

CHAPTER 36

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

Authority

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

Source and Effective Date

R.1999 d.396, effective November 15, 1999.
See: 31 N.J.R. 269(a), 31 N.J.R. 3763(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 36, Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs, was extended by gubernatorial directive from November 15, 2006 to May 17, 2007. See: 38 N.J.R. 5359(b).

Chapter Historical Note

Chapter 36, Standards for Licensure of Intermediate Dialysis Facilities, was adopted as R.1973, d.363, effective January 1, 1974. See: 5 N.J.R. 372(b), 6 N.J.R. 11(b).

Chapter 36, Standards for Licensure of Intermediate Dialysis Facilities, was repealed by R.1980 d.39, effective January 17, 1980. See: 11 N.J.R. 620(b), 12 N.J.R. 76(c).

Chapter 36, Standards for Licensure of Assisted Living Residences and Comprehensive Personal Care Homes, was adopted as R.1993 d.672, effective December 20, 1993. See: 25 N.J.R. 3734(a), 25 N.J.R. 6037(a). Chapter 36, Standards for Licensure of Assisted Living Residences and Comprehensive Personal Care Homes, was renamed Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs, by R.1997 d.42, effective January 21, 1997. See: 28 N.J.R. 4185(a), 29 N.J.R. 329 (a). Pursuant to Executive Order No. 66(1978), Chapter 36 expired on December 20, 1998.

Chapter 36, Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs, was adopted as new rules by R.1999 d.396, effective November 15, 1999. See: 31 N.J.R. 269(a), 31 N.J.R. 3763(a).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 36, Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs, expiration date was extended by gubernatorial directive from November 15, 2004 to May 15, 2005. See: 36 N.J.R. 5129(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 36, Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs, was extended by gubernatorial directive from May 15, 2005 to May 15, 2006. See: 37 N.J.R. 774(c).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 36, Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs, was extended by gubernatorial directive from May 15, 2006 to November 15, 2006. See: 38 N.J.R. 2499(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

- 8:36-1.1 Scope
- 8:36-1.2 Purpose

- 8:36-1.3 Definitions
- 8:36-1.4 Qualifications of all staff
- 8:36-1.5 Qualifications of the administrator of an assisted living residence or comprehensive personal care home
- 8:36-1.6 Qualifications of dietitians
- 8:36-1.7 Qualifications of licensed practical nurses
- 8:36-1.8 Qualifications of personal care assistants
- 8:36-1.9 Qualifications of pharmacists
- 8:36-1.10 Qualifications of physicians
- 8:36-1.11 Qualifications of registered professional nurses
- 8:36-1.12 Qualifications of social workers

SUBCHAPTER 2. LICENSURE PROCEDURES

- 8:36-2.1 Certificate of need
- 8:36-2.2 Application for licensure
- 8:36-2.3 Newly constructed or expanded facilities
- 8:36-2.4 Surveys
- 8:36-2.5 License
- 8:36-2.6 Surrender of license
- 8:36-2.7 Waiver
- 8:36-2.8 Action against a license
- 8:36-2.9 Hearings
- 8:36-2.10 Advertisement of assisted living

SUBCHAPTER 3. PHYSICAL PLANT AND ENVIRONMENT

- 8:36-3.1 Scope
- 8:36-3.2 Restrictions
- 8:36-3.3 Ventilation
- 8:36-3.4 Exit access passageways and corridors
- 8:36-3.5 Automatic fire detection system
- 8:36-3.6 Fire suppression systems
- 8:36-3.7 Interior finish requirement
- 8:36-3.8 General residential unit requirements
- 8:36-3.9 Toilets, baths and handwashing sinks
- 8:36-3.10 Kitchenettes
- 8:36-3.11 Community space
- 8:36-3.12 Laundry equipment
- 8:36-3.13 Dietary department
- 8:36-3.14 Administration and public areas
- 8:36-3.15 Fire extinguisher specifications
- 8:36-3.16 Sounding devices
- 8:36-3.17 Telecommunications

SUBCHAPTER 4. GENERAL REQUIREMENTS

- 8:36-4.1 Types of services provided to residents; resident characteristics
- 8:36-4.2 Ownership
- 8:36-4.3 Submission and availability of documents
- 8:36-4.4 Personnel
- 8:36-4.5 Staffing requirements
- 8:36-4.6 Policy and procedure manual
- 8:36-4.7 Resident transportation
- 8:36-4.8 Written agreements
- 8:36-4.9 Reportable events
- 8:36-4.10 Notices
- 8:36-4.11 Maintenance of records
- 8:36-4.12 Admission and retention of residents
- 8:36-4.13 Involuntary discharge
- 8:36-4.14 Notification requirements
- 8:36-4.15 Interpretation services
- 8:36-4.16 Referral and transfer agreements
- 8:36-4.17 Managed risk agreements

SUBCHAPTER 5. ADMINISTRATION

- 8:36-5.1 Appointment of administrator
- 8:36-5.2 Administrator's responsibilities

SUBCHAPTER 6. RESIDENT CARE POLICIES

- 8:36-6.1 Resident care policies and procedures
- 8:36-6.2 Financial arrangements
- 8:36-6.3 Personal needs allowance

SUBCHAPTER 7. RESIDENT ASSESSMENTS, RESIDENT SERVICE PLANS, HEALTH CARE PLANS AND HEALTH CARE SERVICES

- 8:36-7.1 Initial assessments, resident service plans, health care assessments and health care plans
- 8:36-7.2 Implementation of plans
- 8:36-7.3 Health care services
- 8:36-7.4 Provision of health care services
- 8:36-7.5 Quality assurance

SUBCHAPTER 8. DINING SERVICES

- 8:36-8.1 Provision of meals
- 8:36-8.2 Designation of a food service coordinator
- 8:36-8.3 Responsibilities of dietitians
- 8:36-8.4 Requirements for dining services
- 8:36-8.5 Commercial food management services

SUBCHAPTER 9. PHARMACEUTICAL SERVICES

- 8:36-9.1 Provision of pharmaceutical services
- 8:36-9.2 Self-administration of medications
- 8:36-9.3 Administration of medications
- 8:36-9.4 Designation of a pharmacist
- 8:36-9.5 Storage of medications

SUBCHAPTER 10. RESIDENT ACTIVITIES

- 8:36-10.1 Provision of resident activities

SUBCHAPTER 11. SOCIAL WORK SERVICES

- 8:36-11.1 Provision of social work services

SUBCHAPTER 12. EMERGENCY SERVICES AND PROCEDURES

- 8:36-12.1 Emergency medical services
- 8:36-12.2 Emergency plans and procedures
- 8:36-12.3 Drills and tests

SUBCHAPTER 13. RESIDENT RECORDS

- 8:36-13.1 Health record
- 8:36-13.2 Confidentiality
- 8:36-13.3 Record retention
- 8:36-13.4 Record availability
- 8:36-13.5 Register
- 8:36-13.6 Residents' individual records
- 8:36-13.7 Record of death

SUBCHAPTER 14. RESIDENT RIGHTS

- 8:36-14.1 Posting and distribution of statement of resident rights

SUBCHAPTER 15. HOUSEKEEPING, SANITATION, SAFETY AND MAINTENANCE

- 8:36-15.1 Provision of services
- 8:36-15.2 Housekeeping
- 8:36-15.3 Resident environment
- 8:36-15.4 Waste removal
- 8:36-15.5 Heating and air conditioning
- 8:36-15.6 Water supply
- 8:36-15.7 Building and grounds maintenance
- 8:36-15.8 Laundry services

SUBCHAPTER 16. INFECTION PREVENTION AND CONTROL SERVICES

- 8:36-16.1 Infection control program

- 8:36-16.2 Development of infection control policies and procedures
- 8:36-16.3 General infection control policies and procedures
- 8:36-16.4 Employee health and resident policies and procedures for infection prevention and control
- 8:36-16.5 Staff education and training for infection prevention and control
- 8:36-16.6 Regulated medical waste

SUBCHAPTER 17. COMPREHENSIVE PERSONAL CARE HOMES

- 8:36-17.1 Eligibility
- 8:36-17.2 Services provided to residents
- 8:36-17.3 Physical plant
- 8:36-17.4 Other requirements
- 8:36-17.5 Prohibition of resident discharge on conversion of facility
- 8:36-17.6 Combination of license categories
- 8:36-17.7 Supplemental Security Income recipients

SUBCHAPTER 18. ASSISTED LIVING PROGRAMS

- 8:36-18.1 Tenant/resident eligibility
- 8:36-18.2 Service provider requirements
- 8:36-18.3 Services provided to residents
- 8:36-18.4 Policy and procedure manual
- 8:36-18.5 Resident transportation
- 8:36-18.6 Notices
- 8:36-18.7 Maintenance of records
- 8:36-18.8 Notification requirements
- 8:36-18.9 Administration and staffing
- 8:36-18.10 Financial arrangements
- 8:36-18.11 Resident assessments, service plans, health care plans and health care services
- 8:36-18.12 Dining services and meal preparation assistance
- 8:36-18.13 Pharmaceutical services
- 8:36-18.14 Resident activities
- 8:36-18.15 Resident records
- 8:36-18.16 Resident rights and responsibilities
- 8:36-18.17 Reportable events
- 8:36-18.18 Other requirements

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS**8:36-1.1 Scope**

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

(b) Assisted living residences shall comply with N.J.A.C. 8:36-1 through 16; comprehensive personal care homes shall comply with N.J.A.C. 8:36-1 through 16, where applicable, and 17; and assisted living programs shall comply with N.J.A.C. 8:36-1 through 17, where applicable, and 18.

8:36-1.2 Purpose

(a) The purpose of these rules is to establish standards for assisted living residences, comprehensive personal care homes (which may be collectively referenced as assisted living facilities) and assisted living programs which are intended

to promote “aging in place” in a homelike setting for frail elderly and disabled persons, including persons who require formal long-term care. Assisted living residences and comprehensive personal care homes and assisted living programs assure that residents receive supportive health and social services as they are needed to enable them to maintain their independence, individuality, privacy, and dignity in an

apartment-style living unit or, in the case of assisted living programs, a living unit in publicly subsidized housing. The assisted living environment actively encourages and supports these values through effective methods of service delivery and facility or program operation and promotes resident self direction and personal decision-making while protecting residents’ health and safety.

