or terminated on the anniversary date.

ii. Where a carrier fails to file the supplemental information as required by (e)1 above, the date of notice to the Commissioner shall be deemed to be the date upon which the carrier has filed with the Department all of the items set forth in (d) above. Dates for all other notices required by this subchapter shall be calculated from this new date.

2. A carrier which has submitted its notice of intent to withdraw prior to December 9, 1993 shall comply with the notice requirements set forth at (f), (g), (h) and (i) below, to which all other carriers must similarly comply, unless the Commissioner authorizes or specifies otherwise, to prevent undue hardship to either the carrier, the policyholders, or both.

Recodify existing (e) and (f) as (f) and (g) (No change in text.)

(i) Simultaneous with its notice to the Commissioner, a withdrawing small employer carrier shall submit a notice to the Board at the address specified at N.J.A.C. 11:21-1.2, which:

1.-3. (No change.)

(i) (No change in text.)

11:21-16.4 Restrictions on writings

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

(c) Any small employer carrier which withdraws from the small employer market shall cancel on a date certain or terminate on the anniversary date of all of its in force small employer health benefits plans and nonstandard health benefits plans in accordance with N.J.A.C. 11:21-16.3.

11:21-16.7 Revocation of a notice of intent to withdraw

(a) A carrier may revoke its notice of intent to withdraw, filed with the Commissioner pursuant to N.J.A.C. 11:21-16.3, prior to the date that its withdrawal is complete, by submitting a statement to the Department at the address specified at N.J.A.C. 11:21-16.3(d) and to the Board at the address specified at N.J.A.C. 11:21-1.2 revoking its notice of intent to withdraw. The revocation shall be signed by a duly authorized officer, and shall include the following:

- 1. A statement agreeing to reinstate any small employer that was cancelled, nonrenewed or terminated by the carrier pursuant to the provisions of N.J.S.A. 17B:27A-23e and this subchapter;
2. A statement agreeing that all policies and contracts under a nonstandard health benefits plans shall be brought into compliance with the provisions of N.J.S.A. 17B:27A-17 et seq., as required by P.L. 1994, c.11, no later than the first 12-month anniversary date of the policy or contract occurring after *[the sixtieth day following the effective date of N.J.A.C. 11:21-7.15]* *September 11, 1994*;
3. A statement agreeing that a carrier shall not issue directly a nonstandard health benefits plan to a small employer, and a statement agreeing that any nonstandard health benefits plan which continues to be offered for issue to small employers by or through an association, multiple employer arrangement or out-of-State trust shall be offered to all small employer members of the association, multiple employer arrangement or out-of-State trust; and
4. A statement agreeing that the carrier shall comply with the requirement to offer small employer health benefits plans in accordance with the provisions of N.J.S.A. 17B:27A-17 et seq.

EXHIBIT U

PART 1

REINSURING CARRIER DECLARATION

(To be submitted to the SEH Program Board and the New Jersey Department of Insurance, Division of Financial Examinations, 20 West State Street, CN-325, Trenton, New Jersey 08625-0325, Attn: SEH Declaration.)

(Carrier Name) elects to operate as a reinsuring carrier for purposes of complying with the Small Employer Health Benefits Program established pursuant to N.J.S.A. 17B:27A-17 et seq. In accordance with N.J.S.A. 17B:27A-35 and P.L. 1994, c.11, s.6, this election shall be binding:

- a. for two calendar years from January 1, 1994 if this election is made, or deemed to have been made, prior to October 5, 1993, or within 30 days of the date the SEH Board submitted its Plan of Operation to the Commissioner, whichever date is later, and this election has not been effectively revoked by submission of a Risk-Assuming Carrier Declaration and Application to the Department of Insurance on or before *[the 60th day following the effective date of N.J.A.C 11:21-7.15, as provided for at N.J.A.C. 11:21-14.4(b)]* *December 21, 1994*, or
b. for two calendar years from January 1, 1994 if this election is made, or deemed to have been made, on or before *[the 60th day following the effective date of N.J.A.C. 11:21-7.15, as provided for at N.J.A.C. 11:21-14.4(b)]* *December 21, 1994*, or
c. if this election is made after *[the 60th day following the effective date of N.J.A.C. 11:21-7.15, as provided for at N.J.A.C. 11:21-14.4(b)]* *December 21, 1994*, for five calendar years from January 1 of the calendar year in which this election is made, if made on or before June 30 of the calendar year, or for five years from January 1 of the calendar year following the year in which this election is made, if the election is made subsequent to June 30 in a calendar year.

PART 3

RISK-ASSUMING CARRIER APPLICATION

(Submit to: SEH Declaration/Approval, NJ Department of Insurance, Division of Financial Examinations, 20 West State Street, Trenton, NJ 08625-0325.)

SECTION B (to be completed by all applicants)

- 1.-2. (No change.)
3. Is an actuarial opinion attached? Yes ___ No ___
4. (No change.)

SECTION C (to be completed by all applicants)

Is any of the information contained in this application and/or attachments based upon data from one or more carriers other than the carrier(s) listed in Section A2 above?

Yes ___ No ___

If yes, please indicate the specific information based upon other carrier data.

- ___ a. Actuarial opinion
___ b. Experience data
___ c. Other

If yes, please indicate the carrier(s) and their NAIC numbers, if applicable, whose data has been included in the information submitted (Attach additional pages if necessary, and place a checkmark here: ___ .)

Blank lines for carrier information.

EXHIBIT BB

PART 1

CERTIFICATION OF COMPLIANCE WITH SMALL EMPLOYER HEALTH BENEFITS PLANS

In accordance with N.J.A.C. 11:21-4.2, submit this form in triplicate to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and to the New Jersey Department of Insurance as follows: Attn: SEH Form Certification of Compliance, Division of Life and Health Actuarial Services, N.J. Department of Insurance, 20 West State Street, CN-325, Trenton, NJ 08625-0325.

- 1.-4. (No change.)

PART 3

CERTIFICATION OF PRIOR FILING AND COMPLIANCE WITH P.L. 1994, C.11

In accordance with N.J.A.C. 11:21-11.8(a), submit this form *[in triplicate]* to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and *in triplicate* to the New Jersey Department of Insurance as follows: Attn: Nonstandard Plan Compliance (SEH), Division of Life and Health Actuarial Services, N.J. Department of Insurance, 20 West State Street, CN-325, Trenton, NJ 08625-0325.

1. INFORMATION ABOUT THE CARRIER AND RESPONDENT

Carrier's Name:
NAIC #:
Respondent's Name:
Respondent's Title:
Respondent's Address:
Respondent's Phone: FAX:

INSURANCE

ADOPTIONS

2. NONSTANDARD HEALTH BENEFITS PLAN INFORMATION
(Submit the requested information with respect to one nonstandard health benefits plan form only. Use "NA" to indicate when a question or request is not applicable.)

- a. Form identification number: _____
- b. Form's market name: _____
- c. Date filed (approved) by the Commissioner: _____
- d. Specify which of the following have been approved with respect to this form, providing the most recent date that an approval was received for each:
 Form amendment: _____
 Rider form: _____
 Endorsement form: _____
- e. Has this nonstandard health benefits plan been marketed and sold by or through an association, multiple employer arrangement and/or out-of-state trust?
 _____ Yes _____ No

If yes, please specify the name(s) of the association, multiple employer arrangement and out-of-state trust and the number of policyholders or certificateholders constituting groups of 49 or fewer lives (including single lives) in each association, multiple employer arrangement or out-of-state trust:

____ Check here if additional pages are attached.

- f. If marketed and sold through an association, multiple employer arrangement and/or out-of-state trust, will this nonstandard health benefits plan continue to be marketed and sold to new small employer members of the association, multiple employer arrangement and/or out-of-state trust?
 _____ Yes _____ No _____ NA
- g. If marketed and sold through an association, multiple employer arrangement and/or out-of-state trust, is this the only manner by which this nonstandard health benefits plan is sold and marketed?
 _____ Yes _____ No _____ NA

If no, does the carrier market and sell the nonstandard health benefits plan through:

- Agent force: _____ Yes _____ No
- Direct sale: _____ Yes _____ No

- h. Specify the number of policies, contracts or certificates in force under this form by anniversary date (by month):
 January: _____ July: _____
 February: _____ August: _____
 March: _____ September: _____
 April: _____ October: _____
 May: _____ November: _____
 June: _____ December: _____

3. Attach the amendments made to the nonstandard health benefits plan that are necessary to comply with the provisions of N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11, and rules promulgated thereunder, specifically N.J.A.C. 11:21-3A.

4. CERTIFICATION

I, the undersigned, certify that this completed form, including additional pages attached hereto and incorporated herein, is true and accurate, and that I am an officer of the carrier duly authorized to submit this certification.

I certify that, in accordance with P.L. 1994, c.11, policies, contracts or certificates issued or renewed under this nonstandard health benefits plan have been and shall be brought into compliance with N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11, on their respective first anniversary dates occurring after *[the sixtieth day following the effective date of N.J.A.C. 11:21-7.15]* ***September 11, 1994***, and further, that in no instance shall any policies, contracts or certificates issued or renewed under this nonstandard health benefits plan fail to be in compliance as specified at P.L. 1994, c.11 any later than *[the 425th day following the effective date of N.J.A.C. 11:21-7.15]* ***September 11, 1995***.

I certify that, in accordance with N.J.A.C. 11:21-3A, no policy, contract or certificate shall be issued or renewed under this nonstandard health benefits plan through or by any associations, multiple employer arrangement or out-of-state trust after February 28, 1996.

I certify that, in accordance with N.J.A.C. 11:21-3A, no policy, contract or certificate reinstated, continued or renewed under this nonstandard health benefit plan by (Carrier's name) shall be renewed after February 28, 1996.

| | |
|-------|-----------|
| _____ | _____ |
| Date | Signature |
| | _____ |
| | Title |

PART 4

CERTIFICATION OF INFORMATIONAL FILING AND COMPLIANCE WITH P.L. 1994, C.11

In accordance with N.J.A.C. 11:21-11.8(b), submit this form *[in triplicate]* to the SEH Board at the address specified at N.J.A.C. 11:21-1.3 and ***in triplicate*** to the New Jersey Department of Insurance as follows: Attn: Nonstandard Plan Compliance (SEH), Division of Life and Health Actuarial Services, N.J. Department of Insurance, 20 West State Street, CN-325, Trenton, NJ 08625-0325.

1. INFORMATION ABOUT THE CARRIER AND RESPONDENT

- Carrier's Name: _____
- NAIC #: _____
- Respondent's Name: _____
- Respondent's Title: _____
- Respondent's Address: _____

- Respondent's Phone: _____ FAX: _____

2. NONSTANDARD HEALTH BENEFITS PLAN INFORMATION
(Submit the requested information with respect to one nonstandard health benefits plan form only. Use "NA" to indicate when a question or request is not applicable.)

- a. Form identification number: _____
- b. Form's market name: _____
- c. Specify the reason(s) why this nonstandard health benefits plan was not submitted to the Department for filing prior to April 4, 1994:

____ Check here if additional pages are attached.

- d. Has this nonstandard health benefits plan been marketed and sold by or through an association, multiple employer arrangement and/or out-of-state trust?
 _____ Yes _____ No

If yes, please specify the name(s) of the association, multiple employer arrangement and out-of-state trust and the number of policyholders or certificateholders constituting groups of 49

or fewer lives (including single lives) in each association, multiple employer arrangement or out-of-state trust:

___ Check here if additional pages are attached.

e. If marketed and sold through an association, multiple employer arrangement and/or out-of-state trust, will this nonstandard health benefits plan continue to be marketed and sold to new small employer members of the association, multiple employer arrangement and/or out-of-state trust?

___ Yes ___ No ___ NA

If yes, specify the final date that policies, contracts or certificates will be issued under this nonstandard health benefits plan:

f. If marketed and sold through an association, multiple employer arrangement and/or out-of-state trust, is this the only manner by which this nonstandard health benefits plan is sold and marketed?

___ Yes ___ No ___ NA

If no, does the carrier market and sell the nonstandard health benefits plan through:

Agent force: ___ Yes ___ No

Direct sale: ___ Yes ___ No

g. Specify the number of policies, contracts or certificates in force under this form by anniversary date (by month):

January: _____ July: _____

February: _____ August: _____

March: _____ September: _____

April: _____ October: _____

May: _____ November: _____

June: _____ December: _____

3. Attach the amendments made to the nonstandard health benefits plan that are necessary to comply with the provisions of N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11, and rules promulgated thereunder.

4. CERTIFICATION

I, the undersigned, certify that this completed form, including additional pages attached hereto and incorporated herein, is true and accurate, and that I am an officer of the carrier duly authorized to submit this certification.

I certify that, in accordance with P.L. 1994, c.11, policies, contracts or certificates issued or renewed under this nonstandard health benefits plan have been and shall be brought into compliance with N.J.S.A. 17B:27A-17 et seq. as required by P.L. 1994, c.11, on their respective first anniversary dates occurring after *[the sixtieth day following the effective date of N.J.A.C. 11:21-7.15]* *September 11, 1994*, and further, that in no instance shall any policies, contracts or certificates issued or renewed under this nonstandard health benefits plan fail to be in compliance as specified at P.L. 1994, c.11 any later than *[the 425th day following the effective date of N.J.A.C. 11:21-7.15]* *September 11, 1995*.

I certify that, in accordance with N.J.A.C. 11:21-3A, no policy, contract or certificate shall be issued or renewed under this nonstandard health benefits plan through or by any association, multiple employer arrangement or out-of-state trust after February 28, 1996.

I certify that, in accordance with N.J.A.C. 11:21-3A, no policy, contract or certificate reinstated, continued or renewed under this nonstandard

health benefits plan by (Carrier's name) shall be renewed after February 28, 1996.

Date Signature

Title

(a)

NEW JERSEY SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Definitions; Carriers Acting As Administrators for Small Employers; Non-member Status

Adopted Amendments: N.J.A.C. 11:21-1.2, 7.4, and 8.3

Proposed: September 28, 1994 in accordance with N.J.S.A.

17B:27A-51, at 26 N.J.R. 4308(a).

Adopted: October 26, 1994, by the New Jersey Small Employer Health Benefits Program Board, Maureen E. Lopes, Chair.

Filed: October 27, 1994 as R.1994 d.583, without change.

Authority: N.J.S.A. 17B:27A-17 et seq., as amended by N.J.S.A. 17B:27A-51, P.L.1994, c.11, and P.L.1994, c.97.

Effective Date: October 27, 1994.

Expiration Date: October 15, 1998.

Summary of Public Comments and Agency Responses:

The Small Employer Health Benefits Program ("SEH") Board received comments from two carriers in response to the proposed amendments. No comments were received concerning the proposed amendments to N.J.A.C. 11:21-8.3 regarding non-member certification.

These rules are being adopted pursuant to N.J.S.A. 17B:27A-51, a special procedure whereby the SEH Board may adopt its intended action immediately upon the close of the specified comment period by submitting the adopted action to the OAL. Pursuant to this special procedure, the Board is required to respond to the comments timely submitted within a reasonable period of time thereafter. The SEH Board reviewed the comments received and considered them before adopting the proposal.

The SEH Board will prepare a report for public distribution, and publication by the OAL in the New Jersey Register. The report will include the list of commenters, their relevant comments and the SEH Board's responses. Due to the expedited nature of this process, this rule amendment is adopted before publication of that report in the New Jersey Register.

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 services 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. For purposes of this Act, "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. Hospital confinement or other supplemental limited benefit insurance coverage;
11. 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
12. Stop loss or excess risk insurance with per person retention limits of no less than \$25,000 per year and/or aggregate retention limits of no less than 125 percent of expected claims per year.

...
 "Stop loss or excess risk insurance" means insurance designed to reimburse a self-funded arrangement of one or more small employers for catastrophic and unexpected expenses exceeding specified per person retention limits and/or aggregate retention limits, wherein neither the employees nor other individuals are third party beneficiaries under the policy, contract or plan.

11:21-7.4 Carriers acting as administrators for small employers

(a) A small employer carrier may act as administrator for a small employer's self-funded plan and shall not be considered to be acting in circumvention of N.J.S.A. 17B:27A-17 et seq. if the small employer's self-funded plan meets the definition of an employee welfare benefit plan at 29 U.S.C. 1002(1) and is not a multiple employer welfare arrangement, in whole or in part, as defined at 29 U.S.C. 1002(40).

(b) A small employer carrier may act as administrator for a self-funded plan for a group of small employers and shall not be considered to be acting in circumvention of N.J.S.A. 17B:27A-17 et seq., if the group of small employers meets the requirements of 29 U.S.C. 1002(40)(B), establishing the criteria of what constitutes a control group single employer for the purposes of the federal Employee Retirement Income Security Act.

11:21-8.3 Non-member status

(a) (No change.)

(b) A request for non-member certification shall state that:

1. The carrier or entity neither issued nor had in force a group health benefits plan covering New Jersey small employers during the calendar year for which certification is submitted;
2. The carrier:
 - i. Has issued only one group health insurance policy in New Jersey;
 - ii. Issued the policy exclusively to the members of an association, as defined and authorized by N.J.S.A. 17B:27-27, 28 or 29, or N.J.S.A. 17B:27-8;
 - iii. Issued the policy on or before November 30, 1992;
 - iv. Issued the policy in the name of the association; and
 - v. Currently insures under the policy more than 49 certificateholders who are members of the association; or
3. Other reasons which under law permit a carrier or entity to be certified a non-member.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Carnival-Amusement Rides Inspection and Permit Fees

Adopted Amendment: N.J.A.C. 12:195-1.9

Proposed: September 6, 1994 at 26 N.J.R. 3594(a).

Adopted: October 27, 1994 by Peter J. Calderone, Commissioner, Department of Labor.

Filed: October 27, 1994 as R.1994 d.581, **without change**.

Authority: N.J.S.A. 5:3-31 et seq.

Effective Date: November 21, 1994.

Expiration Date: June 14, 1998.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed amendment was held on September 28, 1994 at the Department of Labor, John Fitch Plaza, Trenton, New Jersey. Deirdre L. Webster, Regulatory Officer, presided at the hearing and received testimony. She responded to certain statements made during the course of testimony and recommended that the amendment be adopted as proposed. The public hearing record may be reviewed by contacting Deirdre L. Webster, Regulatory Officer, Regulatory Services, Office of the Commissioner, Department of Labor, CN 110, Trenton, NJ 08625-0110.

Summary of Public Comments and Agency Responses:

It is noted that the adopted amendment is one of three alternative carnival-amusement ride inspection and permit fee structures proposed by the Department. Initially, the Department proposed two alternative fee structures at 26 N.J.R. 2520(a) based on the amount of time required to inspect carnival-amusement rides and whether the carnival-amusement ride owner's facility is traveling or permanent. Substantial public comments were received in opposition to these alternatives as well as the proposed 90 day application deadline. Specifically, both alternatives were criticized for being arbitrary and excessive resulting in an undue hardship on the carnival-amusement ride industry. The carnival-amusement industry also asserted that both alternatives would cause substantial cost increases for both traveling and permanent carnival-amusement facilities which would result in prohibiting certain carnival-amusement operators from staying in business. The fee alternative based on the amount of time required to inspect carnival-amusement rides was criticized for being discriminatory, confusing and controversial since it did not clearly delineate how the Department determined which ride falls in what category. The fee alternative based on whether the carnival-amusement ride owner's facility is traveling or permanent was opposed because it discriminated against traveling carnivals by charging them a higher fee due to the frequency of inspection. The initial alternatives were also opposed due to the 90 day application deadline which the industry argued would result in unnecessary insurance and bonding costs. In addition, the 90 day application deadline did not consider delays in ride delivery, ride acquisition dates, or substitution of rides that breakdown and need replacement. Upon careful review of these comments and recommendations received from the carnival-amusement industry, the Department proposed a third alternative which charged a fixed fee based on the type of ride inspected. This third alternative is being adopted as proposed at this time with the unanimous support of the members of the Advisory Board on Carnival-Amusement Rides.

Written and oral comments were received from: Edmund J. Florimont, President/CEO, Fantasy Island Amusement Park; Bill Costagliola, Safety Director, Amusements of America; Clark Doran, Director, Planning and Development, Morey Development Corporation; Jerry Chirichella, Member, Outdoor Amusement Business Association, Inc.; Wayne Inners, CEO/President, Inners Amusement Company, Inc. aka Majestic Midways; John M. Tolve, President, Tolve Presentations, Inc.; Albert J. Reid, Vice President, Grandal Enterprises, Inc., t/a Keansburg Amusement Park and Pier; Helen J. Hooker, Executive Director, NJ Amusement Association; Steven Nickel, Nickels Midway Pier; William J. Erwin, Casino Pier and Waterworks; Bill Benneyan, General Manager, Action

ADOPTIONS

Park; Ronald Cook, Cook Amusements; and Dominick Vivona, Amusements of America.

COMMENT: The doubling of inspection and permit fees for the second time since 1991 will pose an undue hardship on the small business owner, especially traveling carnivals.

RESPONSE: In accordance with the Carnival-Amusement Rides Safety Act, the Department must periodically adjust the schedule of inspection and permit fees in order to recoup costs directly associated with the carnival-amusement rides inspection program.

COMMENT: The proposed new inspection and permit fees may be more acceptable if the fees are applied to the growth of the Department's ride inspection program.

RESPONSE: The proposed new inspection and permit fees will be applied directly to support the carnival-amusement rides inspection program.

COMMENT: Guidelines must be established to define and distinguish between a "major ride" and a "super ride."

RESPONSE: Currently, there are no carnival-amusement rides operated by permanent or traveling carnivals in New Jersey which the Department categorizes as a "super ride." The Department will establish a definition distinguishing between a "major ride" and a "super ride" when a carnival-amusement ride owner proposes to operate a ride in New Jersey which it determines should be categorized as a "super ride."

COMMENT: The inspection and permit fees increase should be implemented gradually over several years so as not to impose an undue hardship on carnival-amusement ride owners. Specifically, a four year stepped plan providing for a 25 percent increase annually should be adopted.

RESPONSE: The Department has been operating the carnival-amusement ride inspection program in a deficit since at least 1992. In order to prevent further erosion of this program, it is necessary to impose this new fee schedule to enable the Department to maintain the inspection force at its current level.

COMMENT: The proposed application deadline provision should include a provision for emergency situations.

RESPONSE: The adopted amendment provides for additional rides once operations have commenced provided that 72 hours advanced notice is received by the Department.

COMMENT: The application deadline should be changed from the first of the year to the beginning of the carnival-amusement season, that is, May. This will ensure that carnival-amusement ride owners have income to meet the cost of inspection and permits and prevent delays in submitting applications.

RESPONSE: A small but growing percentage of the carnival-amusement industry's season begins on or about the first of the year with some owners continuing to operate on a yearly basis. The Department of Labor must maintain the application submission requirements as it has been currently proposed to best serve the carnival-amusement industry in its entirety.

COMMENT: The Department of Labor should move toward full regulations of carnival-amusement industry and eliminate numerous inspections from local government officials. This is especially important since local governments also charge inspection and permit fees and therefore further increase the financial burden on the industry.

RESPONSE: The Department's jurisdiction over carnival-amusement rides and its components is consistent with statutory mandates. Such jurisdiction may only be extended through statutory amendment.

Full text of the adoption follows:

12:195-1.9 Inspection fee and permit

(a) Thirty days before commencing operations and in each year thereafter, an owner shall apply for a permit with an application form furnished by the Division and containing such information as the Division may require. The application shall be accompanied by a certificate of insurance, bond, or other security indicating that the owner has complied with N.J.A.C. 12:195-1.14.

(b) After commencing operations, 72 hours advance notice must be received by the Division before any additional rides or "book-ons" are placed in operation.

(c) (No change in text.)

(d) (No change in text.)

(e) Once an application for a permit has been approved, the appropriate officials of the Division of Workplace Standards shall

LAW AND PUBLIC SAFETY

inspect the amusement ride for which an annual fee shall be charged at the rate of \$300.00 for each super ride, \$200.00 for each major ride and \$100.00 for each kiddie ride.

Recodify (e)-(i) as (f)-(j) (No change in text.)

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Direct Loan Program

Allocation of Direct Loan Assistance

Adopted New Rules: N.J.A.C. 12A:31-1.4

Proposed: December 20, 1993 at 25 N.J.R. 5759(a) (see also 26 N.J.R. 1434(a).

Adopted: September 20, 1994 by New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Bryan K. Finnie, Secretary.

Filed: October 19, 1994 as R.1994 d.565, **without change.**

Authority: N.J.S.A. 34:1B et seq., specifically 34:1B-5(l).

Effective Date: November 21, 1994.

Expiration Date: July 16, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

12A:31-1.4 Allocation of direct loan assistance

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

(e) The interest rate on direct loans shall be equal to 100 basis points above two-thirds of the average rate of Moody's "A" Rated Utility Index for bonds available for purchase during the last 26 weeks preceding the date of loan closing, with a minimum of five percent.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Equipment for Emergency Vehicles and Other Specified Vehicles

Redoption: N.J.A.C. 13:24

Proposed: July 18, 1994 at 26 N.J.R. 2865(a).

Adopted: September 21, 1994 by C. Richard Kamin, Director, Division of Motor Vehicles.

Filed: September 26, 1994 as R.1994 d.533, **without change.**

Authority: N.J.S.A. 39:2-3, 39:3-43, 39:3-50, 39:3-54, 39:3-54.7 et seq. and 39:3-69.

Effective Date: September 26, 1994.

Expiration Date: September 26, 1999.

Opportunity to be heard with regard to the proposal was invited via notice published in the July 18, 1994 New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal.

Three commenters forwarded comments to the Division of Motor Vehicles regarding the proposal prior to the close of the comment period. These commenters were: Joseph A. Higgins, Jr., Emergency Management Coordinator, Borough of Woodcliff Lake and Training Officer, Woodcliff Lake Volunteer Fire Department; Ken Koenitzer, Legislative Chairperson, New Jersey State First Aid Council; and Bruce Wingate.

One additional commenter, Raymond N. Sweeney, Jr., forwarded comments to the Division of Motor Vehicles which were postmarked after the close of the comment period. Comments forwarded to the Division after the close of the comment period were not considered by the Division. However, any of the issues discussed by the late commenter which were also discussed by other commenters with regard to the proposal have been taken into consideration by the Division in that context. The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 225 East State Street, 9th Floor, Trenton, New Jersey 08666.

Commenter Higgins offered input which is summarized below, together with the Division's response.

COMMENT: The rules should be amended to permit emergency vehicles to display blue emergency warning lights to the rear. The use of such blue lights is safest on high speed roads since red emergency warning lights may get lost among red brake lights, tail lights and turn signals. The Division's position in the past has been that it would consider this request only if a scientific study is presented which backs up such a use of blue lights. A study which supports the use of such blue lights ("Blue Light Study," Department of California Highway Patrol, April, 1973) is being furnished to the Division by the commenter. The study will confirm that the use of such blue lights by emergency vehicles is safer, especially on high speed roads. The Division's present rules reduce the safety of emergency personnel in the field.

RESPONSE: The Division perceives that the commenter is in favor of allowing vehicles defined as "authorized emergency vehicles" (for example, fire department vehicles, police vehicles, ambulances, etc.) to display and use blue emergency warning lights in addition to red emergency warning lights. The commenter is accurate in indicating that the Division has previously considered this issue and has refrained from amending its rules to permit such red and blue light usage by authorized emergency vehicles in the absence of being furnished with study or test results which establish that the use of such a combination of multi-colored lights is superior to the use of only red lights with regard to driver recognition of such emergency vehicles. However, since the Division is concerned with the safety of both emergency vehicle personnel and the motoring public, the Division has also previously indicated that it remains open to reconsideration of this issue. The study supplied to the Division by the commenter ("Blue Light Study," Department of California Highway Patrol, April, 1973) concluded that a red strobe light was the most visible during daylight and had the greatest effect in reducing the speed of passing traffic in daylight, while a blue strobe light was the most visible in darkness and had the greatest effect in reducing the speed of passing traffic during darkness. Upon consideration of the study submitted by the commenter, the Division concludes that this subject merits serious consideration. The Division has formed a committee to review N.J.A.C. 13:24 and to suggest appropriate changes to those rules. The committee will consider the merit of the regulatory change suggested by the commenter, as well as the study submitted by him, and will welcome any additional input which the commenter wishes to offer concerning this subject.

Commenter Koenitzer offered input which is summarized below, together with the Division's responses.

COMMENT: The Division should change N.J.A.C. 13:24-2.5(a)3 so that more than two permits authorizing the use of red emergency warning lights and/or sirens may be issued to a volunteer first aid or rescue squad. More than two such permits per squad are necessary since, in light of the current shortage of volunteers, the two vehicles being used as the responding vehicles are often out of the local area because the drivers have driven them to work. The commenter notes that his organization supports New Jersey Assembly Bill 665 (A-665), which touches upon the concern raised in this comment.

RESPONSE: N.J.A.C. 13:24-2.5(a)3 provides that no more than two red light permits may be issued to any one volunteer first aid or rescue squad for vehicles owned by, or leased by or for, a captain or principal assistant of such squad. However, an unlimited number of EMS personnel in each volunteer first aid or rescue squad may obtain blue light permits provided they comply with N.J.A.C. 13:24-5, thus ensuring that more than two EMS responding vehicles per squad are eligible to display emergency warning lights (two equipped with red lights, the remainder equipped with blue lights). Accordingly, the Division does not agree that additional red light permits must be made available to EMS squads. It should be noted that volunteer fire companies and police departments are likewise restricted to no more than two red light permits per company or department. See N.J.A.C. 13:24-2.5(a)1 and 2. A bill currently pending

before the New Jersey Legislature, A-665, would nullify the Division's per squad red light permit numerical limitation set forth in N.J.A.C. 13:24-2.5(a)3. In the event A-665 is enacted into law, the Division will review N.J.A.C. 13:24-2.5 and propose any amendments necessary to bring the rule into conformity with all applicable statutes.

COMMENT: Fire service personnel have more options as to where to mount red emergency warning lights on their vehicles pursuant to N.J.A.C. 13:24-2.8(c) than do EMS personnel pursuant to N.J.A.C. 13:24-2.8(e). EMS personnel should be given the same options as fire service personnel as to where to mount such lights since both provide equal emergency services.

RESPONSE: The Division perceives that EMS personnel have more options with regard to this subject than do fire service personnel. The mounting of red emergency warning lights on vehicles owned by a chief or first assistant chief of a volunteer fire company is governed by N.J.S.A. 39:3-54.16, and the Division's rule regarding this subject (N.J.A.C. 13:24-2.8(c)) simply reflects the mounting requirements imposed by the aforementioned statute. However, since the mounting of red emergency warning lights on vehicles owned by, or leased by or for, a captain or principal assistant of a volunteer first aid or rescue squad is not regulated by the aforementioned statute or by any other statutory provision, the Division's applicable rule (N.J.A.C. 13:24-2.8(e)) allows such EMS officials greater latitude with regard to where such a red light may be mounted on the vehicle, prohibiting only the mounting of such a light on the vehicle's interior front dashboard or in place of the vehicle's regular headlights. Since a captain or principal assistant of a volunteer first aid or rescue squad has more options with regard to the mounting of a red emergency warning light than a chief or first assistant chief of a volunteer fire company, the Division discerns no need to amend N.J.A.C. 13:24-2.8(e) with regard to the subject of red light mounting by such EMS personnel.

COMMENT: Fire service personnel are required to follow different rules regarding the mounting of sirens on their vehicles pursuant to N.J.A.C. 13:24-2.9(b) than EMS personnel pursuant to the same subsection. EMS personnel should have the same options for vehicle siren mounting as fire service personnel.

RESPONSE: The only mounting of sirens permitted on vehicles owned by a chief or first assistant chief of a volunteer fire company pursuant to N.J.S.A. 39:3-54.17 is under the hood of the motor vehicle, and that is the only mounting of sirens on such vehicles permitted by N.J.A.C. 13:24-2.9(b)1, which reflects the requirements of the aforementioned statute. However, since the mounting of sirens on vehicles owned by, or leased by or for, a captain or principal assistant of a volunteer first aid or rescue squad is not regulated by the aforementioned statute or by any other statutory provision, the Division's rule (N.J.A.C. 13:24-2.9(b)1) allows such EMS officials to mount a siren either under the hood of the motor vehicle or on the center of the roof of the vehicle for use while responding an emergency call provided it is removed at the conclusion of the emergency. Since a captain or principal assistant of a volunteer first aid or rescue squad has more options with regard to the mounting of sirens than a chief or first assistant chief of a volunteer fire company, the Division discerns no need to amend N.J.A.C. 13:24-2.9(b)1 with regard to the subject of siren mounting by such EMS personnel.

COMMENT: With regard to N.J.A.C. 13:24-5.2(b), many police department chiefs would prefer that blue emergency warning light permits be issued to volunteer firefighters through the chief of the police department rather than by the mayor of the municipality being served by the volunteer fire company.

RESPONSE: With regard to the issuance of blue light permits, N.J.S.A. 39:3-54.11 mandates that such permits are to be issued by the mayor or chief executive officer of a municipality recognizing and being served by a volunteer fire company or a volunteer first aid or rescue squad. Since the issuance of blue light permits is governed by N.J.S.A. 39:3-54.11, the Division's regulation providing for the issuance of such permits by the mayor or chief executive officer (N.J.A.C. 13:24-5.2) simply reflects the statutorily mandated permit issuance procedure. Therefore, the Division cannot change its rules regarding the issuance of blue light permits because such a change would be contrary to the statutorily mandated permit issuance procedure.

COMMENT: Please refer to New Jersey Assembly Bill 646 (A-646) as it relates to N.J.A.C. 13:24-5.1(a).

RESPONSE: A-646, a bill currently pending before the New Jersey Legislature, would allow an active member in good standing of a volunteer fire company or a volunteer first aid or rescue squad to obtain a

permit authorizing the display of blue emergency warning lights on any motor vehicle driven by him. This bill, if enacted into law, would mark a significant departure from current law, codified at N.J.S.A. 39:3-54.7, which restricts the display of such lights to a motor vehicle owned by the volunteer firefighter or first aider or by a member of his household. The Division's rule at N.J.A.C. 13:24-5.1(a) accurately reflects the current statutory requirement as to the display of blue lights by a volunteer firefighter or first aider. In the event A-646 is enacted into law, the Division will review N.J.A.C. 13:24-5 and propose any amendments necessary to bring said rules into conformity with all applicable statutes.

COMMENT: The commenter understands that the Division will be sending out a survey to EMS squads requesting input for future changes in the siren and lighting regulations.

RESPONSE: The Division will not be sending out such a survey to individual EMS squads. However, the Division has formed a committee to review the rules set forth in N.J.A.C. 13:24 and to suggest appropriate changes to those rules. EMS representatives will be included as members of the committee.

COMMENT: The use of flashing headlamps by police agencies is a problem, yet the practice continues.

RESPONSE: The Division has not been supplied with sufficient information to respond to this comment. The commenter indicates that the use of flashing headlights constitutes a "problem", but the Division is unclear as to the nature of the perceived problem. As noted previously, the Division has formed a committee to review N.J.A.C. 13:24 and to recommend any changes to those rules which it deems necessary. The committee will welcome any input which the commenter wishes to submit which clarifies the nature of the perceived problem.

COMMENT: Enforcement of the rules set forth in N.J.A.C. 13:24 is lacking.

RESPONSE: On-the-road enforcement of this State's motor vehicle laws is within the purview of State, county and local police. The commenter's organization may wish to contact those police agencies to express its concern that the rules codified at N.J.A.C. 13:24 are not being properly enforced.

COMMENT: An item that should be looked into as soon as possible is the rule setting forth the 51 candlepower requirement for blue emergency warning lights (N.J.A.C. 13:24-5.4(c)). The number is confusing; how can it be enforced?

RESPONSE: With regard to the maximum allowable candlepower for blue lights, N.J.S.A. 39:3-54.9 mandates in relevant part that such lights be equipped with "a blue lens and a lamp of not more than 51 candlepower . . ." Since the maximum permissible candlepower of blue lights is governed by N.J.S.A. 39:3-54.9, the Division's regulation regarding this subject (N.J.A.C. 13:24-5.4(c)) simply reflects the statutorily mandated maximum permissible candlepower for such lights. Therefore, the Division cannot change its rule regarding this subject because such a change would be contrary to the statutory provision governing the maximum permissible candlepower of blue lights.

Commenter Wingate offered input which is summarized below, together with the Division's response.

COMMENT: The definition of "authorized emergency vehicle" in the rules should be amended to include "fire official" and "fire inspector" as those terms are defined in the New Jersey Uniform Fire Code, N.J.A.C. 5:18-1.5, since such persons can also respond to emergencies. Vehicles used by some fire officials may not be under the direct control of a fire department. The rule should specifically require red emergency warning lights for municipal vehicles used by fire officials and fire inspectors appointed under the Uniform Fire Code. Local officials and inspection station personnel have been confused as to the use of red emergency warning lights by fire officials, and the change requested above should clear up this confusion.

RESPONSE: N.J.S.A. 39:1-1 defines "authorized emergency vehicles" as being "vehicles of the fire department, police vehicles and such ambulances and other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety when operated in response to an emergency call". As noted previously, the Division has formed a committee to review N.J.A.C. 13:24 and to recommend appropriate changes to those rules. To assist it in ascertaining the merit of the suggested regulatory change, the committee will welcome input from the commenter as to whether the officials referred to in the comment must, as part of their responsibilities, travel to the scene of a fire on an emergency basis, thereby rendering the use of red emergency warning lights appropriate.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:24.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Notice of Administrative Correction

Speed Limits

Route U.S. 40

Woodstown Borough, Salem County

Adopted Amendment: N.J.A.C. 16:28-1.6

Take notice that the Department of Transportation has discovered an error in the text of N.J.A.C. 16:28-1.6(a)1i(3)(C) adopted effective October 17, 1994 at 26 N.J.R. 4206(a). The street name of "Kesswood Avenue" should be cited as "Kresswold Lane." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Kesswood Avenue had been proposed as such in the August 1, 1994 issue of the New Jersey Register at 26 N.J.R. 3131(a). Upon notification to the municipality, the Borough Solicitor of Woodstown, George Rosenberger, advised the Department in a letter dated August 15, 1994, that the name of "Kesswood Avenue" had been changed to "Kresswold Lane." The Department intended to make the necessary change on adoption. However, due to an oversight, the proposal was adopted without the necessary change. Therefore, the Department is making the change by this notice of administrative correction.

The following is the comment received with the Agency's response, and the corrected text.

COMMENT: Mr. George Rosenberger called to our attention the fact that Kesswood Avenue should be changed to read "Kresswold Lane".

RESPONSE: The Department advised Mr. Rosenberger that the name would be changed and thanked him for his comment.

Full text of the corrected rule follows (addition indicated in boldface thus; deletion indicated in brackets [thus]):

16:28-1.6 Route U.S. 40

(a) The rate of speed designated for the certain parts of State highway Route U.S. 40 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Salem County:

(1)-(2) (No change.)

(3) Woodstown Borough:

(A) (No change.)

(B) Zone 2: 30 miles per hour between 100 feet west of Green Street and East Wilson Avenue (approximate mileposts 10.41 to 10.86); thence

(C) Zone 3: 35 miles per hour between East Wilson Avenue and [Kesswood Avenue] **Kresswold Lane**, except while "25 miles per hour when flashing" signs are operating during recess or while children are going to or leaving school, during opening or closing hours when passing through Woodstown High School zone (approximate mileposts 10.86 to 11.20); thence

(D) (No change.)

(4)-(7) (No change.)

ii.-iii. (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits**Route U.S. 46 including Route U.S. 1, 9 and 46**

Knowlton Township, White Township, Liberty Township, Independence Township and the Town of Hackettstown in Warren County; Washington Township, Mount Olive Township, Netcong Borough, Roxbury Township, Mine Hill Township, Wharton Borough, Town of Dover, Rockaway Township, Rockaway Borough, Denville Township, Mountain Lakes Borough, Parsippany-Troy Hills Township and Montville Township in Morris County; Fairfield Township in Essex County; Wayne Township, Totowa Borough, West Paterson Borough, Little Falls Township, City of Clifton, City of Paterson in Passaic County, and Elmwood Park Borough, City of Garfield, Saddlebrook Township, Borough of Lodi, Borough of Hasbrouck Heights, Borough of Teterboro, South Hackensack Township, Borough of Little Ferry, Ridgefield Park Village, Ridgefield Borough, Palisades Park Borough and the Borough of Fort Lee in Bergen County

Adopted Repeal and New Rule: N.J.A.C. 16:28-1.10

Proposed: September 6, 1994 at 26 N.J.R. 3600(a).

