CHAPTER N.J.A.C. 8:43F
STANDARDS FOR LICENSURE OF ADULT AND PEDIATRIC DAY HEALTH SERVICES FACILITIES

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N.J.A.C. 8:43E

GENERAL LICENSURE PROCEDURES AND ENFORCEMENT OF LICENSURE REGULATIONS

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New Jersey Department of Health and Senior Services
Division of Health Facilities Evaluation and Licensing
Office of Certificate of Need and Healthcare Facility Licensure
P.O. Box 358
Trenton, New Jersey 08625-0358
Telephone: (609) 292-5960
FAX: (609) 292-3780

To make a complaint about New Jersey licensed adult or pediatric day health services facility, call 1-800-792-9770 (toll-free hotline)

Note:

This is an unofficial version of the rules. The official rules can by found in the *New Jersey Administrative Code*, as published by LexisNexis, at N.J.A.C. 8:43F and 8:43E.

CHAPTER 43F

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CHAPTER 43F

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SUBCHAPTER 1. GENERAL PROVISIONS

8:43F-1.1 Scope and purpose

The rules in this chapter pertain to all facilities that provide adult or pediatric day health services, regardless of the source of payment. These rules constitute the basis for the licensure of adult and pediatric day health services facilities by the New Jersey Department of Health and Senior Services. The Medicaid rules for adult and pediatric day health services are contained in N.J.A.C. 8:86. Adult and pediatric day health services facilities provide specialized, integrated care to participants in order to assist them in reaching the functional levels of which they are capable, as well as to protect their health and safety. The purpose of this chapter is to establish minimum rules to which an adult or pediatric day health service facility must adhere to be licensed to operate in New Jersey. An adult day or pediatric day health services facility that is a Medicaid provider shall also comply with the regulations at N.J.A.C. 8:86.

8:43F-1.2 Definitions

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

“Administration-adult day health services facility” means an identifiable administrative unit within the adult day health services facility headed by a director/administrator, responsible for the overall conduct of all adult day health service program activities.

"Activities of daily living (ADL)" means the functions or tasks for self-care, which are performed either independently or with supervision or assistance. Activities of daily living include dressing, bathing, toilet use, transfer, locomotion, bed mobility and eating. In pediatric day health care facilities, ADL may include developmental stimulation, diaper changing and toilet training.

"Acuity" means the severity of the medical or healthcare needs of a participant.

"Adult day health services facility" means a facility or a distinct part of a facility which is licensed by the New Jersey Department of Health and Senior Services to provide preventive, diagnostic, therapeutic, and rehabilitative services under medical and nursing supervision to meet the needs of functionally impaired adult participants who are not related to the members of the governing authority by marriage, blood, or adoption. Adult day health services facilities provide services to participants for a period of time, which does not exceed 12 hours during any calendar day.

"Adult day health services participant" means a person who participates in a program of services from a licensed adult day health services facility.

"Adult Day Health Services Program for Victims of Alzheimer's Disease and Related Disorders" means a program administered by the New Jersey Department of Health and Senior Services that provides services to individuals who have been diagnosed by a physician as having Alzheimer's disease or a related disorder such as Huntington's disease, Parkinson's disease with dementia, Creutzfeldt-Jakob disease, or Pick's disease.

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

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

"Bylaws" means a set of rules adopted by the facility for governing its operation. A charter, articles of incorporation, and/or a statement of policies and objectives are acceptable as equivalents.

"Clinical note" means an event-triggered note, written, signed, and dated, when significant physical, emotional, mental, behavioral or social changes occur to the participant, when problems arise and/or services are provided on an intensive basis. The clinical note shall include a description of signs, symptoms, treatments, services and the participant's reactions. Clinical notes are written into the participant's medical record the day service is provided.

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

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

"Conspicuously posted" means placed at a location within the facility accessible to and seen by participants and the public.

"Contamination" means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

"Controlled Dangerous Substances Acts" means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1970, N.J.S.A. 24:21-1 et seq.

"Daily census" means the number of participant equivalents who, during any calendar day, receive services in the facility.

"Deficiency" means a determination by the New Jersey Department of Health and Senior Services that a facility is not in compliance with an applicable State licensing requirement and/or Federal requirement.

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

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

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

"Division" means the Division of Long Term Care Systems within the New Jersey Department of Health and Senior Services.

"Documented" means written, signed, and dated.

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

"Epidemic" means the occurrence in a facility of one or more cases of an illness in excess of normal expectancy for that illness, derived from a common or propagated source.

"Family" means individuals who are related by blood, marriage, or commitment.

"Full-time" means relating to a time period of not less than 35 hours, established by the facility as a full working week, as defined and specified in the facility's policies and procedures.

"Full-time equivalent," for the purposes of this chapter, means any combination of staff who work part-time on any given day and together provide the same number of working hours as one full-time staff person.

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

"Interdisciplinary team" means those individuals, representing different professions, disciplines, and services, who work together to provide an integrated program of care to the participant.

"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.

"Legally authorized representative" means an individual or entity who is empowered by law, judicial order, power of attorney or otherwise to make decisions on behalf of the participant, and includes a participant's spouse or immediate next of kin.

"License holder" means the individual or entity that has legal ownership and responsibility for all operations and management of the facility.

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

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

"Medical consultant" means a facility's designated physician, who is licensed to practice medicine in the State of New Jersey, and who is responsible for assisting in and reviewing the provision of medical services to the participants of an adult or a pediatric day health services facility, in accordance with N.J.A.C. 8:43F-8. In a pediatric day health services facility, the medical consultant shall also be certified by the American Board of Pediatrics.

"Medical record" means all records, including radiological films, in the facility pertaining to the participant and maintained in accordance with N.J.A.C. 8:43F-15.1(c).

"Medical record practitioner" means an individual who is certified or eligible for certification as a registered record administrator (RRA) or an accredited record technician (ART) by the American Health Information Management Association (American Health Information Management Association, 919 N. Michigan Ave., Suite 1400, Chicago, Il 60611); or is a graduate of a program in medical record science accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the Council on Education of the American Health Information Management Association (American Health Information Management Association, 919 N. Michigan Ave, Suite 1400 Chicago, IL 60611).

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

"Medication administration" means a procedure in which a prescribed medication is given to a participant by an authorized person in accordance with all laws and rules governing such procedures. The complete procedure of administration includes removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the participant, seeing that the participant takes it, and recording the required information, including the method of administration.

"Monitor" means to observe, watch, or check.

"Nosocomial infection" means an infection acquired by a participant while in the facility.

"Occupational therapist" means an individual who is so licensed, or eligible for licensure, by the New Jersey Occupational Therapy Advisory Council in accordance with N.J.S.A. 45:9-37.51.

"Participant equivalent," for the purposes of this chapter, means a combination of two or more participants who each attend an adult day health services facility for less than five hours on any given day, and who together receive a combined total of five hours of services on that day. For example, two participants each receiving 2.5 hours of service constitute one participant equivalent.

"Pediatric day health services facility" means a facility which provides additional services in order to provide for the needs of technologically dependent or medically unstable children and conforms to the rules of this chapter and N.J.A.C. 10:122, the Manual of Requirements for Child Care Centers.

"Pediatric day health services participant" means a child who is six years of age or younger, who is technology dependent and/or medically unstable as defined in N.J.A.C. 8:86-1.5(g), and who requires continuous nursing services available in a pediatric day health services facility.

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

"Physical therapist" means an individual who is so licensed by the New Jersey State Board of Physical Therapy Examiners, pursuant to N.J.S.A. 45:9-37.11 et seq.