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

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

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

8:36-1.3 Definitions

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

“Activities of daily living (ADL)” means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include, at a minimum: mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

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

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

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

“Assisted living program” means the provision of or arrangement for meals and assisted living services, when needed, to the tenants (also known as residents) of publicly subsidized housing which because of any Federal, State, or

local housing laws, rules, regulations or requirements cannot become licensed as an assisted living residence. An assisted living program may also provide staff resources and other services to a licensed assisted living residence and a licensed comprehensive personal care home.

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

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

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

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

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

“Bounded choice” means limits placed on a resident’s choice as a result of an assessment, in accordance with N.J.A.C. 8:36-4.17, which indicates that such resident’s choices or preferences place the resident or others at a risk of harm or lead to consequences which violate the norms of the facility or program or the rights of others.

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

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

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

“Comprehensive personal care home” means a facility which is licensed by the Department of Health and Senior Services to provide room and board and to assure that assisted living services are available when needed, to four or more adults unrelated to the proprietor. Residential units in

comprehensive personal care homes house no more than two residents and have a lockable door on the unit entrance.

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

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

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

“Documented” means written, signed, and dated.

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

“Formal long-term care” means ongoing assistance with activities of daily living and health care services, provided on a daily or regular basis to people with disabling long-term illnesses by nurses or other health care professionals or by personnel under the direction and supervision of health care professionals, as ordered by a physician.

“Full-time” means relating to a time period established by the facility as a full working week, as defined and specified in the facility’s policies and procedures.

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

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

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

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

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

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

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

“Individuality” means each resident’s unique needs, capabilities, personalities, backgrounds and preferences.

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

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

“Managed risk” means the process of balancing resident choice and independence with the health and safety of the resident and other persons in the facility or program. If a resident’s preference or decision places the resident or others at risk or is likely to lead to adverse consequences, such risks or consequences are discussed with the resident, and, if the resident agrees, a resident representative, and a formal plan to avoid or reduce negative or adverse outcomes is negotiated, in accordance with the provisions of N.J.A.C. 8:36-4.17.

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

“Medication aide” means a person who is qualified in accordance with N.J.A.C. 8:36-9.3(c).

“Nurse practitioner/clinical nurse specialist” means a person who holds a license in accordance with N.J.A.C. 13:37-7.

“Nursing home-level care” means care provided to individuals who have chronic medical condition(s) resulting in moderate to severe impairments in physical, behavioral, cognitive, and/or psychosocial functioning. The need for nursing home-level care and services is determined by a registered professional nurse and identified in a plan of care. “Nursing home-level care” includes, but is not limited to, partial or total assistance with activities of daily living (for example, bathing, dressing, eating, toileting, mobility), assistance with self-administration or administration of medications, and provision of treatments and periodic reassessments as directed by the plan of care. It may also include the provision of physiotherapy, occupational therapy, therapeutic counseling, and other rehabilitative services as indicated by the individual’s medical condition.

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

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

“Personal care assistant” means a person who is qualified in accordance with N.J.A.C. 8:36-1.8.

“Physician assistant” means a person who holds a physician’s assistant license in accordance with N.J.A.C. 13:35-2B.

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

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

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

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

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

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

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

“Shared responsibility” means that residents (and when agreeable to the resident, their family) and providers of assisted living services share responsibility for planning and decision making affecting residents. To participate fully in shared responsibility, residents shall be provided with clear and understandable information about the possible consequences of their decision-making, in accordance with the provisions of N.J.A.C. 8:36-4.17(a)2.

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

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

“Specialized care” or “specialized long-term care” means the care of individuals who must use a respirator or mechanical ventilator and the care of patients with severe behavior

management problems, such as combative, aggressive, and disruptive behaviors.

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

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

"Supervision" means authoritative procedural guidance by a qualified 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.

1. "Direct supervision" means supervision on the premises.

8:36-1.4 Qualifications of all staff

All staff shall be emotionally stable, be in good physical and mental health, be of good moral character, and exhibit a concern for the safety and well-being of residents.

8:36-1.5 Qualifications of the administrator of an assisted living residence or comprehensive personal care home

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

1. Be at least 21 years of age;
2. Possess a high school diploma or equivalent; and
3. Hold a current New Jersey license as a nursing home administrator, or be eligible to take the New Jersey Nursing Home Administrator's Licensing Examination, according to Department of Health and Senior Services requirements; or

i. Have successfully completed an assisted living training course which covers the concepts and rules of assisted living as outlined in this chapter, given by a person(s) qualified to train assisted living administrators, in accordance with 4 below.

ii. Have successfully completed a Department approved competency examination, which covers the concepts and rules delineated in this chapter.

4. Qualified trainers for assisted living administrators shall possess either the education and experience described in i-iii below, or the experience described in iv and v below:

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

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

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

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

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

5. An applicant for certification as an assisted living administrator shall sit for the competency examination within two years of successful completion of an assisted living training course.

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

i. Following a first examination failure, an applicant shall be permitted to sit for re-examination.

ii. Following a second examination failure, or any subsequent two examination failures, the applicant shall be required to re-take, and successfully complete, an assisted living training course approved by the Department in accordance with this rule.

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

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

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

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

(e) In order to be eligible to renew a current certification, an assisted living administrator shall complete at least 20 hours, every two years, of continuing education regarding assisted living concepts and related topics, as specified and approved by the Department of Health and Senior Services, in accordance with (a)3i above.

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

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

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

(i) The applicant shall be required to complete 20 hours of continuing education credit for each year in which the certification was inactive in addition to the required 20 hours of continuing education for biennial certification period.

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

8:36-1.6 Qualifications of dietitians

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

8:36-1.7 Qualifications of licensed practical nurses

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

8:36-1.8 Qualifications of personal care assistants

(a) Each personal care assistant shall have completed:

1. A nurse aide training course approved by the New Jersey State Department of Health and Senior Services in

accordance with N.J.A.C. 8:39-43, and shall have passed the New Jersey Nurse Aide Certification Examination; or

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

3. Other training program equivalent to 1 or 2 above and approved by the Department.

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

(c) The responsibilities of a personal care assistant may be performed by a person who is enrolled in one of the three training programs referred to in (a) above, but such a person must complete the program and pass the examination or become certified (as the case may be) within six months of the date of hire or cease functioning as a personal care assistant. A personal care assistant-in-training shall not administer medication or fulfill the requirement at N.J.A.C. 8:36-4.5(b) that a facility must have one awake personal care assistant on the premises at all times.

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

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

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

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

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

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

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

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

1. Registry confirmation of a personal care assistant certification or nurse aide certification or homemaker-home health aide certification shall not be sufficient to satisfy the requirement for reference checks identified at N.J.A.C. 8:36-4.5(f).

(l) A certificate issued to a personal care assistant in accordance with this section shall be sanctioned, suspended, denied or 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. 8:36-4.5(f); 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.

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

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

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

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

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

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

(q) Personal care assistants who administer medications shall meet the following requirements:

1. Current certification in good standing as a nurse aide, homemaker-home health aide, completion of another Department approved course, as described at (a)1, 2 and 3 above;
2. Successful completion of the medication administration training course approved by the Department of Health and Senior Services and the Board of Nursing, in accordance with N.J.A.C. 8:36-9.3(c); and
3. Successful completion of a Department of Health and Senior Services approved standardized examination regarding medication administration for personal care assistants. An oral examination shall not substitute for the written component of this examination.

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

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

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

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

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

ii. The continuing education requirement shall be in addition to the continuing education requirement in (f) above.

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

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

(v) Registry confirmation of a medication aide certification shall not be sufficient to satisfy the requirement for reference checks identified at N.J.A.C. 8:36-4.5(f).

(w) A certificate issued to a medication aide in accordance with this section shall be sanctioned, suspended, denied, or 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. 8:36-4.5(f);

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

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

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

(y) Upon receipt of a finding that a certified medication aide has abused, neglected, or misappropriated the property

of a resident, or was negligent or incompetent in the performance of the individual's duties, resulting from an investigation by the Office of the Ombudsman for the Institutionalized Elderly, the Department, or other State or local governmental agency, including criminal justice authorities, the Department shall determine whether the finding is valid and is to be entered onto the personal care assistant abuse registry at which time a disciplinary hearing process shall be initiated.

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

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

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

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

8:36-1.9 Qualifications of pharmacists

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

8:36-1.10 Qualifications of physicians

Each physician shall be licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey, in accordance with N.J.A.C. 13:35.

8:36-1.11 Qualifications of registered professional nurses

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

8:36-1.12 Qualifications of social workers

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

SUBCHAPTER 2. LICENSURE PROCEDURES
8:36-2.1 Certificate of need

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

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

Certificate of Need and Acute Care Licensure Program
New Jersey State Department of Health and Senior Services
PO Box 360, Room 604
Trenton, New Jersey 08625-0360
609-292-6552

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

8:36-2.2 Application for licensure

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

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

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

(c) A copy of the assisted living residence or comprehensive personal care home admission agreement or other document stating the scope of a facility's services shall be forwarded to the Director, Long Term Care Licensing and Certification (see (a) above for address) for review when application for licensure is made. Review shall ensure that the admission agreement does not violate any requirements contained herein, any conditions placed on certificate of need approval, or any applicable State or Federal statutes. This subsection shall not apply when a continuing care retirement community (CCRC), as defined at N.J.A.C. 8:36-1.3, contracts with its residents to provide assisted living pursuant to a continuing care agreement. This subsection does apply, however, when a CCRC provides assisted living to a person who is not a party to a continuing care agreement. The admission agreement shall include but not be limited to, the following:

1. Proposed charges for room, board and all levels of service and care and for all additional services and care not included in the standard package of rates;
2. Specification of how and when the resident will be notified of any change in charges;
3. A statement that each resident has the right to appeal an involuntary discharge as specified at N.J.A.C. 8:36-4.13(b); and
4. Specification of the criteria identified at N.J.A.C. 8:36-4.1(d) which will be used to discharge residents and an explanation of how the discharge process will be implemented, including which facility staff will participate and the extent of resident participation.

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

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

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

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

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

5. A description of the proposed physical plant, including the number of beds requested;

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

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

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

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

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

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

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

(i) All applicants shall demonstrate that they have the capacity to operate an assisted living residence or program or a comprehensive personal care home in accordance with the rules in this chapter. An application for a license or change in service shall be denied if the applicant cannot demonstrate that the premises, equipment, personnel, including principals and management, finances, rules and bylaws, and standards of health care are fit and adequate

and that there is reasonable assurance that the health care facility will be operated in accordance with the standards required by these rules. The Department shall consider an applicant's prior history in operating a health care facility either in New Jersey or in other states in making this determination. Any evidence of licensure violations representing serious risk of harm to patients may be considered by the Department, as well as any record of criminal convictions representing a risk of harm to the safety or welfare of patients.