Adopted: October 20, 1994 by Michael A. Lemmo, Acting Director, Division of Traffic Engineering and Local Aid.

Filed: October 21, 1994 as R.1994 d.567, without change.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Effective Date: November 21, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28-1.10 Route U.S. 46, including Route U.S. 1, 9 and 46

(a) The rate of speed designated for certain parts of State highway Route U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Warren, Morris, Essex, Passaic and Bergen Counties:

i. Warren County:

(1) Knowlton Township:

(A) Zone 1: 45 miles per hour between Route I-80, Route U.S. 46 and Route 94 Interchange and 1,900 feet east of Walnut Road (approximate mileposts 0.0 to 1.20); thence

(B) Zone 2: 50 miles per hour between 1,900 feet east of Walnut Road and 800 feet west of the Erie Lackawanna Railroad overpass (approximate mileposts 1.20 to 2.40); thence

(C) Zone 3: 45 miles per hour between 800 feet west of the Erie Lackawanna Railroad overpass and Knowlton Road, except for a 35 mile per hour speed limit when passing through the Knowlton Township Elementary School zone while "35 MPH When Flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 2.40 to 3.84); thence

(D) Zone 4: 50 miles per hour between Knowlton Road and the Knowlton Township-White Township corporate line (approximate mileposts 3.84 to 5.50); thence

(2) White Township:

(A) Zone 1: 50 miles per hour between the Knowlton Township-White Township corporate line and 1,900 feet west of Route 31, except for a 35 mile per hour speed limit when passing through the White Township Elementary School zone 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 mileposts 5.50 to 9.63); thence

(B) Zone 2: 45 miles per hour between 1,900 feet west of Route 31 and 550 feet east of Route 31 (approximate mileposts 9.63 to 10.14); thence

(C) Zone 3: 50 miles per hour between 550 feet east of Route 31 and the White Township-Liberty Township corporate line (approximate mileposts 10.14 to 12.55); thence

(3) Liberty Township:

(A) Zone 1: 50 miles per hour between the White Township-Liberty Township corporate line and the Liberty Township-Independence Township corporate line (approximate mileposts 12.55 to 15.79); thence

(4) Independence Township:

(A) Zone 1: 40 miles per hour between the Liberty Township-Independence Township corporate line and 650 feet east of Baker Mill Road, except for a 25 mile per hour speed limit when passing through the Central School zone while "25 MPH When Flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 15.79 to 17.75); thence

(B) Zone 2: 45 miles per hour between 650 feet east of Baker Mill Road and the Independence Township-Hackettstown Town corporate line (approximate mileposts 17.75 to 20.62); thence

(5) Hackettstown Town:

(A) Zone 1: 35 miles per hour between the Independence Township-Hackettstown Town corporate line and 250 feet east of Prospect Street (approximate mileposts 20.62 to 21.00); thence

(B) Zone 2: 30 miles per hour between 250 feet east of Prospect Street to the bridge over the Musconetcong River, Warren County-Morris County corporate line (approximate mileposts 21.00 to 21.82); thence

ii. Morris County:

(1) Washington Township:

(A) Zone 1: 30 miles per hour between the bridge over the Musconetcong River, Warren County-Morris County corporate line and 180 feet west of Old Mine Road (approximate mileposts 21.82 to 21.93); thence

(B) Zone 2: 35 miles per hour between 180 feet west of Old Mine Road and the Mine Brook Bridge (approximate mileposts 21.93 to 22.48); thence

(C) Zone 3: 45 miles per hour between the Mine Brook Bridge and the Washington Township-Mount Olive Township corporate line (approximate mileposts 22.48 to 23.32); thence

(2) Mount Olive Township:

(A) Zone 1: 45 miles per hour between the Washington Township-Mount Olive Township corporate line and 800 feet west of Schooley Mountain Road-Sand Shore Road (approximate mileposts 23.32 to 24.48); thence

(B) Zone 2: 50 miles per hour between 800 feet west of Schooley Mountain Road-Sand Shore Road and Woodsedge Avenue-Sand Shore Road (approximate mileposts 24.48 to 27.10); thence

(C) Zone 3: 45 miles per hour between Woodsedge Avenue-Sand Shore Road and Budd Lake Road-Lake Netcong Road (approximate mileposts 27.10 to 28.30); thence

(D) Zone 4: 50 miles per hour between Budd Lake Road-Lake Netcong Road and the Mount Olive Township-Netcong Borough corporate line, except for a 35 mile per hour speed limit in the Budd Lake Elementary School zone, during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 28.30 to 29.40); thence

(3) Netcong Borough:

(A) Zone 1: 50 miles per hour between the Mount Olive Township-Netcong Borough corporate line and 300 feet west of Flanders Road (approximate mileposts 29.40 to 29.60); thence

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(B) Zone 2: 40 miles per hour between 300 feet west of Flanders Road and the Netcong Borough-Roxbury Township corporate line (approximate mileposts 29.60 to 30.45); thence

(4) Roxbury Township:

(A) Zone 1: 50 miles per hour between the Netcong Borough-Roxbury Township corporate line and the Route 10-Route U.S. 46 traffic circle (approximate mileposts 30.45 to 33.30); thence

(B) Zone 2: 45 miles per hour between the Route 10-Route U.S. 46 traffic circle and the Black River Bridge (approximate mileposts 33.30 to 34.24); thence

(C) Zone 3: 40 miles per hour between the Black River Bridge and Dell Avenue (approximate mileposts 34.24 to 35.09); thence

(D) Zone 4: 45 miles per hour between Dell Avenue and the Roxbury Township-Mine Hill Township corporate line (approximate mileposts 35.09 to 35.35); thence

(5) Mine Hill Township:

(A) Zone 1: 45 miles per hour between the Roxbury Township-Mine Hill Township corporate line and William Street (approximate mileposts 35.35 to 36.00); thence

(B) Zone 2: 40 miles per hour between William Street and 200 feet east of Randolph Avenue, except for a 25 mile per hour speed limit when passing through the Route U.S. 46 school zone during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 36.00 to 36.55); thence

(C) Zone 3: 45 miles per hour between 200 feet east of Randolph Avenue and the Mine Hill Township-Wharton Borough corporate line (approximate mileposts 36.55 to 37.23); thence

(6) Wharton Borough:

(A) Zone 1: 45 miles per hour between the Mine Hill Township-Wharton Borough corporate line and the Wharton Borough-Dover Town corporate line (approximate mileposts 37.23 to 37.33); thence

(7) Dover Town:

(A) Zone 1: 40 miles per hour between the Wharton Borough-Dover Town corporate line and the bridge over the Central Railroad of New Jersey (approximate mileposts 37.33 to 38.18); thence

(B) Zone 2: 35 miles per hour between the bridge over the Central Railroad of New Jersey and Perry Street, except for a 25 mile per hour speed limit when passing through the East Dover Elementary School zone (Belmont Avenue to Trenton Avenue) while "25 MPH When Flashing" signs are operating during recess or while children are going to or leaving school during opening or closing hours (approximate mileposts 38.18 to 39.14); thence

(C) Zone 3: 40 miles per hour between Perry Street and the Dover Town-Rockaway Township corporate line (approximate mileposts 39.14 to 39.50); thence

(8) Rockaway Township:

(A) Zone 1: 40 miles per hour between the Dover Town-Rockaway Township corporate line and the Rockaway Township-Rockaway Borough corporate line (approximate mileposts 39.50 to 39.94); thence

(9) Rockaway Borough:

(A) Zone 1: 40 miles per hour between the Rockaway Township-Rockaway Borough corporate line and the Rockaway Borough-Denville Township corporate line (approximate mileposts 39.94 to 41.95); thence

(10) Denville Township:

(A) Zone 1: 40 miles per hour between the Rockaway Borough-Denville Township corporate line and 500 feet east of Route 53, except for a 25 mile per hour speed limit when passing through the Saint Mary School zone, during recess when the presence of children is clearly visible from the roadway and when children are going to or leaving school during opening or closing hours (approximate mileposts 41.95 to 43.15); thence

(B) Zone 2: 50 miles per hour between 500 feet east of Route 53 and the Denville Township line-Mountain Lakes Borough corporate line (approximate mileposts 43.15 to 43.82); thence

(11) Mountain Lakes Borough:

(A) Zone 1: 50 miles per hour between the Denville Township-Mountain Lakes Borough corporate line and the Mountain Lakes Borough-Parsippany-Troy Hills Township corporate line (approximate mileposts 43.82 to 44.70); thence

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(12) Parsippany-Troy Hills Township:

(A) Zone 1: 50 miles per hour between the Mountain Lakes Borough-Parsippany-Troy Hills Township-Montville Township corporate line (approximate mileposts 44.70 to 50.35); thence

(13) Montville Township:

(A) Zone 1: 50 miles per hour between the Parsippany-Troy Hills Township-Montville Township corporate line and the Montville Township-Fairfield Township corporate line (approximate mileposts 50.35 to 52.12); thence

iii. Essex County:

(1) Fairfield Township:

(A) Zone 1: 50 miles per hour between the Montville Township-Fairfield Township corporate line and the Fairfield Township-Wayne Township corporate line (approximate mileposts 52.12 to 55.43); thence

iv. Passaic County:

(1) Wayne Township:

(A) Zone 1: 50 miles per hour between the Fairfield Township-Wayne Township corporate line and the Wayne Township-Totowa Borough corporate line (approximate mileposts 55.43 to 56.80); thence

(2) Totowa Borough:

(A) Zone 1: 50 miles per hour between the Wayne Township-Totowa Borough corporate line and the Totowa Borough-West Paterson Borough-Little Falls Township corporate line (approximate mileposts 56.80 to 57.93); thence

(3) West Paterson Borough-Little Falls Township:

(A) Zone 1: 50 miles per hour between the Totowa Borough-West Paterson Borough-Little Falls Township corporate line and the West Paterson Borough-Little Falls Township-Clifton City corporate line (approximate mileposts 57.93 to 59.97); thence

(4) Clifton City-Paterson City:

(A) Zone 1: 50 miles per hour between the West Paterson Borough-Little Falls Township-Clifton City corporate line and the Conrail underpass (approximate mileposts 59.97 to 61.60); thence

(B) Zone 2: 35 miles per hour between the Conrail underpass and 5th Avenue (approximate mileposts 61.60 to 62.20); thence

(C) Zone 3: 50 miles per hour between 5th Avenue and the Clifton City-Paterson City-Elmwood Park corporate line (approximate mileposts 62.20 to 63.95); thence

v. Bergen County:

(1) Elmwood Park Borough:

(A) Zone 1: 50 miles per hour between the City of Clifton-Paterson City-Elmwood Park Borough corporate line and the Elmwood Park Borough-Garfield City corporate line (approximate mileposts 63.95 to 65.12); thence

(2) Garfield City:

(A) Zone 1: 50 miles per hour between the Elmwood Park Borough-Garfield City corporate line and the Garfield City-Saddlebrook Township corporate line (approximate mileposts 65.12 to 65.28); thence

(3) Saddlebrook Township:

(A) Zone 1: 50 miles per hour between the Garfield City-Saddlebrook Township corporate line and the Saddlebrook Township-Lodi Borough corporate line (approximate mileposts 65.28 to 66.05); thence

(4) Lodi Borough:

(A) Zone 1: 50 miles per hour between the Saddlebrook Township-Lodi Borough corporate line and the Lodi Borough-Hasbrouck Heights corporate line (approximate mileposts 66.05 to 67.50); thence

(5) Hasbrouck Heights Borough:

(A) Zone 1: 50 miles per hour between the Lodi Borough-Hasbrouck Heights corporate line and the Hasbrouck Heights Borough-Teterboro Borough corporate line (approximate mileposts 67.50 to 68.20); thence

(6) Teterboro Borough:

(A) Zone 1: 50 miles per hour between the Hasbrouck Heights Borough-Teterboro Borough corporate line and Industrial Avenue-Hollister Street (approximate mileposts 68.20 to 68.49); thence

(B) Zone 2: 45 miles per hour between Industrial Avenue-Hollister Street (approximate mileposts 68.49 to 69.00); thence

(7) South Hackensack Township-Little Ferry Borough:

(A) Zone 1: 45 miles per hour between the Teterboro Borough-South Hackensack Township-Little Ferry Borough corporate line and 500 feet east of Phillips Avenue (approximate mileposts 69.00 to 69.35); thence

(B) Zone 2: 40 miles per hour between 500 feet east of Phillips Avenue to the easterly South Hackensack Township-Little Ferry Borough corporate line (approximate mileposts 69.35 to 69.40); thence

(8) Little Ferry Borough:

(A) Zone 1: 40 miles per hour between the South Hackensack Township-Little Ferry Borough-Ridgefield Park Village corporate line (approximate mileposts 69.40 to 70.29); thence

(9) Ridgefield Park Village:

(A) Zone 1: 40 miles per hour between the Little Ferry Borough-Ridgefield Park Village corporate line and Teaneck Road (approximate mileposts 70.29 to 70.70); thence

(B) Zone 2: 50 miles per hour between Teaneck Road and the Ridgefield Park Village-Ridgefield Borough corporate line (approximate mileposts 70.70 to 71.37); thence

(10) Ridgefield Borough:

(A) Zone 1: 50 miles per hour between the Ridgefield Park Village-Ridgefield Borough corporate line and the Ridgefield Borough-Palisades Park Borough corporate line (approximate mileposts 71.37 to 71.64); thence

(11) Palisades Park Borough:

(A) Zone 1: 50 miles per hour between the Ridgefield Borough-Palisades Park Borough corporate line and the interchange of Route U.S. 1, 9 and 46 (approximate mileposts 71.64 to 72.15) (see Route U.S. 1 for duplicate mileage); thence

(B) Zone 2: 50 miles per hour between the interchange of Route U.S. 1, 9 and 46 and the Palisades Park Borough-Fort Lee Borough corporate line (approximate mileposts 72.15 (Route U.S. 46) and 63.86 (Route U.S. 1)); thence

(12) Fort Lee Borough:

(A) Zone 1: 50 miles per hour between the Palisades Park Borough-Fort Lee Borough corporate line and Route 63 (approximate mileposts 63.86 to 63.97); thence

(B) Zone 2: 45 miles per hour between Route 63 and the George Washington Bridge (Port Authority of New York and New Jersey) (approximate mileposts 63.97 to 64.90).

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Route N.J. 165

Lambertville City, Hunterdon County

Adopted New Rule: N.J.A.C. 16:28-1.53

Proposed: September 6, 1994 at 26 N.J.R. 3602(a).

Adopted: October 20, 1994 by Michael A. Lemmo, Acting

Director, Division of Traffic Engineering and Local Aid.

Filed: October 21, 1994 as R.1994 d.570, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Effective Date: November 21, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28-1.53 Route 165

(a) The rate of speed designated for the certain parts of State highway Route 165 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In the City of Lambertville, Hunterdon County:

(1) Zone 1: 35 mph between Mount Hope Street and Route 179 (Bridge Street) (approximate mileposts 0.00 to 0.26).

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Route N.J. 94

Knowlton Township, Blairstown Township and Frelinghuysen Township in Warren County and Fredon Township, Town of Newton, Hampton Township, Lafayette Township, Sparta Township, Hardyston Township, Hamburg Borough and Vernon Township in Sussex County

Adopted Amendment: N.J.A.C. 16:28-1.79

Proposed: September 6, 1994 at 26 N.J.R. 3603(a).

Adopted: October 20, 1994 by Michael A. Lemmo, Acting

Director, Division of Traffic Engineering and Local Aid.

Filed: October 21, 1994 as R.1994 d.569, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-198.

Effective Date: November 21, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28-1.79 Route 94

(a) The rate of speed designated for the certain part of State highway Route 94 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Warren County:

i. Knowlton Township:

(1) Zone 1: 35 mph between the Commonwealth of Pennsylvania-State of New Jersey jurisdictional line and 1,400 feet south of Stark Road (approximate mileposts 0.19 to 0.72); thence

(2) Zone 2: 50 mph between 1,400 feet south of Stark Road and 1,300 feet north of Brugler Road (approximate mileposts 0.72 to 1.95); thence

(3) Zone 3: 45 mph between 1,300 feet north of Brugler Road and 600 feet north of Hainesburg River Road (approximate mileposts 1.95 to 2.49); thence

(4) Zone 3: 35 mph between 600 feet north of Hainesburg River Road and 2,300 feet north of Mount Pleasant Road (approximate mileposts 2.49 to 2.87); thence

(5) Zone 4: 50 mph between 2,300 feet north of Mount Pleasant Road and the Township of Blairstown-Township of Knowlton corporate line (approximate mileposts 2.87 to 3.92); thence

ii. Blairstown Township:

(1) Zone 1: 50 mph between the Township of Knowlton-Township of Blairstown corporate line and 200 feet south of Main Street (approximate mileposts 3.92 to 8.78); thence

(2) Zone 2: 40 mph between 200 feet south of Main Street and 100 feet north of Hope Road (County Road 521) (approximate mileposts 8.78 to 9.42); thence

(3) Zone 3: 45 mph between 100 feet north of Hope Road (County Road 521) and the Township of Blairstown-Township of

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Frelinghuysen corporate line (approximate mileposts 9.42 to 10.26); thence

iii. Frelinghuysen Township:

(1) Zone 1: 45 mph between the Township of Frelinghuysen-Township of Blairstown corporate line and Silver Lake Road (approximate mileposts 10.26 to 11.89); thence

(2) Zone 2: 35 mph between Silver Lake Road and 600 feet north of Spring Valley Road (approximate mileposts 11.89 to 12.20); thence

(3) Zone 3: 45 mph between 600 feet north of Spring Valley Road and the Township of Frelinghuysen-Township of Fredon corporate line except for 35 mph when passing through the Frelinghuysen Township School zone, 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 mileposts 12.20 to 15.04); thence

2. For both directions of traffic in Sussex County:

i. Fredon Township:

(1) Zone 1: 50 mph between the Township of Fredon-Township of Frelinghuysen corporate line and Fredon-Stillwater Road (Co. Rd. 610), except for 35 mph when passing through the Fredon Elementary School zone, 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 mileposts 15.04 to 18.71); thence

(2) Zone 2: 45 mph between Fredon-Stillwater Road (Co. Rd. 610) and the Township of Fredon-Town of Newton corporate line (approximate mileposts 18.71 to 21.39); thence

ii. Town of Newton:

(1) Zone 1: 40 mph between the Township of Fredon-Town of Newton corporate line and Summit Avenue (approximate mileposts 21.39 to 21.95); thence

(2) Zone 2: 30 mph between Summit Avenue and Liberty Street (approximate mileposts 21.95 to 22.22); thence

(3) Zone 3: 25 mph between Liberty Street and High Street-Park Place (approximate mileposts 22.22 to 22.42) (Route U.S. 206 intervenes here).

3. For counterclockwise directions of traffic in Sussex County:

i. In the Town of Newton:

(1) 25 mph between High Street-Park Place and Park Place-High Street (approximate mileposts 22.42 to 22.61); thence (N.J. Route 94 mileposts 22.61 to 24.91 is under the jurisdiction of Route U.S. 206).

4. For both directions of traffic in Sussex County:

i. Hampton Township:

(1) 45 mph between Route U.S. 206 and the Township of Hampton-Township of Lafayette corporate line (approximate mileposts 24.91 to 25.64); thence

ii. Lafayette Township:

(1) 45 mph between the Township of Hampton-Township of Lafayette corporate line and the Township of Lafayette-Township of Sparta corporate line (approximate mileposts 25.64 to 28.61); thence

iii. Sparta Township:

(1) Zone 1: 45 mph between the Township of Lafayette-Township of Sparta corporate line and 1,130 feet south of Old Prospect School Road, except for 35 mph when passing through the Sussex County Vocational School zone, 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 mileposts 28.61 to 30.83); thence

(2) Zone 2: 40 mph between 1,130 feet south of Old Prospect School Road and the Township of Sparta-Township of Hardyston corporate line (approximate mileposts 30.83 to 31.11); thence

iv. Hardyston Township:

(1) Zone 1: 40 mph between the Township of Sparta-Township of Hardyston corporate line and 700 feet north of Old Prospect School Road (approximate mileposts 31.11 to 31.20); thence

(2) Zone 2: 45 mph between 700 feet north of Old Prospect School Road and the southernmost Township of Hardyston-Borough

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of Hamburg corporate line (approximate mileposts 31.20 to 35.13); thence

v. Hamburg Borough:

(1) 35 mph between the southernmost Hamburg Borough-Hardyston Township corporate line and the northernmost Hamburg Borough-Hardyston Township corporate line (approximate mileposts 35.13 to 35.97); thence

vi. Hardyston Township continued:

(3) Zone 3: 45 mph between the northernmost Borough of Hamburg-Township of Hardyston corporate line and 2,600 feet south of Old Coach Road (approximate mileposts 35.97 to 36.83); thence

(4) Zone 4: 35 mph between 2,600 feet south of Old Coach Road and the Township of Vernon-Township of Hardyston corporate line (approximate mileposts 36.83 to 37.16); thence

v. Vernon Township:

(1) Zone 1: 35 mph between Hardyston Township-Vernon Township corporate line and 1,000 feet north of Rudetown Road (County Road 517) (approximate mileposts 37.16 to 38.62); thence

(2) Zone 2: 40 mph between 1,000 feet north of Rudetown Road (County Road 517) and 400 feet south of Sandhill Road (approximate mileposts 38.62 to 39.93); thence

(3) Zone 3: 35 mph between 400 feet south of Sandhill Road and 600 feet north of Vernon Crossing Road (County Road 644) (approximate mileposts 39.93 to 41.85); thence

(4) Zone 4: 45 mph between 600 feet north of Vernon Crossing Road (County Road 644) and the New York State-State of New Jersey jurisdictional line (approximate mileposts 41.85 to 45.76).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route N.J. 28

City of Elizabeth, Union County

Adopted Amendment: N.J.A.C. 16:28A-1.19

Proposed: September 6, 1994 at 26 N.J.R. 3605(a).

Adopted: October 20, 1994 by Michael A. Lemmo, Acting

Director, Division of Traffic Engineering and Local Aid.
Filed: October 21, 1994 as R.1994 d.568, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138, 39:4-138.1, 39:4-198 and 39:4-199.

Effective Date: November 21, 1994.

Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

16:28A-1.19 Route 28

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

(d) The certain parts of State highway Route 28 described in this subsection shall be designated and established as Restricted Parking Space, for the use of persons who have been issued special Vehicle Identification Cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking spaces:

1. Restricted parking in the City of Elizabeth, Union County:
Recodify existing (1)-(2) as i.-ii. (No change in text.)

iii. Handicapped parking at 644 Westfield Avenue beginning at a point 543 feet west of the westerly curb line of Elmora Avenue and extending 22 feet westerly therefrom.

Recodify existing ii. as 2. (No change in text.)
 Recodify existing (1)-(3) as i.-iii. (No change in text.)
 (e)-(g) (No change.)

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Continuing Political Committee, Political Party Committee, and Legislative Leadership Committee Reporting

Adopted New Rules: N.J.A.C. 19:25-9

Adopted Repeals: N.J.A.C. 19:25-10

Proposed: August 1, 1994 at 26 N.J.R. 3138(a).

Adopted: October 21, 1994 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: October 24, 1994 as R.1994 d.573, **without change.**

Authority: N.J.S.A. 19:44A-6.

Effective Date: November 21, 1994.

Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:

Written comments were received from James E. Cunningham, Treasurer, New Jersey Health Care Political Action Committee (hereafter, NJHCPAC). No other comments were received.

A public hearing on the proposed new rules and deletions was conducted at the Commission's public meeting on September 20, 1994, but no persons appeared to testify. Advance written notice of the hearing was circulated on August 8, 1994, to the Office of the Governor's Counsel, the State political party committees, legislative leadership committees, continuing political committees, county political party chairpersons, the Office of Legislative Services and the State House press corps. The hearing record may be reviewed by contacting Greg Nagy, Esq., Legal Director, Election Law Enforcement Commission, CN-185, Trenton, N.J. 08625-0185.

COMMENT: On behalf of the NJHCPAC, Mr. Cunningham suggested that the Commission amend N.J.A.C. 19:25-9.3 and 9.4 to permit filings of "48-hour" notices of contributions received or expenditures made immediately before the date of an election to be accomplished by facsimile transmission. Both the proposed text of these regulations and the prior text at N.J.A.C. 19:25-10.6 expressly prohibited filing by facsimile transmission (that is, FAX). Alternatively, Mr. Cunningham suggested that the Commission use the postmark date of such notices as the effective date of filing.

RESPONSE: The Commission does not currently have adequate facsimile transmission or receiving equipment to handle the heavy volume of "48-hour" notice transmissions that it anticipates it would be receiving before an election, and therefore the Commission has adopted the rule as proposed, that is with the prohibition against filing by facsimile transmission in effect. However, the Commission agrees with the commenter that these notices, which must be filed with the Commission within 48 hours after receipt of a contribution in excess of \$500.00, or within 48 hours after the making of an expenditure in excess of \$500.00, whichever the case may be, should at some point in the future be permitted to be made by facsimile transmission. Therefore, the Commission will explore the feasibility of filing such notices by facsimile transmission, and amend these regulations accordingly if it proves workable.

The Commission disagrees that it has the authority, or that it is advisable, to use a postmark date as the effective date of filing a notice or report. The word "file" is defined in N.J.S.A. 19:1-1 to mean deposited in the regularly maintained office of the Commission. Therefore, to accomplish filing of a report or notice it must be received at the Commission's offices, not merely be deposited in the United States mail for subsequent delivery. Further, it would be contrary to the salutary public disclosure purposes of the Campaign Contributions and Expenditures Reporting Act (N.J.S.A. 19:44A-1 et seq.) to permit any report or notice to be deemed filed when it was not yet received and therefore not available for public inspection.

Full text of the adoption follows:

SUBCHAPTER 9. CONTINUING POLITICAL COMMITTEE, POLITICAL PARTY COMMITTEE, AND LEGISLATIVE LEADERSHIP COMMITTEE REPORTING

19:25-9.1 Quarterly reports

(a) A continuing political committee, a political party committee, or a legislative leadership committee shall file quarterly reports of all contributions received, all expenditures made, and all other transactions of its election fund subject to reporting, which reports shall be due for filing and shall cover the following periods of time:

1. The first quarterly report shall be due for filing on April 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:01 A.M. of January 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:01 A.M. of April 1 of that calendar year;

2. The second quarterly report shall be due for filing on July 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:01 A.M. on April 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:01 A.M. of July 1 of that calendar year;

3. The third quarterly report shall be due for filing on October 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:01 A.M. on July 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:01 A.M. of October 1 of that calendar year; and

4. The fourth quarterly report shall be due for filing on January 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:01 A.M. on October 1 of the calendar year preceding the calendar year of the filing date and end with the reporting of transactions occurring before 12:01 A.M. of January 1 of the calendar year of the filing date.

(b) The initial quarterly report shall be filed for the calendar year quarter in which the continuing political committee, political party committee, or legislative leadership committee was established or required to be established, and, in the case of a continuing political committee, quarterly reports shall continue to be filed in each calendar year quarter pursuant to (a) above until such time as a final quarterly report is filed pursuant to N.J.A.C. 19:25-9.5. A political party committee or a legislative leadership committee cannot terminate quarterly reporting requirements.

(c) The organizational treasurer shall file and certify the correctness of the quarterly report, and shall certify that no contributions have been received in violation of the contribution limits prescribed by the act.

19:25-9.2 Certified statement (Form A-3)

(a) There shall be no obligation to file the quarterly reports referred to in N.J.A.C. 19:25-9.1 on behalf of a continuing political committee, political party committee, or legislative leadership committee that files no later than January 15 of a calendar year a certified statement (Form A-3) to the effect that the total amount to be raised or expended in that calendar year shall not exceed \$2,500.

(b) In the event a continuing political committee, political party committee, or legislative leadership committee files a certified statement (Form A-3) pursuant to (a) above, and total expenditures exceed \$2,500 during the calendar year for which the statement was filed, the committee shall:

1. File a quarterly report pursuant to N.J.A.C. 19:25-9.1 on the date relevant to the calendar year quarter in which \$2,500 of expenditures was exceeded, and that quarterly report shall include all contributions received and all expenditures made from the beginning of the calendar year; and

2. Continue filing quarterly reports for the remainder of that calendar year, unless a final quarterly report is filed pursuant to N.J.A.C. 19:25-9.5.

(c) If a continuing political committee, political party committee, or legislative leadership committee, which has filed a certified statement for a calendar year pursuant to (a) above, receives during any calendar year quarter a contribution, or aggregate contributions from

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a contributor, that exceeds the sum of \$200.00, that committee shall file on the dates provided in N.J.A.C. 19:25-9.1 a report containing the following information:

1. The name and mailing address of the contributor;
2. The date the contribution was received;
3. The amount of the contribution, or if the contribution was other than money, a description of the contribution and its value as determined pursuant to N.J.A.C. 19:25-11.5; and
4. If the contributor was an individual, the occupation of the contributor and the name and mailing address of the individual's employer.

19:25-9.3 Contributions received immediately before an election

(a) An organizational treasurer of a continuing political committee, a political party committee, or a legislative leadership committee shall file a report or other written notice with the Commission of any contribution in excess of \$500.00, or any aggregate contributions from a contributor which total in excess of \$500.00, received after the closing date of its most recent quarterly report and on or before the date of an election in which the committee has made or intends to make any contribution or expenditure to aid or promote any candidate or the passage or defeat of any public question. The closing dates of quarterly reports are set forth in N.J.A.C. 19:25-9.1(a).

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of receipt of a contribution in excess of \$500.00, or within 48 hours of receipt of aggregate contributions from a contributor which total in excess of \$500.00, except that all such contributions or aggregate contributions received prior to 12:01 A.M. of the 13th day preceding the date of an election may be reported together on a report or written notice to be filed with the Commission no later than the 11th day before that election. A contribution or aggregate contributions from a contributor totaling in excess of \$500.00 received on or after 12:01 A.M. on the 13th day before the election must be reported within 48 hours of receipt.

(c) The report or written notice described in (a) above shall contain the following information:

1. The name of the recipient committee;
2. The date the contribution was received;
3. The amount of the contribution, or if the contribution was other than money, a description of the contribution and its value as determined pursuant to N.J.A.C. 19:25-11.5;
4. The name and mailing address of the contributor; and
5. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer.

(d) The report or written notice described in (a) above shall be signed by the organizational treasurer, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-9.4 Continuing political committee expenditures made immediately before a primary or general election

(a) An organizational treasurer of a continuing political committee shall file a report (Form E-3) of an expenditure of money or other thing of value in excess of \$500.00, or aggregate expenditures that total in excess of \$500.00, made, incurred or authorized in a primary or general election by the continuing political committee to support or defeat a candidate, or to aid the passage or defeat of a public question, which expenditure is, or aggregate expenditures are made, incurred or authorized after March 31 and on or before the day of the primary election, or after September 30 and on or before the day of the general election. The report shall contain:

1. The name of the continuing political committee making the expenditure;
2. The name and mailing address of the person, firm or recipient; or the name and mailing address of the organization to whom or which the expenditure was paid or given; and
3. The amount and purpose of the expenditure.

(b) The report or written notice described in (a) above shall be signed by the organizational treasurer and filed with the Commission within 48 hours of the making, authorizing or incurring of the

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expenditure, or aggregate expenditures, except that all expenditures or aggregate expenditures made, incurred or authorized before 12:01 A.M. on the 13th day preceding the date of a primary or general election may be reported together on a report or written notice to be filed no later than the 11th day before that election. A report of an expenditure or aggregate expenditures in excess of \$500.00 made, incurred or authorized on or after 12:01 A.M. on the 13th day preceding the date of a primary or general election shall be filed within 48 hours of receipt, and such a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-9.5 Termination of continuing political committee reporting

(a) A continuing political committee may certify a quarterly report as its final quarterly report and thereby terminate further quarterly reporting provided:

1. The continuing political committee has ceased making contributions to aid or promote any candidate, or to aid or promote the passage or defeat of any public question;
2. The final quarterly report makes a final accounting of any funds used or relating to aiding or promoting any candidate or the passage or defeat of any public question, including the final disposition of any remaining balance; and
3. The continuing political committee is dissolved.

(b) The chairperson and the organizational treasurer shall file and each certify the final quarterly report.

19:25-9.6 Time and place of filing reports

An original and two copies of all reports required to be filed must be received at the Commission offices no later than 5:00 P.M. on the date the report is due for filing in order to be deemed timely filed. A report submitted by United States mail postmarked on or before a filing date but not received until after 5:00 P.M. of the date the report is due for filing will not be deemed timely filed.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Drop Boxes, Transportation to and from Gaming Tables; Slot Cash Storage Boxes; Transportation to and from Bill Changers; Storage in Count Room

Adopted Amendments: N.J.A.C. 19:45-1.17 and 1.42

Proposed: September 6, 1994 at 26 N.J.R. 3606(b).

Adopted: October 19, 1994 by the Casino Control Commission, Bradford S. Smith, Chairman.

Filed: October 24, 1994 as R.1994 d.574, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j), 99 and 100.

Effective Date: November 21, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comments and Agency Response:

COMMENT: The Division of Gaming Enforcement and Great 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:

19:45-1.17 Drop boxes, transportation to and from gaming tables; slot cash storage boxes, transportation to and from bill changers; storage

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

(d) Except as provided in (e) below, all drop boxes not attached to a gaming table and all slot cash storage boxes not contained in a bill changer, including emergency drop boxes and emergency slot cash storage boxes which are not actively in use, shall be stored in the count room or other secure area outside the count room approved by the Commission, in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double

locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by a Commission inspector.

(e) Drop boxes, when not in use during a shift, may be stored on the gaming tables provided that there is adequate security as approved by the Commission. If adequate security is not provided during this time, the drop boxes shall be stored as required in (d) above.

19:45-1.42 Removal of slot drop buckets, slot drop boxes and slot cash storage boxes; meter readings

(a) For each slot machine and attached bill changer on the gaming floor, the slot drop bucket, slot drop box and slot cash storage box shall be removed at least once a week on specific days and at times designated by the casino licensee on a schedule which shall be filed with the Commission and the Division. No slot drop bucket, slot drop box or slot cash storage box shall be emptied or removed from its compartment at other than the times specified on such schedule except with the express approval of the Commission. Prior to emptying or removing any slot drop bucket, slot drop box or slot cash storage box, a casino licensee shall notify the Commission and the surveillance department of the transportation route that will be utilized.

1. All slot drop boxes which are not attached to a slot machine or temporarily stored in the base of a slot machine pursuant to (c)2ii below, including emergency slot drop boxes which are not actively in use, shall be stored in the count room or other secure area outside the count room approved by the Commission, in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by the Commission.

(b)-(q) (No change.)

(a)

CASINO CONTROL COMMISSION

**Accounting and Internal Controls
Procedure for Control of Coupon Redemption and
Other Complimentary Distribution Programs**

Adopted Amendment: N.J.A.C. 19:45-1.46

Proposed: March 21, 1994 at 26 N.J.R. 1322(a).

Adopted: October 19, 1994 by the Casino Control Commission,
Bradford S. Smith, Chairman.

Filed: October 24, 1994 as R.1994 d.575, **with substantive and technical changes** not requiring additional public comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69(a) and 69(c).

Effective Date: November 21, 1994.

Expiration Date: August 15, 1997.

Summary of Agency-Initiated Changes:

The phrase "and shall include hotel accounting personnel employed by the casino licensee who are not otherwise employed in casino operations" has been deleted in N.J.A.C. 19:45-1.46(e)4 as redundant, since "hotel accounting personnel" are a subclass of "accounting personnel."

Summary of Public Comment and Agency Response:

COMMENT: Greate Bay Hotel and Casino, Inc., t/a the Sands Hotel and Casino has no objection to the proposal.

RESPONSE: Accepted.

COMMENT: Resorts International Hotel, Inc. supports the proposed amendment. However, it suggests that "casino controller" be modified to "casino controller or above."

RESPONSE: Partially accepted. N.J.A.C. 19:45-1.11(a)8 requires a casino licensee to maintain a casino accounting department "supervised by a casino key employee holding a license endorsed with the position of controller." However, the regulation does not require that the supervisor of the casino accounting department hold the title of "casino

controller." Accordingly, the proposed amendment has been amended to provide that the hotel accounting personnel must report in a direct line to the supervisor of the casino accounting department. For purposes of consistency and clarity, "casino controller" has also been changed to "supervisor of the casino accounting department" in subsection (e).

COMMENT: The Division of Gaming Enforcement comments that the proposal would conflict with proposed N.J.A.C. 19:41-1.2(a)9, which would require an employee who distributes, redeems, accounts for, or inventories coupons "considered in the calculation of gross revenue" to hold a casino employee license with a gaming endorsement. The Division suggests that the proposal be amended to provide that hotel accounting employees may handle only coupons which are not considered in the calculation of gross revenue.

RESPONSE: Rejected. Although the Division's comment is well taken, an amendment to the proposal is not required. If N.J.A.C. 19:41-1.2(a)9 is adopted as published, a casino licensee will have two options which are not currently available. It may utilize its hotel accounting personnel to inventory and control only coupons which are not considered in the calculation of gross revenue. A casino licensee may also utilize its hotel accounting personnel to inventory coupons which are considered in calculating gross revenue, provided that the affected personnel and supervisors thereof hold casino employee licenses with gaming endorsements. Neither of these alternatives is currently available.

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

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(e) Coupons received from the manufacturer or distributor, or produced by the licensees' data processing or printing department, shall be opened and examined by at least two individuals, one of whom shall be from the accounting department. Any deviations between the invoice or control listing accompanying the coupons, the purchase or requisition order, and the actual coupons received shall be reported promptly to the *[Casino Controller]* ***supervisor of the casino accounting department*** or to a higher authority in a direct reporting line and the Internal Audit Department.

1.-3. (No change.)

4. For purposes of this section, "accounting department" shall be deemed to refer to any accounting personnel employed by the casino licensee who report in a direct line to the *[casino controller and shall include hotel accounting personnel who are not otherwise employed in casino operations]* ***supervisor of the casino accounting department***.

(f)-(p) (No change.)

(b)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

**Executive Commission on Ethical Standards Rules
Agency Code of Ethics**

Adopted Amendment: N.J.A.C. 19:61-2.2

Proposed: August 1, 1994 at 26 N.J.R. 3141(a).

Adopted: October 27, 1994 by the Executive Commission on
Ethical Standards, Rita L. Strmensky, Executive Director.

Filed: October 27, 1994 as R.1994 d.584, **without change**.

Authority: N.J.S.A. 52:13D-21.

Effective Date: November 21, 1994.

Expiration Date: March 2, 1997.

Summary of Public Comments and Agency Response:

No comments received.

Full text of the adoption follows:

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HEALTH

19:61-2.2 Agency codes of ethics

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

(c) Each agency shall put into place a distribution procedure to ensure that each current officer and employee and each new officer and employee receives a copy of the agency Code of Ethics. Each officer or employee shall sign a receipt indicating the date on which the Code was received and an acknowledgment that the officer or employee is responsible for reading the Code and is bound by it. The receipt shall be maintained in the officer's or employee's personnel file. Each copy of the Code of Ethics shall include a notice to the officer or employee that he or she can seek clarification of the Code's provisions from the agency's ethics liaison officer or from the Executive Commission on Ethical Standards. For the purposes of this subsection, "officer" and "employee" shall include State officers and employees and special State officers and employees as defined by the Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION Standards for Licensure of Long-Term Care Facilities Adopted Repeal and New Rules: N.J.A.C. 8:39

Proposed: May 2, 1994 at 26 N.J.R. 1772(c).

Adopted: October 27, 1994 by Len Fishman, Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: October 27, 1994 as R. 1994 d.582, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3), and with portions not adopted, but still pending (N.J.A.C. 8:39-2.2(e) through (h) and 2.12(c)).

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

Effective Date: November 21, 1994.

Expiration Date: November 21, 1999.