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

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

"Prescriber" means an individual who is authorized to write prescriptions in accordance with Federal and State laws.

"Prior authorization" means the approval process of eligible Medicaid participants by the Department prior to the provision of adult or pediatric day health services in accordance with N.J.A.C. 8:86-1.5 and N.J.A.C. 8:43F-2.8.

"Progress note" means a written, signed, and dated notation or, if a computerized medical records system is used, an authenticated electronic notation, summarizing information about care provided and the participant's response to it.

"Registered professional nurse" (RN) means a person who is so licensed by the New Jersey State Board of Nursing, pursuant to N.J.S.A. 45:11-26.

"Respite" or "respite care" means the provision of temporary, short-term care for, or the supervision of, an eligible person on behalf of the caregiver in emergencies or on an intermittent basis to relieve the daily stress and demands of caring for a functionally impaired adult. Respite may be provided hourly, daily, overnight, or on weekends and may be provided by paid or volunteer staff. The term includes, but is not limited to, companion or sitter services, homemaker and personal care services, assisted living services, adult day health services, short-term inpatient care in a licensed nursing facility, residential health care facility or overnight camp program, private duty nursing and peer support and training for care givers.

"Restraint" means a physical device or chemical (drug) used to limit, restrict, or control participants' movements.

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

"Signature" means, at a minimum, the first initial and full surname and title (for example, R.N., A.P.N., P.A., 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.

"Social worker" means an individual who is certified or licensed by the New Jersey State Board of Social Work Examiners, pursuant to N.J.S.A. 45:15BB-1 et seq.

"Speech-language pathologist" means an individual who holds a current New Jersey license issued by the Audiology and Speech-Language Pathology Advisory Committee, Division of Consumer Affairs of the New Jersey Department of Law and Public Safety.

"Staff education plan" means a written plan that describes a coordinated program for staff education for each service, including in-service 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 the employee has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"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.

"Transportation services" means the conveying of participants who require transportation between the facility and the participant's home, and between the facility and off-site physical or occupational therapy or speech-language pathology services, either directly or through contractual arrangements, in accordance with N.J.A.C. 8:43F-17 and 8:86-1.4.

"Unlicensed assistive personnel" means unlicensed individuals (formerly known as "ancillary nursing personnel") to whom selective nursing tasks are delegated.

"Volunteer" means a person who gives his or her time and services regularly without remuneration.

SUBCHAPTER 2.
LICENSURE PROCEDURES

8:43F-2.1 Licensure application procedures and requirements

(a) A person, organization, or corporation desiring to operate an adult or pediatric day health services facility, or to expand or relocate an existing facility, shall submit an application for a license on forms prescribed by the Department. Such forms may be obtained from:

Director
Office of Certificate of Need and Healthcare Facility Licensure
Division of Health Facilities Evaluation and Licensing
New Jersey Department of Health and Senior Services
PO Box 358
Trenton, NJ 08625-0358

1. The Department shall charge a nonrefundable fee of $ 1,500 plus $ 10.00 per slot for the filing of an application for licensure and $ 1,500 plus $ 10.00 per slot for each annual renewal thereof.

2. The Department shall charge a nonrefundable fee of $ 1,500 plus $ 10.00 per slot for the filing of an application to add services or program slots to an existing adult or pediatric day health services facility.

3. The Department shall charge a nonrefundable fee of $ 375.00 for the filing of an application to reduce services at an existing adult or pediatric day health services facility.

4. The Department shall charge a nonrefundable fee of $ 375.00 for the filing of an application for the relocation of an adult or pediatric day health services facility.

5. The Department shall charge a nonrefundable fee of $ 1,500 for the filing of an application for the transfer of ownership of an adult or pediatric day health services facility.

6. Each adult and pediatric day services facility shall be assessed a biennial inspection fee of $ 450.00. This fee shall be assessed in the year the facility will be inspected along with the annual licensure fee for that year. The fee shall be added to the initial licensure fee for new facilities. Failure to pay the inspection fee shall result in non renewal of the license for existing facilities and the refusal to issue an initial license for new facilities. This fee shall be imposed only every other year even if inspections occur more frequently and only for the

inspection required to either issue an initial license or to renew an existing license.

7. Approval of a project proposal shall be contingent upon a review of the applicant's track record, in accordance with N.J.A.C. 8:43E-5.1(b), and compliance with this chapter. All applicants shall demonstrate that they have the capacity to operate an adult or pediatric day health services facility in accordance with the rules in this chapter. An application for a license or change in service shall be denied if that 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 the health care facility will be operated in accordance with the standards required by these rules.

8. The Department shall not issue or continue licensure for the operation of a pediatric day health services facility unless, in accordance with N.J.S.A. 30:5B-6.10 et seq., any current or prospective staff member, administrator, or individual seeking employment at or ownership of a pediatric day health services facility, including volunteer staff, shall have obtained clearance from the Department's Criminal Background Investigation Unit, prior to owning, operating, administering, volunteering or working for a pediatric day health services facility.

i. In accordance with the provisions of N.J.S.A. 30:5B-6.14, no person shall be issued clearance to own, operate, administer, volunteer or work for a pediatric day health services facility who has been convicted of any of the following crimes and offenses:

(1) A crime against a child, including endangering the welfare of a child and child pornography, pursuant to N.J.S.A. 2C:24-4;

(2) Child molestation as set forth in N.J.S.A. 2C:14-1 et seq.;

(3) Abuse, abandonment or neglect of a child, pursuant to N.J.S.A. 9:6-3;

(4) Endangering the welfare of an incompetent person, pursuant to N.J.S.A. 2C:24-7;

(5) Sexual assault, criminal sexual contact or lewdness, pursuant to N.J.S.A. 2C:14-2 through 2C:14-4, inclusive;

(6) Murder pursuant to N.J.S.A. 2C:11-3 or manslaughter, pursuant to N.J.S.A. 2C:11-4;

(7) Stalking, pursuant to N.J.S.A. 2C:12-10;

(8) Kidnapping and related offenses, including criminal restraint, false imprisonment, interference with custody, criminal coercion or enticing a child into a motor vehicle, structure or isolated area, in violation of any crime enumerated in Chapter 13 of Title 2C of the Revised Statutes of New Jersey (N.J.S.A. 2C:13-1 et seq.);

(9) Arson, pursuant to N.J.S.A. 2C:17-1, or causing or risking widespread injury or damage which would constitute a crime of the second degree or higher, pursuant to N.J.S.A. 2C:17-2;

(10) Terroristic threats, pursuant to N.J.S.A. 2C:12-3; and

(11) An attempt or conspiracy to commit any of the crimes or offenses listed in (a)8i(1) through (10) above.

ii. For convictions of crimes and offenses other than those listed in (a)8i(1) through (11) above, an applicant to own, operate, administer, work or volunteer to work for a pediatric day health services facility shall be eligible for employment if the Department determines that the applicant has demonstrated clear and convincing evidence of the applicant's rehabilitation. In determining whether an applicant has demonstrated rehabilitation, the Department shall consider:

(1) The nature and responsibility of the position that the applicant would hold or currently holds at the facility, as the case may be;

(2) The nature and seriousness of the offense;

(3) The circumstances under which the offense occurred;

(4) The date of the offense;

(5) The age of the person when the offense was committed;

(6) Whether the offense was an isolated or repeat incident;

(7) Any social conditions which may have contributed to the offense; and

(8) Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision.

iii. For convictions occurring in any other state or jurisdiction, conduct which, if committed in New Jersey, would constitute any of the crimes or offenses described in (a)8i(1) through (11), above.

iv. In accordance with the provisions of the Administrative Procedures 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, any individual disqualified from owning, operating, administering, volunteering or working for a pediatric day health services facility pursuant to (a)8i above shall be given an opportunity to challenge the accuracy of the disqualifying criminal history record prior to being permanently disqualified from participation.

v. An individual disqualified from owning, operating, administering, volunteering or working for a pediatric day health services facility pursuant to (a)8ii above shall be given the opportunity to challenge the accuracy of the disqualifying criminal history record or the denial of a determination of rehabilitation pursuant to (a)8ii(1) through (8) above prior to being permanently disqualified from participation.