(j) The Department shall charge a nonrefundable fee of \$1,125 for the filing of an application for licensure and each annual renewal of an assisted living program. The application shall include, but not be limited to the following:

1. A copy of the written contract between the program provider and the publicly subsidized housing unit in accordance with N.J.A.C. 8:36-18.2(c)1 through 6; and

2. A copy of the written agreement or contract between the program provider and residents that will be used at each program site, including clearly addressing N.J.A.C. 8:36-18.3(d); and

3. An evaluation of the requirements specified in (d)1 and 2 above.

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

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

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

(n) Each assisted living program shall be assessed a biennial inspection fee of \$750.00. This fee shall be assessed in the year the facility will be inspected, along with the annual licensure fee for that year. The fee shall be added to the initial licensure fee for new facilities. Failure to pay the inspection fee shall result in nonrenewal of the license for

existing facilities and the refusal to issue an initial license for new facilities. This fee shall be imposed only every other year even if inspections occur more frequently and only for the inspection required to either issue an initial license or to renew an existing license. It shall not be imposed for any other type of inspection.

Amended by R.2004 d.160, effective April 19, 2004.

See: 35 N.J.R. 4838(a), 36 N.J.R. 1962(a).

Increased fees throughout.

8:36-2.3 Newly constructed or expanded facilities

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

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

Health Care Plan Review Services
Division of Codes and Standards
Department of Community Affairs
PO Box 815
Trenton, NJ 08625-0815
609-633-8151

(c) An on-site inspection of the construction of the physical plant shall be made by representatives of Health Care Plan Review Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department. A certificate of occupancy issued by the local municipality may be submitted in lieu of an on-site inspection by Health Care Plan Review Services.

8:36-2.4 Surveys

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

1. The facility shall be notified in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Long Term Care Assessment and Survey Program of the Department when the deficiencies, if any, have been corrected, and the Long Term Care Assessment and Survey Program shall schedule one or more resurveys of the facility prior to occupancy.

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

1. A preliminary conference regarding the conditions for licensure (see N.J.A.C. 8:36-2.2(d) 1 through 8) for review of the conditions for licensure and operation has taken place between the Long Term Care Licensing and Certification Program and representatives of the facility, who will be advised that the purpose of the conference is to allow the Department to determine the facility's compliance with N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules pursuant thereto;

2. The initial survey required by N.J.A.C. 8:36-2.4(a) results in a finding of substantial compliance with the requirements of this chapter;

3. The completed licensure application is on file with the Department;

4. The fee for filing of the application has been received by the Department;

5. A copy of the admission agreement is on file with the Department;

6. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities; and a copy of the certificate of occupancy or a certificate of continued occupancy that has been issued by the appropriate local authority has been submitted to the Department;

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

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

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

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

8:36-2.5 License

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

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

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

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

(e) The license, unless suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the original licensure date. The facility will receive a request for renewal fee 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department, or if the facility is more than 60 days delinquent in payment of a penalty issued pursuant to N.J.S.A. 26:2H-14.

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

8:36-2.6 Surrender of license

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

8:36-2.7 Waiver

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

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

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

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

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

(e) All requests for waivers to the physical plant requirements in N.J.A.C. 8:36-3 and 17 shall be fully explained, justified, and made a part of the certificate of need application submitted in accordance with N.J.S.A. 26:2H-1 et seq. and N.J.A.C. 8:36-2.1(a).

8:36-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(b) The Commissioner may order the immediate removal of residents from a facility whenever he or she determines imminent danger to any person's health or safety.

8:36-2.9 Hearings

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

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

8:36-2.10 Advertisement of assisted living

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

SUBCHAPTER 3. PHYSICAL PLANT AND ENVIRONMENT

8:36-3.1 Scope

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

(b) Prior to approval of an application for a transfer of ownership, the Department may conduct a physical plant inspection of the facility to determine the extent of physical plant deficiencies, based upon then current codes and standards.

1. A report of the physical plant inspection shall be provided to the prospective buyer and seller.

2. A plan of corrections shall be submitted to the Department for all physical plant deficiencies.

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

8:36-3.2 Restrictions

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

8:36-3.3 Ventilation

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

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

8:36-3.4 Exit access passageways and corridors

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

8:36-3.5 Automatic fire detection system

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

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

8:36-3.6 Fire suppression systems

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

8:36-3.7 Interior finish requirement

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

8:36-3.8 General residential unit requirements

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

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

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

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

8:36-3.9 Toilets, baths and handwashing sinks

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

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

8:36-3.10 Kitchenettes

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

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

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

8:36-3.11 Community space

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

8:36-3.12 Laundry equipment

(a) Each assisted living facility shall provide at least one noncommercial washer and dryer for residents' personal items.

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

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

(d) All dryers shall be vented to the outside of the building.

8:36-3.13 Dietary department

(a) Construction, equipment, and installation of food service facilities shall meet the requirements of the dietary programs, as contained in this chapter at N.J.A.C. 8:36-8.

(b) The following facilities shall be provided, at a minimum:

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

8:36-3.14 Administration and public areas

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

(b) Space for private interviews shall be provided.

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

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

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

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

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

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

8:36-3.15 Fire extinguisher specifications

(a) There shall be a minimum of two fire extinguishers in the basement, at least one on each floor of the building and as required in kitchen areas, all of which shall bear the seal of the Underwriters Laboratories.

(b) The following types of extinguishers shall be provided:

1. In kitchen areas, because of danger of grease fires, extinguishers shall be of the Class B dry chemical type 2-B and a minimum of five pounds. The maximum travel distance to an extinguisher shall be 50 feet.

2. In the basement area, an extinguisher shall be Class B dry chemical type 2-B and a minimum of five pounds, if oil or gas is used as fuel. The maximum travel distance to an extinguisher shall be 50 feet.

3. In all other areas, of Class A air-pressurized 2½ gallon water type 2-A extinguisher shall be provided. The maximum travel distance to an extinguisher shall be 75 feet.

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

8:36-3.16 Sounding devices

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

8:36-3.17 Telecommunications

Each residential unit shall be prewired for telephone and television reception.

SUBCHAPTER 4. GENERAL REQUIREMENTS

8:36-4.1 Types of services provided to residents; resident characteristics

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

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

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

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

1. The resident requires 24 hour, seven day a week nursing supervision;

2. The resident is bedridden for more than 14 consecutive days;

3. The resident is consistently and totally dependent in four or more of the following activities of daily living: eating, bathing, dressing, grooming, and toileting;

4. The resident has a cognitive decline severe enough to prevent the making of simple decisions regarding activities such as bathing, dressing and eating and cannot respond appropriately to cueing and simple directions;

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

6. The resident requires more than assistance with transfer as defined at N.J.A.C. 8:36-1.3;

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

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

(e) The facility's or program's admission agreement with each resident must clearly specify if the facility or program will or will not retain residents with one or more characteristics described in (d)1 through 8 above, to what extent, and, if applicable, at what additional cost. This subsection shall not apply when a continuing care retirement community (CCRC), as defined at N.J.A.C. 8:36-1.3, contracts with its residents to provide assisted living pursuant to a continuing care agreement. This subsection shall apply, however, when a CCRC provides assisted living to a person who is not a party to a continuing care agreement.

(f) Residents who require specialized long-term care, as defined at N.J.A.C. 8:36-1.3, shall not remain in the assisted living residence or comprehensive personal care home and shall be transferred to a long-term care facility that provides the applicable form of specialized care.

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

(h) In accordance with N.J.S.A. 26:2H-12.16 et seq., a new assisted living residence or comprehensive personal care home licensed on or after September 1, 2001, shall attain a level of occupancy by Medicaid-eligible persons of at least 10 percent of its total bed complement within three years of licensure and shall maintain this level of Medicaid occupancy thereafter. For the purposes of this subsection, "total bed complement" means the resident census. An existing assisted living residence or comprehensive personal care home which increases its number of licensed beds on or after September 1, 2001, shall occupy at least 10 percent of the additional beds with Medicaid-eligible persons and shall maintain this level of Medicaid occupancy thereafter.

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

2. For the purposes of this subsection, "Medicaid-eligible person" means an individual who has been determined as satisfying the financial eligibility criteria for medical assistance under the Medicaid program, has been assessed as being in need of nursing facility level of care as specified at N.J.A.C. 10:63-2.1, and has been approved by the Department for participation in the Federally approved Enhanced Community Options waiver program for assisted living services. "Medicaid-eligible person" includes:

- i. Persons who were admitted to the facility as private paying residents and subsequently became eligible for Medicaid; and
- ii. Persons who were admitted directly to the facility as Medicaid-eligible;

3. The Commissioner or his or her designee may waive or reduce this 10 percent Medicaid occupancy requirement for some or all regions of the State if it is determined that sufficient numbers of licensed beds are available in the State to meet the needs of Medicaid-eligible persons within the limits of the Federally approved Enhanced Community Options waiver as it pertains to assisted living services.

i. The Commissioner or his or her designee shall waive this 10 percent Medicaid occupancy requirement if limitations on funding result in the Department establishing a waiting list for Medicaid-eligible persons requesting assisted living services through the Enhanced Community Options waiver.

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

4. In accordance with N.J.S.A. 26:2H-12.16 et seq., this subsection shall not apply to an assisted living residence or a comprehensive personal care home operated by a continuing care retirement community (CCRC), as defined at N.J.A.C. 8:36-1.3.

Amended by R.2004 d.120, effective April 5, 2004.
See: 35 N.J.R. 3507(a), 36 N.J.R. 1812(a).
Added (h).

8:36-4.2 Ownership

(a) The ownership of the facility or program and the property on which it is located shall be disclosed to the Department. Any proposed change in ownership shall be reported to the Director of the Long Term Care Licensing and Certification program of the Department in writing and in conformance with N.J.A.C. 8:36-2.