Operative Date: January 1, 1995 (except N.J.A.C. 8:39-43 which is operative November 21, 1994)

The proposed repeal and new rules were published on May 2, 1994. The Department of Health received 33 letters during the public comment period which ended on June 1, 1994. Written comments were received from the following persons and agencies:

Sandra Stimson, Activity Director, Valley View for Seniors

Verelin Torrone, ADC

Virginia Rynone, Activities Dept., N.J. Veterans Memorial Home

Sylvia Ellis, AAC

John R. McAulay, ADC, Activity Director, St. Ann's Home

Sam N. Veltri, R.Ph., Automated Pharmaceutical Services

Michael A. Del Sordo, Newark Aids Consortium

James Ryan, J.A.P.A. of Middlesex County Vocational & Technical High School

Mary Lou Schnurr, Activity Consultant Certified, Quality Resources N.J. Association of Health Care Facilities

John Slade, M.D., St. Peter's Medical Center, UMDNJ

Maria McGregor, Director of Pharmacy, Daughters of Miriam Center for the Aged

Carl Tepper, RP, CCP, FASCP, Consultant Pharmacist

Sister M. Beatrix, LNHA, Saint Mary's Catholic Home

New Jersey Academy of Consultant Pharmacists

New Jersey Group Against Smoking Pollution

Office of the Ombudsman for the Institutionalized Elderly

New Jersey Association of Non-Profit Homes for the Aging

John M. Bettis, JTPA, Atlantic Cape May Private Industry Council, Inc.

Fern Brownstein, MA, Social Worker, Sussex County Homestead

Carmine Marchionda, Administrator, Sussex County Homestead

Calvin H. Knowlton, Ph.D., R.Ph., Amherst Pharmacy & Health Education Center

Dellridge Care Center

Faye E. Wahls, Administrator, The Gospel Hall Home for the Aged, Inc.

C. Donna Hansen, MS-CTRS, New Jersey Recreation & Park Association

David F. Grimm, Executive Director, New Jersey Optometric Association

Solomon Goldberg, Somerset, N.J.

The New Jersey State Board of Nursing

Andrew Horowitz, Scotchwood Institutional Services

Richard B. Porwancher, MD, Chief, Section of Infectious Diseases, St. Francis Medical Center

Annette Garbarini, The National Council for Therapeutic Recreation Certification, Inc.

Ellen R. Griffith, RN

James C. Matthews, R.Ph., Amcare

In order to elicit broad comment on the new rules, particularly from consumers and other citizen representatives, a public hearing regarding the proposal was conducted. Notice of a public hearing to accept testimony on the repeal and new rules was published in the New Jersey Register on Monday, May 2, 1994, (26 N.J.R. 1772(c)), and was forwarded by written notice to consumer advocacy groups, provider organizations, the Office of the Ombudsman and others. The hearing was held on June 2, 1994, at the Rutgers University Labor Education Center in New Brunswick. Robert J. Fogg, J.D., Director of Licensing, Certification and Standards, Health Facilities Evaluation, served as hearing officer. Eighteen persons attended the public hearing, and 10 of these persons testified. Oral comments were submitted by the following:

Edwin O'Connor, representing New Jersey Chapter of the National Association of Social Workers

Meyer Schreiber, representing the New Jersey Coalition for Nursing Home Reform

Martin Cramer, representing the Elder Rights Coalition

Rebecca P. Poole, Certified Nurse Aide, Nursing Team Trainers

Andrew Horowitz, Scotchwood Institutional Services

Elizabeth Oltmer, Activity Director, New Jersey Activity Professionals' Association

Phyllis Jones, Nursing Assistant, Nursing Team Trainers

Theresa McCarthy, RN, BSN, Nursing Team Trainers

Catherine Smith, RN, Instructor, Nursing Team Trainers

Jack Saul, PhD, Elder Rights Advocate

After reviewing the testimony presented at the public hearing, the hearing officer recommended that the Department make changes to the rules at N.J.A.C. 8:39-4.1(a)8, 4.1(a)20, 4.1(a)32, 7.4(b), 11.2(b), and 43.15. Testimonial comments and agency responses are summarized below. A copy of the full transcript of the public hearing is available upon request and payment of the Department's normal charges for copying. Persons requesting copies should write to:

Mr. Robert J. Fogg, J.D., M.P.A.

Director

Licensing, Certification & Standards

CN 367

Trenton, NJ 08625

Hearing Officer's Report and Summary of Public Hearing Testimony, Hearing Officer's Recommendations and Agency Response:

CHAPTER 39. Standards for Licensure of Long-Term Care Facilities

COMMENT: Two persons testified on the licensure rules in general. Dr. Meyer Schreiber, who was one of three consumers appointed to the advisory group who helped the Department to develop the rules, commended the Department for including consumer participation in the group and declared that "a fine job was performed by these individuals in the Nursing Home Advisory Group." One concern expressed by Dr. Schreiber was that the standards do not provide any kind of rating scale that might help the public to judge "how good or how poor the facility is and whether it is making progress or having difficulties over a period of years."

RESPONSE: The Department appreciates Dr. Schreiber's supportive comments regarding development of the rules. It agrees that some kind of rating scale would be helpful to consumers who are choosing among nursing facilities. Some states have developed effective rating systems. The use of advisory standards in New Jersey's licensure rules has provided some guidance to consumers, but not all facilities choose to participate in advisory surveys. Mr. Fogg suggested that further explora-

tion of a rating scale or a realistic incentive system for long-term care facilities would be a good project for the nursing home advisory group (NHAG) and agreed to add it as an agenda item at upcoming meetings.

COMMENT: Dr. Jack Saul, a New Jersey licensed psychologist, testified that the standards fail to address the mental health needs of nursing home patients. Currently on the clinical faculty in Psychiatry at New York University Medical Center, Dr. Saul spent some time as consultant at a New Jersey licensed nursing home in 1990 and 1991. According to Dr. Saul's testimony, New Jersey "has an antiquated system of investigation of mental and physical abuse of residents," there is "underdiagnosis of and failure to treat depression," the licensure standards do not address "the most serious problem for nursing home patients, that of neglect," and there is "an absence of guidelines pertaining to the need to segregate high functioning from low functioning patients," which may compromise the quality of life of residents. According to Dr. Saul, in 1991 he reported a dozen cases of mental and physical abuse of residents in the nursing home where he worked, but neither the Health Department nor the Ombudsman for the Institutionalized Elderly took adequate action. He believes that the Department of Health's failure to develop more effective standards for improving the quality of life of nursing home residents "is also a form of neglect that must be remedied."

RESPONSE: The Department believes that Federal and State licensure and certification rules, as monitored through regular full surveys and complaint investigations, as well as unscheduled surveillance visits, have helped to ensure a high quality of care in New Jersey licensed long-term care facilities. This is borne out by comparison of New Jersey's standards and compliance records with those of other States.

With respect to the diagnosis of depression among residents of long-term care facilities, the Standardized Resident Assessment Instrument (MDS) has been used for several years in all licensed long-term care facilities in New Jersey. The MDS has been extensively tested, in New Jersey as well as nationally, and we believe it is the most effective tool currently available for interdisciplinary assessment of residents. Use of the MDS will continue to be required, in accordance with N.J.A.C. 8:39-11.2. The Department expects that assessments documented on the MDS will trigger diagnoses of depression, as well as other mental health needs, and lead to the development of care plans and treatment of residents as required.

The Department disagrees that it is generally necessary to "segregate high functioning from low functioning patients" in long-term care facilities. Appropriate assessments, care planning and supervision of residents is intended to ensure that quality of life is not compromised for any resident and that each resident's rights are protected. Facilities have the option to establish units segregating residents by diagnosis or to establish specialized services, programs, or units to serve resident populations with unique and special health care needs, as described at N.J.A.C. 8:39-2.9.

Each of the complaints regarding resident abuse which are referred to by Dr. Saul have been investigated by the Department. As a result of these inspections, deficiencies have been cited and a correction plan was verified. The last complaint and surveillance visits to the facility regarding this issue were conducted on January 1, 1992 and February 4, 1992. The Office of the Ombudsman for the Institutionalized Elderly also investigated this situation in 1991 and informed the Department that they would not pursue the matter further. The hearing officer did not recommend any changes to the rules as a result of Dr. Saul's testimony.

Subchapter 2. Licensure Procedures

COMMENT: Martin Cramer, representing the Elder Rights Coalition of New Jersey, testified that the Coalition believes that the "entire Certificate of Need process is becoming more and more watered down," as reflected in the rules (N.J.A.C. 8:39-2.1). Specifically, according to the Coalition, "Medicaid bed requirements are connected with the Certificate of Need in New Jersey, and with more expansions permitted without a Certificate of Need, nursing homes may seek to avoid Medicaid bed responsibilities."

RESPONSE: The Department must implement the Certificate of Need program in accordance with its statutory authority. Currently, with the exception of "add-a-bed" applications, all bed expansions in long term care require a Certificate of Need (CON), and a bill to eliminate CON for religiously-affiliated facilities is in litigation and is not yet implemented.

COMMENT: The Coalition also believes that "the inspection procedures for nursing homes (N.J.A.C. 8:39-2.4) should be tightened.

Nursing homes should be told in advance just what the Department of Health will be looking for, both for announced and unannounced visits."

RESPONSE: The Department believes that inspection procedures for nursing homes are effective in determining compliance with licensure rules and quality of care. Surveyors receive on-going training concerning amendments to licensure and federal rules. Each surveyor is trained and certified by HCFA. The HCFA training courses include effective survey methods as well as techniques for communicating with residents to determine their satisfaction with facility services and quality of care. The Department arranges frequent in-service training for surveyors on issues relating to long-term care as well as the survey process.

Nursing homes are "told in advance" of Departmental expectations by means of information in the manual of standards for licensure and the Federal survey forms. It is a violation of Federal law to inform a nursing facility in advance of when an inspection will occur. No changes to the rules were, therefore, recommended by the hearing officer.

Subchapter 4. Mandatory Resident Rights

COMMENT: Testimony from the representative of the Elder Rights Coalition suggested that N.J.A.C. 8:39-4.1(a)6 should be strengthened. The rule states the residents' rights to be free from chemical and physical restraints, unless authorized by a physician for a limited time for the protection of the resident or others, and that residents shall not be confined in a locked room, or restrained for punishment or staff convenience or with the use of excessive drug doses. According to the Coalition testimony, "authorization by a physician of physical or chemical restraints should be only on the written orders of the physician placed in the resident's permanent chart available for inspection by the Department of Health, the Ombudsman, and the resident's physician."

RESPONSE: The Department must implement the statutory provisions of the nursing home resident bill of rights codified at N.J.S.A. 30:13-3 and 5 which requires a physician order prior to use of restraints. All physicians orders must be entered in the medical record and are available for inspection.

COMMENT: The Elder Rights Coalition commenter testified that N.J.A.C. 8:39-4.1(a)20 does not appear to fully comply with N.J.S.A. 30:13-5(e) which requires unaccompanied access to a telephone at a reasonable hour. The Coalition believes that "pay phones should not be right next to the nurses' station . . . should be in a wheelchair accessible room or some other generally private place where people who are hard of hearing can talk loudly and have some real expectation of a private conversation."

RESPONSE: Discussion with survey staff of the Department indicates that, generally, access to privacy during telephone conversations has not been a problem in most facilities. Facilities have used creative approaches to providing such privacy for residents, such as allowing hard-of-hearing persons to use a vacant office. Surveyors monitor compliance with the rule on an individual basis by means of resident interviews or observation of telephone access. Since the wording of the rule differs slightly from that of the law, the rule has been changed to mirror the statute which states the residents have a right to "unaccompanied access to a telephone at a reasonable hour."

COMMENT: The Coalition commenter further testified that N.J.A.C. 8:39-4.1(a)31, which specifies four circumstances which constitute the only reasons for which a resident may be transferred or discharged, does not conform with either N.J.S.A. 30:13-6 or case law as stated in *Brehm v. Pine Acres Nursing Home* 190 N.J. Super. 103 (App. Div. 1983). State law requires a "written order from the attending physician and at least 30 days advance notice of such transfer . . . and in the case of an incompetent resident where the patient is a danger to himself and others, it is necessary to go the court for an involuntary commitment proceeding." "The *Brehm* case held that . . . involuntary commitment procedures cannot be used to circumvent the protection of N.J.S.A. 30:13-6." "Since most nursing homes read neither statutes nor cases, but rely on your regulations, the lack of proper specification in this regulation may be financially disastrous to some nursing homes if sued by residents or the estates of residents."

RESPONSE: The Department has reviewed the cited case law and statutory authority and believes the rules as written conform to this authority. N.J.A.C. 8:39-4.1(a)32, the next enumerated resident right in the rules, requires that every resident be afforded a 30-day notice in advance of discharge or transfer, except in an emergency.

The Department concurs that there may be some ambiguity related to the requirement for a physician order prior to discharge or transfer,

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which is implicitly required through the reading of several rules. Therefore, N.J.A.C. 8:39-11.3(b) is amended to require discharge plans to be established in accordance with physician's orders.

The rules for discharge are in conformance with the cited *Brehm* case, as the court held that commitment procedures could not be used to circumvent the 30-day notice requirements in N.J.S.A. 30:13-6 for non-emergent cases. As noted above, all residents must be afforded a 30-day notice prior to discharge or transfer under the rules except in an emergency.

COMMENT: The Coalition also believes that "somewhere in either Subchapter 4, 5, or 6 you should prohibit certain practices of nursing homes that are prohibited by federal law, such as duration of stay contracts" and "responsible party" or "sponsor" contracts for both private pay and for Medicaid patients."

RESPONSE: The Department concurs that this restriction should be further clarified. N.J.A.C. 8:39-4.1(a)8 has therefore been amended to indicate that each resident has a right to receive a written statement or admission agreement which describes services provided by the facility, related charges, policies for fee payment, deposits and refunds, and that such statements or agreements must be in compliance with all applicable State and Federal laws.

Subchapter 7. Mandatory Resident Activities

COMMENT: Mrs. Elizabeth Oltmer testified as representative of the New Jersey Activity Professional Association, which includes 280 Professional Activity Directors in the State of New Jersey. The Association members "commend the inclusion of 90 hours of training for those with a high school diploma," as specified at N.J.A.C. 8:39-7.2(a)2. However, the Association believes that the 90 hours of training should be set as the minimum, because the National Certification Council for Activity Professionals will soon require a minimum of 180 hours of training.

RESPONSE: The Department appreciates the supportive comments regarding inclusion of the 90 hour training program. The Department believes that the 90 hour program described at N.J.A.C. 8:39-7.2(a)2, along with the educational and experience requirements specified in the rule, constitutes an appropriate qualification for activities directors in long-term care facilities.

COMMENT: The Association testimony also addressed the rule at N.J.A.C. 8:39-7.2(b), which exempts currently employed activities directors who have completed a course which was previously approved by the Department from taking the 90 hour course. The Association believes that use of the words "currently employed" limits the activity professional who has made an employment change for professional improvement, an illness, family leave, or re-location. The commenter asked "what will be their status in regard to educational requirements when re-employed?"

RESPONSE: The intent of the rule at N.J.A.C. 8:39-7.2(b) was to grandfather those individuals who were in activities directors positions at the time the licensure rules were originally adopted in 1988. The Department would interpret "currently employed" to include an activities director approved under this rule who had transferred from one facility to another without a break in service. However, the general intent of the rule is to improve the quality of activities services Statewide through incremental improvement in the training and qualifications of activities directors. The Department cannot amend the rule or interpret it to permit exceptions where there has been a significant break in an activities director's service.

COMMENT: The Association testified in regard to N.J.A.C. 8:39-7.4(b), which indicates that a facility which requires an exception from any of the seven categories of activities listed at N.J.A.C. 8:39-7.4(a) request such exception in accordance with the waiver process at N.J.A.C. 8:39-2.7 and list the reasons for the exception. The Association disagrees that such exceptions should be granted, since this might allow facilities to not render services based on facility interpretation of the rule, which lists "impracticability" and "lack of appropriateness" as possible reasons, and might, therefore, result in abuse of regulations for mandatory resident activities.

RESPONSE: While the Department believes that the listing of activities categories is appropriate for most facilities, it recognizes that there may be situations where one or two categories may be inappropriate for the particular facility population. The Department, therefore, allows the facility to make this determination, so long as the facility is providing a diversity of programs. Activities staff are expected to meet the needs of individual residents. In order to clarify that it is the facility's responsibility to provide a diversity of activities which is appropriate to

their population and includes activities in all or most of the specified categories, the rule has been changed by deleting reference to the waiver process, requiring that any of the categories not addressed be documented and that written documentation be available for review and provided to the Department as requested. This documentation requirement provides the basis for establishing the appropriateness of not providing particular resident activities, as opposed to the more cumbersome request procedure.

COMMENT: Additionally, the Association commenter suggested the addition of a new rule requiring an activities staff who hold at least one of the following: a high school diploma or G.E.D. and have completed the 90 hour approved course, or currently employed activities staff who have completed an activities course which was previously approved by the Department.

RESPONSE: The Department believes that the educational and experiential qualification specified at N.J.A.C. 8:39-7.2(a) and (b) are appropriate for the director of activities, and expects the facility to select and train additional staff as required. The requested new rule has not been added, since, in the Department's experience, individuals with the characteristics described by the commenter can comply with subsections (a) and (b).

COMMENT: The Association testimony concerning N.J.A.C. 8:39-7.3 recommended that the minimum required staffing time of 45 minutes per resident per week should be increased to at least 55 minutes per resident per week. The Association believes this increase is needed since "residents are lower functioning and require more acute care services," and "the current state survey process recognizes and emphasizes the importance of activity services."

RESPONSE: Increasing the staffing requirements would constitute a substantive change to the rules which could not be made upon adoption. Additionally since 65 percent of patient days in long term care facilities are paid for by Medicaid, such an increase would result in a cost impact on nursing facilities. This cost increase has not been incorporated into the Medicaid budget. Therefore, the requested change has not been made.

Subchapter 8. Advisory Resident Activities

COMMENT: The New Jersey Activity Professional Association representative suggested a new rule at N.J.A.C. 8:39-8.2, which would state that activity staff should be currently certified by the National Certification Council for Activity Professionals.

RESPONSE: The advisory standard at N.J.A.C. 8:39-8.2 provides that if the activities director possesses this certification the advisory standard is met. There is no need, therefore, to provide additional "credit" for having other activities staff also certified by this body.

COMMENT: The Association also testified that they believed advisory staff time suggested at N.J.A.C. 8:39-8.3(a) should be increased to at least 65 minutes of resident activities staff time per resident per week, to meet needs of residents, who are now lower functioning and require more services.

RESPONSE: Increasing the staffing requirements would constitute a substantive change to the rules which could not be made upon adoption. Additionally since 65 percent of patient days in long term care facilities are paid for by Medicaid such an increase would result in a cost impact on nursing facilities, which cost has not been incorporated into the Medicaid budget. Therefore, the requested change has not been made.

Subchapter 9. Mandatory Administration

COMMENT: Dr. Schreiber testified that the "standards do not include any reference to bankruptcy or possible receivership and other forms of fiscal difficulty." Dr. Schreiber believes that residents and families have a right to know if the facility is in difficulty or if closure of the facility is a possibility.

RESPONSE: The Department acknowledges the intent of the comment, but on balance, does not agree that residents and families should be notified if the facility is in "financial difficulty" or "closure is a possibility." As specified at N.J.A.C. 8:39-9.2(1), the Department must be notified of financial insolvency or filing of a petition for bankruptcy. However, since either of these may be preliminary situations which are later resolved, the Department believes such reports should not be required to be released publicly unless the facility authorizes the release of such information. When insolvency or bankruptcy is only a possibility, notification may cause unnecessary anxiety or disruption in resident's lives in the event that the financial difficulties are resolved. It may also create significant concern among employees, causing more rapid turnover, potentially leading to increased quality of care problems.

Subchapter 29. Mandatory Pharmacy

COMMENT: Mr. Andrew Horowitz testified on pharmacy rules. His comment on N.J.A.C. 8:39-29.2(d)3 indicated that the directions for use should not be included as part of this requirement, since this would require a new order each time the dosage or frequency is changed, and would negate the credit return standard (see N.J.A.C. 8:39-29.4(j)), since Board of Pharmacy law does not allow a pharmacist to relabel a previously dispensed medication and non-unit dose items might be destroyed if not properly labeled with the new frequency or dosage.

RESPONSE: The Department contends that self-administration requires directions, as these medications are stored in the resident's room. Since the resident is responsible for these medications, the resident may change directions on the label itself. The directions for use issue has no consequences for the issue of creditable medications. As long as medications, other than controlled dangerous substances, are packaged in unit-of-use form and are appropriately labeled, they may be returned for credit. The rule was not revised in the manner suggested.

COMMENT: Mr. Horowitz testified concerning N.J.A.C. 8:39-29.4, mandatory pharmacy policies and procedures. The following six changes were suggested.

COMMENT: N.J.A.C. 8:39-29.4(b)2: Omit the requirement for trade name labeling. Generic products manufactured and packaged by generic houses are not labeled with trade name equivalents.

RESPONSE: As discussed in the Comment and Response section which follows, N.J.A.C. 8:39-29.4(b)2 has been revised. The revised rule requires the medication to be labeled with the trade (brand) name "or" generic name.

COMMENT: N.J.A.C. 8:39-29.4(b)4: This standard does not mention or recognize the 30 day unit dose distribution system. This system must be recognized as it is the preferred and most widely contracted system in long-term care facilities in New Jersey.

RESPONSE: This rule addresses only the 24-hour unit dose system. The Department recognizes that 30-day unit-of-use systems (for example, bingo cards or punch cards, multidose bubble packages) are very prevalent within the long-term care industry. The rule was not revised in the manner suggested.

COMMENT: N.J.A.C. 8:39-29.4(c): The recommended dosage for over-the-counter medications should be omitted on the labeling for OTC and prescription medications, since the nurses are trained to administer medications from the medication administration record (MAR) and the consultant pharmacist protects the interests of the facility and the patient.

RESPONSE: The recommended dosage is required only for stock over-the-counter medications. This practice serves as a safety check for nursing, allowing the acceptable dose to be compared with any ordered dose, such as one ordered by telephone. It is possible that the consultant pharmacist may not review these orders for up to 30 days. The rule was not revised in the manner suggested.

COMMENT: N.J.A.C. 8:39-29.4(j): Clarification is needed on which medications are acceptable for return and credit. Does this mean injectables, sealed liquids, topical products? The Board of Pharmacy rules do not allow for the return of any controlled dangerous substance.

RESPONSE: The phrase "where allowable by law" refers to Board of Pharmacy rules and/or Medicaid regulations. Controlled dangerous substances cannot be returned unless the provider pharmacy maintains a perpetual inventory of scheduled substances. Any other unit-of-use medication (that is, solid or liquid oral forms, injectables, transdermal systems, or other types of sealed preparations) could be returned for credit. The Department does not expect a 100 percent rate of medication return due to the variety of dispensed medication dosage forms. A substantial savings, however, is expected.

COMMENT: N.J.A.C. 8:39-29.4(l): Does this standard prohibit a patient from utilizing the service of a mail order pharmacy which is not licensed by the New Jersey Board of Pharmacy? Allowing complete freedom of choice of a pharmacy provider may allow patients to obtain medications from multiple sources, which could cause concern in monitoring of interactions and dosage considerations if all medications are not listed on a single patient profile. Moreover, generic substitution regulations of the out-of-state pharmacy may differ from those of New Jersey. "Freedom of choice may also become an accountability nightmare for the nursing staff who are responsible for the administration, storage and reordering of medication from, possibly, multiple pharmacy providers."

RESPONSE: Out-of-state pharmacies do not require licensure by the New Jersey State Board of Pharmacy, nor need they comply with the

New Jersey generic formulary law, N.J.S.A. 24:6E-1 et seq. The consultant pharmacist monitors all medications, regardless of the source.

The Department cannot justify having a resident pay more for his or her medications when a third-party system is available which can save the resident a substantial amount of money. As the person who directs pharmaceutical services in the long-term care facility, the consultant pharmacist would help to develop a system to accommodate the resident's right to his or her personal pharmacy.

COMMENT: N.J.A.C. 8:39-29.4(n): According to the New Jersey State Board of Pharmacy regulations, medication previously dispensed cannot be relabeled.

RESPONSE: Pharmacists may relabel any medication in accordance with currently acceptable professional practices. The pharmacist must use professional judgement to decide whether or not to relabel or repack medication and should document any such repackaging. Nevertheless, the rule has been revised so as to require the facility to implement a system to ensure secure handling, proper storage, and safe administration of drugs, while allowing the facility greater flexibility in developing the mechanism for achieving these goals.

COMMENT: Testimony concerning N.J.A.C. 8:39-29.6 included the following two issues:

COMMENT: N.J.A.C. 8:39-29.6(b)1: The commenter recommended that, if a patient obtains medication from a pharmacy other than the facility provider pharmacy, the policies and procedures of the facility ensure that the medication distribution system is consistent between providers.

RESPONSE: The Department cannot mandate similar drug distribution systems between a long-term care facility provider pharmacy and another provider pharmacy. Many third-party prescription plans may not pay for the packaging associated with a unit-of-use or unit dose system. The Department maintains that, while the existence of different drug distribution systems may present difficulties, the consultant pharmacist will identify possible problems and propose remedies.

COMMENT: N.J.A.C. 8:39-29.6(b)2: It should be the pharmacy's responsibility, not the facility's, to establish a plan for obtaining residents' drugs on an emergency basis. Otherwise, it will become the responsibility of the contracted provider pharmacy to "fill this incredible void." "The outside provider would enjoy the benefit of limited service without the more expensive facility support." Contracted provider pharmacies provide support services such as medication carts, fax machines, and computerized form processing without charge to the facility.

RESPONSE: The long-term care facility is the licensed entity and, therefore, is responsible for ensuring the safety of all residents. The facility employs professionals who are familiar with the mechanisms of drug distribution systems and who must develop a system for initiating emergency treatment. Contracted provider pharmacies are not required to supply medication carts, fax machines, and computerized forms without charge to the facility. In fact, such services may be deemed "kickbacks" under Federal law and, therefore, illegal.

Subchapter 39. Mandatory Social Work

COMMENT: Mr. Edwin O'Connor was critical of the rule at N.J.A.C. 8:39-39.3, which reads as follows: "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 equivalent to one full-time equivalent social worker for every 120 residents.)" Mr. O'Connor testified that "the ratio of 1-120 residents does not allow the social worker to adequately serve the individual resident's needs. It places the social worker in a malpractice situation." According to Mr. O'Connor, "the average resident in LTC facilities at this time in New Jersey is needy, less healthy, and requires significant social work services."

Finally, Mr. O'Connor suggested that subchapter 39 should address the fact that social workers are routinely assigned additional duties of "marketing services" and such duties deprive residents of sufficient time with the social worker. Mr. O'Connor recommended that the rules note that such time utilized by social workers not be included in the 20 minutes of social work services per week for each resident.

RESPONSE: Please refer to the comment/response section below, at subchapter 39, for the Department's full discussion and complete response to written comments regarding social work staffing amounts. As stated in the comment/response section above, 20 minutes of social work services per resident is an average, representing the minimum staffing time each facility must provide. The Department does not intend the rule to limit the provision of social work services to residents who may need more than 20 minutes per week. Each social worker is ex-

pected, based on assessments and care plans, to schedule services to residents as required, and to comply with professional practice requirements. An increase in the staffing hours would constitute a substantive change to the rules, and would have a fiscal impact on nursing facilities. No changes to the subchapter were recommended by the hearing officer.

Subchapter 40. Advisory Social Work

COMMENT: Regarding advisory N.J.A.C. 8:39-40.4, which suggests that social workers should be provided with a private office and a telephone, or access to a private office and a telephone in facilities with 60 or fewer beds, Mr. O'Connor states that, since this is an advisory rule, it "does not grant provision of visual and auditory privacy for resident or family social service interviews and for access to a telephone. The State of New Jersey should MANDATE that counseling, meeting with families, assisting staff to cope with vulnerable residents, performing advocacy services on behalf of residents, etc. occur in a PRIVATE OFFICE."

RESPONSE: Although the Department has not mandated particular space and a telephone dedicated exclusively to social work services, each facility, as stated at N.J.A.C. 8:39-39.5, must provide visual and auditory privacy for resident or family social service interviews, and for confidential telephone calls by social workers. Each facility has the flexibility to arrange for such privacy based on individual facility resources. The hearing officer did not recommend any changes to the social work rules at subchapter 40.

Subchapter 40. Nurse Aide in Long-Term Care Facilities Competency Training and Evaluation Program

COMMENT: The commenter from the Elder Rights Coalition of New Jersey testified that the personnel regulations for nurses aides at subchapter 43 "appear too complex." "Further, there should be a procedure to check and update the records of aides who become inactive and later return to work."

RESPONSE: Although there is no mechanism for keeping a record of which nurse aides are inactive at any time, the Department will maintain a registry of currently certified nurse aides. Names will be removed from and reentered onto the registry in accordance with N.J.A.C. 8:39-43.19.

The Department considers the level of detail of the rules to be appropriate and necessary in order to avoid ambiguity and misinterpretation.

COMMENT: Theresa McCarthy, representing Nursing Team Trainers, testified regarding N.J.A.C. 8:39-43.4, Fees. Ms. McCarthy points out that the two year approval program "was already increased to \$60.00 and now it is listed as \$75.00," and asks the reason for this change in the fee.

RESPONSE: Changes in the fee were necessary as a result of increases in administrative and management costs of the programs which have been incurred by the Department.

COMMENT: Testimony from Ms. McCarthy also addressed N.J.A.C. 8:39-43.4(h), which specifies that documents and fees for approval of nurse aide training programs must be submitted to the Department 90 days prior to the starting date of the training course. According to the testimony, this requirement presents a hardship for programs run by Nursing Team Trainers, since "funding does not always allow for that type of advance notice." Ms. McCarthy requests that the Department reconsider this requirement, since the system seemed to function smoothly with a 30 day application period, and the Department "has more staff now than it did previously."

RESPONSE: The Department maintains the importance of a schedule designed to ensure that instructors are given sufficient time in which to prepare to teach a nurse aide training course. Nevertheless, the Department recognizes that situations may arise in which it becomes difficult to submit all required materials 90 days prior to the starting date of a course. The Department will consider these cases individually as they arise and will attempt to accommodate the needs of the training program within the limits imposed by the need to complete the approval process in a timely manner. Although the Department now has staff with which to monitor the training programs, staff available to review training program applications has not increased.

COMMENT: Four persons testified regarding the requirement at N.J.A.C. 8:39-43.15(b) that, 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. The commenters, two of whom were instructors at a nurse aide training program, and two of whom were nurse aides, objected to the rule and indicated that it is unfair to have a nurse aide

lose his or her certification when they are working in other health care settings providing direct hands-on patient care under the supervision of a licensed nurse, just as nurse aides provide in a long-term care facility. All of the commenters gave examples of personal hardships or difficulties aides have experienced in obtaining employment as a result of the rule. Each commenter urged the Department to revise the wording of the conditions of recertification and to accept equivalent experience from other health care settings in which the nurse aide functions under the supervision of a licensed nurse.

RESPONSE: For full discussion this issue and the Department's response, please refer to the comment/response section below. As stated in the above response, on the basis of the wording and meaning of the Federal regulation and on the basis of the information provided by the commenters on N.J.A.C. 8:39-43.15(b), the Department has revised the rule. The Department agrees that appropriate experience may be obtained outside of the long-term care facility setting and does not encourage the seeking of short-term employment by experienced nurse aides solely for the purpose of complying with the provision of the rule which refers specifically to employment in "a long-term care facility." The revised rule refers more generally to employment directly in a licensed health care facility or employment under supervision provided through a licensed health care facility.

Subchapter 43. Alzheimer's/Dementia Programs—Mandatory Standards

Subchapter 45. Alzheimer's/Dementia Programs—Advisory Standards

COMMENT: The commenter from the Elder Rights Coalition of New Jersey was critical of subchapter 45 and 46, regarding mandatory and advisory standards for Alzheimer's/dementia programs. According to the Coalition, "Alzheimer's units are sometimes more of an advertising ploy than anything substantive, since the program that may be offered in Alzheimer's units may be nothing more than what the nursing home is already required to provide under normal care plan requirements." Furthermore, some homes may charge more for being in this unit. The Coalition suggests that the Department should reconsider these regulations, since they "do not believe that any benefit to nursing home residents will be achieved by this portion of your rules."

RESPONSE: The Department believes that the rules reflect consideration of the individuality of the Alzheimer's/dementia resident and the diversity of ways to meet the needs of such residents. The Department believes that the advisory rules at N.J.A.C. 8:39-46 encourage the development of innovative and individualized programs, based upon assessment of resident's needs by staff who have pursued education beyond the minimum in-service training, who are familiar, for example, with the causes and progression of dementias, the care and management of dementia residents and effective ways to communicate with and reach these residents, and who have access to a consultant gerontologist with training and/or experience in the care of residents with dementia. Prior to adoption of the current rules for Alzheimer's/dementia programs many facilities had advertised and/or claimed to offer specialized services to dementia residents, when in fact there was no evidence that staff had received any additional education to promote specific understanding of the Alzheimer's disease process, effective methods of communicating with such residents, knowledge of the best ways to provide services and maintain the resident's maximum function for as long as possible. Since the initiation of the current rules, which are similar to the new rules, approximately 15 facilities have been approved to offer Alzheimer's/dementia programs. The intent of the Department is to provide protection to consumers who are seeking the best care for family members with dementia by ensuring that care providers are aware of, and trained in, "state-of-the art" techniques for communicating with and offering services to these residents. The Department believes that adoption of the mandatory N.J.A.C. 8:39-45 and the advisory N.J.A.C. 8:39-46, along with documentation that the facility is meeting at least 65 percent of the advisory standards in N.J.A.C. 8:39-46 will allow sufficient flexibility for additional individualized and innovative programs to be developed which will truly be unique in the ways they are meeting the specific needs of the dementia residents at that facility. The Department believes that adoption of the rules will continue to protect residents and families from falsely advertised programs and from unnecessary additional expenses. As stated at N.J.A.C. 8:39-2.9(f), no facility shall advertise itself as providing an Alzheimer's/dementia program without prior approval from the Department, and such programs are not eligible for increased reimbursement through the Division of Medical Assistance.

Summary of Public Comments and Agency Responses:**Chapter 39. Standards for Licensure of Long-Term Care Facilities**

COMMENT: A general comment on the chapter was forwarded by the New Jersey Optometric Association. The Association recommended that an additional subchapter be added to the licensure standards as "Mandatory Eye Services." The new subchapter would require long-term care facilities to provide or arrange for certain eye services to ensure that all residents will be examined for sight-threatening conditions such as cataracts and glaucoma, to ensure diagnosis of ocular manifestations of systemic conditions such as diabetes and hypertension, and to ensure the highest possible recognition of the importance of vision on resident's quality of life. The commenter strongly recommend addition of "eye services as part of the minimum and essential services in LTC, but recommend that eye services be established as "advisory" if the Department is unwilling to add them as mandatory services. The commenter also recommended that the Minimum Data Set (MDS), which is included as Appendix D, be amended to include an automatic trigger for a mandatory eye health examination at Section D, (Vision Patterns), Subsection 2, (Visual Limitations/Difficulties, Item (b).

RESPONSE: N.J.A.C. 8:39-11.2(e) requires a comprehensive assessment to be completed within 14 days of admission for each resident. Both the current and the new rules require the use of the Standardized Resident Assessment Instrument (MDS), or an equivalent instrument, as a screening tool for completing this assessment. Based on assessments, a care plan is developed and residents who require eye health examinations are referred to a practitioner of their choice. The MDS has been extensively tested during the past few years, nationally as well as in New Jersey, and has functioned effectively to identify residents who require eye care or examinations. The Department does not agree that the addition of a new subchapter for eye services, which would be a substantive change in the rules, is necessary. The MDS was developed by the Federal government, and cannot, therefore, be amended by state regulation.

Subchapter 1. General Provisions

COMMENT: The New Jersey Optometric Association commented on N.J.A.C. 8:39-1.2, Definitions. The Association recommended the addition of a definition of "physician." According to the commenter, the rules speak generally of the provision of "medical services," throughout. For example, there are numerous references to "physician" in subchapter 4, Mandatory resident rights. These references might be interpreted to mean that only a physician licensed to practice medicine or surgery (MD or DO) could provide "medical service." The Association suggested that a generic definition of "physician" be included to clarify that medical services can be provided by any health care provider licensed to deliver such services. Language, drawn from the Small Employer Health Coverage Program, is offered for consideration as follows: "Physician" means a provider of health care services who is properly licensed or certified to provide medical care under the laws of the State of New Jersey."

The Association also believes that the list of examples of titles listed at the definition of "signature" is "deficient in that it fails to include the title of 'O.D.' that is authorized to New Jersey licensed optometrists. The Department should at least list the typical titles found in a long-term care facility by also including O.D. for optometrist, "Ph.D. for psychologists, D.P.M. for podiatrists, all other titles customarily utilized."

RESPONSE: As stated at N.J.A.C. 8:39-9.3(c), all personnel who require licensure, certification or authorization in order to provide resident care must be licensed, certified or authorized under applicable New Jersey laws and rules. In addition, personnel must provide care in accordance with applicable professional standards of practice. The Department has added a definition of "physician" to the rules at N.J.A.C. 8:39-1.2, indicating that a physician is a person licensed to practice medicine in accordance with the Board of Medical Examiners' rules at N.J.A.C. 13:35. The physician is responsible for initial examination and orders for newly admitted residents. Responsibility for subsequent visits and orders following this initial assessment and physician's orders may be delegated to nurse practitioners, certified nurse specialists, or New Jersey licensed physician assistants, in accordance with applicable rules and facility policies. Although services are provided in long-term care facilities by other professionals, as ordered by the physician, definitions of providers of specialized care such as optometrists, psychologists, podiatrists, have not been included, since the definitions of these professionals are provided in the laws and rules governing each of the practices.

The list of titles included in the definition of "signature" is intended only to serve as examples of abbreviations of titles which might accompany the first initial and full surname of individuals who are signing orders or records to document provision of services. The list of examples is not intended to include all practitioners who might provide orders or services, nor to discriminate against any particular service providers. Therefore, the definition has not been changed as requested.

Subchapter 2. Licensure Procedures

COMMENT: The New Jersey Board of Nursing commenter recommended a change to N.J.A.C. 8:39-2.9(e), which requires one RN to be present on a unit where ventilator dependent residents are treated, to add "additional nursing staff and ancillary personnel to competently care for patients."

RESPONSE: The staffing requirements specified at N.J.A.C. 8:39-2.8, indicating the presence of at least one RN on the unit 24 hours per day, are additional requirements for specialized care units where ventilator dependent residents are treated, and are not intended to exempt the facility from the requirements at N.J.A.C. 8:39-2.9(b)3 to specify staffing patterns which include the RN, nor from the requirement at N.J.A.C. 8:39-25.2(a) to provide nursing services and licensed nursing and ancillary personnel at all times. Each facility must determine the necessary hours of care to be provided by licensed and ancillary personnel, in addition to the RN, based on assessment of the ventilator dependent residents' needs and the census of the unit. No change has been made to the rule.

COMMENT: The NJAHCF commenter requested a change at N.J.A.C. 8:39-2.10(a)3ii to allow bedside hemodialysis services to be provided in a two-bedded room if no roommate is present, or the roommate does not object, or both patients receive hemodialysis services. The Association believes that this would allow for efficient use of space, since equipment may be small and require little space.

RESPONSE: The requested change has not been made. The intent of the rule as written, permitting bedside hemodialysis only in private rooms, is to provide privacy for the dialysis patient and other LTC residents, and to avoid unnecessary interruption of LTC services.

COMMENT: N.J.A.C. 8:39-2.10(c)3 requires separately licensed providers of hemodialysis to have a New Jersey office. NJACHF requests deletion of this requirement, which they feel is not needed since the outside provider could have an office, for example, in Philadelphia for Camden or in Easton for Phillipsburg.

RESPONSE: The Department believes it is essential to have a basis for jurisdiction in order to conduct appropriate inspections of facilities and to enforce New Jersey law and rules. However, it is also acknowledged that a facility may create a New Jersey office only to satisfy the rule, while the operation and administration of facility services may remain out-of-state. As such, the Department agrees with the commenter to the extent that an alternative will be created to the rule, which is to permit out-of-state facilities to enter into a jurisdictional agreement with the Department in lieu of establishing a New Jersey office.

COMMENT: One commenter asked whether N.J.A.C. 8:39-2.10(b)3, which states that the hemodialysis program shall not require the commingling of hemodialysis patients with facility residents, is intended to restrict such commingling and whether a rule is required to indicate this restriction.

RESPONSE: The rule is intended to ensure that dialysis programs do not use space required for long-term care services, impede use of hallways and treatment rooms, force residents to be commingled with dialysis patients, or intrude on resident privacy. Any commingling which is mutually requested and agreed upon would not be prohibited so long as the requirements of the rule are met. No change has been made to the rule.