9. The Department shall not issue or continue licensure for the operation of an adult day health services facility unless the current or prospective owner(s) and administrator(s) have obtained prior clearance from the Department's Criminal Background Investigation Unit. The Department shall not issue clearance to any current or prospective owner or administrator who has been convicted of a crime or offense relating adversely to the person's ability to provide care, including, but not limited to, homicide, assault kidnapping, sexual offenses, robbery, crimes against the family, children or incompetents, and financial crimes, except when the current or prospective owner or administrator with a criminal history has demonstrated his or her rehabilitation in order to qualify as an owner or administrator in accordance with the standards set forth in the Rehabilitated Convicted Offender Act, N.J.S.A. 2A:168A-1 et seq.

i. In accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1, any individual disqualified from owning, operating, or administering an adult day health services facility shall be given an opportunity to challenge the accuracy of the disqualifying criminal history record prior to being permanently disqualified from participation.

8:43F-2.2 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq. and the rules in this chapter, waive provisions of these rules if, in his or her opinion, such waiver would not render the premises, equipment, personnel, finances, rules and bylaws, and standards of health care at a facility unfit or inadequate.

1. A facility seeking a waiver of these rules shall apply in writing to the Director of the Licensing and Certification Program of the Department.

2. A written request for a waiver shall include the following:

i. The specific rule or part of the rule for which a waiver is requested;

ii. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon adherence;

iii. An alternative proposal which would ensure the care and safety of participants; and

iv. Documentation to support the request for a waiver.

3. The Department reserves the right to request additional information before processing a request for waiver.

8:43F-2.3 Newly constructed or expanded facilities

(a) 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 Unit
Division of Codes and Standards
New Jersey Department of Community Affairs
PO Box 815
Trenton, NJ 08625-0815
609-633-8151

1. Any existing or proposed adult or pediatric day health services facility with a construction program shall submit plans to the Health Care Plan Review Unit, Division of Codes and Standards, New Jersey Department of Community Affairs, PO Box 815, Trenton, NJ 08625-0815, for review and approval prior to the initiation of construction.

2. A newly constructed, renovated or expanded facility may not be occupied without a final approval letter from the Health Care Plan Review Unit of the New Jersey Department of Community Affairs.

8:43F-2.4 Preliminary conference

When a newly constructed facility is approximately 80 percent complete or when an applicant's estimated date of opening is within 30 days, the applicant shall schedule a preliminary conference with the Long Term Care Licensing Program for review of the conditions for licensure and operation.

8:43F-2.5 Surveys

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Department shall be conducted at the Department's discretion to determine if the facility adheres to the rules in this chapter.

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

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

3. Professional personnel shall be employed in accordance with the staffing requirements in this chapter.

(b) No facility shall admit participants to the facility until the Long Term Care Licensing Program of the Department issues a license to operate the facility.

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

(d) The Department shall conduct an on-going evaluation of the day health services facility by on-site visits. The Department shall inform the facility, in writing, of the results of the on-site evaluation.

(e) Department staff may request a plan of correction if the facility is evaluated as providing sub-standard services and/or inadequate documentation of these services. The plan of correction shall address deficiencies noted by the Department staff, and shall be submitted to the Department by the facility by the requested date.

1. If a follow-up on-site visit reveals the plan of correction is not being implemented, the Department shall take enforcement actions in accordance with N.J.A.C. 8:43E, General Licensure Procedures and Enforcement of Licensure Regulations.

8:43F-2.6 License

(a) The Department shall issue a license to the operator of the facility when all of the following conditions are met:

1. A project proposal has been submitted by the applicant and approved by the Long Term Care Licensing Program, in writing;

i. The project proposal shall specify if there will be more than one shift of operation and shall provide the hours of operation for each shift. Any change in the hours of operation shall be reported in writing to the Long Term Care Licensing Program; and

ii. The project proposal shall include scaled plans of the proposed facility, for preliminary review;

2. A completed licensure application and the appropriate fees have been submitted to the Department;

3. A preliminary conference for review of conditions for licensure and operation has taken place between representatives of the facility and staff of the Division of Long Term Care Systems;

4. A review of the applicant's track record has resulted in a determination that the track record is acceptable in accordance with N.J.A.C. 8:43E-5.1;

5. In accordance with N.J.A.C. 8:43F-2.1(a)9, the owners and administrators of prospective adult day health services facilities shall have clearance from the Criminal Background Investigation Unit prior to operating the adult day health services facilities;

6. In accordance with N.J.A.C. 8:43F-2.1(a)8, the owners, administrators, volunteers and employees of pediatric day health services facilities shall have clearance from the Criminal Background Investigation Unit prior to operating a pediatric day health services facility;

7. The applicant has submitted the following additional documents to the Long Term Care Licensing Program:

i. A copy of the certificate of occupancy from the local authority;

ii. Documentation of a satisfactory fire safety inspection by the local fire authority; and

iii. An approval letter from the New Jersey Department of Community Affairs for any renovation or construction of the building, if applicable; and

8. A survey by Department staff indicates that the facility meets the standards set forth in this chapter and N.J.S.A. 26:2H-1 et seq.

(b) A license shall be granted for a period of one year.

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

(d) The license shall not be assignable or transferable and shall be immediately void if the facility ceases to operate, if the facility's ownership changes, or if the facility is relocated to a different site.

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

(f) The license may not be renewed if local rules, regulations, and/or requirements are not met.

(g) A facility shall not exceed its licensed capacity.

8:43F-2.7 Surrender of license

The facility shall notify each participant, the participant's physician, advanced practice nurse, or physician assistant, 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 within seven working days after the voluntary surrender, revocation, non-renewal, or suspension of license.

8:43F-2.8 Action against a license

Pursuant to N.J.S.A. 26:2H-1 et seq., the Commissioner or his or her designee may impose all enforcement actions permitted under N.J.A.C. 8:43E for violations of N.J.A.C. 8:43F or N.J.A.C. 8:86 or other laws. Enforcement actions include civil monetary penalty, curtailment of admissions, appointment of a receiver, revocation of a license, order to cease and desist operation of an unlicensed health care facility, prior authorization, and other remedies for violations of statutes as provided by State or Federal law.

8:43F-2.9 Hearings

(a) If the Department proposes to revoke, deny, or refuse to renew a license, or to assess a monetary penalty pursuant to N.J.A.C. 8:43E, 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.

8:43F-2.10 Ownership

The license holder shall have responsibility for the management, operation, and financial viability of the facility.

8:43F-2.11 Disclosure of ownership

(a) The ownership of the management and operation of the facility and the ownership of the property on which it is located shall be disclosed to the Department. Proof of this ownership shall be available in the facility.