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

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

8:36-4.3 Submission and availability of documents

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

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

8:36-4.4 Personnel

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

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

8:36-4.5 Staffing requirements

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

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

1. At least one awake personal care assistant; and
2. At least one additional employee.

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

1. The provision of services and assistance in accordance with the concepts of assisted living, including care of

residents with cognitive and physical impairment and dementia;

2. Emergency plans and procedures; and
3. The infection prevention and control program.

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

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

(f) The facility or program shall exercise good faith and employ reasonable efforts to ensure that staff providing personal care and services to residents 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 or program.

8:36-4.6 Policy and procedure manual

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

1. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and resident care services of the facility or program;
2. A description of the services which the assisted living residence, comprehensive personal care home or assisted living program is capable of providing;
3. Policies and procedures for maintaining security;
4. Policies and procedures for reporting all diagnosed and/or suspected cases of resident abuse or exploitation. If the resident is 60 years of age or older, the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly shall be notified, in compliance with N.J.S.A. 52:27G-7.1 et seq., at 1-800-792-8820;
5. Policies and procedures for maintaining confidentiality of resident records, including policies and procedures

for examination of resident records by the resident and other authorized persons and for release of the resident's records to any individual outside the facility or program, as consented to by the resident or as required by law or third party payor;

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

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

8. Policies and procedures delineating the responsibilities of the facility's staff in making prompt notification regarding the death of a resident as required by N.J.S.A. 26:2H-5e and N.J.A.C. 8:36-13.7(a).

(b) The facility shall make all policy and procedure manuals available to residents, guardians, designated responsible persons, prospective applicants, and referring agencies during normal business hours or by prior arrangement.

Amended by R.2006 d.331, effective September 18, 2006.
See: 37 N.J.R. 4150(a), 38 N.J.R. 3896(a).

In (a)6, deleted "and" from the end; in (a)7, substituted "; and" for the period at the end; and added (a)8.

8:36-4.7 Resident transportation

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

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

8:36-4.8 Written agreements

The facility or program shall have a written agreement or its equivalent, or a linkage for services not provided directly by the facility or program. If the facility or program provides care to residents with psychiatric disorders, the facility or

program shall also have a written agreement with one or more community mental health centers specifying which services will be provided by the mental health center. The written agreements shall require that services be provided in accordance with this chapter.

8:36-4.9 Reportable events

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

1. Interruption for three or more hours of basic physical plant services, such as heat, light, power, water, food, or staff;

2. Termination of employment of the administrator, and the name and qualifications of his or her replacement;

3. Occurrence of epidemic disease in the facility;

4. All fires, all disasters, all residents who are missing for 24 hours, and all deaths resulting from accidents or incidents in the facility or related to facility services. The written confirmation shall contain information about injuries to residents and/or personnel, disruption of services, and extent of damages;

5. Any major occurrence or incident of an unusual nature shall be reported immediately to the Department by telephone, and shall be confirmed in writing to the Department as soon as possible thereafter;

6. All alleged or suspected crimes which are serious crimes committed by or against residents, which have also been reported at the time of occurrence to the local police department; and

7. All suspected cases of resident abuse or exploitation which have been reported to the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly.

8:36-4.10 Notices

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

1. All waivers granted by the Department;

2. A copy of the last annual licensure inspection survey report and the list of deficiencies from any valid complaint investigation during the past 12 months;

3. Policies and procedures regarding resident rights;

4. Business hours of the facility;

5. Policies and procedures for maintaining security of the assisted living residence and comprehensive personal care home;

6. The toll-free hot line number of the Department; telephone numbers of county agencies and of the State of New Jersey Office of the Ombudsman; and

7. The names of, and a means to formally contact, the owner and/or members of the governing authority.

8:36-4.11 Maintenance of records

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

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

8:36-4.12 Admission and retention of residents

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

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

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

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

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

8:36-4.13 Involuntary discharge

(a) Written notification by the administrator shall be provided to a resident and/or his or her family, guardian, or

designated responsible person, of a decision to involuntarily discharge the resident from the facility or program. Such involuntary discharge shall only be upon grounds contained in the facility's or program's policies and procedures and shall occur only if the resident has been notified and informed of such policies in advance. The notice of discharge shall be given at least 30 days in advance and shall include the reason for discharge and the resident's right to appeal. This 30 day advance notice shall not apply if the discharge is for reasons in accordance with the criteria specified at N.J.A.C. 8:36-4.1(d)1 through 8. A copy of the notice shall be entered in the resident's record.

(b) The resident shall have the right to appeal to the administrator any involuntary discharge from the facility or program. The appeal shall be in writing and a copy shall be included in the resident's record with the disposition or resolution of the appeal. The resident shall have the right to retain legal counsel to appeal.

(c) In an emergency situation, as stated in N.J.A.C. 8:36-4.1(d), for the protection of the life and safety of the resident or others, the facility or program may transfer the resident without 30 days notice. The Department shall be notified in the event of such discharge.

8:36-4.14 Notification requirements

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

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

(b) Such notification shall be given at the time of occurrence, and then documented in the resident's record.

8:36-4.15 Interpretation services

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

8:36-4.16 Referral and transfer agreements

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

8:36-4.17 Managed risk agreements

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

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

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

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

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

SUBCHAPTER 5. ADMINISTRATION
8:36-5.1 Appointment of administrator

An administrator shall be appointed and an alternate shall be designated in writing to act in the absence of the administrator. The administrator or a designated alternate shall be available at all times.

8:36-5.2 Administrator's responsibilities

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

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including resident rights;
2. Planning for, and administration of, the managerial, operational, fiscal, and reporting components of the facility;
3. Ensuring that all personnel are assigned duties based upon their ability and competency to perform the job and in accordance with written job descriptions;
4. Ensuring the provision of staff orientation and staff education;
5. Establishing and maintaining liaison relationships and communication with facility staff and services and with residents and their families; and
6. Establishing and maintaining liaison relationships and communications with community hospitals, social, and mental health service agencies.

(b) The administrator shall be qualified in accordance with N.J.A.C. 8:36-1.5.

SUBCHAPTER 6. RESIDENT CARE POLICIES
8:36-6.1 Resident care policies and procedures

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

1. Resident rights;
2. Advance directives, including, but not limited to, the following:
 - i. The circumstances under which an inquiry will be made of individuals regarding the existence and location of an advance directive;
 - ii. Requirements for provision of a written statement of resident rights regarding advance directives, approved by the Commissioner or his or her designee, to residents upon admission; and

- iii. Requirements for documentation in the resident record;
- 3. The determination of staffing levels to ensure delivery of services and assistance as needed for each resident of the facility or program during each 24-hour period. Services may be provided directly by staff employed by the facility or program or in accordance with a written contract;
- 4. The delivery of personal care and assistance to residents in accordance with assisted living concepts which specify that each resident will be encouraged to maintain his or her independence and personal decision making abilities;
- 5. The referral of residents to health care providers in accordance with individual needs and resident service plans;
- 6. Emergency medical and dental care of residents, including notification of the resident's family, guardian, or designated community agency, when known, and with the resident's consent, and care of residents during periods of acute illness;
- 7. Resident instruction and health education;
- 8. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq.
 - i. Residents, staff and visitors shall be permitted to smoke only in designated smoking areas having adequate outside ventilation, in accordance with iii below;
 - ii. Nonflammable ashtrays in sufficient numbers shall be provided in designated smoking areas;
 - iii. Any room designated for smoking shall meet the following ventilation requirements for acceptable indoor air quality:
 - (1) A ventilation system which prevents contaminated air from recirculating through the facility;
 - (2) The number of air changes per hour within the designated smoking room shall be equivalent to the number necessary to achieve 60 cubic feet per minute per smoker, based on occupancy of no greater than five smokers per 100 square feet; and
 - (3) Negatively pressurized air to prevent back-streaming of smoke into nonsmoking areas of the facility;
 - iv. At the facility's option, a smoke-free policy may be developed, which shall include adequate notice to all applicants prior to admission to the facility;
- 9. Discharge, termination by the facility, transfer, and readmission of residents, including criteria for each;
- 10. The care and control of pets if the facility permits pets in the facility or on its premises; and
- 11. A policy to determine those circumstances where the resident's absence should be investigated.

8:36-6.2 Financial arrangements

- (a) Concerning financial arrangements, the facility shall:

1. Inform residents of any and all fees for services provided and charges for supplies routinely provided by the facility. Upon admission and at the time of any price change, the resident shall also be informed of the costs of supplies which are specially ordered. At the resident's request, this information may be provided instead to the resident's family, guardian, or designated community agency;

2. Maintain a written record of all financial arrangements with the resident and/or his or her family, guardian, or designated community agency with copies furnished to the resident;

3. Assess no additional charges, expenses, or other financial liabilities in excess of the daily, weekly, or monthly rate included in the admission agreement, except:

- i. Upon written agreement of the resident and/or his or her family, guardian, or designated community agency, who shall be given a copy of the written approval;

- ii. Upon written orders of the resident's physician, stipulating specific services not included in the admission agreement;

- iii. Upon 30 days' prior written notice to the resident and/or his or her family of any change in charges, expenses, or other financial liabilities that are in addition to the agreed daily, weekly, or monthly rate; or

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

4. Provide the resident with information regarding financial assistance available from third-party payors and/or other payors and referral systems for residents' financial assistance.

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

1. The facility shall hold such funds or property in trust for the resident and they shall remain the property of the resident. 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.

8:36-6.3 Personal needs allowance

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

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

(c) The resident shall sign to acknowledge receipt of funds, goods or services purchased with such funds at the time of disbursement.

(b) If the assessment indicates that the resident has general service needs, a resident service plan shall be developed within 14 days of the resident's admission. The resident service plan shall include, but not be limited to, the following:

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

(c) In lieu of the required resident service plan, the facility may substitute the admission agreement (or other document presented to the resident) provided it explains the circumstances under which the resident will receive assistance with ADLs, transportation, recreational and other activities.

(d) If the resident does not have any general service needs, a resident service plan is not needed.