COMMENT: NJAHCF suggested deletion of requirements at N.J.A.C. 8:39-2.10(d)2 which would require the facility to document that space identified for provision of dialysis service meets requirements of N.J.A.C. 8:43A-24, that any renovations or construction receive prior approval from the Department, and that space required by the long-term care facility programs shall not be used. The commenter stated that hemodialysis equipment today is very small, needs very little space, and services could possibly be done at bedside. Common space such as admissions area and examination rooms could also be used, and some programs are already approved and operating in this manner.

RESPONSE: The Department disagrees with the suggestion to delete documentation of space identified for dialysis services. The intent of the rule is to prevent dialysis services from interfering or intruding upon

space designated for long-term care programs. Additionally, the Department does not believe that admissions areas and examination rooms would be appropriate or conducive to patient comfort during the three or four hours which might be required for dialysis. Although no change has been made to the rule, waivers may be considered, on an individual basis, in accordance with N.J.A.C. 8:39-2.7.

COMMENT: NHAHCF asked for an addition to the list of criteria upon which the Department would deny an application of add-a-beds, at N.J.A.C. 8:39-2.12(c)1, which would negate such denial upon institution of a performance bond by the applicant assuring that all deficiencies will be expeditiously corrected and will not reappear for a 12 month period. The Association believes that this would "create a fairer system, especially in multifacility ownerships exhibiting a satisfactory performance in their other facilities."

RESPONSE: The statutory provision for the "add-a-bed" program at N.J.S.A. 26:2H-7.2 is available to long term care facilities once every five years. Given the discretionary and flexible nature of this exemption from Certificate of Need requirements, and the complexity of the exemption process, the requested change has not been made. The Department believes that, in particular where such problems occur in the applicant facility, the corrections should be made and maintained over a 12-month period. Subsection (c) has not been adopted at this time, but is still pending. The Department and the Health Care Administration Board will consider the comment, and other performance bond requirements, prior to adopting subsection (c).

COMMENT: One commenter pointed out that N.J.A.C. 8:39-3.1(b)4 lists only revocation of the facility operator's license as an option for enforcement action, while the statute also includes suspension and provisional licensure. The commenter asks whether omission of these options indicates that the Department does not intend to invoke them.

RESPONSE: As the rule at N.J.A.C. 8:39-3.1(b)4 states, the Department may take any of the listed penalty actions, "or any other lawful remedy." If a LTC facility fails to comply with mandatory rules, appropriate enforcement actions are decided upon on a case-by-case basis, and no penalty which is in accordance with statutes would necessarily be ruled out. The Department is separately preparing a chapter of rules which will specify the use of all licensure sanctions, including suspension and provisional licensure.

Subchapter 4. Mandatory Resident Rights

COMMENT: The Office of the Ombudsman for the Institutionalized Elderly requested clarification of N.J.A.C. 8:39-4.1(a)2, which states the resident's right to have a physician explain his or her complete medical condition and treatment unless "this explanation would be detrimental to the resident's health." According to the Ombudsman, "it is unclear who will set the criteria to determine whether a patient should be informed about his or her condition, or what the criteria should be."

RESPONSE: In order to clarify the rule, the language from the New Jersey law concerning rights of nursing home residents (see P.L. 1976, c.120) has been substituted for the final sentence, which has been deleted. The language added is as follows: "... except when the physician deems it medically inadvisable to give such information to the resident and records the reason for such decision in the resident's medical record." The change clarifies the intent of the rule by affirming that a decision to withhold information concerning the resident's condition from a resident is a medical decision based upon the physician's professional judgement, and that such a decision must be documented in the medical record.

COMMENT: The New Jersey Academy of Consultant Pharmacists commented on the rule at N.J.A.C. 8:39-4.1(a)6, which specifies the resident's right to be free from chemical or physical restraints unless they are authorized by a physician for a limited period of time to protect the resident or others from injury. The commenter believes that "limited period of time" is not specific, and suggests a change in the wording to a "limited and specific time period not longer than 48 hours." The Board of Nursing commenter recommended changing this rule by deletion of the word "excessive" from the phrase "excessive drug dosages," since N.J.A.C. 8:39-27.2(d) states that drugs shall not be used as clinical restraints.

RESPONSE: The Department disagrees that the rule needs to be changed. "Limited period of time" is appropriately used in the resident's rights subchapter, inasmuch as emergency use of restraints or psychopharmacological agents are fully addressed at N.J.A.C. 8:39-27.2, Mandatory policies and procedures for the use of restraints, and in Appendix E, Guidelines for the Use of Restraints. This rule also iden-

tifies timeframes for renewing orders and monitoring such restraints. The resident rights rule has been in effect for five years without continuing or serious problems such as adverse outcomes or violations. In addition, the language is consistent with state law and with OBRA. "Excessive" doses in this rule refer to those dosages which are above and beyond the standards of professional practice and the Department believes the wording is appropriate. Therefore, the requested change to the rule has not been made.

COMMENT: The Board of Nursing asked whether any limits should be placed on the number of residents admitted, in regard to the rule at N.J.A.C. 8:39-4.1(a)11, which states the residents' right 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.

RESPONSE: The Department does not believe that further specificity of the limits on the number of residents admitted need to be included as part of this rule. The number of beds is governed by the rule at N.J.A.C. 8:39-2.4(d) which states that the facility shall accept no more than the number of residents for which it is approved or licensed. Additionally, if surveys determine that the facility is not providing safe and adequate care, the Department may limit admissions or remove residents. No changes have been made to the rules as a result of these comments.

COMMENT: NJAHCF and NJANPHA commenters requested deletion of N.J.A.C. 8:39-4.1(a)13, which entitles each resident to the right 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 notification of any change in room or roommate. The Associations requested that the rule be replaced with OBRA language which states that the resident shall receive notice before the resident's room or roommate is changed, and that the facility may not move the resident to a different bed or room in the facility if the relocation is arbitrary or capricious. NJAHCF objects to the language since it goes "far afield of OBRA rules," may cause incompatible gender or bathroom problems, and unnecessary vacancies which might add costs to management and operation of the facility. The commenter from the Homestead also expressed concerns about the rule, since situations occur where it is necessary to move several residents in order to accommodate the medical and/or social concerns of one resident. The Homestead commenter requests changes to the rule to allow facilities to transfer residents who require such services as an isolation room, supplemental air-conditioning, or because of roommate compatibility, and to clarify whether a physician's order would be required for each resident who is moved in order to accommodate the needs of another resident. The Office of the Ombudsman asked for clarification of the word "clinical" in the rule, so that residents or family members could understand and accept the reasons for a transfer.

RESPONSE: The rule was intended to balance a resident's rights in the choice of room assignment against a facility's need to manage its operations in an effective and efficient manner. The rule was intended to clarify circumstances in which a facility could mandate a change in room assignment.

Although the commenters indicate the rule exceeds Federal requirements, the Department believes that the Health Care Financing Administration has often supported the interpretation on a case-by-case basis, and Federal rules specifically mandate notification prior to a room change and imply a resident may refuse a change in certain circumstances. Notwithstanding the ambiguity of the federal rules, the Department notes that there are numerous instances where New Jersey and many other states choose to exceed minimum federal requirements in state licensing rules.

Upon careful review, the Department will modify the rule in a manner intended to better address both resident needs and those of facilities. In doing so, it must first be recognized that conflict situations rarely arise in room reassignments that are not resolved adequately following discussion between facility administration and the resident or their family.

The final rule will revert back to the current standard, such that a transfer cannot occur due to reasons that are arbitrary or capricious. In addition, facilities will have to provide reasonable notice, an opportunity for an informal hearing if a resident refuses a transfer within the facility before it takes effect, and a right to a written statement of the reason for the transfer. A transfer would not be considered arbitrary and capricious if a facility can document a clinical necessity for relocating the resident, such as a need for isolation or behavior management

problems, or there is a hardship to an applicant for admission through a delay caused by inefficient distribution of beds by gender. Unacceptable reasons for a mandatory relocation include transfer solely due to financial considerations, or to involuntarily accommodate another individual's preferences for roommate changes in cases that are not clinically dictated.

COMMENT: The Board of Nursing requested two changes to the rule at N.J.A.C. 8:39-4.1(a)21, which affirms the residents' rights to be awakened for routine care no more than two hours before breakfast is served unless a physician recommends otherwise and specifies the reasons in the medical record. The Board suggested that "routine care" should be defined or deleted, and that CNS/NP as well as the physician should be able to recommend these activities.

RESPONSE: The Department disagrees that "routine care" needs to be defined or deleted. The meaning of "routine care" varies for each resident, and is determined by assessment of the resident's individual needs for assistance and the resident's care plan. The intent of the rule is to ensure that no resident is awakened two hours in advance of breakfast if this is done for the convenience of staff, is not acceptable to the resident, and there is no physician's order in the medical record specifying the reason for such early awakening.

The physician is primarily responsible for orders and medical supervision of residents, even though some of this responsibility may be delegated to other practitioners in accordance with applicable laws, practice acts and facility policies. Additionally, the resident rights rules have been developed in accordance with P.L. 1976, c.120 (N.J.S.A. 30:13-5), which mentions only physicians' documentation as the basis for any modifications of resident rights. Therefore, the requested change has not been made.

COMMENT: The Board of Nursing believes that a CNS/NP should be included, as well as the physician, as provider of documentation in residents' records which is specified at N.J.A.C. 8:39-4.1(a)17, 22, 23, and 25.

RESPONSE: The requested change to the resident rights rules has not been made. Refer to response to N.J.A.C. 8:39-4.1(a)21 above for rationale.

COMMENT: The Office of the Ombudsman states that N.J.A.C. 8:39-4.1(a)32, in order to comply with Federal rules at 42 CFR 483.12iii(A), should include that the name, address, and telephone number of the State Long-Term Care Ombudsman shall be provided in the 30-day transfer notice.

RESPONSE: The requested information has been added to the rule, as specified in the Federal rules.

COMMENT: The commenter from Dellridge Care Center believes that the rules at N.J.A.C. 8:39-4.1(a)35 and 4.1(b), which require the facility to provide the resident and his or her next of kin with the names of government agencies to which a resident can complain or ask questions, and to inform the resident and the resident's next of kin of all resident rights, should be changed. According to the comment, determining next of kin may not be the resident's wish, they may wish son, not daughter, or both, and an undue paper burden would be placed on the facility. Instead of "next of kin" the rule should read "significant other."

RESPONSE: The Department cannot establish rules specifying who may be designated as a resident's next of kin. The facility should determine on admission who will be designated as the responsible party for the resident. This is an issue which the facility must resolve with the resident and the family and include in the admission agreement. If there is an advance directive, the health care representative should be designated; there may be a person designated who has medical power of attorney. These persons would have priority if a dispute occurs as to who is designated as next of kin if the resident becomes incapable of making choices. Additionally, N.J.A.C. 8:39-35(d)2 requires that the next of kin be identified in the current medical record. Since these issues should be addressed in the facility admission policies and documented on admission, no change has been made to the rule.

Subchapter 7. Mandatory Resident Activities

COMMENT: There were five comments concerning the rules at N.J.A.C. 8:39-7.2, Mandatory staff qualifications for resident activities. One commenter strongly recommended that the list of three alternate qualifications for activities director be expanded to include certification by either the National Certification Council for Activity Professionals or the National Council for Therapeutic Recreation, Inc.

RESPONSE: The Department agrees that certification by either of these groups would be an appropriate qualification for the activities

director which would be equivalent to or exceed requirements at N.J.A.C. 8:39-7.2(a)1, 2, and 3. The option of such certification, therefore, has been added as N.J.A.C. 8:39-7.2(a)4.

COMMENT: Three commenters supported the inclusion of the 90 hour State approved training program as part of one of the alternate qualifications. Two of these three commenters believed that every activities director, including activities directors in licensed residential health care facilities, and assisted living residences, should be required to complete this 90 hour course. One commenter indicated that completion of the 90 hour course "will ensure that residents are provided with quality services."

Another commenter stated that the "90 hour program cannot possibly prepare the staff for the complex nature of needs exhibited by patients who have Alzheimer's or who have experienced traumatic brain injury," and suggests additional educational requirements are needed for activities staff, in order for staff to understand the etiology and prognosis of these disabling conditions which are occurring in a growing population of LTC residents.

RESPONSE: Although qualifications for activities personnel in other kinds of licensed health care facilities cannot be addressed as part of this comment/response document, the Department believes that the 90 hour program described at N.J.A.C. 8:39-7.2(a)2, along with the educational and experience requirements specified in the rule, constitutes an appropriate qualification for activities directors in long-term care facilities. The Department appreciates the supportive comments regarding inclusion of the 90 hour training program.

The Department disagrees that the 90 hour activities training course cannot prepare activities directors to meet the needs of residents who have Alzheimer's or other disabling conditions. The 90 hour activities training course does include information and guidance regarding provision of activities for special populations of residents. Additionally, the Department would expect all staff to receive education and training in response to the special resident care problems presented by populations such as those with Alzheimer's/dementia, as stated in N.J.A.C. 8:39-13.4(b). Activities directors would also need to address any special needs of residents when developing individual activities programs for the facility.

COMMENT: One commenter suggested that the third option, allowing qualification for currently employed activities directors who have continuously served as activities director since June 20, 1988, be changed to the adoption date of the rules.

RESPONSE: The Department disagrees with the suggested change, and has retained the "grandparenting" requirements as an optional qualification for activities directors. The intent of the rules was to "grandfather" these individuals who were in activities director positions at the time the licensure rules were originally adopted in 1988. The Department would interpret "currently employed" to include an activities director approved under this rule who had transferred from one facility to another without a break in service. However, the general intent of the proposed rule is to improve the quality of activities services statewide through incremental improvement in the training and qualifications of activities directors. The Department cannot amend the rule or interpret it to permit exceptions where there has been a significant break in an activities director's service.

COMMENT: Two commenters requested an increase in the mandatory staffing amounts stated at N.J.A.C. 8:39-7.3. One commenter indicated that additional activities staff is needed because of the increased numbers of residents with dementia, increased rehabilitation needs, and/or increased physical acuties and suggested an increase to 55 minutes of staff time per resident per week. The other letter stated that, since there has been a significant increase of cognitively impaired residents in LTC, "there should also be an increase in money allocated per resident for reimbursement to each facility for activity staff."

RESPONSE: Increasing the staffing requirements would constitute a substantive change to the rules which could not be made upon adoption. Additionally, such an increase would result in a cost impact on facilities and funding. Since approximately 45 percent of beds in the facilities are paid for by Medicaid, and since funding has not been incorporated in the FY 95 Medicaid budget, the requested change has not been made.

COMMENT: One commenter asked "what constitutes evening," in reference to the rule at N.J.A.C. 8:39-7.4(d) which requires that resident activities be scheduled during at least two evenings per week. According to the letter, residents at the commenter's LTC residence are ready to sleep at 7:00 P.M., and as the residents age, the situation "is unlikely to change." Another comment on the same requirement suggested that

programs should be based on the needs of the resident population rather than mandating a specific number of evening activities, and residents' preferences could be documented in resident council minutes.

RESPONSE: "Evening" is generally considered to be that period of time between sunset or the evening meal and bedtime. While the Department cannot be so prescriptive as to set an exact time as "evening," it is the intent of the rule that the facility offer some kind of activity after dinner. It is unlikely that all residents will be asleep at 7:00 P.M., unless there are no scheduled activities of sufficient interest to encourage them to stay awake. The requirement for activities on at least two evenings per week is minimum only, and the Department expects that programs will be based on the preferences and needs of the resident population, which might exceed two evenings per week. No change has been made to the rule.

Subchapter 8. Advisory Resident Activities

COMMENT: Two commenters noted that the information concerning therapeutic recreation certification, as written in N.J.A.C. 8:39-8.2, is inaccurate, and forwarded the current address of the certifying group, The National Council for Therapeutic Recreation Certification, Inc. (NCTRC).

RESPONSE: The rule has been corrected according to information provided.

COMMENT: Two commenters suggested that the advisory staff qualifications at N.J.A.C. 8:39-8.2 be made mandatory so that each director of activities would be required to possess a baccalaureate degree or hold current certification from a national certifying council for activity or therapeutic recreation professionals.

RESPONSE: This change would constitute a substantive change to the rules and could have a fiscal impact on facilities since 45 percent of facility beds are reimbursed by Medicaid, and since an increase providing for this requirement has not been incorporated into the FY 95 Medicaid budget, the request change was not made. However, the mandatory qualifications at N.J.A.C. 8:39-7.2(a) have been expanded to include certification from either national certifying council as an alternate qualification.

COMMENT: Two letters of comment were received concerning N.J.A.C. 8:39-8.3, Advisory staffing amounts for resident activities. Both recommended an increase in the suggested staffing amounts because of increased care needs of LTC residents. One recommended that the advisory standard be increased to 65 minutes of activities staff time per resident per week; while the other recommended a staff ratio of 1:30.

RESPONSE: This change would constitute a substantive change to the rules and could have a fiscal impact on the Medicaid budget. Since this advisory change would only follow a change to the mandatory staffing ratios, which would create a need for additional funding in the 45 percent of beds which are reimbursed by Medicaid, the change has not been made, and would not be made without budgetary adjustments to accommodate it.

Subchapter 9. Mandatory Administration

COMMENT: Two letters of comment were received concerning N.J.A.C. 8:39-9.1(d) and (e). The rule at N.J.A.C. 8:39-9.1(d) requires that the administrator shall serve full-time in an administrative capacity in facilities with 100 or more beds. The rule at N.J.A.C. 8:39-9.1(e) states that a licensed administrator shall only be responsible for one facility, with the exception 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 not more than 120. One commenter asks "is it more difficult to run one facility of 100 residents than to run two facilities totaling 120 residents?" Another commenter states that "you could have almost 100 beds and only require a half-time administrator," and requests clarification of subsections (d) and (e).

RESPONSE: The Department believes that it may be more difficult to run one facility of 100 residents than it is to run two facilities totaling 120 residents. The facility with 100 beds would have significantly greater operational and administrative issues, such as staffing, physical plant, etc. The exception for one administrator to be responsible for two facilities totaling no more than 120 beds, if such facilities are within a 20 mile radius is consistent with rules of the Nursing Home Administrators Licensing Board at N.J.A.C. 8:34 and has not presented compliance problems to the Department. Therefore, no change has been made to the rule.

COMMENT: One commenter requested clarification of the rule at N.J.A.C. 8:39-9.1(n), regarding PASSAR assessments in the event a resident is "admitted to a psychiatric unit and then ready for discharge, as this overstays days in acute psychiatric hospitals."

RESPONSE: The intent of the rule is that facility transfer policies will include a mechanism to ensure that all applicable documents, including PASSAR assessments, will accompany or follow any resident who is transferred.

COMMENT: There were two comments addressing the rule at N.J.A.C. 8:39-9.2(i). NJANPHA commented that the rule be reworded to clarify the meaning. The rule states that licensed administrative supervision on a consultant basis must be arranged if a vacancy exists in the position of administrator "for 24 to 48 hours." NJANPHA recommended that the phrase "24 to 48 hours" be replaced with "48 hours or more," since literal reading of the rule might indicate that the consultant would be required only when a vacancy exists for the time period between 24 and 48 hours.

Additionally, NJANPHA suggested that the part of the rule requiring appointment of a new licensed administrator be appointed within 90 days may not be possible, and indicated that "some latitude on extending the use of the consultant should be explicit and not implicit in such a situation."

The Dellridge Care Center commenter indicated that, while the Department must be notified immediately by telephone if the administrator or the director of nursing is terminated, as stated at N.J.A.C. 8:39-9.2(g)2, the rule at N.J.A.C. 8:39-9.4 only requires that the administrator or an alternate designated by the administrator be on the premises at all times to direct operations, no requirements are stated for provisions during the absence of the Director of Nursing.

RESPONSE: The rule at N.J.A.C. 8:39-9.2(i) has been clarified as requested, by deleting the phrase "24 to 48 hours" and substituting "more than 48 hours."

If it is not possible to appoint a new licensed administrator within 90 days, it would be necessary for the facility to request a waiver from the rule, as specified at N.J.A.C. 8:39-2.7.

The Department interprets the rule at N.J.A.C. 8:39-25.1(b) to require an alternate registered professional nurse, who has been designated in writing, to be responsible during the absence of the Director of Nursing. This rule is intended to ensure that services of a director of nursing or designated alternate are provided at all times.

COMMENT: N.J.A.C. 8:39-9.2(m) specifies that 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. The Board of Nursing suggests that discharge during these hours should be documented in writing and signed by resident or designee.

RESPONSE: No change has been made to the rule. The Department expects documentation of a resident's discharge whatever time the discharge occurs, and N.J.A.C. 8:39-35.2(a) requires that the medical record contain records of all discharges.

COMMENT: The Newark Aids Consortium commented that the rule at N.J.A.C. 8:39-9.3(d)1, which states that the facility shall make reasonable efforts to ensure that staff providing direct care "are in good physical and mental health, emotionally stable," and "of good moral character," appears to be subjective in nature and perhaps could cause observations whereby litigation by employees may occur.

NJANPHA, commenting on the same rule, stated that, read literally, the use of the word "ensure" exposes the facility to the liability of ensuring that the above criteria is met, and recommend that the word "ensure" be replaced with "increase the likelihood."

The Sussex County Homestead commenter stated that the Homestead is in support of criminal background checks for staff providing direct care to residents in the facility, and requested that a method of conducting criminal background checks should be suggested to nursing facilities, in order to establish consistent practices between agencies such as state police and local law enforcement, and to ensure prompt responses so that hiring will not be delayed until background checks are completed.

RESPONSE: The Department agrees that the wording "make reasonable efforts to ensure" at N.J.A.C. 8:39-9.3(d) is somewhat subjective, and expects that each facility will use professional judgement in hiring practices. The Department expects the facility to have acceptable personnel policies and procedures which are implemented. While following these policies and using professional judgement in hiring staff will not provide an absolute guarantee that each employee is in good health, of good moral character and emotionally stable, these practices will meet the intent of the rule and constitute "reasonable efforts to ensure"

suitability of employees. In addition, professional judgement and knowledge of applicable laws, in hiring as in other facility practices, should help the facility to avoid incurring litigations. The facility would, of course, have to conform to the Americans with Disabilities Act, and make reasonable efforts to accommodate the needs of prospective handicapped employees.

The Department disagrees that replacing the words "make reasonable efforts to ensure" with the words "increase the likelihood" will improve the rule or affect facilities' potential for litigation, and may, in fact, constitute a higher standard. However, to clarify the rule, the rule has been restructured to read as follows: "the facility shall make reasonable efforts to ensure ("reasonable efforts" shall include an inquiry on the employment application, reference checks, and/or criminal background checks where indicated or necessary) that staff providing direct care to residents in the facility. . . ."

While the Department does not have the statutory authority to mandate criminal background checks on all prospective employees, the rules do not preclude facilities from working with local agencies in developing hiring practices and methods for prompt exchange of information between agencies and facilities.

COMMENT: The Newark AIDS Consortium, commenting on N.J.A.C. 8:39-9.3(g), requiring each facility to develop a grievance procedure for all staff, states that "most facilities employ (such a procedure) at will and termination could occur without reason."

RESPONSE: The Department disagrees, since the rule has been instituted in order to help prevent such unreasonable terminations.

COMMENT: The Office of the Ombudsman commented on N.J.A.C. 8:39-9.5, Mandatory policies and procedures for advance directives. The commenter states that "the policies and procedures do not include procedures for individuals being admitted to nursing homes who are incapable of executing or unwilling to execute an advance directive." The rules also fail to address the procedures for current nursing home residents who do not have or are incapable of executing advance directives. The commenter states that the Ombudsman's office is actively involved in such cases, and also points out the N.J.A.C. 5:100-2.3 requires LTC facilities to notify the Ombudsman's office "if there is reasonable cause to believe that withholding or withdrawing life-sustaining treatment from an elderly, incompetent institutionalized resident would be an abuse of that resident."

RESPONSE: The Department adopted rules for advance directives in 1992 following enactment of the New Jersey Advance Directives for Healthcare Act and the Federal Patient Self-Determination Act. These rules reflected all of the statutory mandates imposed upon health care facilities by the New Jersey legislature and by Congress. These rules were developed following a process incorporating the input of the New Jersey Bioethics Commission, providers, and State agencies, including the Office of the Ombudsman.

Neither State nor Federal law fully articulated the health care decision-making process for individuals who were institutionalized when an advance directive has not been executed. However, the Legislature did delegate rulemaking responsibility to the Ombudsman to specify instances in which investigation by its office would be called for in end-of-life decision making. These rules, N.J.A.C. 5:100, were implemented in July of 1992.

Based upon the existence of these rules which long term care facilities must conform to, the Department believes no further licensure rules are necessary to prescribe facility practices in this area.

Subchapter 11. Mandatory Resident Assessment and Care Plans

COMMENT: The rule at N.J.A.C. 8:39-11.1 requires a RN to assess the nursing needs of each resident, coordinate the written plan, and ensure timeliness of services. The Board of Nursing commenter asked if this includes the Director of Nursing.

RESPONSE: The rule does not preclude participation of the Director of Nursing in the completion of resident assessments and coordination of care plans, if time permits and the DON has fulfilled supervisory responsibilities as specified at N.J.A.C. 8:39-25.1.

COMMENT: N.J.A.C. 8:39-11.2(b) includes a requirement that 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. The Board of Nursing believes that 24 hours may be too long to wait, and recommends rewording the rule to "as soon as possible but not to exceed 24 hours."

RESPONSE: The Department has considered the Board of Nursing comment, and, after further review and discussion of the rule, has made changes which indicate that each physician order shall be executed, as

appropriate in accordance with professional standards of practice. Although the Department agrees that some physician's orders are of such importance that they must be executed as soon as possible or within 24 hours, there are also circumstances in which an order's immediate execution may not pose a risk to the health and safety of the resident. Similarly, for example, an order for an increase in activities services may not require implementation within 24 hours. The Department views 24 hours as arbitrary and prescriptive. Therefore, the sentence requiring the physician to be notified within 24 hours if an order is not executed has been deleted. The Department does not consider that this is a substantive change, since each professional is expected to use judgement and follow applicable practice standards to ensure that orders are executed in such a way that resident health and safety is protected.

COMMENT: The Board of Nursing requested that the rule at N.J.A.C. 8:39-11.2(c), requiring each resident to be examined by a physician within five days before or 48 hours after admission, be changed to allow either a physician or a NP/CNS to examine the resident.

RESPONSE: The rule has not been changed as requested. The rule is consistent with Federal (OBRA) requirements and Board of Medical Examiners rules for the physician to provide written orders for each resident's admission and for care beginning on the day of admission. As explained in Federal guidelines, a decision to admit a resident to a long-term care facility would involve physician contact. In addition to the requirement for a physician to "personally approve" admission to the facility, the physician is responsible for supervision of the medical care of the resident, and must participate in the resident's assessment and care planning. The initial assessment and establishment of a baseline and protocols for the resident's care necessitates "face-to-face" contact with the resident. Therefore, the required examination by a physician within five days before or 48 hours after admission could not be delegated to a NP/CNS. However, the physician may choose to delegate subsequent examinations or visits to a NP/CNS or physician's assistant (PA), in accordance with applicable laws and practice acts, and as specified at N.J.A.C. 8:39-23.2(g).

COMMENT: The commenter from Dellridge Care Center believes that it is impossible to complete the requirement at N.J.A.C. 8:39-11.2(d), which states that an initial assessment and care plan, including at least personal hygiene, immediate dietary needs, medications, and ambulation, must be completed on the day of admission. The commenter proposes "to include immediate dietary needs and medications—ambulation and personal hygiene can be developed any time within five days." The commenter believes that "this is not interdisciplinary but rather nursing driven which contradicts the tenets of OBRA." Additionally, according to the comment, "there is not a statement requiring a new MDS if two or more ADL's change." The Board of Nursing also commented on this rule, pointing out that the initial nursing care plan must be completed by a nurse.

RESPONSE: The Department disagrees with the comment that it is necessary to assess only the dietary needs and medications on the day of admission. The Department strongly believes that an initial assessment, including at least the areas specified, is necessary in order to meet the immediate care needs of the new resident on admission and that this does not constitute an impossible burden on the facility. The comprehensive assessment utilizing the MDS, as specified at N.J.A.C. 8:39-11.2(e), needs to be completed within 14 days, and will, of course, include assessment and care plans by members of the interdisciplinary team and other health professionals as required. N.J.A.C. 8:39-11.2(i) requires reassessment to be performed in response to all substantial changes in the resident's condition, which would certainly include changes in two or more ADLs. The Department agrees with the comment that a nurse must complete the initial nursing care plan, in accordance with nursing practice rules. There have been no changes made to the rule as a result of these comments.

COMMENT: One comment was received on N.J.A.C. 8:39-11.2(g), which requires reassessment of a resident who is discharged to a hospital and returns to the facility within 30 days of discharge. The reassessment is to be conducted in those areas where the resident's needs have changed substantially, and a complete reassessment must be done if the resident was discharged for more than 30 days. The Board of Nursing questions granting latitude of 30 days if the resident returns from the hospital, and recommends that reassessment be performed within 24 hours.

RESPONSE: The rule is intended to insure reassessment of any resident who has spent time in the hospital and returns within 30 days; this reassessment may include only those patient needs which have

changed during the period of hospitalization, but must be done at the time of readmission. If the resident has been out of the facility for more than 30 days, complete reassessment must be performed immediately on readmission. No changes have been made to the rule.

Subchapter 13. Mandatory Communication

COMMENT: Two commenters requested clarification of the staff education programs delineated at N.J.A.C. 8:39-13.4(b),(c),(d) and (f). According to the Board of Nursing commenter, it is "unclear if (c), (d) and (f) are included as part of (b); four times a year or in addition to four time(s) a year." Dellridge Care Center commented on N.J.A.C. 8:39-13.4(c)1, asking whether "all direct care staff" includes nursing assistants, and pointing out that Medicaid requires four pharmacy in-services per year.

RESPONSE: The inservice requirements at N.J.A.C. 8:39-13.4(b),(d), and (f) are intended to be in addition to those delineated at N.J.A.C. 8:39-13.4(b). Requirements at N.J.A.C. 8:39-13.4(b) are intended to provide all employees training that is specific to their jobs, in the areas listed, four times per year. The requirements at N.J.A.C. 8:39-13.4(c) are intended to train employees in emergency procedures, resident rights and pharmacy, at least annually. Rules at N.J.A.C. 8:39-13.4(e) spell out requirements for nursing and professional staff to receive appropriate orientation and training in the use of restraints. Training requirements at N.J.A.C. 8:39-13.4(f) reflect the training which is mandated by State and Federal laws concerning advance directives. In order to simplify the section and avoid confusion, N.J.A.C. 8:39-13.4(d) has been recodified as part of N.J.A.C. 8:39-13.4(b) and the following subsection have been recodified.

"All direct care staff" includes nursing assistants. Medicaid requirements for training and inservice may differ from those in State licensure rules.

Subchapter 15. Mandatory Dental Services

COMMENT: One comment was received concerning subchapter 15. Dellridge Care Center commenters believe that there should be a mandatory dental exam within 180 days, unless the patient is seen by their private dentist within that time frame, and annually thereafter "to prevent oral-maxillary cancer even if edentulous."

RESPONSE: The requested change has not been made. The Department believes that assessments utilizing the MDS constitute an effective screening mechanism for cancer and other dental and oral problems.

Subchapter 17. Mandatory Dietary Services

COMMENT: A letter of comment was received from Dellridge Care Center concerning rules at subchapter 17. The commenters suggest that "the dietitian may take direct orders from the physician and document same on the medical record whether initial or ongoing, to foster better physician-dietary communication."

The comment on N.J.A.C. 8:39-17.2(e) states that there is no provision for use of disposable dishes in the event of a mechanical failure of the dishwasher.

The commenters believe that the minimum time that the dietitian must spend, an average of 15 minutes per resident as stated at N.J.A.C. 8:39-17.4(a), is "an unattainable minimum (meetings, assessment, menu development)—impossible." Another commenter noted that the requirement to have a full time dietitian would require four times as many residents as a full time social worker.

RESPONSE: The Department disagrees that direct orders from the physician to the dietitian would improve communication. As stated at N.J.A.C. 8:39-11.1, the RN has the overall responsibility for coordination of care plans and timeliness of services. It is, therefore, appropriate for the nurse to take the physician's order, with the nurse having the obligation to implement the order by calling the dietary department. The rules do not preclude communication between the physician and the dietitian. The Department encourages exchanges of information between professionals responsible for resident care, for example, through discussion, phone conversation, interdisciplinary meetings, or notations and suggestions on the medical record.

The Department would expect policies and procedures for dietary services to include plans for emergency (non-routine) occurrences such as mechanical failure of the dishwasher. The rule at N.J.A.C. 8:39-17.2(e) is only intended to prohibit use of disposable dishes and cutlery on daily basis. Use of disposable utensils and dishes would be acceptable on such infrequent occasions as emergency breakdown of equipment or an outdoor picnic.

The Department disagrees that 15 minutes per resident, the minimum time from the dietitian stated at N.J.A.C. 8:39-17.4(a), is unattainable. The Department believes that the required duties can be completed within that time. This requirement has not changed from the current rule. Any change would constitute a substantive change and could not be made an adoption. Additionally, since 45 percent of beds are Medicaid-reimbursed, the change would have a fiscal impact on the Medicaid budget. Since the Medicaid budget does not allow for this expense, no changes have been made to the rule as a result of these comments. A minimum staffing requirement is exactly that, and does not preclude spending additional time to comply with requirements.

Subchapter 19. Mandatory Infection Control and Sanitation

COMMENT: Three comments were received concerning N.J.A.C. 8:39-19.4, from Dellridge Care Center. One comment stated that the Centers for Disease Control and Prevention (CDC) publications referenced in the rule should be "updated to read long-term care facilities, not hospitals."

RESPONSE: Two of the Centers for Disease Control and Prevention publications cited at N.J.A.C. 8:39-19.4 contain guidelines for handwashing, environmental control and isolation precautions. Although their titles indicate that these are guidelines for use in hospitals, the Department has reviewed them carefully and believes they provide excellent protocols for infection control and sanitation which are applicable to long-term care facilities as well as hospitals. The Department cannot, of course, change the titles or "update" these publications, but is strongly convinced that they are appropriate for use in long-term care facilities.

COMMENT: The commenters recommended a change at N.J.A.C. 8:39-19.4(g), which requires facilities to implement a policy for tuberculin screening of all residents, beginning prior to admission and concluding within 30 days following admission. Commenters believe that "this TB testing should be on admission—or notify the hospitals to begin TB testing before discharge and document it on the transfer form."

RESPONSE: The Department disagrees with the recommendation to change the timeframe for TB screening of residents. The rule does not preclude screening which begins prior to admission to be done at the hospital and documented on the transfer form. The requested change has not been made. However, other changes have been made to the rule, as discussed in the response to the comment summarized below.

COMMENT: The commenter from St. Francis Medical Center requested that the wording of N.J.A.C. 8:39-19.4(g) should be changed to "tuberculosis" screening of all residents, rather than tuberculin screening. This would allow for X-ray as an additional screening measure if the patient were anergic and the tuberculin test positive, and could avoid the delay and expenses associated with a 72 hour wait for the results of "tuberculin" skin test screening before transfer to the LTC.

COMMENT: The Department agrees with the requested change, which correctly indicates the intent of the rule requiring residents to be screened for tuberculosis prior to or within 30 days of admission. Therefore, the word "tuberculin" has been deleted and "tuberculosis" substituted in the rule, to allow for use of X-ray as appropriate. As a chest X-ray will only reveal active disease, the rule is also modified to require a follow-up two-step Mantoux for such residents.

COMMENT: The Dellridge commenters believe that monitoring handwashing practices at least monthly, as stated at N.J.A.C. 8:39-19.4(j), "is unrealistic and a non-documentable practice."

RESPONSE: The Department does not agree that the requirement at N.J.A.C. 8:39-19.4(j) to monitor handwashing practices at least monthly is unrealistic or undocumentable. It concurs with the CDC's position that handwashing is the single most important procedure for preventing nosocomial infections. Ongoing monitoring of handwashing practices and reinforcement of the importance of handwashing are essential components of infection control. Such monitoring could consist of spot checks of employees, a check list of observations of handwashing practices, reminders or counseling of employees as needed.

COMMENT: The Board of Nursing requested that N.J.A.C. 8:39-19.5(a) be changed to allow a NP/CNS or a physician to complete the required employee health history and examination.

RESPONSE: The requested change has been made, allowing physicians or other practitioners to complete employee health histories and examinations, in accordance with the scope of practice designated by law and rule for such other practitioners.

Subchapter 23. Mandatory Medical Services

COMMENT: A comment was received from the Gospel Hall Home for the Aged urging the Department to modify the rules so that small homes would not be required "to be under the same rules as larger homes." Gospel Hall has from 55 to 65 residents, who are treated like "family" and "are appreciative of the good care" provided. Two doctors come to the home weekly and participate informally in policies and procedures. Under the new requirement for all facilities to have a medical director (N.J.A.C. 8:39-23.1(a)), the facility "would have to pay for this and increase the time spent in meetings." "New rules increase paperwork and committee meetings leaving little time for extra attention to residents. We are operating with a deficit, and "may lose our good personnel or should have to close."

RESPONSE: The Department agrees, that in some instances in small facilities, the medical director's responsibilities may be met by a less formal mechanism than the appointment of a medical director. Therefore, the rule has been changed by the addition of a new N.J.A.C. 8:39-23.1(b), which would allow facilities with fewer than 60 beds to develop an alternate system for medical direction. However, the facility must develop a system and document that the responsibilities of the medical director, as specified in the subchapter, are met. Since 60 beds is specified in the current rule, the commenter asked for relief from the economic burden which would result from formal appointment, regularly scheduled meetings, and a contract with a medical director in such a small facility. Therefore, the Department does not believe that reinstating the 60 bed cutoff constitutes a substantive change.

COMMENT: The Academy of Consultant Pharmacists commented that subchapter 23 should contain some requirement for the inclusion in the medical record of a progress note by the physician which addresses the progress of the resident and the indication and expected outcome of prescribed treatments.

RESPONSE: The physician's professional judgement, practice codes, and Board of Medical Examiners rules, as well as facility policy, dictate the contents of the physician's entries into the medical records. Licensure rules are not intended to prescribe contents of progress notes. The requested change to subchapter 23 has not been made.

COMMENT: Dellridge Care Center commented on N.J.A.C. 8:39-23.2(e), requiring the medical director to review all incident reports, stating that the rule should apply "only if the facility uses incident reports—which by federal rule it does not have to maintain."

RESPONSE: If the facility does not use "incident reports," there must, nevertheless, be a mechanism to inform physicians of incidents regarding care of residents, and the physician must document that he or she has been so informed. N.J.A.C. 8:39-9.3(g)4 requires that the Department be notified of imminent dangers to a resident's life or health resulting from accidents or incidents in the facility. Additionally, N.J.A.C. 8:39-33.1(d) requires the quality assurance program to review procedures for emergency response to incidents and accidents. Although it is not the intent of the Department to prescribe the format, there must be a system for documentation of incidents, so that the physician can be informed these incidents. In order to clarify the rule, it has been rewritten to indicate that the physician must review all reports of incidents which have been documented in accordance with N.J.A.C. 8:39-9.2(f)4 and N.J.A.C. 8:39-33.1(d).

COMMENT: The Board of Nursing commented that "Clinical nurse specialist/nurse practitioner practice is being limited" at N.J.A.C. 8:39-23.2, since the NP/CNS is "only addressed at 23.2(g)."

RESPONSE: The Department disagrees that the NP/CNS is "limited" at subchapter 23. The rules are consistent with Federal OBRA requirements which require the physician to provide the initial visit and initial orders. Alternate visits may be delegated to other practitioners, including NP/CNS and New Jersey licensed physician assistants. Additionally, the rule at N.J.A.C. 8:39-19.5(a) has been changed to allow a NP/CNS or New Jersey licensed physician assistant to complete employee health histories and physicals. A New Jersey licensed physician's assistant has been included among the practitioners to whom alternate 30 day visits may be delegated, at N.J.A.C. 8:39-23.2(g). The rules do not preclude the delegation of some services by the physician to other practitioners, if such delegation is within the scope of applicable laws, facility policies and procedures, and the requirements of this Chapter.

Subchapter 25. Mandatory Nurse Staffing

COMMENT: The Board of Nursing recommended that the rule at N.J.A.C. 8:39-25.1(a) be changed to require that the Director of Nursing have a BSN degree.