(b) No facility shall be owned or operated by any individual who does not receive clearance from the Criminal Background Investigation Unit in accordance with N.J.A.C. 8:43F-2.1(a)8 or 9, or who has a history of continuing or serious violations of N.J.A.C. 8:43F or N.J.A.C. 8:86 or other statutory requirements.

8:43F-2.12 Transfer of ownership

(a) 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 at least 30 days prior to the change.

(b) Prior to transferring ownership of a facility, the prospective new owner shall submit an application to the Long Term Care Licensing and Certification Program. The application shall include the following information:

1. A cover letter stating the applicant's intent to purchase the facility, and identification of the facility by name, address, county, and licensed participant capacity (number of licensed slots);

2. A description of the proposed transaction, including identification of the current owners of the facility; identification of 100 percent of the proposed new owners, including the names and addresses of all principals (that is, individuals and/or entities with a 10 percent or more interest); and, if applicable, a copy of an organizational chart, including parent corporations and wholly owned subsidiaries;

3. A copy of the agreement of sale and, if applicable, a copy of any lease and/or management agreement; and

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

(c) The review of an application for a transfer of ownership shall include an evaluation of the applicant's track record, in accordance with N.J.A.C. 8:33-4.10 and 8:43E-5.1, and clearance from the Department's Criminal Background Investigation Unit.

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

(e) After the transaction has been completed, the applicant shall submit the following documents to the Long Term Care Licensing and Certification Program:

1. Completed licensure application forms and the annual licensure fee;

2. A notarized letter stating the date on which the transaction occurred; and

3. A copy of a certificate of continuing occupancy from the local township, or a letter from the township verifying a policy of not issuing any such document for changes of ownership.

(f) A license shall not be issued to the new owner until the applicant has submitted the items under (e)1 through 3 above.

(g) For Medicaid Provider Enrollment, the new owner shall contact Unisys for an application for Medicaid participation at (609) 588-6036 or access the application on the Internet at www.njmmis.com.

SUBCHAPTER 3.
ADMINISTRATION

8:43F-3.1 Appointment and responsibilities of the administrator

(a) The license holder shall appoint an administrator who is a full-time employee of the facility. The administrator, or an alternate who shall be designated in writing to act in the absence of the administrator, shall be available on the premises of the facility during the hours when participant care services are being provided.

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

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

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

3. Participating in the quality improvement program for participant care and staff performance;

4. Ensuring that all personnel are assigned duties based upon their education, training, competencies, and job descriptions;

5. Ensuring the provision of staff orientation, staff education, and ongoing staff training in accordance with N.J.A.C. 8:43F-6.3;

6. Establishing and maintaining liaison relationships and communication between facility staff and services providers and with participants and their caregivers; and

7. Verifying that each Medicaid-eligible participant is eligible to receive services available at the adult day health services facility or the pediatric day health services facility prior to the participant's entry into the program. For the purposes of this section, the administrator shall be entitled to rely on any prior authorization performed by the Department for the participant in accordance with N.J.A.C. 8:86.

8:43F-3.2 Qualifications of the administrator of the adult day health services facility

(a) The administrator of an adult day health services facility shall:

1. Have a master's degree from a college or university approved by a state department of education and at least one year of full-time administrative or supervisory experience in a licensed health care facility;

2. Have a baccalaureate degree from an approved college or university and three years of full-time experience in a licensed health care facility, one year of which shall have included administrative or supervisory experience; or

3. Be a qualified health professional licensed by the State of New Jersey, such as a nursing home administrator, physician, social worker, licensed physical therapist, registered professional nurse, occupational therapist, certified assisted living administrator or speech-language pathologist with at least one year of full-time administrative or supervisory experience in a licensed health care facility.

(b) In addition to meeting the criteria in (a) above, the administrator of an adult day health services facility serving adults shall be experienced in the care of the elderly and disabled and knowledgeable regarding their physical, social and medical health needs.

8:43F-3.3 Administrative policies and procedures

(a) If a health care facility licensed by the Department provides adult day health services in addition to other health care services, the facility shall adhere to the rules in this chapter and to the rules for licensure of facilities providing the other health care services.

(b) Except in an emergency, facilities shall not provide program services to individual participants for more than 12 consecutive hours during any calendar day of the year without prior written approval by the Department.

(c) The facility shall adhere to applicable Federal, State, and local laws, rules, regulations, and requirements.

(d) A policy and procedure manual(s) for the organization and operation of the facility 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 to representatives of the Department at all times. The manual(s) shall include at least the following:

1. A written statement of the program's philosophy and objectives and the services provided by the facility;

2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration and participant care services of the facility;

3. A description of mechanisms for referral of participants to other health care providers, in order to provide a continuum of care for the participant;

4. A description of the quality improvement program for participant care and staff performance;

5. Specification of the hours and days on which services are provided;

6. Policies and procedures for the maintenance of personnel records for each employee, including, at a minimum, the employee's name, previous employment, educational background, credentials, license number with effective date and date of expiration (if applicable), certification (if applicable), verification of credentials, records of physical examinations, job description, and evaluations of job performance;

7. Policies and procedures, including content and frequency, for physical examinations upon employment and subsequently for employees and for other persons providing direct care services to participants; and

8. Policies and procedures for complying with applicable statutes and protocols to report abuse or mistreatment of elderly or disabled adults, elopement, child abuse, sexual abuse, specified communicable disease, rabies, poisonings, and unattended or suspicious deaths. These policies and procedures shall include, but not be limited to, the following:

i. The notification of any suspected case of participant abuse or exploitation to the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly, pursuant to N.J.S.A. 52:27G-7.1 et seq., if the participant is 60 years of age or older, and if less than 60 years of age, to the DHSS Complaint Program, Division of Long Term Care Systems;

ii. The notification of any suspected case of child abuse or exploitation to the New Jersey Department of Human Services, Division of Youth and Family Services;

iii. The development of written protocols for the identification and the treatment of children, elderly or disabled adults who are abused and/or neglected;

iv. The provision at least annually of education and/or training programs to appropriate persons regarding the identification and reporting of diagnosed and/or suspected cases of sexual abuse; domestic violence; abuse of the elderly or disabled adult; child abuse; and the facility's policies and procedures; and

v. Policies and procedures regarding communicable diseases, in accordance with N.J.A.C. 8:57.

(e) The policy and procedure manual(s) shall be available and accessible to all participants, staff, and the public.

(f) The facility shall have a written agreement for services not provided directly by the facility. The written agreement, or its equivalent, shall specify that the facility retain administrative responsibility for services rendered and shall require that services be provided in accordance with the rules in this chapter.

8:43F-3.4 Mandatory notification

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

1. Unanticipated interruption or cessation of program services for three hours or more (excluding closure for inclement weather);

2. Termination of employment of the administrator, and the name and qualifications of the administrator's replacement. If a new administrator cannot be designated within 72 hours, the facility shall notify the Department in writing and the facility shall make arrangements, which are acceptable to the Department, for administrative supervision. A new administrator shall be appointed within 30 days;

3. Termination of employment of the Director of Nursing, and the name and qualifications of the Director of Nursing's replacement. If a new Director of Nursing cannot be designated within 72 hours, the facility shall notify the Department in writing and the facility shall make arrangements, which are acceptable to the Department, for nursing supervision by a registered professional nurse. A new Director of Nursing shall be appointed within 30 days;

4. Occurrence of epidemic disease in the facility;

5. All fires, all disasters, 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 participants and/or personnel, disruption of services, and extent of damages; and

6. All alleged or suspected crimes committed by or against participants, which shall also be reported at the time of occurrence to the local police department.