(e) If the resident assessment indicates that the resident requires health care services, a health care assessment shall be completed within 14 days of admission by a registered professional nurse using the minimum data set (MDS) form (available from the Department) or an assessment instrument which has been adopted by the facility or program that meets the requirements of (f) below. Based on the health care assessment a written health care plan shall be developed. The health care plan shall include, but not be limited to the following:

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

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

1. Cognitive patterns;
2. Communication/hearing patterns;
3. Vision patterns;
4. Physical functioning and structural problems;
5. Continence;

**SUBCHAPTER 7. RESIDENT ASSESSMENTS,
RESIDENT SERVICE PLANS, HEALTH
CARE PLANS AND HEALTH CARE
SERVICES**

8:36-7.1 Initial assessments, resident service plans, health care assessments and health care plans

(a) Each resident shall receive an initial assessment by a registered professional nurse to determine resident needs. If this initial assessment indicates the resident has general service needs, a service plan shall be developed in accordance with (b) below. If the initial assessment indicates the resident has health service needs, a health care assessment shall be completed in accordance with (d) below. The initial nursing assessment to determine health service needs shall not be required if a licensed physician, or 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 rules (N.J.A.C. 13:37), or a New Jersey licensed physician assistant, specifies in writing, within 60 days prior to admission, that the resident has no health care service needs and is appropriate for an assisted living residence, a comprehensive personal care home, or assisted living program, unless facility or program policy specifies otherwise.

6. Psychosocial well-being;
7. Mood and behavior patterns;
8. Activity pursuit patterns;
9. Disease diagnoses;
10. Health conditions;
11. Oral/nutritional status;
12. Oral/dental status;
13. Skin conditions;
14. Medication use; and
15. Special treatment and procedures.

(g) If the resident does not need a health care service, a health care plan is not needed.

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

8:36-7.2 Implementation of plans

The resident service plan shall be reviewed and, if necessary, revised semiannually, based upon the resident's response to the care provided. The health care plan shall be reviewed, and if necessary, revised quarterly, based upon the resident's response to the care provided. Documentation in the resident's record shall indicate review and any necessary revision of the resident service plan and/or health care plan.

8:36-7.3 Health care services

(a) The assisted living residence, comprehensive personal care home, or assisted living program shall assure that the resident receives health care services, as defined at N.J.A.C. 8:36-1.3, under the direction of a registered professional nurse, in accordance with the health care plan.

(b) The facility or program shall have at least one registered professional nurse available at all times. Available, in this instance, shall mean on call and capable of being reached by telephone.

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

(d) Written policies and procedures shall insure, but not be limited to, the following:

1. Assessment of the health care service needs of all residents in the facility at least semiannually, except that those residents who have a health care plan shall be reassessed quarterly;

2. Monitoring of the conditions of the residents on a periodic basis;

3. Notification of the registered nurse if there are significant changes in a resident's condition;

4. Assessment of the resident's need for referral to a physician or community agencies as appropriate; and

5. Maintenance of records as required.

8:36-7.4 Provision of health care services

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

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

(c) The initial health care assessment shall be documented by the health care professional providing the service and shall be updated as required, in accordance with professional standards of practice, at least quarterly.

(d) The resident's physician or the physician's designee shall be notified of any significant change in the resident's physical or psychological condition and any intervention by the physician shall be recorded.

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

(f) The registered professional nurse or a physician or a New Jersey licensed physician's assistant shall be called at the onset of illness of any resident to arrange for assessment of the resident's nursing care needs or medical needs and for needed nursing care intervention or medical care.

(g) Each resident shall have an annual physical examination by a physician or by a nurse practitioner/clinical nurse specialist, which shall be documented in the resident's record. The physician or nurse practitioner/clinical nurse specialist shall certify annually that the resident does not have needs which exceed the care which the assisted living residence, comprehensive personal care home, or assisted living program is capable of providing.

(h) Residents shall be permitted free choice of a physician.

(i) If it is determined that there is a medical need for a transfer to another health care facility because the assisted living residence or comprehensive personal care homes cannot meet the resident's needs such transfers shall be initiated promptly, in accordance with N.J.A.C. 8:36-4.1(d)1. The registered professional nurse shall be notified to ensure that the resident is receiving appropriate care during the transfer period. If the resident is not transferred within seven days, the Department shall be notified and assistance shall be requested from the Department to arrange for transfer of the resident.

8:36-7.5 Quality assurance

The facility or program shall develop written policies and procedures for monitoring the quality of health care services provided to resident.

SUBCHAPTER 8. DINING SERVICES

8:36-8.1 Provision of meals

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

8:36-8.2 Designation of a food service coordinator

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

8:36-8.3 Responsibilities of dietitians

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

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

2. Providing nutritional counseling and education to residents.

8:36-8.4 Requirements for dining services

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

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

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

1. At least three meals shall be prepared and served daily to residents;

2. The facility shall select foods and beverages, which include fresh and seasonal foods, and shall prepare menus with regard to the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal preference of residents;

3. Written, dated menus shall be planned at least 14 days in advance for all diets. The same menu shall not be used more than once in any continuous seven day period;

4. Current menus with portion sizes and any changes in menus shall be posted in the food preparation area. Menus shall be posted in a conspicuous place in residents' area, and/or a copy of the menu shall be provided to each resident. Any changes or substitutes in menus shall be posted or provided in writing to each resident. Menus, with changes or substitutes, shall be kept on file in the facility for at least 30 days;

5. Diets served shall be consistent with the diet manual, the dietitian's instructions, and, if applicable for special diets, shall be served in accordance with physicians' orders;

6. Nutrients and calories shall be provided for each resident, based upon current recommended dining allowances of the Food and Nutrition Board of the National Academy of Sciences, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the resident, if applicable;

7. Between-meal snacks and beverages shall be available at all times for each resident, unless medically contraindicated as documented by a physician in the resident's health care plan;

8. Substitute foods and beverages of equivalent nutritional value shall be available to all residents;

9. In the case of a resident who has a health care plan in which diet is identified as a service, the staff shall observe whether meals are refused or missed and shall document this information;

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

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

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

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

8:36-8.5 Commercial food management services

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

SUBCHAPTER 9. PHARMACEUTICAL SERVICES

8:36-9.1 Provision of pharmaceutical services

The assisted living residence, comprehensive personal care home, or assisted living program shall be capable of ensuring that pharmaceutical services are provided to residents in accordance with physician's orders and with each resident's health care plan.

8:36-9.2 Self-administration of medications

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

1. The facility or program shall document the provision of training to each employee who has been designated to provide resident supervision and/or assistance with self-administration of medications; and

2. The facility or program shall document any observed instance where medications are not taken in accordance with physician's orders.

8:36-9.3 Administration of medications

(a) Notwithstanding the definition of "health care service" at N.J.A.C. 8:36-1.3, the administration of medication in accordance with N.J.A.C. 8:36-9.2 and this section, in and of itself, shall not be considered a health care service.

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

(c) The administration of medications is within the scope of practice and remains the responsibility of the registered professional nurse. The registered professional nurse may choose to delegate the task of administering medications in accordance with N.J.A.C. 13:37-6.2 to personal care assistants who have completed a medication administration course approved by the State Board of Nursing and the Department and also have passed the medication aide certification examination. When the registered nurse delegates the task of administering medications to personal care assistants this delegation shall be based upon individual residents' needs and circumstances, within specific limits. These limits shall include, but not be limited to, the following:

1. The administration of oral, ophthalmic, otic, inhaled, nasal, rectal, vaginal, topical and injectable (subcutaneous) medications may be delegated. Residents receiving short-term scheduled medications (II-IV) for analgesia, and injections other than pre-drawn insulin, must be reassessed by the registered nurse at least every 72 hours, in order to determine if the medication is still required;

2. A training program approved by the State Board of Nursing and the Department regarding medication administration shall be completed by each personal care assistant who shall administer medications;

3. The delegating nurse shall review with the personal care assistant medication actions and untoward effects for each drug to be administered. Pertinent information about medications' adverse effects, side effects, and potential interactions shall be incorporated into the care plan for each resident, with interventions to be implemented by the personal care assistant and other caregiving staff;

4. A unit of use drug distribution system shall be developed and implemented; and

5. At least weekly, a registered nurse shall review and sign off on any modifications or additions to the medication administration record which were made by the personal care assistant under the nurse's delegation.

(d) Each resident shall be identified prior to drug administration.

(e) Drugs prescribed for one resident shall not be administered to another resident.

(f) Personnel shall report drug errors and adverse drug reactions immediately to the director of health services, to the prescriber, and to the pharmacist, and shall document the incident in the resident's record.

8:36-9.4 Designation of a pharmacist

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

1. The training of employees;
2. Educating residents regarding medications;
3. Establishing policies and procedures which ensure safe and appropriate self-administration of medications;
4. Reviewing medication records; and
5. Inspecting all common areas that the facility or program has designated for storage of medications and maintaining records of such inspections.

8:36-9.5 Storage of medications

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

1. The storage area shall be kept locked when not in use.
2. The storage area shall be used only for storage of medications and medical supplies.
3. The key to the storage area shall be kept on the person of the employee on duty who is responsible for resident supervision.
4. Each resident's medications shall be kept separated within the storage area, with the exception of large volume medications which may be labeled and stored together in the storage area.
5. Medications shall be stored in accordance with manufacturer's instructions and with U.S.P. (United States Pharmacopoeia) requirements at USP 23, NF18, published by U.S. Pharmacopoeia Convention, 12601 Twinbrook Parkway, Rockville, MD 20852, incorporated herein by reference.

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

1. The label of each resident's prescription medication container shall be permanently affixed and contain the resident's full name, physician's name, prescription number, name and strength of drug, lot number, quantity, date of issue, expiration date, manufacturer's name if generic, directions for use, and cautionary and/or accessory labels. If a generic substitute is used, the drug shall be labeled according to the Drug Utilization Review Council requirements at N.J.S.A. 24:6E-1 et seq. and N.J.A.C. 8:70. Required information appearing on individually packaged drugs or within an alternate medication delivery system need not be repeated on the label.

2. All over-the-counter (OTC) medications repackaged by the pharmacy shall be labeled with an expiration date, name and strength of the drug, lot number, date of issue, manufacturer's name if generic, and cautionary and/or accessory labels, in accordance with U.S.P. requirements cited in (a)5 above. Original manufacturer's containers shall be labeled with at least the resident's name, and the name label shall not obstruct any of the aforementioned information.

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

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

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

(e) Discontinued or expired medications shall be destroyed within 30 days in the facility, or, if unopened and properly labeled, returned to the pharmacy. All medication destruction in the facility shall be witnessed and documented by two persons, each of whom shall be either the administrator, the licensed nurse or the pharmacist.