RESPONSE: The Department believes that the specified credentials for the Director of Nursing, who must be a registered professional nurse with at least two years of supervisory experience, are appropriate. Requiring the DON to have a BSN would potentially have a significant fiscal impact on facilities, since most Directors do not have this degree at present. In addition, the change would exclude those Directors who have a baccalaureate or Master's degree not in nursing but in another health related field, which is an alternate advisory credential at N.J.A.C. 8:39-26.4(a). No change has been made to the rule.

COMMENT: N.J.A.C. 8:39-25.1(b) requires that there shall be a registered professional nurse on duty who is designated in writing to act as an alternate to the director of nursing during a temporary absence of the director. NJAHCF requested that "registered professional nurse" be deleted from the rule and replaced with "licensed nurse." The NJAHCF commenter states that this change would comport with both Federal and State rules. Small facilities would not have a second RN on the day shift if the Director of Nurses had to leave for a short time. Additionally, facilities with fewer than 100 beds are not required to have nor reimbursed for registered professional nurses around the clock, according to the comment.

RESPONSE: The Department disagrees that the change from registered professional nurse to licensed nurse, as requested, would be consistent with either current Department policy or OBRA requirements. No facility should be without an RN during the daytime. A LPN may not serve as the Director of Nursing, nor direct an RN, according to nursing practice rules. A temporary absence is interpreted by the Department as no longer that one day, with on-call coverage available. The facility must arrange for backup coverage by a RN, designated in writing, during the DON's absence for vacation or illness.

COMMENT: The comment from Sussex County Homestead regarding N.J.A.C. 8:39-25.2(a) through (g) states that nurse staffing is based on 2.5 hours/day multiplied by the total number of residents, plus the total number of residents receiving each of the acuity levels. The 2.5 hours is factored into two components: Professional-Registered/Licensed Practical Nurse (20 percent) and Certified Nurse Aides (80 percent). The acuity services are reimbursed in a similar fashion despite the likelihood that professional nurses provide the bulk of these services. Acuity services require professional nursing attention and should be reimbursed 100 percent instead of at 20 percent of the acuity hours. The comment from Dellridge Care Center concerning N.J.A.C. 8:39-25.2(b)2 states that "the acuities should be factored at 100% to include only licensed personnel, as the 80/20 component for non-licensed personnel is not realistic nor allowable under the nurse practice act. (Not even under the delegatory powers of the registered professional nurse)."

RESPONSE: Nursing services, including acuity services, must be provided within the Board of Nursing rules regarding scope of practice, but also in accordance with the minimum staffing requirements of this chapter. The Department acknowledges a need to further evaluate this standard to assure adequacy of licensed nursing staff in the provision of nursing services for acuity conditions. As a change in the rules may represent a substantive change with a fiscal impact, the Department will convene an advisory group in the near future to consider this issue, and makes no change at this time.

COMMENT: Additionally, two commenters believe the acuity levels should be expanded to include restraints, which involve "an enormous amount of work," including assessments, monitoring, reduction attempts, documentation, committee review and discussion, and interventions. Therefore, nursing facilities should be reimbursed for the extra costs associated with the new restraint rules.

RESPONSE: Absent further study, the Department cannot discern whether acuity levels listed at N.J.A.C. 8:39-25.2(b) should be expanded to include the use of restraints. As most long-term care residents are stable, emergency restraint use should be minimal, and the Department believes that restraints, therefore, have presently been managed appropriately within the 2.5 hours/day of nursing services required at N.J.A.C. 8:39-25.2(b)1. Use of restraints has also not been identified as an acuity service eligible for additional funding by the Division of Medical Assistance, and no change has been made at this time.

COMMENT: The NJANPHA comment on N.J.A.C. 8:39-25.2(b) states that "this standard outlines mandatory staffing to include RNs, LPNs and nurse aides. However, 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. The reference to N.J.A.C. 8:39-25.1(a) which states '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 supervise all nursing personnel' makes no sense. Please explain."

RESPONSE: In addition to the supervisory functions of the director of nursing, the director may provide direct care. However, in computing hours towards compliance with minimum staffing requirements, the Department presently includes all documented direct care hours provided by the Director that exceed the full-time supervisory hours required.

COMMENT: The Board of Nursing commenter had a question concerning N.J.A.C. 8:39-25.4(b), which requires each nurse aide to receive a minimum of 12 hours of regular in-service education per year, based on the outcome of performance reviews. The Board asks whether the 12 hours of inservice is included in the four times a year inservices specified at N.J.A.C. 8:39-13.4(b), what is the meaning of "regular" inservice; and is there a difference between evaluations in N.J.A.C. 8:39-9.3(f)3 and performance reviews in this rule?

RESPONSE: The requirement for each certified nurse aide to receive a minimum of 12 hours of inservice per year, based on the outcome of performance reviews, is a reflection of the Federal requirement for such training. The intent of the Department, and OBRA, is that these 12 hours of inservice address areas of weakness identified in performance reviews of aides, special resident needs, and needs of residents with cognitive impairments. Some of these identified areas to be covered in the required 12 hours may overlap with some of the mandated inservices specified at N.J.A.C. 8:39-13.4. Therefore, the rule at N.J.A.C. 8:39-25.4(b) has been changed to permit inclusion of topics included in OBRA which overlap or are duplicative of those at N.J.A.C. 8:39-13.4(b), up to a maximum of six hours per year, to the extent that these are identified in the aide's individual inservice plan.

"Regular inservice" means a training program which is planned, scheduled and provided on an ongoing basis and which is sufficient to ensure the continuing competence of nurse aides.

Policies and procedures for written, job-related criteria which are to be used in evaluations of all employees, are required as stated at N.J.A.C. 8:39-9.3(f)3. These would differ from performance reviews required at N.J.A.C. 8:39-25.4(b) only in that performance reviews in this section are specifically addressed to the evaluation of nurse aides. Performance reviews for nurse aides are evaluations based on job-related criteria related to care provided by nurse aides and observations of nurse aides' continuing competence. Performance reviews and evaluations for other employees would be based on their individual responsibilities (for example, social work or dietary services).

Subchapter 26. Advisory Nurse Staffing

COMMENT: The Board of Nursing pointed out an error in the proposal, at N.J.A.C. 8:39-26.4(c). As published, the rule reads that "the facility employs a certified nurse practitioner "as" a clinical nurse specialist: the rule should read "or" a CNS.

RESPONSE: The wording of the rule has been corrected as suggested by the commenter.

Subchapter 27. Mandatory Quality of Care

COMMENT: The Board of Nursing commenter suggests an addition at N.J.A.C. 8:39-27.1, Mandatory policies and procedures for quality of care, "that all licensed nursing personnel shall be competent in the use of bag-valve mask and shall be oriented to the location of oxygen, bag-valve mask and cardiac arrest board."

RESPONSE: The Department believes that competence in such specific procedures as these falls within the scope of nursing practice and should not be prescribed as part of the licensure rules. Additionally, the facility emergency preparedness plan should address use of this equipment. The rule has not been changed as requested.

COMMENT: The Dellridge Care Center commenters believe that the rule at N.J.A.C. 8:39-27.1(d), which requires notation in the medical record if a resident gains or loses five or more pounds, should read five percent, not five pounds, in order to be consistent with Minimum Data Set (MDS) assessments.

RESPONSE: The Department agrees that percentage of unplanned weight gain or loss is a better measure of a resident's nutritional status than the number of pounds lost or gained. For this reason, and to be consistent with the MDS assessment, the rule has been change as requested.

COMMENT: The comment from NJANPHA on N.J.A.C. 8:39-27.2 notes that several references are made to guidance provided in Appendix

E, regarding use of restraints, and asks whether Appendix E "guidelines" are considered mandatory or advisory.

RESPONSE: The Department considers the guidelines to be neither mandatory nor advisory standards. The rules at N.J.A.C. 8:39-27.2 state "what has to be done," that is, mandatory development of policies and procedures for the use of restraints. The Appendix explains "how to do it," and includes technical assistance, standards of practice and protocols for the development of policies and procedures which are based on individual facility requirements. A facility may develop policies and procedures which deviate from the guidance in Appendix E, but will be held accountable for implementing these policies. To clarify this, N.J.A.C. 8:39-27.2(e), (h), and (i) have been amended to require policies and procedures to be implemented. The Department will continue to monitor the appropriateness of the use of restraints and their effect on resident quality of life, dignity, and safety.

COMMENT: In commenting on N.J.A.C. 8:39-27.2, Mandatory policies and procedures for the use of restraints, Dellridge Care Center commenters reiterated that, due to the extensiveness of restraints, an acuity value should be assigned of not less than 1.00 hour per day.

The commenters also indicated that the wording in N.J.A.C. 8:39-27.2(a), which excepts devices used for protective supports from the definition of restraints, should be changed to read "used for positioning support," not "protective."

RESPONSE: Refer to the response to comments at N.J.A.C. 8:39-25.2(b) above for the discussion of the Department's position on provision of nursing services for acuity conditions.

The Department agrees that the suggested wording for N.J.A.C. 8:39-27.2(a) better clarifies the intent of the rule, and the recommended change has been made.

COMMENT: Dellridge commenters recommend the addition of a rule which states that a non-ambulatory resident who has a device adjacent to their body which does not prevent free bodily movement to a position of their choice does not constitute a restraining device.

RESPONSE: Addition of such a rule would constitute a substantive change which could not be done on adoption. The specific device referred to has not been defined by the commenter. Furthermore, any device intended for restraint would be determined at the time of use and in conjunction with assessments and the resident's plan of care.

COMMENT: Additionally, according to the commenters, N.J.A.C. 8:39-27.2(g), requiring the facility to continuously attempt to remediate the resident's condition to eliminate or lessen the need for restraints, is very subjective and vague.

RESPONSE: The Department does not agree with the commenters. As stated in the rule, remediation of the resident's condition to eliminate or lessen need for restraints is accomplished through nursing and interdisciplinary assessment and interventions based on professional judgments and staffs' knowledge of the resident. Further guidance is provided at Appendix E. This rule has been in effect for two years and has not resulted in a need for further interpretation.

COMMENT: The commenters from Dellridge Care Center suggest that the rule at N.J.A.C. 8:39-27.3(b), specifying that prostheses must accompany the body of deceased residents out of the facility, be changed to read "prostheses . . . including dentures in place."

RESPONSE: The Department interprets "prostheses" to include dentures, as does the usual definition of the word as follows: "An artificial substitute for a missing part, such as an eye, leg, or denture." The rule has not been changed as recommended.

Subchapter 29. Mandatory Pharmacy

COMMENT: The New Jersey Academy of Consultant Pharmacists (NJACP) commented on subchapter 29 generally, indicating that there needs to be a rule stipulating that the provider pharmacy is responsible for providing certain basic dispensing services as defined by the New Jersey Board of Pharmacy, such as patient profiles and allergy and drug interaction checks, prior to dispensing. Waiting for a drug regimen review by an outside consultant "may allow for a negative outcome."

RESPONSE: Provider pharmacies in New Jersey must review patient profiles prior to dispensing. OBRA 1990 also requires patient counseling, unless the patient resides in a long-term care facility, in which case the licensed pharmacist serving as consultant pharmacist performs the review and any necessary counseling. The Department believes, therefore, that no change is needed to the rules.

COMMENT: NJACP commented on N.J.A.C. 8:39-29.1(a), which states that a New Jersey licensed pharmacist shall serve as director of pharmaceutical services or as consultant pharmacist. NJACP commenters

believe that all pharmacists should be New Jersey licensed and the "or" should be an "and." The New Jersey Association of Non-Profit Homes for the Aged commented on N.J.A.C. 8:39-29.1(a), (b) and (c), stating that each of these standards uses the term "director of pharmaceutical services," which has not been defined. The Association recommended the elimination of the references to "director of pharmaceutical services" in subsections (a), (b), and (c), and combination of subsections (a) and (c) to read as follows: (a) The facility shall appoint a New Jersey licensed pharmacist who shall serve as a consultant pharmacist, who is not the pharmacist provider and does not have an affiliation with the pharmacist provider. The Academy of Consultant Pharmacists also requests "clarification of exactly who is the director of pharmacy services" specified at N.J.A.C. 8:39-29.1(c). NJACP asks "does this only apply to an in-house pharmacy? Are there three necessary pharmacists: a director, a consultant, and a provider? If there is an in-house pharmacy, does this stipulate that there must be an outside consultant who is not an employee of the in-house pharmacy?"

The Automated Pharmaceutical Services (APS) commenter states that N.J.A.C. 8:39-29.1(c), which separates the consultant from the provider even in cases where the facility has a Director of Pharmaceutical Services, seems inconsistent with N.J.A.C. 8:39-29.1(a), which states that the facility shall have a New Jersey licensed pharmacist as director of pharmaceutical services or as consultant pharmacist; APS believes N.J.A.C. 8:39-29.1(a) should be "and," not "or." A letter of comment from Daughters of Miriam Center for the Aged also states that the position of director of pharmacy is not clear through the standards. In N.J.A.C. 8:39-29.1(c), it appears that only the provider pharmacist can be director of pharmacy, never the consultant. This situation is not acceptable when an in-house pharmacy is present and the director is responsible for all pharmaceutical services, including consulting. The commenter requests that, when pharmaceutical services are provided by an in-house pharmacy, separate consulting services, as described at N.J.A.C. 8:39-29.1(c), be exempted.

RESPONSE: The Department recognizes the need for clarification of the rules which make reference to a "director of pharmaceutical services." The term "director of pharmaceutical services" has been deleted accordingly. The rules at N.J.A.C. 8:39 now refer uniformly to a "consultant pharmacist." This revision should remove the apparent inconsistencies and sources of misunderstanding.

The Department does not agree that the existence of an in-house pharmacy warrants exclusion from the requirement at N.J.A.C. 8:39-29.1(c) for an independent consultant pharmacist. In such a case, the in-house pharmacy is the provider pharmacy, and the rule applies, as revised, so as to delete reference to a director.

COMMENT: Commenters from NJANPHA and Automated Pharmaceutical Services recommended changes to N.J.A.C. 8:39-29.1(b), so that the provider pharmacist could be part of the pharmacy and therapeutics committee, the medical director would be required to serve on the committee, and meetings would be held at least quarterly.

RESPONSE: The Department maintains that the flexibility which the rule allows with respect to the involvement of the medical director and the frequency of meetings of the pharmacy and therapeutics committee is appropriate. Moreover, the rule was not intended to be so inflexible as to exclude the provider pharmacist from membership on the committee. Consequently, the rule has been revised so as to explicitly allow participation by a licensed pharmacist representing the provider pharmacy.

COMMENT: The NJACP commenter states that the rule at N.J.A.C. 8:39-29.1(d), concerning controlled medications, should be relocated to subchapter 23, Mandatory Medical Services, since the facility, in conjunction with the medical director, is responsible for these medications, according to Controlled Dangerous Substance registration requirements at N.J.S.A. 24:21-10.

RESPONSE: The consultant pharmacist is partly responsible for establishing any policies regarding stock supplies, together with the director of nursing services, the medical director, the provider pharmacist, and the administrator. Problems concerning controlled medications are more likely to be discovered and resolved by the consultant pharmacist and/or provider pharmacist. The rule, therefore, has not been relocated.

COMMENT: Three letters of comment addressed the rule at N.J.A.C. 8:39-29.2. One commenter requested the addition of the provider pharmacist to the persons specified at N.J.A.C. 8:39-29.2(d)5 who must provide training in self-administration of drugs to residents. Another commenter stated that the rule at N.J.A.C. 8:39-29.2(b) is similar to the

rule at N.J.A.C. 8:39-29.4(n), which more specifically describes authorization and procedures for release of medications to residents at discharge, and, therefore, suggests deletion of N.J.A.C. 8:39-29.2(b). Additionally, the commenter suggested that the rules at N.J.A.C. 8:39-29.2(a), (c), (d), and (e) should be relocated to subchapter 25, Mandatory Nurse Staffing, since these rules address administration of medications, which must be done by or under the supervision of nurses since pharmacists are not licensed to administer medications in New Jersey.

RESPONSE: The Department does not agree that it would be appropriate to add the provider pharmacist to N.J.A.C. 8:39-29.2(d)5, since the teaching of self-administration would constitute a consultative, rather than a distributive, function. Nevertheless, pharmacists have traditionally overseen medication administration. It should be noted that N.J.A.C. 8:39-29.4(d)2 requires the consultant pharmacist to observe a medication pass.

Although pharmacists do not administer medications to residents, pharmacists do, in practice, evaluate drug administration. Consequently, the areas addressed in N.J.A.C. 8:39-29.2 have been determined to be relevant to pharmaceutical services and have not been relocated to a nursing-specific subchapter.

The Department acknowledges that N.J.A.C. 8:39-29.2(b) is duplicative of N.J.A.C. 8:39-29.4(n), and the former has been deleted accordingly. In addition, N.J.A.C. 8:39-29.4(n) has been revised as discussed below.

COMMENT: The Automated Pharmaceutical Services (APS) commenter noted that N.J.A.C. 8:39-29.4(a) states that the pharmacy label must list the drug's manufacturer, lot number and expiration date. The commenter indicated that unit-of-use products are often packaged in punch cards or unit dose boxes in advance of when they are needed. The manufacturer, lot number and expiration date are then placed on a separate label on the package, not on the prescription label. The commenter requests a change which would allow for this information to be permanently affixed to the drug package rather than the prescription label.

In addition, this commenter pointed out that N.J.A.C. 8:39-29.4(b)2 requires that unit dose medication contain both the brand and the generic name of the drug. This requirement can be met if the pharmacy packages the drug or if the product is a brand name item purchased in unit dose from the manufacturer. However, according to the commenter, the majority of unit dose products are generic drugs purchased in unit dose packaging from an approved generic manufacturer; these products cannot state the brand name of the drug, as to do so would be misbranding on the part of the generic manufacturer.

RESPONSE: The Department agrees that it is acceptable for the information to be on the drug package rather than on the resident's medication container. N.J.A.C. 8:39-29.4(a) has been revised to allow this practice.

In order to avoid the potential problem identified by the commenter concerning identification of generic drugs in a unit dose system, N.J.A.C. 8:39-29.4(b)2 has been revised. The revised rule requires the medication to be labeled with the trade (brand) name "or" generic name.

COMMENT: N.J.A.C. 8:39-29.4(b)4 states that resident medication trays in a unit dose system can be exchanged at least every 24 to 72 hours. According to the two commenters, this is inconsistent with N.J.A.C. 8:39-29.4(b)5, which states that the number of doses for each resident shall be sufficient for a maximum of 48 hours. Another letter of comment on N.J.A.C. 8:39-29.4(b)5 indicates that the facility believes that "this will be a financial burden to the facility and to private pay residents due to the labeling costs that the pharmacy provider is permitted to charge whenever a prescription is reordered," and recommends continuing with a 30-day supply of prescription drugs to counteract this cost.

Amcare Health Services, Inc., stated that the rules are restrictive in that they favor a 24-hour exchange and may "unfairly give one pharmacy provider a competitive advantage over others merely based on the quantity of medication being dispensed." The commenter argued that systems with longer exchange periods can be equally advantageous.

RESPONSE: The rule has been revised. The revised N.J.A.C. 8:39-29.4(b)4 requires exchange at least once every 24 hours, including weekends and holidays. This schedule is characteristic of contemporary unit dose distribution systems. In the interest of consistency, N.J.A.C. 8:39-29.4(b)5 has been deleted. It should be noted that the rules do not require use of a unit dose system and do not preclude use of a 30-day unit-of-use system. They, rather, specify requirements to be met in the event that a unit dose system is employed.

Unit dose is a pharmacy labor-intensive drug distribution system which decreases a facility's burden, frees up nurses to provide better resident care and decreases the long term costs of pharmaceutical services, by only changing for what it used. Most oral/solid (and some liquid) dosage forms are returnable, thereby providing a cost savings to government subsidized programs for example, Medicaid, private payors and other third party pharmaceutical benefit management systems.

By decreasing the quantity of dispensed medications to a 24 hour supply, the facility has less medications to account for, thereby decreasing nursing time spent on monitoring excessive doses and again, providing professional staff the opportunity to interact with residents and eliminate "busy work."

Also, there's a cost savings inherent in a 24-hour system by decreasing the number of medications that are sent to a facility. In fact, the 24 hour unit dose system is the standard drug distribution system and does not purport to be "unlike other systems." This clarification is not a substantive change in either intent or actual practice.

The section which adds "including weekends and holidays" is also the standard, since cassettes (which contain the 24 hour supply) are distributed every day (with one cassette in the facility, one in transit and one being filled at the pharmacy—again, the industry standard).

COMMENT: The commenter from the Academy of Consultant Pharmacists disagrees with N.J.A.C. 8:39-29.4(c), which allows for the facility to keep both over-the-counter and prescription medications if the facility uses a provider pharmacy, and states that a limited amount of prescription medications may be kept as stock for the administration of emergency doses, lost doses, or doses not sent by the pharmacy. The commenter suggests that only OTC medications should be allowed as stock, because of the potential for large amounts of medications to be stored under non-pharmacist supervision or for dispensing by non-licensed personnel.

RESPONSE: The Department has historically found a need to allow the storage of stock prescription medications due to the volume of requests for changes in medication stock which would otherwise result. Non-licensed personnel, however, may not have access to these stock medications, and only a registered pharmacist, in accordance with N.J.A.C. 13:39, may dispense medications.

COMMENT: The Academy of Consultant Pharmacists commenter suggests removal of the words "review the crediting system" from N.J.A.C. 8:39-29.4(d)2, since this is already addressed at N.J.A.C. 8:39-29.4(j).

RESPONSE: The reference to review of the crediting system at N.J.A.C. 8:39-29.4(d)2 is distinctive in that it is intended to relate to a quality assurance activity of the consultant pharmacist. It is not subsumed by the requirement at N.J.A.C. 8:39-29.4(j) and has, thus, been retained.

COMMENT: One commenter, addressing N.J.A.C. 8:39-29.4(i), suggests that two nurses be allowed to witness drug destruction, other than controlled substances, as is allowed in other licensed facilities, and that the pharmacy and therapeutics committee decide how these removals should be done.

RESPONSE: The Department agrees, and the rule was revised so as to require that drug destruction be witnessed by at least two persons and that a record of the destruction be maintained. Each witness must be either the consultant pharmacist or a licensed nurse.

COMMENT: Both the Academy of Consultant Pharmacists commenter and the Automated Pharmaceutical Services commenter disagree that sample medications should be allowed, as stated in N.J.A.C. 8:39-29.4(m), since sample use may bypass all the safeguards inherent in pharmacy dispensing, and the practice is inconsistent with requirements at N.J.A.C. 8:39-29.4(a) regarding labeling and N.J.A.C. 8:39-29.4(l), which requires medications to be obtained from a New Jersey licensed pharmacy. The Academy comment also notes that repackaging of medications, as addressed at N.J.A.C. 8:39-29.4(n), is prohibited under FDA guidelines and could be especially problematic if medications were obtained from an outside pharmacy or were samples.

RESPONSE: Sample drugs are currently used in long-term care facilities. The Department maintains the importance of control and limitation of sample use, hence the need for N.J.A.C. 8:39-29.4(m), which has been retained. The rule, in the interest of resident health and safety, gives the Department the opportunity to monitor this practice.

With regard to repackaging, it should be noted that a licensed pharmacist is not required to repackage any particular medication, but, rather, must exercise professional judgement in each instance. In addition, the FDA does not have jurisdiction over a New Jersey licensed

pharmacist's practice, unless a provider pharmacist is repackaging medications for interstate transport. Nevertheless, the rule has been revised, at subsection (n), so as to require the facility to implement a system to ensure secure handling, proper storage, and safe administration of drugs, while allowing the facility greater flexibility in developing the mechanism for achieving these goals.

COMMENT: Two comments were received concerning N.J.A.C. 8:39-29.6(b), which lists conditions to be met if a resident obtains medications from a pharmacy which is not the facility provider. The Academy of Consultant Pharmacists suggested the addition of a third condition which would state "if the drugs are obtained from an alternate source, then they may not be re-labeled by the provider pharmacy. This would violate federal law." In addition, the Academy commenter suggested a change in N.J.A.C. 8:39-29.6(b)1, adding wording so that the rule would read "... comply with all labeling and packaging requirements." This change would allow for greater accountability and prevent storage problems, especially in the case of controlled substances which must be stored separately and accounted for as specified in N.J.A.C. 8:39-29.7(c).

Pharmacist Carl Tepper suggested that the rule be clarified to "state that a resident is to receive medication from an out-of-state vendor only when it is related to a prescription benefit program which the resident is entitled to by work or through an insurance plan." The clarification is believed to be necessary since the rules, as proposed, would allow for "out-of-state vendors to provide a majority of medications to the resident and this puts the resident at great risk." For example, a long-term care facility in a nearby state receives all of its intravenous medications via United Parcel Service from a California pharmacy, which leaves residents unprotected since handling and timeliness of these medications may not conform to acceptable standards of practice in New Jersey.

RESPONSE: As noted above, the FDA does not regulate the practice of pharmacy at the state level, and the pharmacist is not bound to repackage any particular medication. The recommended third condition was not added. Moreover, the suggested wording regarding "packaging," which would compel the resident's pharmacy to use the same drug distribution system as the facility's provider pharmacy, was not added. Many third-party prescription plans may not pay for the packaging associated with a unit-of-use or unit dose system. The Department maintains that, while the existence of different drug distribution systems may present difficulties, the consultant pharmacist needs to identify possible problems and propose remedies.

The recommended restriction on the use of out-of-State pharmacies was not added, as the Department contends that such a rule would be excessively prescriptive. N.J.A.C. 8:39-29.4(l) requires the facility to implement procedures for obtaining medications from a New Jersey licensed pharmacy, thus narrowing the potential use of out-of-state pharmacies. The extreme example cited by the commenter would constitute a violation of N.J.A.C. 8:39-29.4(l). It is the responsibility of the facility to protect residents from unacceptable standards of practice. The consultant pharmacist is expected to guide and assist the facility in protecting and accommodating the rights of the residents, while considering the needs of the facility.

COMMENT: One commenter suggested that the consultant pharmacist as well as the pharmacy and therapeutics committee review all medication errors, as required at N.J.A.C. 8:39-29.8.

RESPONSE: The revised N.J.A.C. 8:39-29.1(b) requires the pharmacy and therapeutics committee to include the consultant pharmacist. Consequently, there is no need to revise N.J.A.C. 8:39-29.8 in the manner suggested.

Subchapter 30. Advisory Pharmacy

COMMENT: The Academy of Consultant Pharmacists commented on N.J.A.C. 8:39-30.1, which suggests that the consultant pharmacist or director of pharmaceutical services should hold current certification by the Joint Board of Certification of Consultant Pharmacists. The Academy strongly urges that this become a mandatory rule, since it has been advisory for over five years, the number of consultants now certified is sufficient to provide services, and other certification requirements in the rules are even more restrictive (that is, infection control coordinators at N.J.A.C. 8:39-20.2(a) and nurse aide certification at N.J.A.C. 8:39-25.2(g)). The Academy further states that, if the Department does not agree with their suggestion for certification, the Academy suggests removal of any reference to the director of pharmaceutical services from the rule.

RESPONSE: The Department and the Nursing Home Advisory Group have decided that no professional accreditations or certifications by

independent bodies would be made mandatory. For example, the infection control rule at N.J.A.C. 8:39-20.2(a) is advisory, while nurse aides are certified by the Department as a mandatory requirement. As discussed above, references to a director of pharmaceutical services have been deleted from the rules.

COMMENT: Three comments were received concerning the advisory rule at N.J.A.C. 8:39-30.2, which states that the consultant pharmacist should arrange for quarterly meetings to address medication issues with residents, families and others. Two commenters believe that "quarterly may be too frequent for these meetings and may hinder the action of the pharmacy and therapeutics committee," that this should be "the responsibility of the administrator, not the pharmacist," and that the term "medication issues" is extremely broad. Both of these commenters suggested deletion of the advisory standard, since consultants or providers could arrange open meetings when advisable or requested. A third commenter suggested that the provider pharmacist should participate in support group meetings open to residents and families to discuss medication issues related to Alzheimer's disease or to other conditions which may be addressed at such support groups.

RESPONSE: It should be noted that advisory standards are intended to exceed the minimum mandatory requirements, hence specification of the frequency of meetings. Also, this activity would be separate and distinct from those of the pharmacy and therapeutics committee. The Department believes the pharmacist to be the professional most competent to discuss medication issues and, in so doing, would be performing a significant service for residents. In order to make the standard more flexible, however, the provider pharmacist was added as an alternative to the consultant pharmacist. The term "medication issues" is intended to include medication issues of interest to support groups.

Subchapter 31. Mandatory Physical Environment

COMMENT: The NJAHCF commenter requested the addition of the words "where applicable" to the rule at N.J.A.C. 8:39-31.1(e)1, which requires each facility to provide well-lighted parking areas and entrances, since "not all facilities have parking lots."

RESPONSE: The rule has been reworded to require good lighting at entrances and, where applicable, in facility parking areas.

COMMENT: One commenter suggested that the verbs in Appendix A, which includes pet therapy guidelines, as referenced at N.J.A.C. 8:39-31.2(f), be changed from "should" to "shall", indicating that these are mandatory rules.

RESPONSE: The information included at Appendix A is intended for the guidance of those facilities which allow pets. As stated at N.J.A.C. 8:39-31.1(f), each facility must develop appropriate safeguards and policies, which should be but are not required to be, in accordance with recommendations in Appendix A. Each facility would develop policies if needed, based on individual needs or specific pets allowed. The requested change has not been made.

Subchapter 32. Advisory Physical Environment

COMMENT: Dr. John Slade, Chairman of the Public Health Council, commented on the advisory standard at N.J.A.C. 8:39-32.1, which states that there should be a smoke-free policy in the facility which is in accordance with rules at N.J.A.C. 8:39-41.3(e)4. The commenter notes that a smoke-free policy is advisory only and that there is no time limit by which the smoke-free policy must be accomplished. (Refer to comments/responses at N.J.A.C. 8:39-41.3(e)4 below for additional comments from Dr. Slade regarding smoking rules in nursing homes.)

RESPONSE: Each long-term care facility has the option to become smoke-free, following policies outlined at N.J.A.C. 8:39-41.3(e)4, and many facilities are working toward this goal. However, smoking rules must be developed, implemented and enforced in accordance with existing law, N.J.S.A. 26:3D-1 et seq. If this law is to be changed, commenters must work with State legislators to effect such change. The Department does not have the authority to mandate changes in the law. The rule remains advisory.

Subchapter 35. Mandatory Medical Records

COMMENT: The commenter from the Board of Nursing recommended that N.J.A.C. 8:39-35.2(d)4, which states that the medical record must include a history and results of a physical examination performed by the physician on admission and results of the most recent examination, be changed. If a NP/CNS is utilized, these practitioners need to be added to the rule.

RESPONSE: The Department agrees that examinations, with the exception of the initial examination, which have been delegated to other

practitioners in accordance with N.J.A.C. 8:39-23.2(g), must be documented in the medical record. Therefore, the rule has been changed to require documentation of the most recent examination by the physician, NP/CNS, or New Jersey licensed physician assistant.

COMMENT: The Academy of Consultant Pharmacists commented that the rules at N.J.A.C. 8:39-35.2(g)3i through iv, regarding procedures for entries into the medical record if a facsimile communications system (FAX) is used, do not address a mechanism for providing the pharmacy with a copy of medication orders.

RESPONSE: According to New Jersey Board of Pharmacy rules, the provider pharmacy must receive a copy of each medication order. It is the responsibility of the individual LTC facility to determine the most effective mechanism, which may include FAX, for forwarding the order to the pharmacy in a timely manner.

COMMENT: The Board of Nursing commented that N.J.A.C. 8:39-35.2(g)3i, which states that the "physician shall sign the original order," should also include the NP/CNS.

RESPONSE: The Department agrees, and has included NP/CNS, or New Jersey licensed physician assistant in the rule to indicate that orders may be signed by these individuals if such responsibility has been delegated by the physician in accordance with established protocols and applicable practice laws.

COMMENT: NJAHCF requested that N.J.A.C. 8:39-35.2(h), concerning procedures and fees for obtaining copies of medical records, be amended to delete the definition of "legally authorized representative." According to the comment, the law spells out what legally authorized representative is, the definition exceeds the law, and OBRA directs that a legal surrogate be authorized "under State law, not rule." The Dellridge commenter requests clarification of "immediate next of kin," as included in the definition of legally authorized representative, "especially as it pertains to children." The commenter also states that "the request should be made to a person in authority, that is, administrator or designee." Additionally, the Dellridge commenter asks whether P.N.A. funds may be used to pay for copies of medical records.

RESPONSE: The "law" which spells out legally authorized representative was not specified by the commenter. Therefore, the Department cannot respond directly to the commenter. The definition of "legally authorized representative" has not been deleted from the rule as requested. The definition is included to indicate that copies of records may be released only to those individuals specified by the resident and with the resident's permission, or to those persons or entities who are entitled by law to obtain copies. Refer to comment/response at N.J.A.C. 8:39-4.1 above for discussion of the Department's position on designation of "immediate next of kin" for each resident. According to N.J.A.C. 8:39-35.2(h)1, each facility must establish a policy assuring access to copies of medical records for residents who do not have the ability to pay. Recipients of P.N.A. funds would generally be considered residents who do not have the ability to pay for copies of records. Personal Needs Allowance (P.N.A.) are intended to meet the personal needs of a resident living in a LTC facility. P.N.A. funds must be used in compliance with all applicable state and Federal laws and rules. These funds must not be used to obtain services or items which are considered part of the facility's allowable cost and which are eligible for the per diem reimbursement. Since Medicaid may cover the expense of copies, reimbursement should be sought from this source. If there is a need for clarification in an individual case, the matter may be referred to the Director of the Medicaid District Office serving the LTC facility.

Subchapter 37. Mandatory Rehabilitation

COMMENT: The commenter from Dellridge Care Center recommended an addition to N.J.A.C. 8:39-37.1, which addresses physician order for rehabilitation services. The new rule would indicate that physical therapists, occupational therapists, speech and audiology therapists "may take treatment orders directly from the physician." This would foster "concise communication between physician and therapist."

RESPONSE: The Department disagrees that direct orders from the physician to therapists would improve communication. As stated at N.J.A.C. 8:39-11.1, the RN has the overall responsibility for coordination of care plans and timeliness of services. It is, therefore, appropriate for the nurse to take the physician's order. The nurse has the obligation to implement the order by forwarding it to the therapist. The rules do not preclude communication between the physician and the therapist, and the Department encourages exchanges of information between professionals who are responsible for resident care, for example, through discussion, phone conversation, interdisciplinary meetings, or notations and suggestions on the medical record.

Subchapter 39. Mandatory Social Work

COMMENT: Two commenters from the Sussex County Homestead commented on N.J.A.C. 8:39-39.3(a), which states that a facility shall provide "one full time equivalent social worker for every 120 residents." According to the commenters, this number is "unrealistic," has not been changed from the current rules, although the social worker's role has been expanded to include counseling to residents and families, a resource, an advisor, an educator, a troubleshooter, a diplomat, and admissions coordinator," etc. "The population of the nursing home reflects the problems of the community," including alcoholism, victims of physical and emotional abuse, dysfunctional families, depression, and mental illness. "The role of the social worker has been increase in nursing facilities, as State and Federal mandates require additional interaction with the resident, family members, as well as staff." Re-evaluation of staffing ratios is recommended. A ratio of one social worker for every 70 residents is suggested.

RESPONSE: Any increase in the minimum staffing hours required by the rule would constitute a substantive change and would have a fiscal impact on long-term care facilities and on Medicaid. As stated in the rule, 20 minutes of social work services per resident is an average, and represents the minimum staffing time each facility must provide. The Department does not intend the rule to limit the provision of social work services to residents who need them. Each social worker is expected, based on assessments and care plans, to schedule services to residents as required. The social worker may provide more than 20 minutes during a particular week to those residents who need them, while there may be residents who require few services during that week. The social worker has the flexibility to divide his or her time to meet the weekly needs of residents. If social work needs cannot be met within these minimum required hours, the facility has the responsibility to provide additional staffing hours according to need. As stated at N.J.A.C. 8:39-27.1(a), "The facility shall provide and ensure that each resident receives all care and services needed to attain and maintain the highest practicable level of physical, emotional and social well-being, in accordance with individual assessments and care plans." While the Department has set minimum staffing requirements for social work, each facility has the responsibility to provide needed staff, while social workers are expected to provide services based on individual assessments and professional standards of practice and to negotiate additional time if needs cannot be met within the minimum mandated hours. Therefore, no changes have been made to the rule.

Subchapter 40. Advisory Social Work

COMMENT: A representative of Sussex County Homestead recommended that the advisory standard at N.J.A.C. 8:39-40.1 be broadened so as to refer not only to education in social work, but also to education in other relevant disciplines. It was observed that master's degree programs in psychology, counseling, and human services are provided by New Jersey State institutions of higher learning. The commenter enumerated the various components of these educational programs and stated that the corresponding degrees should be accorded a status at least equal to that of an MSW in the context of this rule. It was recommended that an MA in the behavioral sciences, psychology, or counseling be permitted to satisfy the advisory standard.

RESPONSE: Since social workers must now be licensed or certified, educational requirements would have to be in accordance with New Jersey Board of Social Workers Examiners rules, N.J.A.C. 13:44G. The rule has not been changed as requested.

Subchapter 41. Mandatory Physical Plant

COMMENT: A comment from Sussex County Homestead questions the reference, at N.J.A.C. 8:39-41.1(c), to the 1985 edition of the National Fire Protection Associations Life Safety Code, since there are more current editions, published in 1991 and 1993.

RESPONSE: The Department agrees, and the wording has been changed to refer to the 1994 Code, as amended and supplemented. Inasmuch as the rule indicates that the code shall not be enforced to exceed the requirements of the Uniform Construction Code, this does not constitute a substantive change and will not result in more stringent or less protective requirements, but reflects current survey practices.

COMMENT: The Office of the Ombudsman commenter stated that N.J.A.C. 8:39-41.2, Mandatory general maintenance does not address location and use of microwaves within the facility, and there is no policy or procedure requiring the posting of "Microwave in Use" signs.

RESPONSE: The rules do not specifically address the location and use of microwaves in the facility. However, each facility has the responsibility to operate and maintain equipment without harm or jeopardy to residents, as specified at N.J.A.C. 8:39-41.29(d) and (e). The Department expects that written instructions for the safe use of microwaves, in accordance with manufacturer's instructions, will be retained and followed by each LTC facility.

COMMENT: The Homestead commenter requests clarification of the rules at N.J.A.C. 8:39-41.2(g) and 41.4(a). N.J.A.C. 8:39-41.2(g) requires that all life-sustaining equipment shall be plugged into outlets connected to an emergency power supply, while N.J.A.C. 8:39-41.4(a) states that an outlet that is connected to an emergency power supply shall be available wherever life-sustaining equipment is in operation. According to the commenter, N.J.A.C. 8:39-41.2(g) "under physical plant, seems to imply that the equipment must be plugged into an outlet connected to the generator," while N.J.A.C. 8:39-41.4(a) "under mandatory safety requirements, merely states that a power supply should be available." Since "most nursing facilities have emergency power outlets available in the event of an emergency, but do not have them dedicated for the sole use of life-sustaining equipment," clarification is required because the two rules are conflicting.

RESPONSE: The Department does not believe that the two rules are conflicting, but, in fact, reinforce one another. N.J.A.C. 8:39-41.2(g) is (intended to ensure that whenever life-sustaining equipment is in use, it must be plugged into outlets connected to an emergency power supply. If no life-sustaining equipment is in use, equipment would, of course, not need to be plugged into such outlets, but outlets would need to be immediately available to staff. N.J.A.C. 8:39-41.4(a), however, is intended to ensure that each LTC facility has an outlet which is connected to the emergency power supply and is readily available when life-sustaining equipment must be used.

COMMENT: One comment was received concerning use of extension cords on a temporary basis in patient areas. According to the commenter, extension cords present a serious danger to the elderly, and deletion of the rule is recommended.

RESPONSE: The Department does not believe that emergency or temporary use of extension cords should be prohibited entirely. As stated in N.J.A.C. 8:39-41.4(f), such cords must be provided and monitored by the maintenance or engineering staff, who would be responsible for ensuring that cords are used in such a way that they do not present safety hazards to residents.