(b) The facility shall conspicuously post a notice that the following information is available in the facility to participants and the public:

1. All waivers granted by the Department in accordance with N.J.A.C. 8:43F-2.2;

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

3. Policies and procedures regarding participant rights; and

4. A means of contacting the license holder.

8:43F-3.5 Financial arrangements

(a) The facility shall:

1. Inform participants in writing of the fees for services and supplies (where a fee is charged);

2. Maintain a written record of all financial arrangements with the participant and/or the participant's family, with copies furnished to the participant;

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 approval and authority of the participant and/or the participant's family, each of whom shall be given a copy of the written approval;

ii. Upon written orders of the participant's physician, advanced practice nurse or physician assistant, stipulating specific services and supplies not included in the admission agreement;

iii. Upon 15 days' prior written notice to the participant and/or the participant's family of additional charges, expenses, or other financial liabilities due to the increased cost of maintenance and/or operation of the facility; or

iv. In the event of a health emergency involving the participant and requiring immediate, special services or supplies to be furnished during the period of the emergency;

4. Describe for the participant agreements with third-party payors and/or other payors and referral systems for participant's financial assistance; and

5. Describe sliding fee scales and any special payment plans established by the facility.

8:43F-3.6 Participant care policies and procedures

(a) Written policies and procedures for the care of participants 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, policies and procedures for the following:

1. The determination of staffing levels on the basis of the daily census and on the basis of an assessment of the acuity of participant need;

2. The referral of participants to other health care providers, in order to provide a continuum of care for the participant;

3. Emergency care of participants, including notification of the participant's family;

4. Participant instruction and health education, including the provision of printed and/or written instructions and information for participants, with multilingual instructions as indicated;

5. Advance directives, including, but not limited to, the following:

i. The circumstances under which an inquiry will be made of adult participants;

ii. Requirements for provision of a written statement of participants' rights regarding advance directives, approved by the Commissioner or his or her designee, to such participants; and

iii. Requirements for documentation in the medical record;

6. The control of smoking in the facility in accordance with N.J.S.A. 26:3D-1 et seq.;

i. At the facility's option, a smoke-free policy may be developed, which includes adequate notice to all applicants for admission to the facility;

ii. In the event that participants, staff and visitors are permitted to smoke, they shall smoke only in designated smoking areas having adequate outside ventilation;

iii. Nonflammable ashtrays in sufficient numbers shall be provided in designated smoking areas;

iv. Any room designated for smoking shall have acceptable indoor air quality and be equipped with a ventilation system that prevents contaminated air from recirculating through the facility;

7. Discharge, transfer, and readmission of participants, including criteria for each;

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

9. Exclusion of participants from the facility, and authorization to return to the facility, for participants with communicable disease.

8:43F-3.7 Denial of admission

If an applicant, after applying in writing, is denied admission to the facility, the applicant and/or the applicant's family shall be given the reason for such denial in writing, signed by the administrator, within 15 days of receipt of the written application.

8:43F-3.8 Involuntary discharge

(a) Thirty days written notice by the administrator shall be provided to a participant and, if possible and appropriate, the participant's family, of a decision to involuntarily discharge the participant from the facility. The notice shall include the reason for discharge and the participant's right to appeal. A copy of the notice shall be entered in the participant's medical record.

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

(c) An involuntary discharge for reasons of the participant's or other participants' welfare shall comply with N.J.A.C. 8:43F-4.2(a)6.

8:43F-3.9 Verbal and telephone orders

Verbal or telephone orders shall be written into the participant's medical record by the person accepting them and countersigned by the prescriber or verified via the original written order or a plain-paper faxed copy within seven days. Any limits on the use of verbal and telephone orders and criteria for their acceptance shall be defined in the facility's policies and procedures.

8:43F-3.10 Interpretation services

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

8:43F-3.11 Notification of family

The participant's family shall be notified in the event that the participant sustains an injury, or an accident or incident occurs, immediately after the occurrence. Immediately following such notification, the notification shall be documented in the participant's medical record.

8:43F-3.12 Participant follow-up

The facility shall establish and implement policies and procedures for follow-up of participants in the event that a participant does not appear for services on scheduled days, and for documentation of the follow-up in the participant's medical record.

8:43F-3.13 General record policies

(a) The following records shall be maintained by the facility:

1. A chronological listing of participants admitted and discharged, including the destination of participants who are discharged; and

2. Statistical data concerning utilization of program services and demographic information related to participants or other data as may be required by these rules.

SUBCHAPTER 4.
PARTICIPANT RIGHTS

8:43F-4.1 Policies and procedures regarding participant rights

(a) The facility shall establish and implement written policies and procedures regarding the rights of participants. These policies and procedures shall be available to participants, staff, and the public and shall be conspicuously posted in the facility in English and the primary language(s) of the participants.

(b) The staff of the facility shall receive in-service education concerning the implementation of policies and procedures regarding participant rights.

(c) The facility shall comply with all applicable State and Federal statutes and rules concerning participant rights, including N.J.S.A. 52:27G-7.1 et seq. The facility shall notify the State of New Jersey Office of the Ombudsman for the Institutionalized Elderly at 1-877-582-6995 of any suspected case of participant abuse or exploitation that occurred in the facility pursuant to N.J.S.A. 52:27G-7.1 et seq., if the participant is 60 years of age or older. The facility shall report to Adult Protective Services any suspected case of participant abuse or exploitation that occurred outside the facility that is discovered by facility staff, pursuant to N.J.S.A. 52:27D-46 et seq., if the participant is 60 years of age or older. For adult participants under 60 years of age, the facility shall notify the Department of Health and Senior Services.

(d) The Department of Human Services, Division of Youth and Family Services, shall be notified of any suspected child abuse.

8:43F-4.2 Rights of each participant

(a) Participant rights, policies, and procedures shall ensure that, at a minimum, each participant admitted to the facility:

1. Is informed of these rights, as evidenced by the participant's (or, if the participant is incapacitated or under age 18, his or her parent's, legal guardian's, spouse's, or other responsible party's) written acknowledgement prior to or upon admission, and receives an explanation, in terms that the participant can understand, and a copy of the participant rights;

2. Is informed of services available in the facility, of the names and professional status of the personnel providing and/or responsible for the participant's care, and is given a written statement of fees and related charges, including the payment, fee, deposit, and refund policy of the facility and any charges for services not covered by sources of third-party payment or not covered by the facility's basic rate;

3. Is assured of care in accordance with the plan of care, is informed of the plan of care, unless medically contraindicated as documented by a physician, advanced practice nurse or physician assistant in the participant's medical record, and has the opportunity to participate in the planning of the participant's care;

4. Upon request, is informed of the risks associated with the use of any medications and/or procedures provided by the facility. May give consent to or refuse medication and treatment, and may refuse to participate in experimental research;

5. Is informed of the alternatives for care and treatment;

6. Is transferred or discharged only for medical reasons or for the participant's welfare or that of other participants upon the written order of the participant's physician, advanced practice nurse or physician assistant, as documented in the participant's medical record, except in an emergency situation, in which case the administrator shall notify the physician, advanced practice nurse or physician assistant and the family immediately following the transfer and document the reason for the transfer in the participant's medical record. If a transfer or discharge on a non-emergency basis is requested by the facility, including transfer or discharge for nonpayment for services (except as prohibited by sources of third-party payment), the participant and the participant's family shall be given at least 30 days advance written notice of such transfer or discharge;