SUBCHAPTER 10. RESIDENT ACTIVITIES**8:36-10.1 Provision of resident activities**

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

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

SUBCHAPTER 11. SOCIAL WORK SERVICES**8:36-11.1 Provision of social work services**

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

SUBCHAPTER 12. EMERGENCY SERVICES AND PROCEDURES

8:36-12.1 Emergency medical services

(a) Emergency medical services shall be available to or arranged for residents requiring these services.

(b) The facility shall develop a written plan for arranging for emergency transportation of residents for medical care and returning them to the assisted living residence.

8:36-12.2 Emergency plans and procedures

(a) The facility shall develop written emergency plans, policies, and procedures which shall include plans and procedures to be followed in case of medical emergencies, power failures, fire, or natural disasters. The emergency plans shall be filed with the Department and the Department shall be notified when the plans are changed. Copies of emergency plans shall also be forwarded to other agencies in accordance with State and municipal laws.

(b) The emergency plans, including a written evacuation diagram specific to the unit that includes evacuation procedure, location of fire exits, alarm boxes, and fire extinguishers, and all emergency procedures shall be conspicuously posted throughout the facility. All employees shall be trained in procedures to be followed in the event of a fire and instructed in the use of fire-fighting equipment and resident evacuation as part of their initial orientation and at least annually thereafter. All residents shall be instructed in emergency evacuation procedures.

(c) Procedures for emergencies shall specify persons to be notified, process of notification and verification of notification, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating residents, procedures for reentry and recovery, frequency of fire drills, tasks and responsibilities assigned to all personnel, and shall specify medications and records to be taken from the facility upon evacuation and to be returned following the emergency.

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

8:36-12.3 Drills and tests

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

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

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

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

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

SUBCHAPTER 13. RESIDENT RECORDS

8:36-13.1 Health record

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

8:36-13.2 Confidentiality

Records and information regarding the individual resident shall be considered confidential and the resident shall have the opportunity to examine such records, in accordance with facility or program policies. The written consent of the resident shall be obtained for release of his or her records to any individual outside the facility or program, except in the case of the resident's transfer to another health care facility, or as required by law, third-party payor, or authorized government agencies.

8:36-13.3 Record retention

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

8:36-13.4 Record availability

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

8:36-13.5 Register

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

1. The administrator or the administrator's designee shall make all entries in the register and shall be responsible for its maintenance and safe-keeping;
2. The register shall be kept up-to-date at all times. Admissions, discharges and discharge destination, and other changes shall be recorded within 48 hours;
3. The register, which is a permanent record, shall be kept in a safe place; and
4. All entries into the register shall be clear, legible, and written in ink or typed.

8:36-13.6 Residents' individual records

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

1. The resident's completed admission application and all records forwarded to the facility;
2. The resident's name, last address, date of birth, name and address of sponsor or interested agency, date of admission, date of discharge (and discharge destination) or death, the name, address and telephone number of physician to be called, and the name and address of nearest relative, guardian, responsible person, or interested agency, together with any other information the resident wishes to have recorded;
3. A copy of the resident's service plan and/or health care plan, if applicable; and
4. All assessments and treatments by health care and service providers shall be entered according to the standards of professional practice. Documentation and/or notes from all health care and service providers shall be entered according to the standards of professional practice.

8:36-13.7 Record of death

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

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

contacted provided other instructions as to when the required notification shall occur.

- ii. The facility shall enter any alternate instructions in the resident's record alongside the contact information; and

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

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

Amended by R.2006 d.331, effective September 18, 2006.
See: 37 N.J.R. 4150(a), 38 N.J.R. 3896(a).
Rewrote the section.

SUBCHAPTER 14. RESIDENT RIGHTS**8:36-14.1 Posting and distribution of statement of resident rights**

(a) To assure the highest quality of services, each assisted living provider will post and distribute a statement of resident rights, as approved and issued by the Department in accordance with N.J.S.A. 30:13-1 et seq., the Nursing Home Patients Bill of Rights, and consistent with the following principles of assisted living:

1. To provide personalized services and care to meet each resident's needs;
2. To foster the independence and individuality of each resident;
3. To treat each resident with respect, courtesy, consideration and dignity;
4. To assure each resident the right to make choices with respect to services and lifestyle;
5. To assure each resident's right to privacy;
6. To nurture the spirit and uniqueness of each resident;
7. To encourage families and friends participation in resident service planning and implementation; and
8. To provide opportunities for the assisted living facilities and programs to become a valuable community resource.

SUBCHAPTER 15. HOUSEKEEPING, SANITATION,
SAFETY AND MAINTENANCE**8:36-15.1 Provision of services**

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

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

8:36-15.2 Housekeeping

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

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

8:36-15.3 Resident environment

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

1. The facility and its contents, including all surfaces such as tables, floors, walls, beds and dressers, shall be clean to sight and touch and free of dirt and debris;
2. All rooms shall be ventilated to help prevent condensation, mold growth, and noxious odors;
3. All resident areas shall be free of noxious odors;
4. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Items which are broken or worn to the extent that they may cause discomfort or present danger to residents shall be repaired, replaced, or removed promptly.
5. All equipment and materials necessary for cleaning, disinfecting, sanitizing, and sterilizing (if applicable) shall be provided;
6. For central kitchens, thermometers which are accurate to within three degrees Fahrenheit shall be kept in a visible location within refrigerators, freezers, and store-rooms used for perishable and other items subject to deterioration. Temperatures shall be maintained in accordance with Chapter XII of the New Jersey Sanitary Code, N.J.A.C. 8:24-3.2;
7. Lighted and ventilated storage spaces shall be provided in the facility for the proper storage of residents' clothing, linens, drugs, food, cleaning and other supplies;
8. Articles in storage shall be elevated from the floor and away from walls (if moisture is present), ceilings, and air vents;
9. Unobstructed aisles shall be provided in storage areas;
10. Effective and safe controls shall be used to minimize and eliminate the presence of rodents, flies, roaches and other vermin in the facility;
11. When facility housekeeping services are provided, items such as bedpans, toilets and sinks shall be disinfected, using a process for disinfection established by the facility; and
12. Toilet tissue, soap, paper towels or air dryers, and waste receptacles shall be provided in each common area toilet facility at all times. A self-draining dish or device shall be provided for storage of bar soap, if bar soap is used. Resident's personal cloth towels may be used in residential units.

(b) The following safety conditions shall be met:

1. Non-carpeted floors in public areas shall be coated with slip-resistant floor finish, and any carpeting in public areas shall be kept clean and odor free and shall not be frayed, worn, torn, or buckled;
2. All equipment shall have unobstructed space provided for operation;
3. Pesticides shall be applied in accordance with N.J.A.C. 7:30;
4. All household and cleaning products used by facility staff shall be identified, labeled, and secured. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room. The telephone number of the poison control center shall be conspicuously posted in the facility;
5. Combustible materials shall be stored in accordance with fire safety requirements specified in the New Jersey Uniform Fire Code, N.J.A.C. 5:70;
6. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in accordance with fire safety requirements specified in the New Jersey Uniform Fire Code, N.J.A.C. 5:70;
7. If pets are allowed in the facility, the facility shall provide safeguards to prevent interference in the lives of residents. Guidelines for pet facilitated therapy may be requested from the Department of Health and Senior Services;
8. An electrician licensed in accordance with N.J.A.C. 13:31 shall annually inspect and provide a written statement that the electrical circuits and wiring in the facility are satisfactory and in safe condition;
 - i. The written statement shall include the date of inspection, and shall indicate that circuits are not overloaded, that all wiring and permanent fixtures are in safe condition, and that all portable electrical appliances, including lamps, are Underwriters Laboratory (U.L.) approved; and
 - ii. The written statement shall be forwarded annually to the Department, Division of Long Term Care Systems Development and Quality.

8:36-15.4 Waste removal

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

(b) If garbage compactors are used, they shall comply with all State and local codes.

8:36-15.5 Heating and air conditioning

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

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

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

3. During warm weather conditions, the temperature within the facility shall not exceed 82 degrees Fahrenheit, in accordance with N.J.A.C. 8:43-15.5(b).

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

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

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

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

8:36-15.6 Water supply

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

(b) The temperature of the hot water used for bathing and handwashing shall be at least 95 degrees and shall not exceed 110 degrees Fahrenheit (35 to 43 degrees Celsius).

(c) Equipment requiring drainage, such as ice machines, shall be drained to a sanitary connection, in accordance with State and local codes.

(d) The sewage disposal system shall be maintained in good repair and operated in compliance with State and local laws, rules, and ordinances.

8:36-15.7 Building and grounds maintenance

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

8:36-15.8 Laundry services

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

1. Storage and transportation of laundry;

2. Collection and storage of soiled laundry in a ventilated area;

3. Protection of clean laundry from contamination during processing, transporting, and storage; and

4. Handling and laundering of resident's clothing and personal items separately from other laundry.

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

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

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

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

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

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

SUBCHAPTER 16. INFECTION PREVENTION AND CONTROL SERVICES

8:36-16.1 Infection control program

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

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

8:36-16.2 Development of infection control policies and procedures

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

1. Guideline for Handwashing and Hospital Environmental Control, PB85-923404;
2. Prevention and Control of Tuberculosis in Facilities Providing Long-Term Care to the Elderly, and contained in MMWR 39(RR-10);
3. Prevention of Nosocomial Pneumonia, PB95-176970; and
4. OSHA Standards 29 CFR Bloodborne pathogens—1910.1030, as amended and supplemented.

(b) Centers for Disease Control publications can be obtained from:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161
(703) 605-6000
(800) 553-6847

or

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

(c) The facility shall document evidence of annual vaccination against influenza for each resident, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of vaccination, incorporated herein by reference, unless such vaccination is medically contraindicated or the resident has refused the vaccine, in accordance

with N.J.A.C. 8:36-4.1(a). Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year. Residents admitted after this date, during the flu season and up to February 1, shall, as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident.

(d) The facility shall document evidence of vaccination against pneumococcal disease for all residents who are 65 years of age or older, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of vaccination, incorporated herein by reference, unless such vaccination is medically contraindicated or the resident has refused offer of the vaccine in accordance with N.J.A.C. 8:36-4.1(a). The facility shall provide or arrange for pneumococcal vaccination of residents who have not received this immunization, prior to or on admission unless the resident refuses offer of the vaccine.

8:36-16.3 General infection control policies and procedures

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

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

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

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

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

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

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

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

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

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

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

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

8. Needles and syringes used by residents as part of home self-care shall be disposed of in accordance with N.J.S.A. 2A:170-25.17, and amendments thereto, and shall then be placed in a puncture-resistive container prior to disposal.