COMMENT: A representative of the New Jersey Group Against Smoking Pollution forwarded comments on N.J.A.C. 8:39-41.3(e), which requires the facility to develop and enforce smoking rules. The commenter stated, first, that rules should not be developed in accordance with N.J.S.A. 26:3D-7 et seq., as specified in the rule, since this law was written in 1981, and was "seminal" in the area of non-smokers' rights, is of limited usefulness today. The commenter suggests that additions be made to N.J.A.C. 8:39-41.3(e)1, which states that residents shall not be permitted to smoke in their rooms and other secluded areas. The rule, with recommended changes, would state that smoking is not permitted except as follows: the smoking area is not generally accessible to the public; is enclosed by solid walls, ceiling and closable doors; has a ventilation system which is separately exhausted from the non-smoking areas of the facility; and is not an area in which an employee is normally required to work. N.J.A.C. 8:39-41.3(e)2 should be changed by deleting the final two sentences which specify provision of nonflammable ashtrays and require adequate outside ventilation in smoking areas. Finally, deletion of the rule at N.J.A.C. 8:39-41.3(e)4, specifying conditions under which the facility may institute a smoke-free policy, is recommended, since such provisions are dealt with in the above comments.

RESPONSE: Physical plant changes suggested by the commenter would constitute a substantive change to the rules which cannot be made on adoption. Additionally, such changes would have an economic impact on facilities and would not be in accordance with resident rights and current laws regarding smoking in facilities. Each facility must provide adequate outside ventilation in areas where smoking is allowed. However, facilities need to consider resident safety when providing such ventilated areas. Enclosed areas such as those suggested by the commenter would not permit observation by staff nor supervision of residents if required. The requested changes to the rule have not been made.

COMMENT: Dr. John Slade credits the Department for developing more stringent rules governing smoking in nursing homes, but believes several issues regarding tobacco smoke and tobacco use were not addressed. Dr. Slade pointed out that the amended rule is silent as to

whether smoking by staff and visitors is permitted, does not sufficiently define the term "adequate outside ventilation" and ignores the responsibility of the nursing home to assess, diagnose and treat addiction to nicotine when it is present. An additional issue raised by the commenter concerns the exposure to tobacco smoke of nonsmoking patients, staff or visitors who may find it necessary to enter the designated smoking room. Dr. Slade recommends that the Department forgo adopting the amended rule at N.J.A.C. 8:39-41.3(e) and develop in its place a more appropriate and comprehensive standard.

RESPONSE: N.J.A.C. 8:39-41.3(e) requires that restricted and ventilated areas must be designated for smoking. Staff and visitors must also comply with these restrictions. However, the Department concurs that a facility may enforce a rule prohibiting smoking by staff and visitors, and has amended the rule to clarify this. As stated in the response above, each facility must balance resident needs for safety in enclosed areas with the need to provide outside ventilation. "Adequate outside ventilation" is interpreted by the Department as compliance with existing construction standards, as specified at N.J.A.C. 8:39-41.1, and with smoking laws. More prescriptive requirements for ventilation would constitute a substantive change to the proposal, and would have a cost impact on existing LTC facilities.

The Department believes that the physician's professional judgement and knowledge of the resident should determine the need to assess, diagnose and treat addiction problems; it does not have the authority to dictate the physician's practice.

Individual facility policies and procedures for employees and visitors would determine entrance to the smoking room, and any problems would need to be resolved between staff or visitors and administration. Although changes to the rules may occur in the future as a result of changes in State or Federal legislation, the Department intends to adopt them as written, with the exception of the amended rule at N.J.A.C. 8:39-41.3(e)1, specifying the facility's option to develop a no-smoking rule for staff and visitors.

Subchapter 43. Nurse Aide in Long-Term Care Facilities Competency Training and Evaluation Program

COMMENT: The New Jersey State Board of Nursing questioned the consistency between the wording of N.J.A.C. 8:39-43.11(a)2i and that of the Americans with Disabilities Act.

RESPONSE: N.J.A.C. 8:39-43.11(a)2i requires the applicant to submit "attestation that the applicant is not a habitual user of controlled substances" as evidence of good moral character. The intent of the rule is to refer to illegal use of such substances. Consequently, the rule, as intended, does not conflict with the Americans with Disabilities Act, which excludes current illegal drug abusers from the class of individuals with a disability who can claim the protections of the Act. In the interest of clarity, the rule was rewritten so as to refer to the illegal use of drugs.

COMMENT: Both Atlantic Cape May Private Industry Council, Inc., and Middlesex County Vocational and Technical High School objected to the requirement at N.J.A.C. 8:39-43.15(b) that, 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. The commenters described job training programs which produce trainees who become certified nurse aides in long-term care and move into diverse health facility settings in which their acquired skills are similar to those required of nursing assistants in those settings. These may include, for example, acute care hospitals, adult day health care facilities, and assisted living facilities. It was argued that the rule would prevent certified aides who have worked throughout the specified 24-month period in one of these alternative facilities from being recertified, thereby impeding their return to the long-term care setting. Restriction of recertification to nurse aides whose recent experience has been in a long-term care facility was considered to be unfair, if similar experience has been obtained elsewhere. The impracticability of expecting nurse aides to seek and be offered employment for seven hours in a long-term care facility for the sole purpose of meeting the rule was indicated. It was recommended that the rule be revised so that relevant experience obtained in other health care settings under the supervision of a licensed nurse would satisfy the conditions for recertification as a nurse aide in long-term care.

The New Jersey State Board of Nursing noted that requiring seven hours of employment within a 24-month period at N.J.A.C. 8:39-43.15(b) would not ensure nurse aide competence. It was also remarked that facilities are "unable to hire nurse aides to meet criteria."

RESPONSE: The intent of N.J.A.C. 8:39-43.15(b) is, in part, to complement Federal Medicare and Medicaid requirements concerning nurse aide training and competency evaluation programs (see 56 FR 48922).

The Federal rule states that the "registry must remove entries for individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months. . . ." The summary of comments and responses to the Federal rules notes that "individuals may provide nursing or nursing-related services in any location, not just a facility, and remain employable as nurse aides" (see 56 FR 48911). On the basis of the wording and meaning of the Federal rule and on the basis of the information provided by the commenters on N.J.A.C. 8:39-43.15(b), the Department has revised the rule. The Department agrees that appropriate experience may be obtained outside of the long-term care facility setting and does not encourage the seeking of short-term employment by experienced nurse aides solely for the purpose of complying with the provision of the rule which refers specifically to employment in "a long-term care facility." The revised rule refers more generally to employment directly in a licensed health care facility or employment under supervision provided through a licensed health care facility. This revision does not constitute a substantive change to the rule, since it does not change the type of supervision which must be provided to nurse aides while they are in training.

Summary of Agency Initiated Changes:

A change was made to N.J.A.C. 8:39-2.1(a), deleting references to "religiously affiliated" facilities, and to P.L. 1993, c.205. The Department and the Legislature are considering further modifications to the Health Care Facilities Planning Act in regard to applicability of CN requirements. As further changes may be enacted, the Department is broadening the scope of this rule beyond P.L. 1993, c.205.

The Department is not adopting, but still pending, the provisions of N.J.A.C. 8:39-2.2(e) through (h), in light of the need for further discussion.

N.J.A.C. 8:39-2.12(c) was not adopted, but is still pending in light of the need for further discussion.

The rule at N.J.A.C. 8:39-9.2(o) was deleted, since N.J.A.C. 8:39-9.3(f) covers job descriptions and the Department believes it is too prescriptive to require a table of organization.

Technical changes were made to the following rules at N.J.A.C. 8:39-19, Mandatory infection control and sanitation, as a result of updated information forwarded by the Department's Division of Epidemiology and the Tuberculosis Program:

N.J.A.C. 8:39-19.4(c) was changed to indicate that the specified list of surveillance data needs to include data concerning multiple antibiotic resistant bacteria which are a growing problem in LTC facilities. No additional requirements are imposed upon the infection control coordinator, since the rule already specifies the continuous collection and analysis of data regarding nosocomial infections, clusters of infections and infections due to unusual pathogens. According to the Tuberculosis Control Program, it is clear that surveillance data should be continuously reviewed with prompt response to outbreaks of all kinds, including those caused by multiple antibody resistant bacteria. Without prompt review of such data, an outbreak may not be detected for weeks or months after it started, resulting in an unacceptable level of morbidity and mortality. The Department does not believe that singling out these pathogens, and thus reinforcing their current significance as a public health problem, constitutes a substantive change to the intent of the rule.

N.J.A.C. 8:39-19.4(h) and (i) were changed to indicate that manufacturer's recommendations need to be followed as well as CDC recommendations for sanitizing equipment. It is standard procedure for manufacturer's recommendations to be followed, in addition to any requirements added by law or rule. The Department, therefore, does not believe the change is substantive, since facilities are not required to do any more than they otherwise would do.

N.J.A.C. 8:39-19.5(d) were clarified to indicate that two-step Mantoux skin test is to be done on all current employees within the specified timeframe. This is consistent with the requirement at N.J.A.C. 8:39-19.5(b) which states that each new employee shall receive a two-step tuberculin skin test, as recommended by the Tuberculosis Control Program. N.J.A.C. 8:39-19.5(e) has been changed to require reports of tuberculin testing to be forwarded semi-annually to the Tuberculosis Control Program. The Tuberculosis program has informed the Department that this is a current requirement, the program provides the reporting forms, and semi-annual reporting has been found to be more effective than annual reporting in maintaining accurate data concerning TB testing and test results. Since this is current practice, the Department does not believe the change to be substantive.

N.J.A.C. 8:39-19.7(c) duplicates N.J.A.C. 8:39-19.3(c) and has therefore been deleted.

N.J.A.C. 8:39-19.7(g) has been changed to indicate that the rule applies only to new construction. Since the rule was first adopted in 1988, it has been the Department's practice to apply this requirement, for the garbage compactor to be located on an impervious pad that is graded to a drain, to new construction only. The Department believes that requiring this for all existing facilities retroactively would constitute an undue financial burden and, thus, has clarified the intent of the rule.

N.J.A.C. 8:39-20.2(b) has been changed to indicate the current address and name change for the Association for Professionals in Infection Control and Epidemiology, Inc.

A statement regarding delegation of nursing tasks by RNs to LPNs and ancillary nursing personnel has been added to N.J.A.C. 8:39-25.2(a) to reflect current Board of Nursing rules.

A change has been made to N.J.A.C. 8:39-25.2(e) which states that a registered professional nurse shall be on duty in facilities with 100 beds or more. The Department has deleted the referral to 100 beds in the proposal and limited the requirement for an RN on duty at all times to facilities with more than 150 beds. The rule was amended in view of the absence of funds in the State Medicaid budget for FY'95. Inasmuch as Medicaid funding represents financing for 65 percent of patient days in LTC facilities, Medicaid funding is a critical factor in determining staffing requirements. Thus, it is impracticable to implement this change without a commensurate increase in Medicaid funding due to its potential financial impact. Since the specified number of beds is set at 150 in the current rule, returning to this number on adoption is not a substantive change in staffing requirements and will not change the level of patient care.

N.J.A.C. 8:39-28.2(c) has been expanded to include visits by clothing vendors as an advisory option for resident's acquiring clothing. This change reflects current practices in some LTC facilities.

Technical changes and corrections have been made to subchapters 29 and 30, Mandatory and Advisory pharmacy services, as follows:

N.J.A.C. 8:39-29.2(d) has been clarified to indicate that administration of the right drug in the right dose must be ensured. Correct terminology for amount of medication administered is "dose."

N.J.A.C. 8:39-29.3(d) has been changed to include dispensing pharmacies along with provider pharmacies to which information concerning drug allergies must be communicated. "Dispensing pharmacy" is used to apply both to in-house and outside pharmacies.

N.J.A.C. 8:39-29.3(e) was changed to read "of," instead of "or," which was incorrect.

N.J.A.C. 8:39-29.4(c) has been changed by deleting the phrase "If the facility uses and contracts with a provider pharmacy," in order to indicate that the rule is applicable to in-house as well as contracted pharmacies.

N.J.A.C. 8:39-29.4(e) has been changed to indicate that emergency kits must be stored securely but not kept under lock and key. This reflects current Department policy requiring emergency kits to be readily accessible to staff when needed, but protected from unauthorized access or tampering and secured so as to protect residents' health and safety. Having to take time to locate keys and unlock kits would hamper staff who must respond quickly in an emergency.

N.J.A.C. 8:39-29.4(f) has been changed to include compliance with FDA rules where applicable. This change reflects current rules which allow delivery of prescriptions from out-of-State Pharmacies which are subject to FDA requirements.

N.J.A.C. 8:39-29.4(i) has been changed to comply with current requirements for LTC facilities to document all medication destruction.

N.J.A.C. 8:39-29.5 has been changed to indicate that Controlled Dangerous Substances registrations are now issued by the Department of Law and Public Safety.

N.J.A.C. 8:39-30.3 has been changed to more clearly indicate that the consultant pharmacist is expected to contribute to the MDS as required by the facility, in accordance with N.J.A.C. 8:39-11.2(e).

A number of technical changes have been made to subchapter 43, concerning nurse aide training and evaluation programs. Changes to correct the name of the program, or to correct grammar have been made to the following rules: N.J.A.C. 8:39-43.1(a), 43.4(h), 43.4(k), 43.5(c), 43.6(a), 43.7(a), and 43.8(d). Additionally, changes have been made to clarify the person(s) responsible for payment of the fee, in particular, to make clear that the loss of a certificate is the responsibility of the person certified, and that, if a person is not employed, nor offered employment, that person is responsible for the fee. While the proposed text delineated the responsibilities of the nursing home, it did not explicitly state the corresponding responsibilities of the individual certified, which has now been done.

N.J.A.C. 8:39-43.4(a) was amended by the Department based upon recommendations from the Nurse Aide Advisory Committee indicating that 50 hours of classroom experience and 40 hours of clinical experience is the currently recommended distribution of the 90 hours of training.

N.J.A.C. 8:39-43.4(g) was also changed based on recommendations of the Advisory Committee, who decided after review of the rule that the specified timeframe for classroom and clinical instruction was too prescriptive.

N.J.A.C. 8:39-43.5(a) was changed since the modules of the curriculum as taught were changed following proposal of the rules. As currently written, the curriculum no longer specifies the number of hours to be devoted to each module.

The rule at N.J.A.C. 8:39-43.7(b), which indicated that the director of nursing could not serve as nurse instructor, was deleted based on an interpretation received from HCFA which allows the director to serve as instructor under certain circumstances.

The rule at N.J.A.C. 8:39-43.11(a)2ii was changed to indicate that evidence of rehabilitation following convictions may be submitted to the Department. This change is consistent with criminal background check law and ADA.

N.J.A.C. 8:39-43.14(a)2 was changed to refer to conviction or guilty plea as specified at N.J.A.C. 8:39-9.3(d)2. The crimes at N.J.A.C. 8:39-9.3(d)2 preclude employment in a LTC facility by any individual, while N.J.A.C. 8:39-43.11(a)2ii is intended to gather information to determine good moral character and may or may not lead to denial of a certificate.

At the September 8, 1994 meeting of the Health Care Administration, during discussion preceding the vote to approve the rules for final adoption, Mr. William R. Abrams, representing NJAHCF, requested a change to the rule at N.J.A.C. 8:39-43.16(a)9. The rule specifies that information regarding convictions or findings of resident abuse by a certified nurse aide must be included in the nurse aide registry. Mr. Abrams requested that the Department rewrite the rule to clarify the intent that only substantiated findings or abuse, neglect or misappropriation of resident property which have been affirmed by a conviction in a court of law or a hearing, and in which the individual has been afforded notice and a right to a hearing, may be included in the registry. The rewritten rule was read to the HCAB, the commissioner approved the change, and the HCAB voted unanimously to approve the rules, with this change, for final adoption.

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 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. Components 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 Ad-

vance 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 "omissions," 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.

"Physician" means a person licensed to practice medicine by the New Jersey State Board of Medical Examiners.

"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.

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]*** ***Facilities*** exempt from Certificate of Need pursuant to ***[P.L. 1993, c.205]*** ***law***, 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:

ADOPTIONS

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)-(h) (Reserved)

(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

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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.

(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 ***or execute a jurisdictional agreement with the Department***;
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.

(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) (Reserved)

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:

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*, **except when the physician deems it medically inadvisable to give such information to the resident and records the reason for such decision in the resident's medical record;***[If this information would be detrimental to the resident's health, the]* ***and provides an* 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 ***or admission agreement*** describing the services provided by the nursing home and the related charges. ***Such statement or admission agreement must be in compliance with all applicable State and Federal laws.*** This statement ***or agreement*** must also include the nursing home's policies for payment of fees, deposits, and refunds. The resident shall receive this statement ***or agreement*** 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;]*** ***To receive notice of an intended transfer from one room to another within the facility or a change in roommate, including a right to an informal hearing with the administrator prior to the transfer as well as a written statement of the reasons for such transfer. The nursing home shall not move the resident to a different bed or room in the facility if the relocation is arbitrary and capricious. A transfer would not be considered arbitrary and capricious if a facility can document a clinical necessity for relocating the resident, such as a need for isolation or to address behavior management problems, or there is a hardship to an applicant for admission through a delay caused by inefficient distribution of beds by gender.***

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 ***unaccompanied*** access to a telephone ***at a reasonable hour to conduct private conversations*** [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;

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 ***include the name, address, and telephone number of the New Jersey Office of the Ombudsman for the Institutionalized Elderly, and shall*** also be provided to the resident's 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 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]* *four*** 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^{[.]**}; or^{*}

***4. 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 for Therapeutic Recreation Certification (National Council for Therapeutic Recreation, Inc., P.O. Box 479, Thiells, NY 10984-0479).*

(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]* *and written documentation of the reasons for the exception shall be provided to the Department upon request*.**

(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).] *National Council for Therapeutic Recreation Certification (National Council for Therapeutic Recreation, Inc., P.O. Box 479, Thiells, NY 10984-0479).*

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 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 *or more*, 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.

(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]* ***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] ***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. ***("Reasonable efforts" shall include an inquiry on the employment application, reference checks, and/or criminal background checks where indicated or necessary.)***

(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 judgments.

(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 ADMINISTRATION

8:39-10.1 Advisory policies and procedures for administration

(a) The administrator monitors trends in staff turnover.

(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 ***in accordance with professional standards of practice***. ***[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 ***physician's orders, and*** 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.

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. ***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.***

(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)]**[(d)]* 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)]**[(e)]* 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)]**[(f)]* 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.

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(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 re-assessment, 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.

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

8:39-19.1 Mandatory organization for 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
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 ***or multiple antibiotic resistant bacteria***, 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]* *tuberculosis*** screening of all residents which begins prior to admission and concludes within 30 days following admission. ***If the admission screening is conducted through chest X-ray within three months prior to admission, the resident shall receive a two-step Mantoux skin test within three months after 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*, **and with manufacturer's recommendations***.

(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*, **and with manufacturer's recommendations***. 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 ***or NP/CNS, or New Jersey licensed physician assistant,*** 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 **two-step** Mantoux test upon employment, except those exempted by (b) above, shall receive a test **within three months of the effective date of this rule** **by February 21, 1995**. 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 **semi-annually** the results of all tuberculin testing of personnel, on forms provided by **to** the Department of Health, Division of Epidemiology, Tuberculosis Program, on forms provided by the Department.

(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.

[(h)] Garbage compactors shall be located on an impervious pad that is graded to a drain. **[The]** **For new construction, 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 **and Epidemiology, Inc.** (APIC), **[505 E. Hawley, Mundelein, IL 60060]** **1016 Sixteenth Street NW, Sixth Floor, Washington, DC 20036**.

(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]**21.3* 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]**21.4* 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.

(b) Facilities with fewer than 60 beds may develop an alternate system of medical direction, if the facility can document that medical staff perform the requirements at (a)1 through 4 above.

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 *of incidents which have been documented in accordance with N.J.A.C. 8:39-9.2(g)4 and 33.1(d)*.

(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 inpatient admissions.

(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), ***or to a New Jersey licensed physician assistant,* *[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. ***In accordance with N.J.A.C. 13:37-6.2, the registered professional nurse may delegate selected nursing tasks in the implementation of the nursing regimen to licensed practical nurses and ancillary nursing personnel.***

(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]* ***150*** 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, ***the content of which shall be*** based on the outcome of performance reviews of every nurse aide which are completed at least once every 12 months. ***(The 12 hours may include topics included in OBRA requirements which overlap or are duplicative of those required at N.J.A.C. 8:39-13.4(b), up to a maximum of six hours of inservice training per year.)***

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]* ***or***** 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 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 ***percent*** 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]* ***positioning***** 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 implementa-

tion 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 ***and implemented***. 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]* *establish and implement*** written policies and procedures for interventions 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]* *establish and implement*** 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.

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 ***or clothing vendors' periodic visits to 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 may include a licensed pharmacist representing the provider pharmacy.** 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)**(b)* The facility shall have a system to accurately identify recipients before any drug is administered.

*(d)**(c)* 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)**(d)* Medications shall be accurately administered by properly authorized individuals **who shall ensure that the right drug is administered*** to the right resident in the right *[amount]* **dose*** through the right route **of administration*** 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 **or dispensing*** pharmacy ***[if a provider pharmacy is used]***.

(e) Drugs that are not specifically limited as to duration ***[or]* *of*** 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 **or package*** 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;
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]* *or*** trade ***(brand)* name*[s]*** 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; ***and***
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*, including weekends and holidays.****; 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]* *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 ***securely*** at each nursing unit, ***but not kept under lock and key,*** 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 ***and applicable FDA regulations*.**

(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]* *All medication destruction in the facility shall be witnessed by at least two persons, each of whom shall be either 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]*. *A record of each instance of drug destruction shall be maintained.***

(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.]* *The facility shall develop and implement a system whereby instructions for use are provided whenever medications are released to residents. Instructions shall be written in a manner intended to promote proper storage, secure handling, and safe administration of medications released to residents.*** 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]* *Law and Public Safety*.**

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.

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 ***or a licensed pharmacist representing the provider pharmacy*** 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;]* *Good lighting at entrances and, where applicable, in parking areas;***
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.

(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 acuties 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)**(c)* and results of the most recent examination ***by the physician, or NP/CNS, or New Jersey licensed physician assistant***;
5. An assessment and plan of care made by each discipline involved in the resident's care;
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*, or NP/CNS, or New Jersey licensed physician assistant* 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 insurer 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-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 to 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.

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] *1994, as amended and supplemented,* edition of the National Fire Protection Association's 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.

ADOPTIONS

HEALTH

(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 an 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. ***The facility may enforce a no-smoking rule for staff and visitors.***

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.

(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 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 *COMPETENCY* EVALUATION PROGRAM

8:39-43.1 Fees

(a) The following fees shall be charged to the *[applicant]* long-term care facility *training program*, for each person for whom training and evaluation is sought, by the Department or its sub-contract agency for the following, in accordance with N.J.S.A. 26:2H-12*, **except as noted below***:

| | |
|--|---------|
| 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*, which shall be charged to the individual*: | \$15.00 |

7. Recertification certificate*, **which shall be charged to the individual if the individual is neither currently employed nor has been offered employment by a long-term care facility*:** \$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.

(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.

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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]* *50*** hours of classroom instruction and ***[45]* *40*** 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 ***for particular tasks or procedures*** shall be ***[given]* *scheduled*** concurrently ***to the extent practicable***; 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]* *Program*** 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]* *Program*** 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

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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 been 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]* *Nurse Aide*** Personnel in Long-Term Care Facilities**

(a) The New Jersey Curriculum for ***[Ancillary Nursing]* *Nurse Aide*** 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]*

1. MODULE I The Core Curriculum for the Nurse Aide in Long-Term Care Facilities Training and Competency Evaluation Program;

- *2. MODULE II Psychosocial Needs of the Resident;***
- *3. MODULE III Physical Needs of the Resident;***
- *4. MODULE IV Spiritual, Recreational and Activity Needs of the Resident.***

(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]* *Nurse Aide*** 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]* *Certification 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]* ***Nurse Aide*** 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]* ***Nurse Aide*** 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 preceding submission of the instructor/evaluator resume to the Certification *[Unit]* ***Program*** 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)] **(b)** The nurse instructor shall not be the director of nursing.]*

*[(c)]****(b)*** The student to instructor ratio for classroom instruction shall not exceed a ratio of 20 students to one instructor.

*[(d)]****(c)*** The student to instructor ratio for clinical instruction shall not exceed a ratio of 10 students to one instructor.

*[(e)]****(d)*** 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)]****(e)*** The resume of each nurse instructor/evaluator currently teaching the training course shall be available in the facility or educational institution.

*[(g)]****(f)*** 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)]****(g)*** 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*, **in writing*** 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.

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]* ***does not engage in the illegal use*** 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. ***Evidence demonstrating rehabilitation from such convictions, if any, may be submitted to the Department.***

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 ***pending licensure*** 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]****9.3(d)2***; 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 ***performing nursing or nursing-related services*** for at least seven hours ***[in a long-term care facility]****, **either directly in a licensed health care facility or under supervision provided through a licensed health 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.]* ***Any substantiated findings of resident abuse, neglect, or misappropriation of resident property, affirmed by a conviction in a court of law or a hearing in accordance with N.J.A.C. 8:39-43.17(d), in which the individual has been afforded notice and a right to a hearing.*** 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.

(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 procedures for the Alzheimer's/dementia program that are retained by the administrative staff and available to all staff and to members of the public, including those participating in the program.

(b) The facility 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 com-

municable 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 communicable 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, rhinotracheitis, 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 to 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.

- 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. Secondly, 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

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.

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 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.

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.

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)

| | | | |
|--|--|--|---|
| Last _____ First _____ Middle _____ | | | STATUS: <input type="checkbox"/> Private <input type="checkbox"/> Medicaid <input type="checkbox"/> Short Term <input type="checkbox"/> Medicare <input type="checkbox"/> Undetermined <input type="checkbox"/> Long Term <input type="checkbox"/> Undetermined |
| Name _____ | | | TRANSFERRED FROM: _____ |
| Address _____ | | | |
| Social Security No _____ S M W D | | | Date Admitted _____ Date Discharged _____ |
| M/Care # _____ M/Caid # _____ | | | TRANSFERRED TO: _____ |
| Other Insurance _____ | | | Date Admitted _____ |
| Birth Date _____ Sex _____ Religion _____ | | | Physician in Charge at Time of Transfer _____ |
| Relative or Sponsor _____ Relationship _____ | | | _____ M.D. |
| Address _____ | | | Address _____ |
| Home Phone _____ Business Phone _____ | | | 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 |
|--|--|--|--------------------------------------|----------------------|---|
| <input type="checkbox"/> Alert | <input type="checkbox"/> Dentures <input type="checkbox"/> P | <input type="checkbox"/> Speech | <input type="checkbox"/> Foley | _____ | <input type="checkbox"/> Ambulation (independent or w/assist.) |
| <input type="checkbox"/> Forgetful | <input type="checkbox"/> Glasses | <input type="checkbox"/> Vision | <input type="checkbox"/> N/G | _____ | <input type="checkbox"/> Bed to Chair |
| <input type="checkbox"/> Confused | <input type="checkbox"/> Hearing Aid | <input type="checkbox"/> Hearing | <input type="checkbox"/> Gastric | _____ | <input type="checkbox"/> Bedfast |
| <input type="checkbox"/> Wanders | <input type="checkbox"/> Prosthesis | <input type="checkbox"/> Sensation | <input type="checkbox"/> Other _____ | _____ | <input type="checkbox"/> Restraint and type _____ |
| <input type="checkbox"/> Combative | <input type="checkbox"/> Pacemaker | ELIMINATION | | | <input type="checkbox"/> Physical Therapy (describe modality) _____ |
| <input type="checkbox"/> Noisy | <input type="checkbox"/> Other _____ | <input type="checkbox"/> Continent | Date Last Enema/BM | _____ | _____ |
| <input type="checkbox"/> Comatose (Semi) | | <input type="checkbox"/> 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 RHC

PHYSICIAN _____ DATE _____
(Signature required)

NOTE: ATTACH LAB. X-RAY AND OTHER SIGNIFICANT REPORTS

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 | a. b. c. d. e. |
| 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 | a. b. c. d. e. f. g. h. |
| 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 | a. b. c. |

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 | a. b. c. |

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) | | a. |
| Naps regularly during day (at least 1 hour) | | b. |
| Goes out 1+ days a week | | c. |
| Stays busy with hobbies, reading, or fixed daily routine | | d. |
| Spends most time alone or watching TV | | e. |
| Moves independently indoors (with appliances, if used) | | f. |
| NONE OF ABOVE | | g. |
| EATING PATTERNS | | |
| Distinct food preferences | | h. |
| Eats between meals all or most days | | i. |
| Use of alcoholic beverage(s) at least weekly | | j. |
| NONE OF ABOVE | | k. |
| ADL PATTERNS | | |
| In bed/clothes much of day | | l. |
| Wakens to toilet all or most nights | | m. |
| Has irregular bowel movement pattern | | n. |
| Prefers showers for bathing | | o. |
| NONE OF ABOVE | | p. |
| INVOLVEMENT PATTERNS | | |
| Daily contact with relatives/close friends | | q. |
| Usually attends church, temple, synagogue (etc.) | | r. |
| Finds strength in faith | | s. |
| Daily animal companion/presence | | t. |
| Involved in group activities | | u. |
| NONE OF ABOVE | | v. |
| UNKNOWN—Resident/family unable to provide information | | |

END

Signature of RN Assessment Coordinator: _____

Signatures of Others Who Completed Part of the Assessment: _____

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 | <input type="text"/> <input type="text"/> <input type="text"/> — <input type="text"/> <input type="text"/> <input type="text"/> — <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> | Month Day Year |
| 2. RESIDENT NAME | <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> | (First) (Middle Initial) (Last) |
| 3. SOCIAL SECURITY NO. | <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> | |
| 4. MEDICAID NO. (if applicable) | <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> | |
| 5. MEDICAL RECORD NO. | <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> | |
| 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 <input type="checkbox"/> VA <input type="checkbox"/> Medicare <input type="checkbox"/> Self pay/Private insurance <input type="checkbox"/> CHAMPUS <input type="checkbox"/> Other <input type="checkbox"/> | a. b. c. |
| 8. RESPONSIBILITY/LEGAL GUARDIAN | (Check all that apply) Legal guardian <input type="checkbox"/> Family member responsible <input type="checkbox"/> Other legal oversight <input type="checkbox"/> Resident responsible <input type="checkbox"/> Durable power attorney/health care proxy <input type="checkbox"/> NONE OF ABOVE <input type="checkbox"/> | a. b. c. |
| ADVANCED DIRECTIVES | (For those items with supporting documentation in the medical record, check all that apply) Living will <input type="checkbox"/> Feeding restrictions <input type="checkbox"/> Do not resuscitate <input type="checkbox"/> Medication restrictions <input type="checkbox"/> Do not hospitalize <input type="checkbox"/> Other treatment restrictions <input type="checkbox"/> Organ donation <input type="checkbox"/> NONE OF ABOVE <input type="checkbox"/> Autopsy request <input type="checkbox"/> | f. g. h. i. |
| DISCHARGE PLANNED WITHIN 3 MOS. | 0. No 1. Yes 2. Unknown/uncertain | |
| PARTICIPATE IN ASSESSMENT | a. Resident 0. No 1. Yes b. Family 0. No 1. Yes 2. No family | a. b. |
| SIGNATURES | Signature of RN Assessment Coordinator Signatures of Others Who Completed Part of the Assessment: | |

SECTION B. COGNITIVE PATTERNS

| | | |
|-----------------------|--|----------|
| COMATOSE | (Persistent vegetative state/no discernible consciousness) 0. No 1. Yes (Skip to SECTION E) | |
| 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 | a. b. |
| MEMORY/RECALL ABILITY | (Check all that resident normally able to recall during last 7 days) Current season <input type="checkbox"/> That he/she is in a nursing home <input type="checkbox"/> Location of own room <input type="checkbox"/> NONE OF ABOVE are recalled <input type="checkbox"/> Staff names/faces <input type="checkbox"/> | c. d. e. |

• Code the appropriate response = Check all the responses that apply

| | | |
|--|---|-------------------|
| 4. COGNITIVE SKILLS FOR DAILY DECISION-MAKING | (Make 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/supervisor 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) Least alert, easily distracted Changing awareness of environment Episodes of incoherent speech Periods of motor restlessness or lethargy Cognitive ability varies over course of day NONE OF ABOVE | a. b. c. d. e. 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 Hearing aid, present and not used Other receptive comm. techniques used (e.g., lip read) NONE OF ABOVE | a. b. c. d. |
| 3. MODES OF EXPRESSION | (Check all used by resident to make needs known) Speech <input type="checkbox"/> Sign/gestures/sounds <input type="checkbox"/> Writing messages to express or clarify needs <input type="checkbox"/> Other <input type="checkbox"/> NONE OF ABOVE <input type="checkbox"/> | a. b. c. d. e. f. |
| 4. UNDERSTANDING SELF | (Express information content—however able) 0. Understood 1. Usually Understood—difficulty finding words or finishing thoughts 2. Sometimes Understood—ability is limited in 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 pertinent 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) Experiences any of following: sees halos or rings around lights; sees flashes of light; sees "curtains" over eyes NONE OF ABOVE | a. b. c. |
| 3. VISUAL APPLIANCES | Glasses; contact lenses, lens implant; magnifying glass 0. No 1. Yes | |

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) (2) SELF PERFORM. 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. LOCOMOTION | 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, unna); 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/orying face, hands, and penneum (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) 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 Bedrest all or most of the time Contracture to arms, legs, shoulders, or hands Hemiplegia/hemiparesis Quadriplegia Arm—partial or total loss of voluntary movement Hand—lack of dexterity (e.g., problem using toothbrush or adjusting hearing aid) Leg—partial or total loss of voluntary movement Leg—unsteady gait Trunk—partial or total loss of ability to position, balance, or turn body Amputation NONE OF ABOVE |
| 5. MOBILITY APPLIANCES/ DEVICES | (Check all that apply during last 7 days) Canewalker Brace/prothesis Wheeled self Other person wheeled Lifted (manually/mechanically) NONE OF ABOVE |

| | |
|--|--|
| 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 Direct care staff believe resident capable of increased independence in at least some ADLs Resident able to perform tasks/activity but is very slow 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) NONE OF ABOVE |
| 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 Resident has been checked for presence of a fecal impaction, or there is adequate bowel elimination NONE OF ABOVE |
| 3. APPLIANCES AND PROGRAMS | Any scheduled toileting plan External (condom) catheter Inwelling catheter Intermittent catheter Did not use toilet room/ commode/unna Pads/briefs used Enemas/irrigation Ostomy NONE OF ABOVE |
| 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 At ease doing planned or structural activities At ease doing self-initiated activities Establishes own goals Pursues involvement in life of facility (e.g., makes/keeps friends; involved in group activities; responds positively to new activities; assists at religious services) Accepts invitations into most group activities NONE OF ABOVE |
| 2. UNSETTLED RELATIONSHIPS | Cover/open conflict with and/or repeated criticism of staff Unhappy with roommate Unhappy with residents other than roommate Openly expresses conflict/anger with family or friends Absence of personal contact with family/friends Recent loss of close family member/friend NONE OF ABOVE |
| 3. PAST ROLES | Strong identification with past roles and life status Expresses sadness/anger/empty feeling over lost roles/status NONE OF ABOVE |

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) DEMONSTRATED (OBSERVABLE) SIGNS of mental DISTRESS — Tearfulness, emotional groaning, sighing, breathlessness — Motor agitation such as pacing, handwringing or picking — Failure to eat or take medications, withdrawal from self-care or leisure activities — Pervasive concern with health — Recurrent thoughts of death—e.g., believes he/she about to die, have a heart attack — Suicidal thoughts/actions NONE OF ABOVE | a. b. c. d. e. f. g. 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) VERBALLY ABUSIVE (others were threatened, screamed at, cursed at) PHYSICALLY ABUSIVE (others were hit, shoved, scratched, sexually abused) SOCIALLY INAPPROPRIATE/DISRUPTIVE BEHAVIOR (made disrupting sounds, noisy, screams, self-abusive acts, sexual behavior or disturbing in public, smeared/threw food/ feces, hoarding, rummaged through others' belongings) | a. b. c. d. |
| 4. | RESIDENT RESISTS CARE | (Check all types of resistance that occurred in the last 7 days) Resisted taking medications/injection Resisted ADL assistance NONE OF ABOVE | a. b. 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 2. Little—less than 1/3 of time 1. Some—1/3 to 2/3 of time 3. None |
| 3. | PREFERRED ACTIVITY SETTINGS | (Check all settings in which activities are preferred) Own room a. Outside facility c. Day/activity room b. NONE OF ABOVE d. 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/hobbies b. Trips/shopping g. Exercise/sports c. Walking/wheeling outdoors h. Music d. Watch TV i. Read/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 Atherosclerotic heart disease (ASHD) Cardiac dysrhythmias Congestive heart failure Hypertension Hypotension Peripheral vascular disease Other cardiovascular disease | PSYCHIATRIC/MOOD Anxiety disorder Depression Manic depressive (bipolar disease) SENSORY Cataracts Glaucoma OTHER Allergies Anemia Arthritis Cancer Diabetes mellitus Explicit terminal prognosis Hypothyroidism Osteoporosis Seizure disorder Sepsisemia Urinary tract infection— in last 30 days |
| | NEUROLOGICAL Alzheimer's Dementia other than Alzheimer's Aphasia Cerebrovascular accident (stroke) Multiple sclerosis Parkinson's disease | |
| | PULMONARY Emphysema/Asthma/ COPD Pneumonia | |
| 2. | OTHER CURRENT DIAGNOSES AND ICD-9 CODES | |

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 f. Diarrhea b. Recurrent lung aspirations in last 90 days g. Dizziness/vertigo c. Shortness of breath h. Edema d. Syncope (fainting) i. Fecal impaction e. Vomiting n. Fever f. NONE OF ABOVE o. Hallucinations g. Delusions h. Internal bleeding i. Joint pain j. |
| 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. |

| | | | |
|---|-------------------------|---|----|
| 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. |
| | | | d. |

| | | | |
|---|--------------------|--|----|
| 4 | SKIN PROBLEMS-CARE | Open lesions other than stabs 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 beds) | e. |
| | | Wound care/treatment (e.g., pressure ulcer care, surgical wound) | f. |
| | | Other skin care/treatment | g. |
| | | NONE OF ABOVE | h. |

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.) | WT (lb.) |
| | | c. Weight loss (i.e., 5%+ in last 30 days; or 10% in last 180 days) | |
| | | 0. No 1. Yes | d. |
| 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. |
| 4. | NUTRITIONAL APPROACHES | Parenteral/IV | a. |
| | | Feeding tube | b. |
| | | Mechanically altered diet | c. |
| | | Syringe (oral feeding) | d. |
| | | Dietary supplement between meals | e. |
| | | Plate guard, stabilized built-up utensil, etc. | f. |
| | | NONE OF ABOVE | g. |
| | | | 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 med. used less than weekly) Antipsychotics Anxiolytics/hypnotics Antidepressants |
| | | 5. PREVIOUS MEDICATION RESULTS | (SKIP this question if resident currently receiving antipsychotics, antidepressants, or anxiolytics/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 M. ORAL/DENTAL STATUS

| | | | |
|----|------------------------------------|--|----|
| 1. | ORAL STATUS AND DISEASE PREVENTION | Dentures (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 (gingivitis); swollen or bleeding gums; oral abscesses, ulcers or rashes | e. |
| | | Daily cleaning of teeth/dentures | f. |
| | | NONE OF ABOVE | g. |

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. |

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 tissue—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 | |

| | |
|------------------|---------------------|
| 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 | <input type="checkbox"/> | <input type="checkbox"/> | |
| COGNITIVE LOSS/DEMENTIA | <input type="checkbox"/> | <input type="checkbox"/> | |
| VISUAL FUNCTION | <input type="checkbox"/> | <input type="checkbox"/> | |
| COMMUNICATION | <input type="checkbox"/> | <input type="checkbox"/> | |
| ADL FUNCTIONAL/ REHABILITATION POTENTIAL | <input type="checkbox"/> | <input type="checkbox"/> | |
| URINARY INCONTINENCE AND INDWELLING CATHETER | <input type="checkbox"/> | <input type="checkbox"/> | |
| PSYCHOSOCIAL WELL-BEING | <input type="checkbox"/> | <input type="checkbox"/> | |
| MOOD STATE | <input type="checkbox"/> | <input type="checkbox"/> | |
| BEHAVIOR PROBLEM | <input type="checkbox"/> | <input type="checkbox"/> | |
| ACTIVITIES | <input type="checkbox"/> | <input type="checkbox"/> | |
| FALLS | <input type="checkbox"/> | <input type="checkbox"/> | |
| NUTRITIONAL STATUS | <input type="checkbox"/> | <input type="checkbox"/> | |
| FEEDING TUBES | <input type="checkbox"/> | <input type="checkbox"/> | |
| DEHYDRATION/FLUID MAINTENANCE | <input type="checkbox"/> | <input type="checkbox"/> | |
| DENTAL CARE | <input type="checkbox"/> | <input type="checkbox"/> | |
| PRESSURE ULCERS | <input type="checkbox"/> | <input type="checkbox"/> | |
| PSYCHOTROPIC DRUG USE | <input type="checkbox"/> | <input type="checkbox"/> | |
| PHYSICAL RESTRAINTS | <input type="checkbox"/> | <input type="checkbox"/> | |

August 15, 1990

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 Involving 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.f | 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.i.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 i | not ✓ | | | | | | | | | | | | | | | | | | ● |
| N2 | 1,2,3,4 | | | | | | | | | | | | ● | | | | | | ● |
| N4 c.d.e.i.c | none ✓ | | | | | | | | | | | | | | | | | | ▲ |
| O4 a.b.c | 1-7 | ▲ | | | | | | | | | ▲ | | | | | | | | ▲ |
| | | | | | | | | | | | | | | | | | | | ● |

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.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF PERMIT INFORMATION AND ASSISTANCE

Notice of Classification of Permits under the Environmental Management Accountability Act

Take notice that the Department of Environmental Protection is revising some permit categories and review schedules originally published in the New Jersey Register of July 20, 1992 (see 24 N.J.R. 2632(a)). As required by P.L. 1991, c.423 (the Environmental Management Accountability Act), the Department established categories within each permit program, based on the complexity of the application and of the necessary documentation, as well as on the potential environmental or health effects that could result from the approval of such an application. In addition, the Department established general timeframes for the review of applications or other activities under each category. The Act gave the Department authority to alter particular review schedules from time to time in order to effectuate more efficient, effective and equitable review of applications.