7. Has access to and/or may obtain a copy of the participant's medical record, in accordance with the facility's policies and procedures;

8. Is free from mental and physical abuse, free from exploitation, and free from the use of chemical and physical restraints. Medications shall not be used for punishment or for convenience of facility personnel;

9. Is assured confidential treatment of the participant's records and disclosures, and shall have the opportunity to approve or refuse their release to any individual, except in the case of the participant's transfer to another health care facility or as required by law or third-party payment contract;

10. Is treated with courtesy, consideration, respect, and recognition of the participant's dignity, individuality, and right to privacy, including, but not limited to, auditory and visual privacy and confidentiality concerning treatment and disclosures. Privacy of the participant's body shall be maintained during toileting, bathing, and other activities of personal hygiene;

11. Is not required to perform work for the facility unless the work is part of the care plan and is performed voluntarily by the participant. Such work shall be in accordance with local, State, and Federal laws and rules;

12. May associate and communicate privately with persons of the participant's choice and may join with other participant's or individuals within or outside the facility to work for improvements in participant care;

13. Is allowed to conduct private telephone conversations;

14. Is assured of civil and religious liberties, including the right to independent personal decisions. No religious beliefs or practices, or any attendance at religious services, shall be imposed upon any participant;

15. Is not the object of discrimination with respect to participation in regularly scheduled recreational activities (except as provided at N.J.A.C. 8:43F-13.3(c)), meals, or other social functions because of age, race, religion, sex, nationality, or ability to pay. The participant's participation may not be restricted or prohibited, unless the participant consents and the restriction or prohibition is documented by the participant's physician, advanced practice nurse or physician assistant in the participant's medical record;

16. Is not deprived of any constitutional, civil, and/or legal rights solely because of admission to the facility; and

17. Is encouraged and assisted to exercise rights as a participant and as a citizen, may voice grievances on behalf of the participant or others, and has the right to recommend changes in policies and services to facility personnel and/or to outside representatives of the participant's choice, free from restraint, interference, coercion, discrimination, or reprisal.

(b) The administrator shall provide all participants and/or their families with the name, address, and telephone number of the following offices where complaints may be lodged:

Division of Long Term Care Systems
New Jersey Department of Health and Senior Services
PO Box 367
Trenton, New Jersey 08625-0367
Telephone: (800) 792-9770

State of New Jersey
Office of the Ombudsman for Institutionalized Elderly
PO Box 808
Trenton, New Jersey 08625-0808
Telephone: 1-877-582-6995
Division of Medical Assistance and Health Services
New Jersey Department of Human Services
PO Box 712
Trenton, N.J. 08625-0712
Telephone: (609) 588-3828

Division of Youth and Family Services
New Jersey Department of Human Services
PO Box 717
Trenton, N.J. 08625-0717
Telephone: (609) 292-6920, or (800) 792-8610

(c) The administrator shall also provide all participants and/or their families with the telephone number of the local (county) agency of the Adult Protective Services Program (APS), for adult participants, or the Division of Youth and Family Services Office of Child Abuse Control or District Office, for pediatric participants.

(d) The telephone numbers in (b) and (c) above, shall be conspicuously posted in the facility at every public telephone and on all bulletin boards used for posting public notices.

SUBCHAPTER 5.
PARTICIPANT ASSESSMENT AND PLAN OF CARE

8:43F-5.1 Pre-admission assessment

(a) Prior to admission of the participant, a member of the interdisciplinary team shall perform an assessment of the participant's home environment. The assessment shall be documented in the participant's medical record and shall include assessment of at least the following:

1. Living arrangements;

2. The participant's relationship with his or her family;

3. Amenities and facilities available, such as heat, toilet and bathing facilities, and provisions for preparing and storing food;

4. Existence of environmental barriers, such as stairs, not negotiable by the participant; and

5. Access to transportation, shopping, religious, social, or other resources to meet the needs of the participant.

(b) The administrator or a designee shall conduct an interview with the participant and, if possible, the participant's family prior to or at the time of the participant's admission. The interview shall include at least orientation of the participant to the facility's policies and services, hours and days on which services are provided, fee schedule, participant rights, and criteria for admission, treatment, and discharge. The administrator shall make a determination, in writing, that a Medicaid eligible participant is eligible to receive services offered by the facility. A summary of the interview shall be documented in the participant's medical record.

(c) A participant who manifests such a degree of behavioral disorder to allow the facility to reasonably believe that he or she is a danger to himself or herself or others, or whose behavior may interfere with the health or safety or well-being of other participants, shall not be admitted to or retained in the facility.

(d) A person suffering exclusively from substance abuse or misuse shall not be admitted to or retained in the facility.

(e) All participants in adult day health services facilities shall be 16 years of age or older.

8:43F-5.2 Assistance with activities of daily living

Assistance with activities of daily living shall be provided on-site to participants who require such assistance.

8:43F-5.3 Assessment

(a) A registered professional nurse (RN) shall assess the nursing needs of each participant, coordinate the written interdisciplinary plan of care, and ensure the timeliness of all services.

(b) An initial assessment shall be completed for each participant on the day of admission and shall include at least personal hygiene, immediate dietary needs, medications, ambulation and diagnosis. Based on this initial assessment, a written initial plan of care shall be developed within five business days of the date the initial assessment is performed.

(c) A physician, advanced practice nurse or physician assistant shall provide orders for each participant's care beginning on the day of admission.

(d) Each physician, advanced practice nurse or physician assistant order shall be executed by the nursing, dietary, social work, activities, rehabilitation or pharmacy service, as appropriate in accordance with professional standards of practice.

(e) A comprehensive assessment shall be completed for each participant within 14 days of the date the participant first attends the program. The comprehensive assessment shall include, at a minimum, evaluation of the following:

1. Cognitive patterns;

2. Communication/hearing patterns and vision;

3. Physical functioning;

4. Psychosocial well-being;

5. Medical condition/diagnoses;

6. Nutritional status and life style;

7. Oral/dental status;

8. Skin condition;

9. Medication use; and

10. Special treatment and procedures, assistive devices.

8:43F-5.4 Development and implementation of plan of care, and discharge

(a) A written interdisciplinary plan of care shall be developed, based on the initial and interdisciplinary assessment, within 30 days of the date the participant first attends the program. The plan of care shall include, but not be limited to, the following:

1. The participant's scheduled days of attendance;

2. The specific goals of care, if appropriate;

3. The participant's needs and preferences for himself or herself;

4. Orders for treatment or services, medications, and diet, if needed; and

5. The time intervals at which the participant's response to treatment will be reviewed.

(b) The interdisciplinary plan of care shall be based on the comprehensive assessments provided by nursing, dietary, activities, and social work staff; and when ordered by the physician, advanced practice or physician assistant, other health professionals, including pharmacy consultation, shall also provide assessments. The plan of care shall include measurable objectives with interventions based on the participant's care needs and means of achieving each goal. The complete plan of care shall include, if appropriate, rehabilitative/restorative measures, preventive intervention, and training and teaching of self-care.

(c) There shall be a scheduled review and evaluation in each service involved in the initial assessment, and in other areas that the physician, advanced practice nurse or physician assistant, or interdisciplinary team indicates are necessary. Reassessments shall be performed as necessary, based on participant's needs, but at least quarterly for adult participants.

(d) The plan of care shall include documented discharge planning, which shall address the participant's changing status that may alter the appropriateness of day care and necessitate helping the caregiver to access alternative resources.