8:36-16.4 Employee health and resident policies and procedures for infection prevention and control

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

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

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

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

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

(c) The facility shall assure that all current employees who have not received the Mantoux test upon employment, except those exempted by (a) above, shall receive a test within three months of the effective date of this rule. The facility shall act on the results of tests of current employees in the same manner as prescribed in (a) above.

(d) 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.

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

(f) 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.

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

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

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

(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.

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

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

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

8:36-16.5 Staff education and training for infection prevention and control

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

8:36-16.6 Regulated medical waste

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

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

SUBCHAPTER 17. COMPREHENSIVE PERSONAL CARE HOMES

8:36-17.1 Eligibility

(a) Eligibility for conversion to a comprehensive personal care home shall be open exclusively to the following:

1. Freestanding residential health care facilities which were either licensed or certificate of need approved on or before December 20, 1993;
2. Residential health care beds located within a long term care facility that was licensed or certificate of need approved on or before December 20, 1993;
3. Licensed long term care beds; and
4. "Class C" boarding homes which were licensed by the Department of Community Affairs or under construction with approval from the Department of Community Affairs on or before December 20, 1993.

(b) Eligibility for the construction of new comprehensive personal care beds shall be open exclusively to the following:

1. Existing comprehensive personal care homes and existing facilities proposing conversion to a comprehensive personal care home that wish to add a limited number of beds. Within any five year period the new construction of no more than 20 beds as an addition to an existing or proposed comprehensive personal care home may be proposed in accordance with N.J.A.C. 8:36-2.

i. Eligible facilities that wish to add more than 20 beds shall apply for approval as an assisted living residence.

2. Hospice programs which have been Medicare-certified for at least 12 consecutive months. If approved the facility shall be constructed using the most current New Jersey Uniform Construction Code, N.J.A.C. 5:23-3, Use Group I-2, applicable at the time plans are approved.

i. The facility shall be occupied exclusively by persons who are eligible for hospice services.

(c) Only applications proposing either conversion of the eligible facility's entire compliment of licensed beds, or conversion of one or more separate and distinct units, wings, floors or other areas within the facility, shall receive consideration for approval to convert to comprehensive personal care.

8:36-17.2 Services provided to residents

Each comprehensive personal care home shall comply with the following: N.J.A.C. 8:36-1, 2, 3.8(c), 3.15, 3.16, and 4 through 16, (except N.J.A.C. 8:36-15.5(a)4).

8:36-17.3 Physical plant

(a) Each comprehensive personal care home shall, at a minimum:

1. Maintain substantial compliance with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-3, and the Uniform Fire Code, N.J.A.C. 5:70, Use Group I-2 of the subcode;

2. Maintain a comprehensive automatic fire-suppression system throughout the facility. Buildings presently in Use Group I-2 or buildings which comply with the construction requirements for an I-2 use may apply to the Department for an exemption to this requirement, provided they can document compliance with the New Jersey Uniform Fire Code, N.J.A.C. 5:70, with regard to construction type;

3. Maintain compliance with N.J.A.C. 5:23-7, regarding barrier-free accessibility, applicable at the time plans are approved.

4. Provide smoke detectors in all resident bedrooms, living rooms, and public areas; and

5. Provide corridor widths of at least 36 inches of clear space.

(b) Ventilation requirements for comprehensive personal care homes are as follows:

1. Means of ventilation shall be provided either by a window with an openable area or by mechanical ventilation for every habitable room. If mechanical ventilation is used, there shall be at least two air changes per hour.

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

3. All hallway corridors and passageways shall have a minimum of two outside air changes per hour.

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

(d) Residential units occupied by one person shall have a minimum of 80 square feet of clear and useable floor area. ("Clear and useable floor area" means space exclusive of closets, bathroom and, if provided, kitchenette.)

(e) In units occupied by more than one resident, there shall be a minimum of 50 additional square feet of clear floor area.

(f) No residential unit in a comprehensive personal care home may be occupied by more than two individuals. An exception may be considered in those instances where an eligible facility at the time of conversion to a comprehensive personal care home has more than two individuals in a unit. However, as attrition occurs, the number of individuals per residential unit shall be reduced to no more than two.

8:36-17.4 Other requirements

Each comprehensive personal care home administrator, manager, or their designee shall explain to all residents assisted living concepts, services to be provided based on these concepts, and all charges for these services.

8:36-17.5 Prohibition of resident discharge on conversion of facility

An eligible existing facility converting to a comprehensive personal care home shall not discharge any current resident solely because of the conversion. If compliance with this section results in more than two individuals per residential unit, the facility shall apply for the exception noted at N.J.A.C. 8:36-17.3(f).

8:36-17.6 Combination of license categories

Another licensed bed category may be located within a district and separate section of the comprehensive personal care home. The comprehensive personal care home shall comply fully with all licensure requirements applicable to each licensed component.

8:36-17.7 Supplemental Security Income recipients

(a) In converting to a comprehensive personal care home from a residential health care facility or Class C boarding home, the facility shall maintain its existing residents who are Supplemental Security Income (SSI) eligible recipients and those who are former psychiatric patients.

(b) On an ongoing, annual basis, at least five percent of each comprehensive personal care home's residents shall be SSI-eligible recipients, at least half of whom shall be former psychiatric patients. This percentage shall be computed based on the number of resident days per calendar year. The facility shall report this information to the Long Term Care Licensing and Certification Program by April 15 of each year for the prior calendar year.

1. Facilities approved for conversion to comprehensive personal care which maintain less than the five percent SSI-eligible requirement noted above shall have one year from the date of licensure as comprehensive personal care to comply.

2. In the event that the Supplemental Security Income (SSI) payment rate for Comprehensive Personal Care Homes is set at a level below the SSI payment rate for residential health care facilities, the five percent occupancy requirements for SSI-eligible residents noted above shall not take effect. However, comprehensive personal care homes shall maintain their existing residents who are Supplemental Security Income-eligible, as required above.

(c) Subsections (a) and (b) above shall not apply when a continuing care retirement community (CCRC), as defined at N.J.A.C. 8:36-1.3, contracts to provide assisted living services pursuant to a continuing care agreement. These subsections do apply, however, when a CCRC provides assisted living to a person who is not a party to a continuing care agreement.

SUBCHAPTER 18. ASSISTED LIVING PROGRAMS

8:36-18.1 Tenant/resident eligibility

(a) Participation in the services of an assisted living program shall be voluntary on the part of any tenant of any publicly subsidized housing.

(b) A tenant voluntarily receiving the services of an assisted living program shall be assessed according to the provisions of N.J.A.C. 8:36-7.1(a) through (g), except that paragraph (b)4 shall not apply.

(c) Neither the legal rights and responsibilities enjoyed by a tenant under law nor the legal requirements pertaining to publicly subsidized housing shall be abridged, diminished or abrogated by a resident's participation in the assisted living program.

8:36-18.2 Service provider requirements

(a) Assisted living programs shall provide their services exclusively in a licensed assisted living residence, comprehensive personal care home, and/or within publicly subsidized housing units. Housing units which are not publicly subsidized are eligible to apply for a certificate of need for an assisted living residence and, if approved, a license.

(b) Assisted living program providers which provide staffing, management or other services to licensed assisted living residences or comprehensive personal care homes shall do so in accordance with the licensing standards which are applicable to the particular facility. In such cases, the licensing standards for assisted living residences and comprehensive personal care homes shall take precedence over the standards for assisted living programs. The assisted living residence and/or the comprehensive personal care home shall establish and maintain written contracts detailing all policies, procedures, and services to be provided by the licensed facility and the licensed program.

(c) Assisted living program providers shall establish and maintain a written contract with each publicly subsidized housing unit to be served.

1. The contract shall stipulate that a tenant shall not be prohibited from participation in the assisted living program due to the location or physical characteristics of the unit in which the tenant resides.

2. The contract shall stipulate that tenants shall not be involuntarily moved from one unit to another within the building for the purpose of receiving the services of the assisted living program.

3. The contract shall include a written acknowledgment by the publicly subsidized housing building manager and owner that each has reviewed the provisions of N.J.A.C. 8:36 and will permit the assisted living program's operation in accordance with such provisions.

4. The contract shall state that there are policies and procedures for the publicly subsidized housing staff to notify the assisted living program of any substantial change in a resident's condition noticed by housing staff.

5. The contract shall state that there are policies and procedures which ensure the on-premises presence of at least one publicly subsidized housing staff or assisted living program provider staff 24 hours per day. This staff shall be responsible for contacting appropriate authorities, including the assisted living program, in the event of an emergency situation involving a resident or the building as a whole.

6. The assisted living program provider shall submit written documentation to the Department that each building for which it is contracting to provide services is a publicly subsidized housing building.

(d) The assisted living program provider shall submit to the Department a copy of the resident agreement/contract it shall utilize at each site at which it shall provide services. The agreement/contract shall include at least the following:

1. The services that will be provided;
2. The charges for services;
3. The circumstances under which services and charges will be revised, with at least 30 days prior written notice;
4. The circumstances and processes under which a resident will be discharged from the program in accordance with the provisions of N.J.A.C. 8:36-4.1(d) and (e); and
5. Resident rights and responsibilities.

8:36-18.3 Services provided to residents

(a) Each assisted living program shall comply with the applicable provisions in N.J.A.C. 8:36-1, 2, 4 through 9, 11, 13 and 14.

(b) Each assisted living program provider shall be capable of providing or arranging for the provision of assistance with personal care, and of nursing, pharmaceutical, dietary and social work services to meet the individual needs of each resident.

(c) The assisted living program provider shall be capable of providing or arranging for the provision of nursing services to maintain residents, including residents who require formal long-term care. However, a resident may be, but is not required to be, removed from program participation if it is documented in the health care plan that a higher level of care is required as demonstrated by one or more of the characteristics identified in N.J.A.C. 8:36-4.1(d)1 through 8.

(d) The assisted living program's service agreement with each resident shall clearly specify if the program will or will not continue to provide, or arrange for the provision of, services to residents with the characteristics described in N.J.A.C. 8:31-4.1(d)1 through 8, to what extent and, if applicable, at what additional cost.

(e) In the event that the assisted living program removes a resident from program participation as permitted by (c) above, it shall provide the resident with information to assist in obtaining the level of care required.