The following review schedules have changed since they were first published in the New Jersey Register in July, 1992:

Wastewater Facilities Regulation Program

(New Jersey Pollutant Discharge Elimination System (NJPDES) permits)
 Ground Water Discharge (Industrial & Sanitary) 6 months
 Ground Water General Permits (Industrial & Sanitary) 3 months

Water Allocation Permits

Modifications—no public hearing 10 months
 New Permit—Surface/Groundwater 10 months
 Dewatering, Modifications, Initial—public hearing 15 months

Water Supply Element

Safe Drinking Water (Public Water Works Permits)
 Treatment Modifications 6 $\frac{2}{3}$ months
 Distribution Modifications 6 $\frac{2}{3}$ months
 New Surface Sources 10 months
 New Public Water Systems 33 $\frac{1}{3}$ months
 New Wells 26 $\frac{2}{3}$ months

Air Quality Regulation Program

LEVEL 1 PERMITS

- A. General Description:
 Registration type permits, large numbers of identical source types with well established State Of The Art (SOTA) and standardized review procedure. The Bureau of New Source Review calculates the emissions.
- B. Level 1 Source Categories 1 month
- Storage and transfer of service station fuels (stage I) retail and non-retail.
 - Storage and transfer of service station fuels (stage II) retail and non-retail.
 - Retail dry cleaning operations.
 - Commercial oil and gas combustion of less than 20 million BTU per hour maximum rated gross heat input, not including reciprocating engines, cogeneration of power generation.
 - Liquid non-floating roof storage tanks of less than 40,000 gallons capacity, and not storing a toxic substance as listed in N.J.A.C. 7:27-17.3.
 - Emergency Generators with less than 10 megawatts of electrical output that operate less than 500 hours per year.
 - Any tank, reservoir, container or bin that is used for the storage of solid particles.
 - Auto body repair spray coating booths.
 - Open burning permits.
 - Woodworking equipment, including, but not limited to saws, planers, and sanders.

LEVEL 2 PERMITS

- A. General Description
 Permit categories with established policies and procedures, but which require technical review, permit conditioning, testing and monitoring.
- B. Level 2 Source Categories 3 months
- Liquid storage tanks of 40,000 gallons or more.
 - All permit applications submitted under the non-reactive permitting procedure except for source operations subject to emission offset rules (N.J.A.C. 7:27-18).
 - Liquid storage tanks storing a toxic substance listed in N.J.A.C. 7:27-17.3.
 - Surface coating and printing operations, except auto body spray coating booths.
 - Sources operations with emissions less than 25 tons per year.
 - Commercial fuel burning equipment with a gross heat input rate of at least 10 million BTU per hour, and less than 50 million BTU per hour. This does not include reciprocating engines, cogeneration or power generation.
 - Soil venting operations except at Superfund sites or hazardous waste sites.
 - Surface cleaners and degreasers.
 - Metalworking equipment, including, but not limited to welders, grinders and drill presses.
 - Enclosed stationary solid material handling equipment using pneumatic, bucket or belt conveying systems.
 - Any control apparatus that services only one or more laboratory hoods, ducts, and/or vents.
 - Source operations such as reaction, mixing and distillation processes.
 - Clean wood waste furnaces with a heat input of less than 10 million BTU per hour.
 - Asphalt plant operations.
 - Ethylene oxide sterilizers.

LEVEL 3 PERMITS

- A. General Description
 Complex type permits with combinations of source types with long project history, which require state of the art review and drafting policy.
- B. Level 3 Source Categories 4.5 months
- Glass melting operations.
 - Source operations with emission increases of at least 25 tons per year (considering enforceable operating conditions). This does not include such source operations which are in Level 4 or 5.
 - All Batch Plant applications.
 - All Pilot Plant applications.
 - All Dual Pilot/Batch Plant applications.
 - Source operations subject to emission offset reviews (netting analysis) under N.J.A.C. 7:27-18 that are not in Level 4 or 5.
 - Source operations subject to Prevention of Significant Deterioration (PSD) that are not in Level 4 or 5.
 - Source operations that require a Public Notice, and are not in Level 4 or 5.
 - Source operations involving the production of polystyrene foam.
 - Cogeneration or power generation equipment, using gas or oil, with a heat input that is less than or equal to 10 million BTU per hour.
 - Wastewater treatment equipment.
 - Sludge dewatering processes.
 - Composting facilities.
 - Solid waste applications other than solid waste combustion.
 - Solid waste transfer stations.
 - All permits submitted under the Non-Reactive permitting procedure with emissions of 25 tons or more per year, after control.
 - Reciprocating engines with a heat input less than 10 million BTU per hour.
 - Flares.

PUBLIC NOTICES

19. Hospital waste processing using autoclaves, microwaves, sterilizers, or grinding, but not incineration.
20. Active and passive landfill gas vents, with a heat input rate of greater than 10 million BTU per hour, other than at Superfund sites.
21. Clean wood waste furnaces with a heat input of 10 million BTU per hour or more.
22. Volatile organic compound loading racks.
23. All biofilters.
24. Commercial fuel burning equipment with a gross heat input rate of at least 50 million BTU per hour and less than 100 million BTU per hour.

LEVEL 4 Source Categories 12 months

1. Liquid or gas combustion, energy generation equipment with a heat input rate of 100 million BTU per hour or more.
2. Incinerators, regardless of size or feed rate, including sludge incinerators and human and pet crematories, but not including hazardous waste incinerators.
3. Reciprocating engines with a heat input of 10 million BTU per hour or more.
4. Coal fired or other solid fuel fired equipment, except that which utilizes clean wood.
5. Permits involving superfund site mitigation.
6. Commercial facilities that treat offsite generated waste.
7. Waste oil process by-products or other non-commercial fuel combustion.
8. Cogeneration and power generation equipment greater than 10 million BTU per hour.

Once a Level 4 Air Permit application is administratively complete, the aforementioned 12 month review schedule is as follows:

| | |
|-------------------------------|-----------------|
| First technical review | 30 days |
| Response from applicant | 30 days |
| Second technical review | 30 days |
| Response from applicant | 30 days |
| Final review and draft permit | 30 days |
| Public comment period | 45 days |
| Response to comments | 90 days |
| Management review of response | 30 days |
| Finalize permit/decision | 20 days |
| | <u>365 days</u> |

LEVEL 5 Source Categories 16 months

1. Hazardous waste incinerators and associated equipment which vents to the incinerator.
2. Hazardous waste site cleanup using incinerators or other types of treatment equipment.
3. Site clean-up using innovative technology.
4. Commercial facilities that treat waste generated offsite.
5. Combustion of waste oil or other non-commercial fuel.

Once a Level 5 Air Permit application is administratively complete, the aforementioned 16 month review schedule is as follows:

| | |
|--|--------------------|
| First technical review | 30 days |
| Response from applicant | 30 days |
| Second technical review | 30 days |
| Response from applicant | 30 days |
| Final technical review | 30 days |
| Response from applicant | 30 days |
| Coordination with DEP programs and Federal Agencies | 30 days |
| Draft Permit | 30 days |
| Comments from applicant | 30 days |
| Finalize public notice, permit conditions, and public information document | 15 days |
| Public hearing and comments | 45 days |
| Prepare response document | 90 days |
| Management review of response | 30 days |
| Finalize permit/decision | 30 days |
| | <u>480 days</u> |
| | <u>(16 months)</u> |

Site Remediation Program

Site Remediation activities are not permit activities. They are case management activities. The timeframes to complete the process may vary greatly, depending on a number of factors outside of the control of the DEP. The following timeframes are averages for reviews by DEP of complete and accurate submittals.

ENVIRONMENTAL PROTECTION

Industrial Site Recovery Act (ISRA)

The Department will work with the owner or operator of an industrial establishment to allow their sale or transaction to proceed prior to full compliance with ISRA through a Remediation Agreement.

| | |
|---|----------|
| Applicability determinations | 7 days |
| Remediation agreements | 5 days |
| Minimum environmental concern waiver | 30 days |
| Preliminary assessment/site investigation with a negative declaration | 7 days |
| Completion of cleanup—remedial action report review and approval via no further action letter | 45 days |
| Remedial action workplan review and approval | 164 days |

(a)

**OFFICE OF LAND AND WATER PLANNING
Amendment to the Tri-County Water Quality
Management Plan
Public Notice**

Take notice that the New Jersey Department of Environmental Protection (NJDEP) is seeking public comments on a proposed amendment to the Tri-County Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of Moorestown Township and the Mount Holly Sewerage Authority (MHSA) in Burlington County and would modify the Moorestown Township and MHSA Wastewater Management Plans. This amendment identifies that the proposed Moorestown Creek Road Sewage Treatment Plant (STP) will not be constructed. The previously identified sewer service area of the Creek Road STP has been divided into three different service area designations. One of these areas, designated in the easternmost portion of Moorestown Township, is the Laurel Creek sewer service area which includes the following parcels: Laurel Creek Residence and Office, Hatfield, Moorestown Low and Moderate Income Homes, Stevens, Winner, U.S. Navy Combat Systems Engineering Development/Martin Marietta/Aegis (Block 7402, Lot 1 only) and the Moorestown Township Sanitary Landfill site.

The MHSA will accept wastewater management planning responsibility for the Laurel Creek sewer service area of Moorestown Township and plans to service all of this area, except for the landfill site which has been identified as a less than 2,000 gallons per day (GPD) subsurface sewage disposal service area. An existing 6,000 GPD domestic discharge to ground water at the U.S. Navy Combat Systems Engineering Development/Martin Marietta/Aegis site will be abandoned for connection to the MHSA when service is available, but an existing non-contact cooling water discharge will remain on-site. Approximately 351,164 GPD of wastewater flows from the Laurel Creek sewer service area will be sent to the MHSA STP in Mount Holly Township for treatment. This brings the projected wastewater planning flow need of the MHSA STP to 7.28 million gallons per day (MGD).

Another portion of the former Creek Road STP sewer service area has been designated as a less than 20,000 GPD subsurface sewage disposal service area (Block 7401, Lots 1, 2, 5, 6, 7, and 8, the GE Antenna Farm) while the third area is a proposed expansion to the Moorestown Pine Street STP sewer service area. The proposed Pine Street STP sewer service area expansion includes the following properties: Laurel Corporate Center II, DeMarco, Griffin, Vesper, Wilson, Gravatt, Gross, Re/Max, Commerce Bank, Martin Marietta/Aegis (Block 7402, Lot 2 only) and the Georgokolis site which was not previously proposed for sewer service. The projected wastewater planning flow from these properties is approximately 90,000 GPD which brings the projected wastewater planning flow need of the Pine Street STP to 3.59 MGD. The existing RCA/GE Missile Surface Radar Site pretreatment discharge to the Pine Street STP will continue its discharge there.

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 develop-

ment 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 notice is being given to inform the public that a plan amendment has been proposed for the Tri-County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEP, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons should submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, at the NJDEP address cited above with copies sent to Ms. Diane Vesely, Buchart Horn, Inc., 55 South Richland Avenue, P.O. Box 15055, York, PA 17405-7055 and Mr. Joseph Augustyn, The Alaimo Group, 200 High Street, Mount Holly, NJ 08060. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment (or extend the public comment period in this notice up to 30 additional days). These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this notice to Dr. Van Abs at the NJDEP address cited above. If a public hearing for the amendment is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT HUDSON COUNTY DEPARTMENT OF HUMAN SERVICES

Notice of Availability of Grant Funds

Title of Grant: Grant Care Administrative and Operational Services (Hudson County)—Including the Provision of Child Care Services for the Family Development Program; Transitional Child Care (TCC); Title IV-A "At-Risk" (ARCC); Child Care and Development Block Grant (CCDBG), including State-aid Protective Services Child Care; and Child Care Resource and Referral Services (CCR&R)

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5, and 34.6, the New Jersey Department of Human Services' Division of Family Development in conjunction with the County of Hudson Department of Human Services, hereby announces the availability of the following grant program funds:

A. Name of program: Child Care Administrative and Operational Services (Hudson County)—Including Provision of Child Care Services for the Family Development Program (FDP); Transitional Child Care (TCC); Title IV-A "At-Risk" (ARCC); Child Care and Development Block Grant (CCDBG), including State-aid Protective Services Child Care; and Child Care Resource and Referral Services (CCR&R).

B. Purpose: Program funds are issued to administer specific child care programs to eligible low income families in Hudson County, New Jersey. The applicant agency shall be fully based in the County, with a complete administrative office located in the county to handle all facets of the child care operation. Responsibilities will incorporate duties required by the various child care funding resources as follows: Aid to Families with Dependent Children (AFDC); Family Development Program (FDP); Transitional Child Care; Title IV-A "At-Risk"; Child Care and Development Block Grant, including State-aid Protective Services Child Care; and Child Care Resource and Referral Services. Specific information on the requirements of the child care programs will be delineated in the body of the Request for Proposal.

C. Amount of available funding for the program: Estimated annual grant monies total \$2,809,866. These funds are distributed by program

as follows: ARCC—\$895,000; CCDBG—\$1,026,600; FDP/TCC—\$859,000; and CCR&R Services—\$29,266.

Grant monies are subject to available State funding and existing contractual agreements pertaining to child care supervision and operations in the County. Final annual grant funding will be based on actual contractual dates and the time period for transition of services to the successful applicant agency.

D. Final Contracting Information: The successful bidder will be contracting both with the Department of Human Services' Division of Family Development for the ARCC, CCDBG and CCR&R monies; and with the Hudson County Department of Human Services for the FDP and TCC child care programs.

The allocation of FDP and TCC monies by the County Department of Human Services will be through a performance-based contract with the successful bidder for that portion of the funding. The performance standards will be established by using the Division of Family Development's (DFD) level of service projections for 1996.

E. Grant Period: The Grant Period is February 1, 1995 through December 31, 1995.

F. Organizations which may apply for funding under this program: Agencies must be New Jersey based organizations or corporate bodies, not-for-profit, or public entities. Additionally, applicant agencies must either currently maintain a fully functional administrative office capable of handling all required facets of such a child care service entity within Hudson County, or be able to demonstrate that a permanent, fully functional administrative entity will be established in the County for the purpose of carrying out the administration and operation of these child care program services within 60 days from the date of the grant award. "Fully functional" means able to conduct both fiscal and programmatic responsibilities as an all inclusive County-based child care service entity as determined by the Division of Family Development and the Hudson County Department of Human Services.

G. Qualifications of agencies/organizations that apply for funding under this program: Through written proposals, agencies must demonstrate the capacity to develop and carry out the proposed administrative and service delivery elements of the aforementioned child care service programs. Applicants must demonstrate their ability to work cooperatively with and to enter into cooperative agreements with all parties within the Hudson County child care community, and related program offices of the County (including the Job Training Partnership Act (JTPA) entity, the County Welfare Agency, the County Department of Human Services and the Family Development Program staff). A primary function of the applicant agency will be to assure timely referral to permit the scheduling of child care arrangements in-line with the activity or employment schedule of the parent(s) and to ensure that such referrals are coordinated with the JTPA and/or FDP office or other training/educational provider or employer.

The County will require the successful bidder to be able to out-station staff on-site at the County FDP Resource Center so that child care service information and assistance will be co-located with other available social and supportive entities, to enable referrals for a variety of needs to be met within one location. Also, the County will require the successful bidder to demonstrate a willingness for future collaboration or consultation with an appropriate agency in the creation of a child care drop-in center located at the Family Resource Center.

Each applicant agency shall demonstrate coordination of their respective operation with preschool programs funded under Chapter 1 of the Education, Consolidation and Improvement Act of 1981 (Public Law 97-35); school and non-profit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children); with organizations sponsoring before-and-after school activities; SSBG centers; private providers; sectarian providers; and with Federal and/or State demonstration programs.

H. Procedure for eligible organizations to apply: Interested agencies may request in writing a copy of the Request For Proposal from:

Department of Human Services
Division of Family Development
Office of the Acting Deputy Director
CN 716

Trenton, New Jersey 08625

or by telephone: (609) 588-2411. Packages will be available on Monday November 21, 1994.

Additional information and technical assistance will be provided to interested applicants at a Bidders' Conference to be held at the New

PUBLIC NOTICES

Jersey Division of Family Development, Quakerbridge Plaza, Building 6, Third-Floor, Board Rooms A and B, Mercerville, New Jersey, on Wednesday, November 30, 1994 at 10:00 A.M.

RFP packages will also be available, upon request, at the Bidders' Conference.

I. Address to which applications must be submitted: Applicants should submit one signed original and seven copies of the completed Request For Proposal (RFP) document and all support materials to the following mailing address to be received no later than 4:00 P.M. on December 21, 1994:

Marion Reitz, Director
Department of Human Services
Division of Family Development
CN 716
Trenton, New Jersey 08625 or,

by hand carry no later than 4:00 P.M. on December 21, 1994 to the following:

Marion Reitz, Director
NJ Division of Family Development
Building 6, 3rd Floor
Quakerbridge Plaza
Mercerville, New Jersey

J. Deadline by which applications must be received: Wednesday, December 21, 1994. No applications will be accepted after 4:00 P.M.

K. Date the applicant is to be notified of acceptance or rejection: No later than January 13, 1995.

(a)

NEW JERSEY COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Notice of Available Grant Funds Independent Living Services for Older Individuals Who are Blind

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5, and 34.6, the New Jersey Commission for the Blind and Visually Impaired, the Department of Human Services, hereby announces the availability of the following grant program funds.

A. Name of program: Senior Community Independent Living Services for Central New Jersey.

B. Purpose: To allow elderly persons, 55 or over per Federal legislation, who are visually impaired to live more independently in their homes and communities with a maximum degree of self-direction and to reduce the risk of unnecessary institutionalization. The grantee, in cooperation with the Commission, provides outreach into the community, information and referral, eye health education, vision screening, advocacy, volunteers, peer support, recreation, and social services. Emphasis will be on the Hispanic and other minority populations in selected areas in Union, Middlesex, Mercer and Essex counties. Specific cities or areas in Middlesex and Union counties will be targeted for the first program year.

C. Amount of funding available for the program: Federal funds of \$100,000 are available for the first year.

D. Organizations which may apply for funding under this program: Private not-for-profit community based organizations; public agencies, institutions or organizations including those of county and State; involvement with service provision to older adults; and capable of serving the targeted cities and counties.

E. Qualifications needed by an applicant to be considered for funding: Knowledge of community needs and services, community participation on agency board and/or advisory committee, knowledge of range of services to elderly persons, experience with and trusted by the target populations, availability of bilingual staff, demonstrate capability of implementing and managing programs. Experience serving adults with disabilities or visual impairments is helpful. Joint or cooperative grant applications are acceptable.

F. Procedure for eligible organizations to apply: A technical assistance workshop will be held at Joseph Kohn Rehabilitation Center, 130 Livingston Ave., New Brunswick, New Jersey on Monday, December 5, 1995.

The Request for Proposal packet will be available on November 21, 1994. To obtain the RFP packet or register for the technical assistance workshop telephone (201) 648-4799, 2899 or write to the address below.

G. Address to which applications must be submitted: Judith Liebman, Program Development/Contract Unit, New Jersey Commission for the

LAW AND PUBLIC SAFETY

Blind and Visually Impaired, 153 Halsey Street, PO Box 47017, Newark, NJ 07101.

H. Deadline by which applications must be submitted: January 20, 1995.

I. Date the applicant is to be notified of acceptance or rejection: February 10, 1995.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES Notice of Availability in Monmouth County of Funds for Homemaker Services

Take notice that the Department of Human Services provides Social Service Block Grant funds to the Monmouth County Division of Social Services for Homemaker Services for providing home care to the aged, disabled and chronically ill. Monmouth County, through its Human Service Advisory Council process, will make available a request for proposals for \$485,500. Interested non-profit agencies located in Monmouth County and in compliance with all applicable licensing and insurance requirements should contact Bucky LaMeune at the Monmouth County Division of Social Services, Contract Administration Unit, between the hours of 8:30 A.M. and 4:30 P.M. The telephone number is (908) 431-6087.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF CONSUMER AFFAIRS BOARD OF OPTOMETRY Notice of Receipt of Petitions for Rulemaking and Action Thereon

(1) N.J.A.C. 13:38-1.3 and 13:38-1.2(h)

(2) N.J.A.C. 13:38-2.3

Petitioner: New Jersey Optometric Association.

Take notice that by letters dated September 16, 1994, the law firm of Schragger, Lavine & Nagy, acting on behalf of the New Jersey Optometric Association (NJOA), filed the following two petitions for rulemaking with the Board of Optometry.

I. Petition to amend N.J.A.C. 13:38-1.3 and 13:38-1.2(h)

NJOA petitioned the Board to amend N.J.A.C. 13:38-1.3 and 13:38-1.2(h), and any other relevant regulations, to specifically permit a licensed optometrist to use the term "Optometric Physician." In support of this petition, NJOA argues that:

1. Pursuant to N.J.S.A. 45:12-26, N.J.A.C. 13:38-1.3 and 1.2(h), an optometrist may use almost any descriptive identifying term as long as that term is qualified by the word "Optometrist," is not specifically prohibited by law, and would make the designation easier to understand for consumers.

2. New Jersey doctors of optometry are licensed in part to diagnose, manage and treat ocular disease, pain, injury and other abnormal conditions. As such, use of the term optometric physician is appropriate and will help the public make informed choices.

3. The Medicare program refers to all providers as physicians, and optometrists are included in this definition. Use of the term optometric physician will clarify for senior citizens that an optometrist is included within Medicare's definition of physician.

4. Many managed care organizations do not cover supplemental vision care. Use of the term optometric physician will make it clear that optometrists can and should be participating in managed care systems.

II. Petition to amend N.J.A.C. 13:38-2.3

NJOA petitioned the Board to amend N.J.A.C. 13:38-2.3 to prohibit a licensee from providing copies of patient records to any person or entity absent a signed release from the patient. In support of this petition, NJOA argues that:

1. N.J.S.A. 45:12-18.1 indicates that the legislature placed great emphasis on the confidential nature of the patient/optometrist rela-

tionship. The legislature therefore provided that use of records had to be authorized by both the patient and the optometrist.

2. Case law has extended the physician/patient privilege to include dentists and psychologists. Since optometrists are authorized by law to diagnose, treat and prescribe as to diseases of the eye, optometrists would also fall within the broad definition of the practice of medicine included at N.J.S.A. 45:9-18. Therefore optometrists are required to comply with all laws regarding physician/patient privilege, including the requirement to obtain the patient's authorization prior to any release of the patient's records.

3. Various third party payors and others are currently requiring optometrists to provide patient records of other persons who are not enrolled as subscribers to these third parties. Such requests violate the patient/optometrist privilege, and N.J.A.C. 13:38-2.3 does not include any guidance, directions or specific conditions for patient record release to third party entities.

Take further notice that, upon consideration of these petitions at its September 21, 1994 meeting, the Board determined that additional time was needed to study and evaluate the issues raised by NJOA. Accordingly, the Board referred the petitions to a subcommittee for further analysis and consideration. The Board anticipates that the subcommittee will conclude its deliberations and make recommendations to the Board by March 16, 1995.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

STATE

(a)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Grants Applications Available for

Organization Grants Fiscal Year 1996 (July 1, 1995-June 30, 1996)

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces the availability of the following grant program:

Name of program: Organization Grant Program, Fiscal Year 1996
General Operating Support
Special Project Support
Arts Basic to Education Expansion Project Support
Folk Arts Programs and Project Support
Major Impact Organization Designation

Purpose: To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey through the award of matching grants to eligible organizations. Matching grants under this program are exclusively to support arts projects, programs and services and the operation of arts organizations during the fiscal year 1995/96 (July 1, 1995 to June 30, 1996).

Eligible applicants: Must be a New Jersey incorporated, nonprofit organization that is tax exempt 501(c)3 or 4 by determination of the Internal Revenue Service; must have been in existence and active for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finances; and must comply with all existing State and Federal regulations and laws as described in Guidelines and Application.

Ineligible applicants: Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

Grant size: Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50 percent of project expenses.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for FY96.

Match: All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must indicate at least a 4:1 match of applicant cash to NJSCA dollars, Special Project applicants who are arts organizations, at least 1:1 match of applicant cash to NJSCA dollars; and Special Project applicants, who are not an arts

organization, at least 3:1 match of applicant cash to NJSCA dollars. Indirect costs, however, may not be included.

Deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices not later than January 13, 1995 (5:00 P.M. if delivered in person to office). All prospective applicants that are not direct recipients of FY95 NJSCA grants must submit a Letter of Intent.

Letters of intent are due on December 1, 1994 (5:00 P.M. Receipt)—All organizations that are not FY95 NJSCA grantees must submit a letter of intent. The Letter of Intent is a form contained in the Guidelines and Application, which when completed briefly describes the prospective applicant organization and the purposes for which funds would be sought.

Decisions: Each complete application by eligible applicants will be evaluated by an independent panel of experts appropriate to the category or arts discipline of the applicant and by the NJSCA according to the published criteria for evaluation. The consensus of the panel is further reviewed by the Council. The Council's final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 25, 1995. Applicants are notified in writing of the Council's decision immediately following the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after October 17, 1994. Call (609) 292-6130 (Voice) or (609) 633-1186 (TDD) or write GRANTS 96, NJ State Council on the Arts, CN 306 Trenton, NJ 08625.

(b)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Grants Applications Available for

Fellowship Support Fiscal Year 1996 (July 1, 1995-June 30, 1996)

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces the availability of the following grant program:

Name of program: Fellowship Support Program, Fiscal Year 1996

Purpose: In recognition of outstanding artwork, Fellowships are granted to enable New Jersey artists to pursue their artistic goals. Fellowships are awarded in choreography, music composition, opera/musical theatre composition, theatre (mime), experimental art, graphics, painting, sculpture, design arts, crafts, photography, media arts (film/video/sound), prose, playwriting, poetry and interdisciplinary.

Eligible applicants: Artists who are residents of the State of New Jersey (all awards are subject to verification of New Jersey residency); artists who have not received a fellowship since FY1990-91; artists who are not matriculated students in a high school, undergraduate or graduate program at the time of application (fellowships do not provide funding for scholarships or academic study in pursuit of a college degree). **NOTE:** Artists may submit only one application, apply in one discipline and only in one category of a discipline.

Ineligible applicants: Artists who are residents in another state; are matriculated students in a high school, undergraduate or graduate program at the time of application; artists who received a fellowship during FY92, 93, 94 or 95.

Grant size: In the past three years grants have ranged between \$5,000 and \$12,000.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for FY96.

Match: This is a non-matching award.

Deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices not later than December 15, 1994 (5:00 P.M. if delivered in person to office).

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The Council further reviews the panel evaluations and final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 25, 1995. Applicants are notified in writing of the Council's decision within three weeks following the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after October 1, 1994. Call (609) 292-6130 (Voice) or (609) 633-1186 (TDD) or write GRANTS 96, NJ State Council on the Arts, CN 306, Trenton, NJ 08625.

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 October 3, 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.1994 d.1 means the first rule filed for 1994.

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 SEPTEMBER 19, 1994

NEXT UPDATE: SUPPLEMENT OCTOBER 17, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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. 4981 and 5382 | November 15, 1993 | 26 N.J.R. 2167 and 2510 | June 6, 1994 |
| 25 N.J.R. 5383 and 5728 | December 6, 1993 | 26 N.J.R. 2511 and 2692 | June 20, 1994 |
| 25 N.J.R. 5729 and 6084 | December 20, 1993 | 26 N.J.R. 2693 and 2828 | July 5, 1994 |
| 26 N.J.R. 1 and 280 | January 3, 1994 | 26 N.J.R. 2829 and 3102 | July 18, 1994 |
| 26 N.J.R. 281 and 520 | January 18, 1994 | 26 N.J.R. 3103 and 3230 | August 1, 1994 |
| 26 N.J.R. 521 and 878 | February 7, 1994 | 26 N.J.R. 3231 and 3504 | August 15, 1994 |
| 26 N.J.R. 879 and 1178 | February 22, 1994 | 26 N.J.R. 3505 and 3780 | September 6, 1994 |
| 26 N.J.R. 1179 and 1272 | March 7, 1994 | 26 N.J.R. 3781 and 3916 | September 19, 1994 |
| 26 N.J.R. 1273 and 1416 | March 21, 1994 | 26 N.J.R. 3917 and 4120 | October 3, 1994 |
| 26 N.J.R. 1417 and 1554 | April 4, 1994 | 26 N.J.R. 4121 and 4244 | October 17, 1994 |
| 26 N.J.R. 1555 and 1738 | April 18, 1994 | 26 N.J.R. 4245 and 4470 | November 7, 1994 |
| 26 N.J.R. 1739 and 1904 | May 2, 1994 | 26 N.J.R. 4471 and 4720 | November 21, 1994 |
| 26 N.J.R. 1905 and 2166 | May 16, 1994 | | |

| N.J.A.C. CITATION | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
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| ADMINISTRATIVE LAW—TITLE 1 | | | |
| 1:7A | Department of Environmental Protection cases | 26 N.J.R. 4124(a) | |
| 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) | |

Most recent update to Title 1: TRANSMITTAL 1994-5 (supplement September 19, 1994)

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| AGRICULTURE—TITLE 2 | | | |
| 2:5 | Quarantines and embargoes on animals | 26 N.J.R. 1908(b) | |
| 2:6 | Animal health: biological products for diagnostic or therapeutic purposes | 26 N.J.R. 3784(a) | |
| 2:33 | Agricultural fairs | 26 N.J.R. 285(a) | |
| 2:34 | Equine Advisory Board rules | 26 N.J.R. 3919(a) | |

Most recent update to Title 2: TRANSMITTAL 1994-6 (supplement September 19, 1994)

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| BANKING—TITLE 3 | | | | |
| 3:1-4.5 | Governmental unit deposit protection: public funds exceeding 75 percent of capital funds | 26 N.J.R. 2832(a) | R.1994 d.558 | 26 N.J.R. 4347(a) |
| 3:1-6.6 | Department examination charges | 26 N.J.R. 1560(b) | | |
| 3:1-16.2, 16.5 | Mortgage commitments, lender advertising and licensure, surety bond amounts | 26 N.J.R. 3234(a) | R.1994 d.559 | 26 N.J.R. 4347(b) |
| 3:2-1.4 | Mortgage commitments, lender advertising and licensure, surety bond amounts | 26 N.J.R. 3234(a) | R.1994 d.559 | 26 N.J.R. 4347(b) |
| 3:4-3 | Banking institutions: sale of alternative investments | 25 N.J.R. 5733(a) | | |
| 3:18-1.1, 1.3, 3.2, 7.4, 8.1, 8.2, 12 | Secondary Mortgage Loan Act rules | 26 N.J.R. 3920(a) | | |
| 3:22 | Insurance premium finance companies | 26 N.J.R. 2697(a) | R.1994 d.562 | 26 N.J.R. 4348(a) |
| 3:33 | Acquisitions by out-of-State entities: application requirements | 26 N.J.R. 3235(a) | R.1994 d.560 | 26 N.J.R. 4349(a) |
| 3:38-1.1, 1.10, 5.3 | Net worth of mortgage lenders | 26 N.J.R. 4124(b) | | |
| 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) | | |
| 3:40-6 | New Jersey Cemetery Board: applications | 26 N.J.R. 3785(a) | R.1994 d.579 | 26 N.J.R. 4597(a) |
| 3:41-12 | Cemetery Board: service contractors and service contracts | 26 N.J.R. 6(b) | | |
| 3:41-13.8-3.10 | New Jersey Cemetery Board: applications | 26 N.J.R. 3785(a) | R.1994 d.579 | 26 N.J.R. 4597(a) |

Most recent update to Title 3: TRANSMITTAL 1994-6 (supplement August 15, 1994)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)

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| PERSONNEL—TITLE 4A | | | |
| 4A:1-2.3 | Department use of Social Security numbers | 26 N.J.R. 287(a) | |
| 4A:2-2.3 | Sexual harassment | 26 N.J.R. 3507(a) | |
| 4A:2-3.1 | Department use of Social Security numbers | 26 N.J.R. 287(a) | |
| 4A:2-3.1 | Performance evaluations | 26 N.J.R. 3509(a) | |
| 4A:3-3.1 | Department use of Social Security numbers | 26 N.J.R. 287(a) | |
| 4A:3-4.6 | Voluntary furlough program | 26 N.J.R. 4126(a) | |
| 4A:4-1.10 | Personnel action freezes | 26 N.J.R. 3510(a) | |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
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| 4A:4-2.1 | Department use of Social Security numbers | 26 N.J.R. 287(a) | | |
| 4A:4-2.15, 5.2 | Voluntary furlough program | 26 N.J.R. 4126(a) | | |
| 4A:4-4.8 | Non-selection of eligible in same rank | 26 N.J.R. 2697(b) | R.1994 d.507 | 26 N.J.R. 3941(a) |
| 4A:6-1.1, 1.3, 1.6, 1.8, 1.10, 1.21, 1.21B, App. | Family and medical leave | 26 N.J.R. 3511(a) | | |
| 4A:6-1.2, 1.3, 1.5, 1.23, 2.4 | Voluntary furlough program | 26 N.J.R. 4126(a) | | |
| 4A:6-4.2 | Department use of Social Security numbers | 26 N.J.R. 287(a) | | |
| 4A:6-5.3 | Performance evaluations | 26 N.J.R. 3509(a) | | |
| 4A:7-1.3, 3.3, 3.4 | Sexual harassment | 26 N.J.R. 3507(a) | | |
| 4A:8 | Layoffs | 26 N.J.R. 3518(a) | | |
| 4A:8-2.4 | Voluntary furlough program | 26 N.J.R. 4126(a) | | |
| 4A:8-2.4 | Family and medical leave | 26 N.J.R. 3511(a) | | |

Most recent update to Title 4A: TRANSMITTAL 1994-5 (supplement September 19, 1994)

COMMUNITY AFFAIRS—TITLE 5

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| 5:12 | Homelessness Prevention Program | 26 N.J.R. 4248(a) | | |
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| 5:18-1.5, 2.7, 2.8, 2.22, 3.3, 3.4, 3.5, 4.9, 4.13 | Uniform Fire Code requirements | 26 N.J.R. 4249(a) | | |
| 5:18-2.4A | Uniform Fire Code: overnight camps life hazard use category | 26 N.J.R. 4254(a) | | |
| 5:18-2.11A | Construction boards of appeal: UCC and Fire Code appeals | 26 N.J.R. 4254(b) | | |
| 5:18-2.12, 2.21, App. 3-A | Uniform Fire Code: cigarette lighters | 26 N.J.R. 2182(b) | | |
| 5:18A | Fire Code Enforcement | 26 N.J.R. 4258(a) | | |
| 5:18B | High Level Alarms | 26 N.J.R. 4258(a) | | |
| 5:18C | Standards for Fire Service Training and Certification | 26 N.J.R. 4258(a) | | |
| 5:18C-2.4 | Fire service training facilities | 26 N.J.R. 4249(a) | | |
| 5:23-2.9, 2.34–2.37, 4.40 | Construction boards of appeal: UCC and Fire Code appeals | 26 N.J.R. 4254(b) | | |
| 5:23-3.4, 3.20A | Indoor air quality subcode | 25 N.J.R. 5918(a) | | |
| 5:23-3.14, 7 | Uniform Construction Code: Barrier Free Subcode | 26 N.J.R. 2698(a) | | |
| 5:23-3.14, 7 | Barrier Free Subcode: correction of public hearing date | 26 N.J.R. 3524(a) | | |
| 5:23-10.1, 10.3, 10.4 | Radon Hazard Subcode: schools and residential buildings in tier one areas | 26 N.J.R. 2704(a) | | |
| 5:25-2.5 | New home warranties and builder registration: denial of registration | 26 N.J.R. 1913(a) | | |
| 5:25A-1.3, 2.1, 2.5, 2.6 | FRT plywood roof sheathing failures: alternative claim procedures | 26 N.J.R. 2706(a) | R.1994 d.506 | 26 N.J.R. 3941(b) |
| 5:26-8.2 | Planned real estate developments: community association meeting location | 26 N.J.R. 4277(a) | | |
| 5:31 | Local authorities | 26 N.J.R. 4128(a) | | |
| 5:34-7.2, 7.5, 7.6, 7.8, 7.9 | Local government finance: renewal of registration of Cooperative Purchasing System | 26 N.J.R. 2707(a) | | |
| 5:37 | Municipal, county and authority employees deferred compensation plans | 26 N.J.R. 2708(a) | R.1994 d.578 | 26 N.J.R. 4600(a) |
| 5:80-5.10 | Housing and Mortgage Finance Agency: prepayment of project mortgage | 26 N.J.R. 1187(a) | | |
| 5:93-3.6, 5.6 | New Jersey Council on Affordable Housing: reductions for substantial compliance; zoning for inclusionary development | 26 N.J.R. 2514(a) | R.1994 d.563 | 26 N.J.R. 4349(a) |

Most recent update to Title 5: TRANSMITTAL 1994-8 (supplement September 19, 1994)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1994-1 (supplement June 20, 1994)

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| 6:1 et seq. | Extension of Executive Order No. 66(1978) expiration dates | _____ | _____ | 26 N.J.R. 3942(a) |
| 6:7 | State-operated school districts | 26 N.J.R. 3524(b) | | |

Most recent update to Title 6: TRANSMITTAL 1994-7 (supplement September 19, 1994)

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| 7:0 | Management of waste oil: request for public comment | 26 N.J.R. 1466(a) | | |
| 7:1C-1.5 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:1G-2.1, 3.1 | Community Right to Know: EPA list of regulated substances for accidental release prevention; hazardous substance reporting threshold | 26 N.J.R. 2833(a) | R.1994 d.576 | 26 N.J.R. 4606(a) |
| 7:1H | County Environmental Health Act rules: pre-proposal | 26 N.J.R. 3526(a) | | |
| 7:1L | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:4A | Historic Preservation Grant Program | 26 N.J.R. 3105(a) | R.1994 d.521 | 26 N.J.R. 4182(a) |