1. The plans for discharge shall be in compliance with N.J.A.C. 8:86-1.5 regarding Medicaid eligibility criteria, if applicable.

2. As part of the documented plans for discharge, the facility shall assist the participant and, if applicable, the participant's caregiver and/or family members, in accessing alternative resources.

(e) The participant and, if indicated, the participant's caregiver and/or family members shall assist in developing the plans for discharge.

(f) The facility shall maintain signed attestations by the participant or the participant's authorized representative that the facility has provided him or her with a written explanation of the facility's policies and procedures regarding discharge planning, and that he or she agrees with it.

SUBCHAPTER 6.
GENERAL SERVICES

8:43F-6.1 General services provided

(a) The facility shall provide, in accordance with the rules in this chapter, preventive, diagnostic, therapeutic, rehabilitative and habilitative services to participants who do not require 24-hour inpatient health care.

(b) The facility, at a minimum, shall provide the following services directly in the facility: nursing, dietary, activities, pharmaceutical, and social work.

(c) The facility shall provide or arrange for occupational therapy, physical therapy, and speech-language pathology services, either in the facility or outside of the facility. Habilitative services shall be provided or arranged for children and adult participants with developmental disabilities.

(d) The facility shall make referrals for services, which shall include, but not be limited to, dental, laboratory, medical, and radiological.

(e) Adult day health services shall be provided for at least five consecutive hours and no more than 12 hours daily, exclusive of transportation time, for a minimum of five days per week.

1. For Medicaid-eligible participants, the facility shall also comply with all of the provisions of N.J.A.C. 8:86.

(f) The facility shall maintain a daily record of participant attendance for each day during which services are provided, in accordance with N.J.A.C. 8:86-1.3(a)3.

8:43F-6.2 General staffing requirements

(a) Adult day health service facilities shall provide at least one full-time, or full-time equivalent, direct care staff member for every nine participant equivalents, calculated on the basis of the daily census. Additional staff shall be provided as needed, based on the acuity of the participants. The facility shall have adequate staff capability to provide services and supervision to the participants at all times.

(b) Transportation staff shall not be counted as direct care staff for purposes of the staff to participant ratio, except during any hours that they spend in the facility providing care to the participants. Under no circumstances shall the time spent driving participants to or from the facility be counted as direct care staff hours.

8:43F-6.3 Personnel

(a) The facility shall make reasonable efforts to ensure that all staff providing direct care to participants in the facility are in good health, are concerned for the safety and well-being of participants, and have not been convicted of a crime relating adversely to the person's ability to provide care to participants, except when the applicant or employee with a criminal history has demonstrated his or her rehabilitation, in accordance with the standards set forth at N.J.S.A. 2A:168A-1 et seq., and N.J.A.C. 8:43F-2.1(a)8ii, in order to qualify for employment at the facility.

1. In adult day health services facilities, "reasonable efforts" shall include, but not be limited to, an inquiry on the employment application, reference checks, and/or criminal background checks when necessary for compliance with N.J.A.C. 8:43F-2.1(a)9.

i. Administrators and owners of adult day health services facilities shall have clearance from the Criminal Background Investigation in accordance with N.J.A.C. 8:43F-2.1(a)9.

2. In a pediatric day health services facility, no individual may be employed until he or she receives clearance from the Criminal Background Investigation in accordance with N.J.A.C. 8:43F-2.1(a)8.

(b) The facility 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.

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

(d) The facility shall maintain written staffing schedules. Staffing schedules shall be implemented to ensure continuity of care.

(e) The facility shall develop and implement a staff orientation plan and a staff training and education plan, including plans for each service and designation of person(s) responsible for ongoing training.

1. All staff shall receive orientation at the time of employment and ongoing in-service training regarding, at a minimum, emergency plans and procedures, the infection prevention and control services, participant rights, and elder abuse.

i. The facility shall document ongoing in-service training of all staff.

(f) Employee health records as required by these rules shall be maintained for each employee. Employee health records shall be confidential and kept separate from personnel records and shall include documentation of all medical screening tests performed and the results.

SUBCHAPTER 7.
NURSING SERVICES

8:43F-7.1 Designation of director of nursing services

(a) A registered professional nurse shall be designated in writing as the director of nursing services and shall be on duty at all times when participants are present in the facility. A registered professional nurse shall be designated in writing to act in the director's absence.

1. Additional licensed nursing personnel and unlicensed assistive personnel shall be provided in accordance with the facility's policies and procedures for determining staffing levels on the basis of an assessment of the acuity of participants.

i. In facilities where the daily attendance exceeds 60 participants, additional licensed nursing personnel shall be present in the facility.

2. The director of nursing services shall not perform the functions of any other position while functioning as the director of nursing services.

8:43F-7.2 Qualifications of the director of nursing services

The director of nursing services shall be a registered professional nurse who has at least one year of full-time experience in nursing supervision and/or administration in a licensed health care facility.

8:43F-7.3 Responsibilities of the director of nursing services

(a) The director of nursing or designated alternate shall be responsible for the supervision of all nursing staff and unlicensed assistive personnel.

(b) The director of nursing services shall be responsible for the direction, provision, and quality of nursing services provided to participants. The director of nursing services shall be responsible for developing and implementing written objectives, standards of practice, policies and procedures and an organizational plan for the nursing service.

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

1. Procedures for the assessment of the health service needs of all participants;

2. Procedures for monitoring the conditions of the participants on a continuing basis;

3. Procedures for the notification of the administrator if there are significant changes in a participant's condition;

4. Procedures for the assessment of the participant's need for referral to a physician, advanced practice nurse or physician assistant;

5. Procedures for maintaining records as required by the facility; and

6. A policy statement that each nurse shall serve as a resource person and health educator to the participants and to the administrator of the facility.

8:43F-7.4 Provision of nursing services

(a) The facility shall provide nursing services to participants, directly in the facility.

(b) The registered professional nurse shall be responsible for, but not limited to, the following:

1. Interviewing the participant and caregivers in order to evaluate the participant's health status and health care needs;

2. Maintaining the standards of nursing practice including, but not limited to:

i. Monitoring of identified medical conditions;

ii. Administration and supervision of prescribed medications and treatments;

iii. Coordination of rehabilitative services;

iv. Development of a restorative nursing plan;

v. Monitoring of clinical behavior and nutritional status;

vi. Assisting with the maintenance or redevelopment of the activities of daily living skills;

vii. Monitoring growth and development;

viii. Implementing infection control procedures; and

ix. Communicating findings to the attending physician;

3. Managing medical emergencies;

4. Documenting the nursing services provided, including the initial assessment and evaluation of the participant's health care needs, development of the nursing component of the individualized plan of care, evaluation of the participant's progress in reaching established goals and defining the effectiveness of the nursing component of the individualized plan of care;

5. Overseeing the development of the initial individualized interdisciplinary plan of care;

6. Alerting others involved with the participant's care about changes in status and the need to change the individualized interdisciplinary plan of care;

7. Developing community medical referral resources and maintaining ongoing communication with those providers;

8. Linking the participant to necessary health care services outside the program;

9. Coordinating the services provided by other staff to meet the mutually identified health care and psychosocial needs of each recipient;

10. Providing in-service training to facility staff about the participant's health care needs;

11. Providing health education for a participant's family or primary caregiver; and

12. Serving as an advocate to assist the participant/caregiver to resolve problems.

(c) The facility's nursing staff shall assure that nursing services provided to participants are coordinated with health services currently received at home, as well as with existing community health agencies and services available to participants in time of need.