(f) Each assisted living program is authorized to provide "specialized long term care" services, as defined in N.J.A.C. 8:36-1.3, to residents as required.

8:36-18.4 Policy and procedure manual

A policy and procedure manual(s) for the organization and operation of the assisted living program shall be developed, implemented and reviewed in accordance with the provisions of N.J.A.C. 8:36-4.6(a)1, 2, 4 through 7, and (b). The manual(s) shall be available in all assisted living program sites, the assisted living program provider main office, and to representatives of the Department.

8:36-18.5 Resident transportation

(a) The assisted living program provider shall have written policies and procedures for arranging resident transportation to and from health care services provided outside of the program site, and shall provide reasonable plans for security and accountability for the resident and his or her personal possessions.

(b) The assisted living program provider shall develop a mechanism for the transfer of appropriate resident information to and from the providers of service, as required by individual residents and as specified in their service plans.

8:36-18.6 Notices

(a) The assisted living program provider and each program site shall conspicuously post a notice that the following information is available to residents and the public at the program site and at the assisted living program provider's main office during normal business hours:

1. All waivers from the provisions of this chapter granted by the Department;

2. A copy of the last annual licensure inspection survey report and the list of deficiencies from any valid complaint investigation during the past 12 months;
3. Policies and procedures regarding resident rights and responsibilities;
4. Business hours and telephone number of the assisted living program provider main office;
5. The toll-free hot line number of the Department; telephone numbers of county agencies dealing with senior service issues; and the telephone number of the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly; and
6. The names of, and a means to formally contact, the administration of the assisted living program provider.

8:36-18.7 Maintenance of records

(a) The assisted living program shall maintain an annual **listing of residents admitted and discharged**, including the destination of residents who are discharged to a health care facility.

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

8:36-18.8 Notification requirements

(a) When known, and with the resident's consent, the resident's family, guardian, and/or designated responsible person or designated agency shall be notified promptly in the event of the following:

1. The resident acquires an acute illness requiring medical care;
2. Any serious accident, criminal act or incident occurs which involves the resident and results in serious harm or injury or results in the resident's arrest or detention. The Department's Long Term Care Licensing and Certification Program shall also be notified in writing of these events;
3. The resident is discharged from the program; or
4. The resident expires. The assisted living program shall have a written procedure established with the program site to ensure that dual notifications of death do not occur.

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

Amended by R.2006 d.331, effective September 18, 2006.
See: 37 N.J.R. 4150(a), 38 N.J.R. 3896(a).
In (b), inserted the last sentence.

8:36-18.9 Administration and staffing

(a) The administrator of an assisted living program shall:

1. Hold a current New Jersey license as a nursing home administrator, or be eligible to take the New Jersey Nursing Home Administrator's Licensing Examination, according to the Department of Health and Senior Services requirements contained in N.J.A.C. 8:34; or
 - i. Have successfully completed an assisted living training course which covers the concepts and rules of assisted living as outlined in this chapter, given by a person(s) qualified to train assisted living administrators, in accordance with N.J.A.C. 8:36-1.5(a)4; and
 - ii. Have successfully completed a Department competency examination, which covers the concepts and rules delineated in this chapter; and
2. Comply with the requirements at N.J.A.C. 8:36-1.5(a)1 and 2.

(b) The assisted living program provider shall ensure that all personnel providing health care services are assigned duties based on their education, training, competencies and pursuant to all laws, rules, and regulations applicable to State professional licensing and certification boards and agencies.

(c) Adequate staffing shall be provided based on all assessed needs of residents.

8:36-18.10 Financial arrangements

(a) If the assisted living program offers financial management services, it shall develop written policies and procedures for such services, including any charges for such services.

(b) The assisted living program shall:

1. Inform residents of any and all fees for services and charges for supplies routinely provided by the program. Residents and/or their family, guardian or designated community agency shall be given at least 30 days prior written notice of any change in fees for services or charges for supplies routinely provided. At the resident's request, this information shall be provided to the resident's family, guardian or designated community agency;
2. Maintain a written record of all financial arrangements with the resident and/or his or her family, guardian or designated community agency, with copies furnished to the resident; and
3. Provide the resident with information regarding financial assistance available from third party payors and/or other payors and referral systems for resident financial assistance.

8:36-18.11 Resident assessments, service plans, health care plans and health care services

(a) Each resident living in publicly subsidized housing who elects to participate in an assisted living program shall receive an initial assessment pursuant to N.J.A.C. 8:36-7.1(a).

(b) The assisted living program shall comply with N.J.A.C. 8:36-7.1(b)1 through 3 and (e) through (h); 7.2; 7.3; 7.4(a) through (h); and 7.5.

8:36-18.12 Dining services and meal preparation assistance

(a) The assisted living program shall make available dining services and/or meal preparation assistance to meet the daily nutritional needs of residents.

(b) The assisted living program shall have a mechanism to assist residents with shopping and/or preparation of meals in accordance with their needs and plans of care.

(c) The assisted living program shall comply with N.J.A.C. 8:36-8.3(a)1 and 2, 8.4(c)10 and 12, and 8.5.

(d) The assisted living program shall ensure that congregate kitchens in buildings in which meals are prepared for assisted living program residents comply with the provisions of Chapter XII of the New Jersey Sanitary Code, Retail Food Establishments, at N.J.A.C. 8:24.

(e) The assisted living program shall ensure that a current diet manual shall be available in each building in which the assisted living program provides services.

(f) The assisted living program shall ensure that meals are planned, prepared and served in accordance with, but not limited to, the following:

1. The nutritional needs of residents;
2. In congregate kitchens in buildings where meals are prepared for assisted living program residents, written dated menus shall be planned in advance. The same menu shall not be used more than once in any continuous seven day period. Menus shall be posted in a conspicuous place and a copy of the menu shall be provided to each resident. Menus, with changes or substitutes, shall be kept on file for at least 30 days;
3. Diets served shall be consistent with the diet manual, the dietitian's instructions, if applicable, and, if necessary for special diets, shall be served in accordance with physicians' orders; and
4. Where indicated in the health care plan nutrients and calories shall be provided for each resident, based upon current recommended dining allowances of the Food and Nutrition Board of the National Academy of Services, National Research Council, adjusted for age, sex, weight, physical activity, and therapeutic needs of the resident.

8:36-18.13 Pharmaceutical services

(a) The assisted living program shall assist residents to obtain pharmaceutical services in accordance with physician's orders and with each resident's health care or resident service plan.

(b) The assisted living program shall comply with N.J.A.C. 8:36-9.2(a)1 and 2, 9.3(a), (b), (c)1 through 3, and (d) through (e), and 9.4(a)1 through 5.

(c) Assisted living program staff shall report drug errors and adverse drug reactions immediately to the assisted living program registered professional nurse and shall document the incident in the resident's record.

(d) For those residents who do not self-administer medications, the assisted living program shall provide an appropriate and safe medication storage area, either in a common area or in the resident's housing unit, for the storage of medication.

1. The common storage area shall be kept locked when not in use.
2. The common storage area shall be used only for the storage of medications and medical supplies.
3. The key to the common storage area shall be kept on the person of the assisted living program employee on duty.
4. Each resident's medications shall be kept separated within the common storage area, with the exception of large volume medications which shall be labeled but may be stored together in the common storage area.
5. Medications shall be stored in accordance with manufacturer's instructions and with U.S.P. (United States Pharmacopoeia) requirements at USP 23, NF18, incorporated herein by reference, published by the U.S. Pharmacopoeia Convention, 12601 Twinbrook Parkway, Rockville, MD 20852.
6. All medications shall be kept in their original containers and shall be properly labeled and identified.

8:36-18.14 Resident activities

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

(b) The assisted living program shall provide assistance in obtaining transportation services for residents in accordance with N.J.A.C. 8:36-4.7(b).

8:36-18.15 Resident records

(a) The assisted living program shall comply with N.J.A.C. 8:36-13.1 through 13.6.

(b) Whenever a resident dies, the assisted living program administrator or his or her designee shall document the date, cause of death, and location, if obtainable, in the resident's record and shall notify the resident's physician.

8:36-18.16 Resident rights and responsibilities

To assure the highest quality of services, each assisted living program shall distribute and implement a statement of resident rights and responsibilities consistent with the principles of assisted living contained in N.J.A.C. 8:36-14.1(a)1 through 7.

8:36-18.17 Reportable events

(a) The assisted living program's contract or agreement with a publicly subsidized housing program site shall include procedures for the site to notify the assisted living program of all building and physical plant emergencies such as, but not limited to, interruption for three or more hours of basic services such as heat, light, power, water, telephone and site staff.

(b) The assisted living program shall notify the Department of Health and Senior Services immediately by telephone at (609) 633-9042 or (609) 392-2020 after business hours, followed within 72 hours by written confirmation, of the following:

1. Any interruption of basic building services, as noted in (a) above;
2. Any actual or expected interruption or cessation in assisted living program operations and services;
3. Termination of employment of the assisted living program administrator and the name and qualifications of his or her replacement;
4. Occurrence of all reportable infections and disease as specified in Chapter II of the State Sanitary Code Communicable Diseases, N.J.A.C. 8:57-1.1 through 12, among residents and, where known, at the program site;

5. Any deaths or accidents related to the program's services or activities and all residents who are determined to be missing, and all deaths among residents resulting from accidents in the publicly subsidized housing building or related to other building services. Written confirmation of this shall contain information about injuries to residents and/or program personnel, disruption of program and/or building services and extent of damages;

6. Where known all alleged or suspected crimes committed by or against residents, which have also been reported at the time of occurrence to the local police department; and

7. All suspected cases of abuse or exploitation of residents which have been reported to the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly.

8:36-18.18 Other requirements

(a) The assisted living program shall have a mechanism to provide information and referrals to other levels of care, as required by a resident and documented in the health care plan. All necessary resident information shall also be transferred in accordance with the program's confidentiality requirements.

(b) Records and information regarding the individual resident shall be considered confidential and the resident shall have the opportunity to examine such records, in accordance with facility or program policies. The written consent of the resident shall be obtained for release of his or her records to any individual outside the facility or program, except in the case of the resident's transfer to another health care facility, or as required by law, third-party payor, or authorized government agencies.

(c) The assisted living program and each publicly subsidized housing unit in which it provides services shall develop written policies and procedures to assure substantial compliance with N.J.A.C. 8:36-12, 15 and 16.