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| 7:4A-2.3 | Historic Preservation Bond Program | 26 N.J.R. 3253(b) | R.1994 d.541 | 26 N.J.R. 4350(a) |
| 7:4B-3.1 | Historic Preservation Bond Program | 26 N.J.R. 3253(b) | R.1994 d.541 | 26 N.J.R. 4350(a) |
| 7:4C | Historic Preservation Bond Program | 26 N.J.R. 3253(b) | R.1994 d.541 | 26 N.J.R. 4350(a) |
| 7:5C | Endangered Plant Species Program | 26 N.J.R. 3790(a) | | |
| 7:5D | State Trails System | 26 N.J.R. 1459(a) | | |
| 7:7A-16.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:7E-5.5 | Coastal zone management: administrative correction regarding development potential | _____ | _____ | 26 N.J.R. 3943(a) |
| 7:9 | NJPDES permitting program: proposal summary and request for public comment | 26 N.J.R. 3927(a) | | |
| 7:9B | NJPDES permitting program: proposal summary and request for public comment | 26 N.J.R. 3927(a) | | |
| 7:10-15.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:13 | Flood hazard area control | 26 N.J.R. 1009(a) | | |
| 7:13-7.1 | Flood plain redelineation of Pascaack and Fieldstone brooks in Montvale | 26 N.J.R. 2834(a) | | |
| 7:14 | NJPDES permitting program: proposal summary and request for public comment | 26 N.J.R. 3927(a) | | |
| 7:14A | New Jersey Pollutant Discharge Elimination System | 26 N.J.R. 1332(a) | | |
| 7:14A | NJPDES permitting program: proposal summary and request for public comment | 26 N.J.R. 3927(a) | | |
| 7:14A-1.8 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:14A-2.15 | NJPDES program: administrative correction regarding permit-by-rule authorization | _____ | _____ | 26 N.J. 4182(b) |
| 7:14B-3.9 | Payment schedule for permit application fees | 26 N.J.R. 3922(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 | Statewide water quality management planning | 26 N.J.R. 3106(a) | R.1994 d.525 | 26 N.J.R. 4182(c) |
| 7:15 | NJPDES permitting program: proposal summary and request for public comment | 26 N.J.R. 3927(a) | | |
| 7:19-3.8 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:22A | Sewage Infrastructure Improvement Act grants | 26 N.J.R. 3793(a) | | |
| 7:24A | Dam Restoration and Inland Waters Projects Loan Program | 26 N.J.R. 2228(a) | | |
| 7:25-4 | Implementation of Wild Bird Act of 1991 | 26 N.J.R. 1040(a) | | |
| 7:25-6 | 1995-96 Fish Code | 26 N.J.R. 2835(a) | R.1994 d.577 | 26 N.J.R. 4611(a) |
| 7:25-6.9 | 1995-96 Fish Code: administrative correction | 26 N.J.R. 3258(a) | | |
| 7:25-18.1, 18.4, 18.5, 18.13-18.15 | Marine fisheries management: winter flounder, bluefish, weakfish, Atlantic sturgeon, American lobster | 26 N.J.R. 4277(b) | | |
| 7:25-18.1, 18.5 | Directed conch fishery | 26 N.J.R. 1931(a) | | |
| 7:25-24.7, 24.9 | Leasing of Atlantic coast bottom for aquaculture | 26 N.J.R. 3109(a) | | |
| 7:26-1.4 | Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule" | 26 N.J.R. 294(a) | | |
| 7:26-3A.1, 4.1, 4A.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:26A-2.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
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| 7:27-1, 8, 18, 22 | Air pollution control: facility operating permits | 25 N.J.R. 3963(a) | R.1994 d.502 | 26 N.J.R. 3943(b) |
| 7:27-1, 8, 18, 21, 22 | Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties | 25 N.J.R. 4836(a) | | |
| 7:27-1, 8, 18, 22 | Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments | 26 N.J.R. 793(a) | | |
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| 7:27-8.11 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:27-15 | Motor vehicle enhanced inspection and maintenance program | 26 N.J.R. 3258(b) | | |
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| 7:27-16.1 | Control and prohibition of air pollution by VOS | 25 N.J.R. 6002(a) | | |
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| 7:27-25.1, 25.3 | Oxygenated fuels program | 26 N.J.R. 1148(a) | | |
| 7:27-25.3 | Oxygen program exemptions | 26 N.J.R. 3835(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) | R.1994 d.537 | 26 N.J.R. 4355(a) |
| 7:27A | Air pollution control: civil administrative penalties | 26 N.J.R. 3566(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) | R.1994 d.501 | 26 N.J.R. 4030(a) |
| 7:27A-3.10 | Air pollution control: facility emission statement penalties | 25 N.J.R. 4033(a) | R.1994 d.500 | 26 N.J.R. 4026(a) |

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| 7:27A-3.10 | Air quality management: enhanced Inspection and Maintenance program | 25 N.J.R. 5130(a) | | |
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| 7:27A-3.10 | Control and prohibition of mercury emissions | 26 N.J.R. 1050(a) | | |
| 7:27A-3.10 | Motor vehicle enhanced inspection and maintenance program | 26 N.J.R. 3258(b) | | |
| 7:27A-3.10 | Control and prohibition of air pollution from oxides of nitrogen | 26 N.J.R. 3298(a) | | |
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| 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) | | |
| 7:30-1.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
| 7:31-1.1 | Payment schedule for permit application fees | 26 N.J.R. 3922(a) | | |
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| 8:8-8.3, 8.5, 8.8 | Collection of human blood | 26 N.J.R. 3141(a) | | |
| 8:18 | Catastrophic Illness in Children Relief Fund Program | 26 N.J.R. 3573(a) | R.1994 d.572 | 26 N.J.R. 4380(a) |
| 8:18 | Catastrophic Illness in Children Relief Fund Program: corrections to proposal statements | 26 N.J.R. 3805(a) | | |
| 8:23 | Veterinary public health | 26 N.J.R. 4129(a) | | |
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| 8:31 | Health facilities construction plan review fee | 26 N.J.R. 4135(a) | | |
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| 8:36-1.8, 9.3 | Assisted living residences and comprehensive personal care homes: personal care assistants; administration of medications | 26 N.J.R. 2187(a) | R.1994 d.496 | 26 N.J.R. 4046(a) |
| 8:39 | Long-term care facilities: standards for licensure | 26 N.J.R. 1772(c) | R.1994 d.582 | 26 N.J.R. 4641(a) |
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| 8:44-2.5 | Clinical laboratory Proficiency Testing Program | 26 N.J.R. 1070(a) | | |
| 8:44-2.11 | Clinical laboratories: reopening of comment period on reporting of blood lead levels | 26 N.J.R. 1190(a) | | |
| 8:57-5 | Confinement of persons with tuberculosis | 26 N.J.R. 3236(a) | | |
| 8:57-5 | Confinement of persons with tuberculosis: public hearing | 26 N.J.R. 3574(a) | | |
| 8:59 | Worker and Community Right to Know Act rules | 26 N.J.R. 2888(a) | R.1994 d.535 | 26 N.J.R. 4380(b) |
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| 8:62 | Certification of lead abatement workers, supervisors, inspectors, project designers | 26 N.J.R. 3575(a) | | |
| 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), 1347(b), 2095(a)) | 25 N.J.R. 4844(a) | R.1994 d.457 | 26 N.J.R. 3717(a) |
| 8:71 | List of Interchangeable Drug Products (see 26 N.J.R. 1348(a), 2096(a)) | 26 N.J.R. 13(b) | R.1994 d.456 | 26 N.J.R. 3716(a) |
| 8:71 | List of Interchangeable Drug Products | 26 N.J.R. 14(a) | R.1994 d.244 | 26 N.J.R. 2039(a) |
| 8:71 | List of Interchangeable Drug Products | 26 N.J.R. 69(a) | R.1994 d.243 | 26 N.J.R. 2028(a) |
| 8:71 | Interchangeable drug products (see 26 N.J.R. 2025(b), 2901(a), 3715(b)) | 26 N.J.R. 1190(b) | R.1994 d.546 | 26 N.J.R. 4387(a) |
| 8:71 | Interchangeable drug products (see 26 N.J.R. 2897(a), 3719(a)) | 26 N.J.R. 1821(a) | R.1994 d.547 | 26 N.J.R. 4388(a) |
| 8:71 | Interchangeable drug products (see 26 N.J.R. 2898(a), 3717(b)) | 26 N.J.R. 1822(a) | R.1994 d.548 | 26 N.J.R. 4388(b) |
| 8:71 | Interchangeable drug products (see 26 N.J.R. 3720(a)) | 26 N.J.R. 2723(a) | R.1994 d.545 | 26 N.J.R. 4386(a) |
| 8:71 | Interchangeable drug products | 26 N.J.R. 3583(a) | R.1994 d.549 | 26 N.J.R. 4390(a) |
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| 8:71 | Interchangeable drug products | 26 N.J.R. 4293(a) | | |
| 8:71 | Interchangeable drug products | 26 N.J.R. 4294(a) | | |

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| 9:4-1.7 | Curriculum coordinating committee | 26 N.J.R. 1751(a) | | |
| 9:9-7.1, 7.2, 7.3 | Eligibility criteria for NJCLASS loans | 26 N.J.R. 3242(a) | | |
| 9:11-1.2, 1.7, 1.8, 1.19, 1.20, 1.22, 1.23 | Educational Opportunity Fund Program | 26 N.J.R. 3586(a) | | |

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| 9:12-1.1, 1.4, 1.6-1.9, 1.16-1.21, 1.23, 2.5, 2.7, 2.8, 2.10 | Educational Opportunity Fund Program | 26 N.J.R. 3586(a) | | |

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| 10:11 | Department instructional staff: tenure status | 26 N.J.R. 4297(a) | | |
| 10:15 | Child Care Services Manual | 26 N.J.R. 3327(a) | | |
| 10:15A | Child Care Services Manual | 26 N.J.R. 3327(a) | | |
| 10:15B | Child Care Services Manual | 26 N.J.R. 3327(a) | | |
| 10:15C | Child Care Services Manual | 26 N.J.R. 3327(a) | | |
| 10:17 | Child placement rights | 26 N.J.R. 1563(a) | | |
| 10:37-5.28-5.34 | Repeal (see 10:37E) | 26 N.J.R. 3608(a) | | |
| 10:37E | Division of Mental Health and Hospitals: outpatient service standards | 26 N.J.R. 3608(a) | | |
| 10:43 | Division of Developmental Disabilities: determination of need for guardian | 26 N.J.R. 2838(a) | | |
| 10:43 | Division of Developmental Disabilities: extension of comment period concerning determination of need for guardian | 26 N.J.R. 3341(a) | | |
| 10:46A | Family Support Service System | 26 N.J.R. 3341(b) | | |
| 10:46A | Family Support Service System: administrative correction and extension of comment period | 26 N.J.R. 3610(a) | | |
| 10:46B | Division of Developmental Disabilities: placement of eligible persons | 26 N.J.R. 3611(a) | | |
| 10:48-4 | Eligibility for services | 26 N.J.R. 1752(a) | | |
| 10:48-4 | Division of Developmental Disabilities: public hearing and reopening of comment period regarding management of waiting lists for services | 26 N.J.R. 2756(a) | | |
| 10:49-5.2, 5.3, 5.4 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | | |
| 10:49-14.1 | Medicaid benefits: recovery from estates of payments correctly made | 26 N.J.R. 2757(a) | R.1994 d.524 | 26 N.J.R. 4184(b) |
| 10:49-14.4 | Medical assistance recoveries involving county welfare agencies | 26 N.J.R. 3348(a) | | |
| 10:50-2.2 | Transportation services for Medicaid recipients: provider reimbursement | 26 N.J.R. 3929(a) | | |
| 10:51-1.6, 1.23, 2.6, 2.21, 4.6, 4.22, App. E | Medicaid and Pharmaceutical Assistance to the Aged and Disabled programs: EMC billing | 26 N.J.R. 4136(a) | | |
| 10:51-1.12 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | | |
| 10:51-1.12, 2.11, 4.13 | Medicaid and PAAD programs: unit-dose-packaged drugs | 26 N.J.R. 3349(a) | | |
| 10:52-1.3, 1.7, 1.8 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | | |
| 10:52-8.2 | Manual of Hospital Services: disproportionate share adjustment for Other Uncompensated Care component | 26 N.J.R. 2239(a) | | |
| 10:52-8.2 | Charity care component of Health Care Subsidy Fund | 26 N.J.R. 3485(a) | R.1994 d.536 | 26 N.J.R. 4392(a) |
| 10:53-1.6, 1.7 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | | |
| 10:53A-3.2, 3.4 | Hospice Services Manual: determination of Medicaid eligibility | 26 N.J.R. 1283(a) | R.1994 d.508 | 26 N.J.R. 4185(a) |
| 10:54-1.2 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | | |
| 10:58-1.3 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | | |
| 10:59-1.9 | Medical Supplier Manual: reimbursement for certain services | 26 N.J.R. 2839(a) | | |
| 10:60-1.3 | Home Care Services: accreditation of private duty nursing agencies | 26 N.J.R. 2840(a) | | |
| 10:61-1.3, 3.2 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | | |
| 10:63 | Long-Term Care Services | 26 N.J.R. 3614(a) | | |
| 10:66-2.3 | Medicaid reimbursement for infertility-related services | 26 N.J.R. 3345(a) | | |
| 10:69A-5.3, 5.6, 6.2, 6.12 | Pharmaceutical Assistance to the Aged and Disabled: eligibility and income criteria | 26 N.J.R. 3142(a) | | |
| 10:73-1.1, 1.2, 2.1, 2.6, 2.8-2.12, 3.1, 3.2 | Medicaid program: case management services billing | 26 N.J.R. 3350(a) | R.1994 d.585 | 26 N.J.R. 4614(a) |
| 10:81-2.6, 3.9, 3.10, 13.3 | Public Assistance Manual: AFDC-N segment eligibility of aliens | 26 N.J.R. 3930(a) | | |
| 10:81-11.6A, 11.6B, 11.15 | Child Support Hotline; locator processing fees | 26 N.J.R. 3353(a) | R.1994 d.566 | 26 N.J.R. 4616(a) |
| 10:81-11.9 | Public Assistance Manual: \$50 disregarded child support payment | 26 N.J.R. 1937(a) | | |
| 10:82-2.3 | Assistance Standards Handbook: administrative correction regarding income from noneligible individual | _____ | _____ | 26 N.J.R. 4047(a) |
| 10:82-2.3 | Assistance Standards Handbook: AFDC-N segment eligibility of aliens | 26 N.J.R. 3932(a) | | |
| 10:85 | General Assistance Manual | 26 N.J.R. 2757(b) | | |

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| 10:85-4.6 | General Assistance Program: extension of temporary rental assistance benefits | 26 N.J.R. 1756(a) | | |
| 10:87-2.31 | Food Stamp Program: applications in pending status | 26 N.J.R. 4298(a) | | |
| 10:95 | Commission for the Blind and Visually Impaired: Vocational Rehabilitation Services Program | 26 N.J.R. 2242(a) | R.1994 d.561 | 26 N.J.R. 4394(a) |
| 10:122-2.4, 2.5, 4.5, 4.8, 5.2, 9.1-9.5 | Manual of Requirements for Child Care Centers | 26 N.J.R. 4139(a) | | |
| 10:126-1.2, 1.4, 2.2-2.4, 2.6, 3.2, 4.1, 4.2, 4.6, 4.8, 5.1-5.4, 5.6-5.10, 6.1-6.6, 6.8, 6.9, 6.13, 6.18, 6.20 | Manual of Requirements for Family Day Care Registration | 26 N.J.R. 3144(a) | | |
| 10:129A | Child protective services investigations and determinations of abuse and neglect | 26 N.J.R. 3700(a) | | |
| 10:133-1.3 | DYFS: initial response and service delivery definitions | 26 N.J.R. 1285(a) | R.1994 d.531 | 26 N.J.R. 4186(a) |
| 10:133A-1.7, 1.9, 1.10, 1.11, 1.12 | Division of Youth and Family Services: initial response | 26 N.J.R. 3355(a) | | |
| 10:133C-2 | Eligibility for DYFS services | 26 N.J.R. 897(a) | R.1994 d.530 | 26 N.J.R. 4186(b) |
| 10:133H-3 | Review of children in out-of-home placement | 25 N.J.R. 5752(a) | R.1994 d.532 | 26 N.J.R. 4188(a) |

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| 10A:2 | Fiscal management of inmate accounts, welfare funds, claims, and other financial matters | 26 N.J.R. 4299(a) | | |
| 10A:26 | Bureau of Parole: policies and procedures | 26 N.J.R. 4143(a) | | |
| 10A:71 | State Parole Board rules | 26 N.J.R. 4150(a) | | |
| 10A:71-3.15, 3.16 | State Parole Board: parole hearings | 26 N.J.R. 2189(a) | R.1994 d.510 | 26 N.J.R. 4190(a) |
| 10A:71-7.16, 7.16A | Parole Board panel action: establishment of parole release date upon revocation of parole for technical violations | 26 N.J.R. 2516(a) | R.1994 d.511 | 26 N.J.R. 4191(a) |

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| 11:1-1.1 | Organization of the Department of Insurance | Exempt | R.1994 d.557 | 26 N.J.R. 4405(a) |
| 11:1-20.1, 20.3, 22.1 | Cancellation and nonrenewal of homeowners' policies | 26 N.J.R. 4303(a) | | |
| 11:2-27.3 | Determination of insurers in a hazardous financial condition | 26 N.J.R. 3589(a) | R.1994 d.550 | 26 N.J.R. 4407(a) |
| 11:2-41 | Windstorm Market Assistance Program for voluntary market homeowners' coverage | 26 N.J.R. 4304(a) | | |
| 11:3-16.7 | Automobile insurers rate filing requirements | 26 N.J.R. 900(a) | | |
| 11:3-28.2, 28.14-28.17 | Unsatisfied Claim and Judgment Fund: uninsured motorists case assignment procedures | 26 N.J.R. 2190(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) | R.1994 d.564 | 26 N.J.R. 4616(b) |
| 11:3-33.2, 44.3, 44.4 | Automobile insurance: provision of coverage to all eligible persons | 26 N.J.R. 3591(a) | | |
| 11:5-1.2, 1.4, 1.5, 1.19, 1.29 | Real Estate Commission: licensing requirements | 26 N.J.R. 3111(a) | | |
| 11:5-1.7 | Real Estate Commission: preproposal concerning mass marketing and brokerage licensure requirement | 26 N.J.R. 3110(a) | | |
| 11:5-1.43 | Real Estate Commission: consumer information statement | 26 N.J.R. 3113(a) | | |
| 11:13-7.4, 7.5 | Commercial lines insurance: exclusions from coverage; refiling of policy forms | 26 N.J.R. 3805(b) | | |
| 11:15 | Group self-insurance | 26 N.J.R. 2518(a) | R.1994 d.551 | 26 N.J.R. 4407(b) |
| 11:15 | Group self-insurance: extension of comment period | 26 N.J.R. 3356(a) | | |
| 11:15-2 | Joint insurance funds for local governmental units | 26 N.J.R. 2725(a) | | |
| 11:15-2 | Joint insurance funds for local governmental units: extension of comment period | 26 N.J.R. 3592(a) | | |
| 11:17A | Insurance producers and limited insurance representatives: marketing conduct standards | 26 N.J.R. 4307(a) | | |
| 11:17A-1.2, 1.7 | Automobile insurance: provision of coverage to all eligible persons | 26 N.J.R. 3591(a) | | |
| 11:17B | Insurance producers and limited insurance representatives: commissions and fees | 26 N.J.R. 4307(a) | | |
| 11:17C | Insurance producer standards of conduct: management of funds | 26 N.J.R. 4307(a) | | |
| 11:17D | Insurance producers and limited insurance representatives: administrative procedures and penalties | 26 N.J.R. 4307(a) | | |
| 11:18 | Medical Malpractice Reinsurance Recovery Fund surcharge | 26 N.J.R. 2195(a) | | |

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| 11:19-4 | Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers | 26 N.J.R. 1195(a) | | |
| 11:20-9.6 | Individual Health Coverage Program: good faith marketing report | 26 N.J.R. 3809(a) | R.1994 d.509 | 26 N.J.R. 4193(a) |
| 11:20-App. Exh. A-F, M, N, O, P | Individual Health Coverage Program: policy forms, PPO and POS standard plan provisions, schedule of benefits | 26 N.J.R. 3356(b) | | |
| 11:21-1.2, 1.3, 2.2, 3A, 7.1, 7.2, 7.3, 7.5-7.9, 7.12, 7.13, 7A, App. Exh. N, O, Q, R, S, T | Small Employer Health Benefits Program: standard and non-standard plans | 26 N.J.R. 3421(a) | R.1994 d.499 | 26 N.J.R. 4047(b) |
| 11:21-1.2, 7.4, 8.3 | Small Employer Health Benefits Program: stop loss and excess risk insurance; non-member status | 26 N.J.R. 4308(a) | R.1994 d.583 | 26 N.J.R. 4629(a) |
| 11:21-2.1, 2.5 | Small Employer Health Benefits Program: Board membership | 26 N.J.R. 4310(a) | | |
| 11:21-2.5 | Small Employer Health Benefits Program: public hearing regarding Board membership | 26 N.J.R. 4311(a) | | |
| 11:21-7.4 | Small Employer Health Benefits Program: carriers acting as administrators for small employers | 26 N.J.R. 3117(a) | | |
| 11:21-9.1-9.4, 11, 14.2, 14.4, 14.5, 16.2, 16.3, 16.4, 16.7, Exh. BB, U | Small Employer Health Benefits Program: plan filings; informational rate filings; declaration and approval of carrier status; withdrawals of carriers from plan market | 26 N.J.R. 3118(a) | R.1994 d.580 | 26 N.J.R. 4620(a) |
| 11:11-Exh. A-AA | Small Employer Health Benefits Program: plan exhibits | 26 N.J.R. 2843(a) | R.1994 d.498 | 26 N.J.R. 4066(a) |
| Most recent update to Title 11: TRANSMITTAL 1994-9 (supplement September 19, 1994) | | | | |
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| 12:15-1.3-1.7 | Unemployment compensation and temporary disability: 1995 maximum weekly benefit rates, contribution levels, and eligibility tests | 26 N.J.R. 3592(b) | R.1994 d.552 | 26 N.J.R. 4410(a) |
| 12:16-13.7 | Unemployment Insurance and Disability Insurance Financing: magnetic media wage reporting | 26 N.J.R. 2863(a) | R.1994 d.527 | 26 N.J.R. 4194(a) |
| 12:18 App. | Department of Labor hearings | 26 N.J.R. 2174(a) | | |
| 12:20 | Board of Review and Appeal Tribunal | 26 N.J.R. 1941(a) | | |
| 12:20 | Department of Labor hearings | 26 N.J.R. 2174(a) | | |
| 12:40 | Worker Adjustment and Retraining Notification (WARN) procedures | 26 N.J.R. 4311(b) | | |
| 12:56-6.1, 7.5, 7.6 | Wage and Hour compliance: limousine operators | 26 N.J.R. 94(a) | | |
| 12:90 | Division of Workplace Standards: boilers, pressure vessels, refrigeration | 26 N.J.R. 3810(a) | | |
| 12:100-10.10 | Safety and health standards for public employees: respiratory protection devices | 26 N.J.R. 4313(a) | | |
| 12:195-1.9 | Carnival-amusement rides: inspection fees | 26 N.J.R. 2520(a) | | |
| 12:195-1.9 | Carnival-amusement rides: inspection and permit fees | 26 N.J.R. 3594(a) | R.1994 d.581 | 26 N.J.R. 4630(a) |
| 12:235-1.6 | Workers' Compensation: 1995 maximum benefit rate | 26 N.J.R. 3594(b) | R.1994 d.553 | 26 N.J.R. 4410(b) |
| 12:235-14.7 | Uninsured Employer's Fund: attorney fees | 26 N.J.R. 2199(a) | | |
| 12:235-14.7 | Uninsured Employer's Fund: withdrawal of proposal regarding attorney fees | 26 N.J.R. 4313(b) | | |
| Most recent update to Title 12: TRANSMITTAL 1994-5 (supplement September 19, 1994) | | | | |
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| 12A:10 | Small businesses: waiver of Executive Order No. 66(1978) expiration date | _____ | _____ | 26 N.J.R. 4411(a) |
| 12A:10-1 | Goods and services contracts for small businesses, minority businesses, and female businesses | 25 N.J.R. 4889(a) | Expired | |
| 12A:31-1.4 | Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance | 25 N.J.R. 5759(a) | R.1994 d.565 | 26 N.J.R. 4631(a) |
| 12A:31-1.4 | Development Authority for Small Businesses, Minorities' and Women's Enterprises: reopening of comment period regarding allocation of direct loan assistance | 26 N.J.R. 1434(a) | | |
| Most recent update to Title 12A: TRANSMITTAL 1994-2 (supplement May 16, 1994) | | | | |
| LAW AND PUBLIC SAFETY—TITLE 13 | | | | |
| 13:3-3.4 | Legalized Games of Chance Control Commission: maximum fee for games participation | 26 N.J.R. 1297(a) | | |
| 13:4 | Housing discrimination | 26 N.J.R. 1942(a) | | |
| 13:9-1.1 | Housing discrimination | 26 N.J.R. 1942(a) | | |
| 13:13 | Housing discrimination | 26 N.J.R. 1942(a) | | |
| 13:18-1.5-1.9, 1.12, 1.15 | Division of Motor Vehicles: overweight oceanborne containers | 26 N.J.R. 2521(a) | | |
| 13:24 | Division of Motor Vehicles: equipment for emergency and other specified vehicles | 26 N.J.R. 2865(a) | R.1994 d.533 | 26 N.J.R. 4631(b) |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
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| 13:30-8.18 | Board of Dentistry: licensee continuing education | 26 N.J.R. 1948(a) | | |
| 13:31-1.11, 1.16 | Board of Examiners of Electrical Contractors: fee schedule; requirement of ID card defined | 26 N.J.R. 2742(a) | | |
| 13:33-4.1 | Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing | 26 N.J.R. 1595(a) | | |
| 13:35 | Board of Medical Examiners rules | 26 N.J.R. 2526(a) | R.1994 d.522 | 26 N.J.R. 4195(a) |
| 13:35-2B, 6.14 | Board of Medical Examiners: physician assistants | 25 N.J.R. 5099(b) | R.1994 d.538 | 26 N.J.R. 4411(b) |
| 13:35-3.12 | Board of Medical Examiners: licensure of physicians with post-secondary educational deficiencies | 26 N.J.R. 2742(b) | R.1994 d.539 | 26 N.J.R. 4418(a) |
| 13:35-5.1 | Board of Medical Examiners: release of contact lens specification to patient | 26 N.J.R. 1219(a) | | |
| 13:35-6.17 | Board of Medical Examiners: professional fees and investments | 25 N.J.R. 5441(a) | | |
| 13:35-6.21 | Board of Medical Examiners: withdrawal of stay of operative date for hair replacement techniques | _____ | _____ | 26 N.J.R. 4083(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) | | |
| 13:36 | Board of Mortuary Science rules | 26 N.J.R. 2536(a) | R.1994 d.523 | 26 N.J.R. 4201(a) |
| 13:38-6.1 | Board of Optometrists: release of contact lens specification to patient | 26 N.J.R. 1220(a) | | |
| 13:39-1.2, 6.7, 9.1, 9.7, 10.4, 11.1 | Board of Pharmacy: pharmacy technicians | 26 N.J.R. 2743(a) | | |
| 13:39A-2.3 | Board of Physical Therapy: public forum on direct supervision of physical therapist assistants | 26 N.J.R. 1604(a) | | |
| 13:40-6.1, 11 | Board of Professional Engineers and Land Surveyors: continuing competency requirements for land surveyors | 26 N.J.R. 4314(a) | | |
| 13:42-1.1, 1.2, 4.5, 9.9 | Board of Psychological Examiners rules | 25 N.J.R. 4937(a) | Expired | |
| 13:44D-2.2, 2.6 | Board of Public Movers and Warehousemen: licensee mailing address and permanent place of business | 26 N.J.R. 2745(a) | R.1994 d.540 | 26 N.J.R. 4419(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 | 26 N.J.R. 3932(b) | | |
| 13:44E-2.2 | Board of Chiropractic Examiners: patient records and cessation of practice | 26 N.J.R. 2866(a) | | |
| 13:44E-2.13 | Board of Chiropractic Examiners: overutilization; excessive fees | 26 N.J.R. 1231(b) | | |
| 13:45A-27 | Division of Consumer Affairs: licensee duty to cooperate with licensing board or agency | 26 N.J.R. 3128(a) | | |
| 13:45A-28 | Motor vehicle leasing | 26 N.J.R. 3243(a) | | |
| 13:45B-1.2, 2, 3.1, 4, 5, 6.4, 6.6, 7.1, 8.2, 9, 10.1, 11.1, 12.1, 14, 15 | Health care service firms: registration requirements and standards for placement of health care practitioners | 26 N.J.R. 4316(a) | | |
| 13:47-1-4, 6-9, 13-16 | Legalized games of chance | 26 N.J.R. 4326(a) | | |
| 13:47A-1.10A, 2.6A, 13, 14 | Bureau of Securities: rules of practice | 26 N.J.R. 3814(a) | | |
| 13:47A-1.10A, 2.6A, 13, 14 | Bureau of Securities: extension of comment period concerning rules of practice | 26 N.J.R. 4337(a) | | |
| 13:49-1.1, 1.5 | State Medical Examiner: death investigations and potential organ donations | Emergency (expires 12-20-94) | R.1994 d.571 | 26 N.J.R. 4447(a) |
| 13:59 | State Police: criminal history background checks for non-criminal justice purposes | 26 N.J.R. 3595(a) | | |
| 13:70-8.18 | Thoroughbred racing: items included in jockey's weight | 26 N.J.R. 3130(a) | R.1994 d.554 | 26 N.J.R. 4420(a) |
| 13:70-8.28 | Thoroughbred racing: overweight of jockey after race | 26 N.J.R. 3130(b) | R.1994 d.555 | 26 N.J.R. 4420(b) |
| 13:70-14A.1 | Thoroughbred racing: administration of phenylbutazone on day of race | 26 N.J.R. 1955(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: administration of phenylbutazone on day of race | 26 N.J.R. 1956(a) | | |
| 13:70-19.44 | Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse | 25 N.J.R. 5107(a) | | |
| 13:71-9.5 | Harness racing: conflicts of interest involving veterinary practitioner and spouse | 25 N.J.R. 5108(a) | | |
| 13:71-23.1 | Thoroughbred racing: administration of phenylbutazone on day of race | 26 N.J.R. 1956(b) | | |
| 13:71-23.8 | Thoroughbred racing: administration of phenylbutazone on day of race | 26 N.J.R. 1957(a) | | |
| 13:71-23.9 | Harness racing: possession of drugs or drug instruments | 26 N.J.R. 1316(a) | | |
| 13:72-2.11, 4.10 | Racing Commission: casino simulcasting and cancellation of incorrect pari-mutuel tickets | 26 N.J.R. 2546(a) | R.1994 d.556 | 26 N.J.R. 4420(c) |

Most recent update to Title 13: TRANSMITTAL 1994-9 (supplement September 19, 1994)

NEW JERSEY REGISTER, MONDAY, NOVEMBER 21, 1994

(CITE 26 N.J.R. 4717)

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| PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14 | | | | |
| 14:18-3.24 | Cable television: late fees and charges | 26 N.J.R. 105(a) | | |
| | Most recent update to Title 14: TRANSMITTAL 1994-3 (supplement May 16, 1994) | | | |
| ENERGY—TITLE 14A | | | | |
| | Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994) | | | |
| STATE—TITLE 15 | | | | |
| | Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993) | | | |
| PUBLIC ADVOCATE—TITLE 15A | | | | |
| | Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990) | | | |
| TRANSPORTATION—TITLE 16 | | | | |
| 16:21A | Bridge Rehabilitation and Improvement Fund: State aid to counties and municipalities | 26 N.J.R. 3246(a) | R.1994 d.544 | 26 N.J.R. 4421(a) |
| 16:24 | Public utility rearrangement agreements | 26 N.J.R. 4160(a) | | |
| 16:28-1.6 | School zone along U.S. 40 in Woodstown Borough, Salem County | 26 N.J.R. 3131(a) | R.1994 d.513 | 26 N.J.R. 4206(a) |
| 16:28-1.6 | Administrative correction regarding street name change in Woodstown Borough, Salem County | _____ | _____ | 26 N.J.R. 4633(a) |
| 16:28-1.10 | Speed limits along entire length of U.S. 46, including U.S. 1, 9 and 46 | 26 N.J.R. 3600(a) | R.1994 d.567 | 26 N.J.R. 4634(a) |
| 16:28-1.18 | Speed limit zones along Rising Sun Square Road-Old York Road in Bordentown Township | 26 N.J.R. 3934(a) | | |
| 16:28-1.41 | Speed limit zones along U.S. 9 in Galloway Township, Atlantic County | 26 N.J.R. 3132(a) | R.1994 d.512 | 26 N.J.R. 4207(a) |
| 16:28-1.53 | Speed limit zone along Route 165 in Lambertville | 26 N.J.R. 3602(a) | R.1994 d.570 | 26 N.J.R. 4636(a) |
| 16:28-1.61 | Speed limit zones along Collins Avenue-Nixon Drive under State jurisdiction in Burlington County | 26 N.J.R. 4337(b) | | |
| 16:28-1.77 | Speed limits along Route 29 in Mercer and Hunterdon counties | 26 N.J.R. 3821(a) | | |
| 16:28-1.79 | Speed limit zones along Route 94 in Sussex County | 26 N.J.R. 3133(a) | | |
| 16:28-1.79 | Speed limits along Route 94 in Warren and Sussex counties | 26 N.J.R. 3603(a) | R.1994 d.569 | 26 N.J.R. 4636(b) |
| 16:28-1.158 | Speed limits along Route 179 in Lambertville | 26 N.J.R. 3820(b) | | |
| 16:28A-1.7 | Restricted parking along U.S. 9 in Middle Township, Cape May | 26 N.J.R. 3935(a) | | |
| 16:28A-1.19 | Handicapped parking along Route 28 in Elizabeth | 26 N.J.R. 3605(a) | R.1994 d.568 | 26 N.J.R. 4637(a) |
| 16:28A-1.28 | No stopping or standing zones along U.S. 40 in Pilesgrove Township, Salem County | 26 N.J.R. 3936(a) | | |
| 16:28A-1.33 | No stopping or standing zone along Route 47 in Middle Township, Cape May | 26 N.J.R. 3936(b) | | |
| 16:28A-1.36 | Handicapped parking along Route 57 in Washington Borough, Warren County | 26 N.J.R. 4160(b) | | |
| 16:28A-1.37 | No stopping or standing zones along Route 70 in Cherry Hill and Pennsauken | 26 N.J.R. 4338(a) | | |
| 16:28A-1.38 | No stopping or standing along Route 71 in Bradley Beach Borough | 26 N.J.R. 4161(a) | | |
| 16:28A-1.44 | No stopping or standing zones along Route 88 in Lakewood Township, Ocean County | 26 N.J.R. 3135(a) | R.1994 d.514 | 26 N.J.R. 4207(b) |
| 16:28A-1.57 | Bus stop on U.S. 206 in Princeton Township | 26 N.J.R. 3820(a) | | |
| 16:28A-1.98 | No stopping or standing zones along Route 56 in Deerfield Township, Cumberland County | 26 N.J.R. 3136(a) | R.1994 d.515 | 26 N.J.R. 4208(a) |
| 16:30-3.9 | Truck lane-usage restriction along Route I-80 in Morris County | 26 N.J.R. 4162(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) | | |
| 16:30-3.12 | Left turn center lane along Rising Sun Road, Bordentown | 26 N.J.R. 3247(a) | R.1994 d.529 | 26 N.J.R. 4208(b) |
| 16:30-7.4 | Interstate highways: classes of traffic | 26 N.J.R. 4162(b) | | |
| 16:30-9.14 | Bidwells Creek bridge restrictions, Route 47 in Middle Township, Cape May | 26 N.J.R. 3937(a) | | |
| 16:31-1.8 | Left turn prohibitions along Route 47 in Vineland | 26 N.J.R. 3822(a) | | |
| 16:31-1.8 | Turn prohibitions along Route 47 in Middle Township, Cape May | 26 N.J.R. 3937(b) | | |
| 16:31-1.17 | Left turn prohibition along Route 73 in Berlin Township, Camden County | 26 N.J.R. 3137(a) | R.1994 d.516 | 26 N.J.R. 4208(c) |
| 16:31-1.22 | Turn prohibitions along U.S. 130 in Burlington City | 26 N.J.R. 3938(a) | | |
| 16:31-1.29 | Left turn prohibitions along U.S. 9 in Lakewood Township, Ocean County | 26 N.J.R. 3137(b) | R.1994 d.517 | 26 N.J.R. 4209(a) |
| 16:32 | Truck operations within State | 26 N.J.R. 4163(a) | | |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
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| 16:47-1.1, 3.5, 3.8, 3.9, 3.12, 3.16, 4.3, 4.6, 4.7, 4.9, 4.10, 4.12, 4.14, 4.24, 4.25, 4.26, 4.27, 4.29, 4.33, 4.34, 4.35, 4.36, 4.37, 5.2, App. B, C, E, L | State Highway Access Management Code | 26 N.J.R. 2549(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 Reduction Program tax credit | 26 N.J.R. 756(a) | | |
| 16:51 | Regulation of autobuses and transportation public utilities: pre-proposal | 26 N.J.R. 1317(b) | | |
| 16:53D | Regulation of autobuses and transportation public utilities: pre-proposal | 26 N.J.R. 1317(b) | | |
| 16:53D-1.1 | Autobus carrier Zone of Rate Freedom | 26 N.J.R. 3247(b) | R.1994 d.526 | 26 N.J.R. 4209(b) |
| 16:82 | Examination and duplication of NJ TRANSIT records | 26 N.J.R. 2871(b) | R.1994 d.534 | 26 N.J.R. 4210(a) |

Most recent update to Title 16: TRANSMITTAL 1994-9 (supplement September 19, 1994)

TREASURY-GENERAL—TITLE 17

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| 17:2-4.3 | Public Employees' Retirement System: school year members | 26 N.J.R. 3823(a) | | |
| 17:3-4.3 | Teachers' Pension and Annuity Fund: school year members | 26 N.J.R. 3606(a) | | |
| 17:4-1.4 | Police and Firemen's Retirement System: election of member-trustee | 26 N.J.R. 3938(b) | | |
| 17:9-4.1, 4.5 | State Health Benefits Program: appointive officer eligibility | 26 N.J.R. 109(a) | | |
| 17:9-4.2, 8.3, 9.1 | State Health Benefits Program: continued coverage under voluntary furlough program | 26 N.J.R. 2202(a) | | |
| 17:12 | Purchase Bureau | 26 N.J.R. 3248(a) | | |
| 17:12 | Purchase Bureau rules: extension of comment period | 26 N.J.R. 4166(a) | | |
| 17:12 | Purchase Bureau rules: waiver of Executive Order No. 66(1978) expiration date | _____ | _____ | 26 N.J.R. 4421(b) |
| 17:13 | Goods and services contracts for small businesses, minority businesses, and female businesses | 25 N.J.R. 4889(a) | Expired | |
| 17:13 | Goods and services contracts for small businesses, urban development enterprises, and micro businesses: waiver of Executive Order No. 66(1978) expiration date | _____ | _____ | 26 N.J.R. 4411(a) |
| 17:14 | Minority and female subcontractor participation in State construction contracts: waiver of Executive Order No. 66(1978) expiration date | _____ | _____ | 26 N.J.R. 4411(a) |

Most recent update to Title 17: TRANSMITTAL 1994-7 (supplement September 19, 1994)

TREASURY-TAXATION—TITLE 18

| | | | | |
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| 18:1 | Organization of Division of Taxation | 26 N.J.R. 2752(a) | R.1994 d.503 | 26 N.J.R. 4087(a) |
| 18:24-28.2 | Sales of horses in claiming races | 26 N.J.R. 4166(b) | | |
| 18:26-1.1, 2.2, 2.5, 2.9, 2.12, 2.15, 3.2, 3.7-3.10, 6.3, 6.6, 7.7, 7.12, 8.5-8.8, 8.17, 8.18, 8.22, 9.7, 9.13, 9.15, 10.5, 10.7, 10.13, 11.1, 11.31, 12.2, 12.3-12.6, 12.9, 12.10, 12.12 | Transfer inheritance and estate tax: application of Taxpayer Bill of Rights | 26 N.J.R. 4166(c) | | |
| 18:35-1.28 | Gross income tax: commuter transportation benefits reporting by employer | 26 N.J.R. 4173(a) | | |

Most recent update to Title 18: TRANSMITTAL 1994-5 (supplement August 15, 1994)

TITLE 19—OTHER AGENCIES

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| 19:3, 3A, 4, 5 | Hackensack Meadowlands Development District rules | 26 N.J.R. 1970(a) | R.1994 d.543 | 26 N.J.R. 4421(c) |
| 19:8-1.1, 1.12, 2.1, 2.13, 2.14, 2.15 | Garden State Parkway: transporting of hazardous materials | 26 N.J.R. 3249(a) | R.1994 d.519 | 26 N.J.R. 4211(a) |
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