8:43F-7.5 Responsibilities of licensed nursing personnel

The registered professional nurse may delegate selected nursing tasks in the implementation of the nursing regimen to licensed practical nurses and unlicensed assistive personnel, in accordance with N.J.A.C. 13:37-6.2.

SUBCHAPTER 8.
MEDICAL SERVICES

8:43F-8.1 Provision of medical services

(a) Medical services shall be provided as follows:

1. The facility's medical consultant, with the administrator, shall establish written medical and administrative policies governing the provision of medical services to the participants;

2. Any medical services required (including podiatry services, see N.J.A.C. 10:57-2.11) shall be coordinated by the participant's attending physician, advanced practice nurse or physician assistant;

3. If the participant has no attending physician, advanced practice nurse or physician assistant, the facility shall assist the participant to secure one;

4. The participant may choose the medical consultant as his or her attending physician, provided the medical consultant becomes the participant's attending physician with all the responsibilities attendant to such a role over a 24-hour period on a continuing basis;

5. An individual medical record shall be maintained for each participant; and

6. The attending physician, advanced practice nurse or physician assistant shall provide medical orders for treatment of participants, which shall include medication; diet; activities permitted; therapies, such as physical therapy, occupational therapy, and speech-language pathology services; and other services as necessary (that is, laboratory tests, dental, etc.).

8:43F-8.2 Designation of a medical consultant

A physician shall be designated to serve as the facility's medical consultant.

8:43F-8.3 Medical consultant's responsibilities

(a) The medical consultant shall be responsible for, but not limited to, the following:

1. Assisting the facility in developing written objectives, policies, a procedure manual, an organizational plan, and a quality improvement program for the medical service;

2. Assisting in the coordination and integration of medical services with other participant care services to provide a continuum of care for the participant; and

3. Reviewing written medical policies in cooperation with the physicians, advanced practice nurses, or physician assistants responsible for providing care to the participants.

(b) If the medical consultant is an attending physician for a participant, then the facility must document evidence of the medical consultant's attempts to assist the participant in securing an attending physician, advanced practice nurse or physician assistant (other than the medical consultant) and of the participant's choice in selecting the medical consultant as his or her attending physician.

1. The medical consultant and the facility shall ensure compliance with N.J.S.A. 45:9-22.5, which restrict practitioners from referring their patients to health care services in which they have a significant beneficial interest.

8:43F-8.4 Responsibilities of physicians, advanced practice nurses and physician assistants

(a) A physician, advanced practice nurse or physician assistant and an alternate physician, advanced practice nurse or physician assistant shall be designated for each participant, who can be contacted when necessary, including a medical emergency.

(b) The physician, advanced practice nurse or physician assistant who provides care to the participant shall provide the following information, which shall be included in the participant's medical record:

1. A signed, dated medical history and physical examination report, including results of a chest X-ray, if performed. The history and physical examination shall be performed within 60 days prior to or upon admission to the program;

2. Orders for the specific type and intensity of care to be provided to the participant by the facility;

3. Specification of the degree of participant mobility and specification of any assistive devices that the participant requires; and

4. Verification that the participant is free of communicable disease.

(c) The facility shall have a mechanism to ensure that the participant's physician, advanced practice nurse or physician assistant shall participate collaboratively in developing, implementing, reviewing, and revising the participant's plan of care.

SUBCHAPTER 9.
PHARMACEUTICAL SERVICES

8:43F-9.1 Provision of pharmaceutical services

(a) The facility shall designate a pharmaceutical consultant, who is not the pharmacy provider and who has no affiliation with the pharmacy provider.

(b) The designated pharmaceutical consultant shall be responsible, in accordance with N.J.A.C. 13:39, for the following:

1. Establishing written policies and procedures to ensure the safe use, labeling, storage, integrity, administration, control and accountability of all medications stored or administered by the facility;

2. Reviewing the records of all participants at least every 90 days to assure that the medication records are accurate, up-to-date and that these records indicate that medications are administered or self-administered in accordance with the prescriber's orders;

3. Reviewing records at least every 90 days to assure medication regimen, laboratory tests, special dietary requirements, and foods or natural or herbal medicines used or administered concomitantly with other medications to the same participants are monitored for potential adverse reaction, allergies, medication interaction, contraindications, rationality, medication evaluation, and test modification; and that all irregularities or recommended changes are documented on the participant's record and reported to the administrator or attending physician, advanced practice nurse or physician assistant;

4. Providing and documenting in-service training and consultation with staff and, if appropriate, participants of the facility as required to assure pharmaceutical and utilization compliance;

5. Devoting a minimum of one hour a month to carry out the responsibilities under this section and documenting his or her attendance at the facility; and

6. Maintaining a written record of activities, findings and recommendations.

8:43F-9.2 Medication administration policies and procedures

(a) The facility shall establish a system to accurately identify participants before any medication is administered.

(b) Medications shall be accurately administered by properly authorized individuals who shall ensure that the right medication is administered to the right person in the right dose through the right route of administration at the right time.

8:43F-9.3 Pharmacy reporting policies and procedures

(a) The consultant pharmacist shall report any irregularities to the director of nursing services, who shall report to the administrator and the attending physician, advanced practice nurse or physician assistant. These reports shall be acted upon.

(b) Medication allergies shall be documented in the participant's medical record and on its outside front cover and communicated to the provider or dispensing pharmacy.

(c) Medication errors and adverse reactions shall be reported immediately to the director of nursing services or the alternate to the director of nursing services, and a description of the error or adverse medication reaction shall be entered into the medical record before the end of the employee shift. If the participant has erroneously received medication, the participant's physician, advanced practice nurse or physician assistant who prescribed the medication shall be notified immediately. If a medication error originated in the pharmacy, the pharmacy shall be notified immediately.

8:43F-9.4 Pharmacy control policies and procedures

(a) The label of each participant's individual medication container or package shall be permanently affixed and contain the following information, except as provided by (b) and (c) below:

1. The participant's full name;

2. The prescriber's name;

3. The prescription number;

4. The name and strength of the medication;

5. The quantity dispensed;

6. Directions for use;

7. The date upon which the medication is dispensed;

8. The manufacturer's name if generic;

i. If a generic substitute is used, the medication shall be labeled in accordance with the Drug Utilization Review Formulary, N.J.S.A. 24:6E-1 et seq. and N.J.A.C. 8:71; and

9. The expiration date, if dispensed in any packaging other than the manufacturers original packaging, and in accordance with N.J.A.C. 13:39-5.9.

(b) If medications are dispensed to participants from out-of-State pharmacies, the facility shall request, in writing, each pharmacy to label medications in accordance with (a) above.

(c) The dispensed container for any product shall bear all auxiliary labeling as recommended by the manufacturer and/or as deemed appropriate in the professional judgement of the dispensing pharmacy.

(d) Alternative medication delivery systems, such as unit-of-use, unit dose or customized medication packages, shall be labeled, dispensed, stored, accounted for, and monitored in accordance with the New Jersey State Board of Pharmacy rules, N.J.A.C. 13:39, the United States Pharmacopoeia, and generally accepted standards of pharmaceutical practice for medication distribution systems. Required information appearing on individually packaged medications or within an alternative medication delivery system need not be repeated on the label.

(e) Over-the-counter (OTC) medications may be kept as stock. These medications shall be approved by the pharmacy consultant, monitored for accountability, and labeled to include medication name, strength, manufacturer's name, lot number, expiration date, recommended dosage for OTC use (if repackaged), and applicable cautionary and/or accessory labeling.

SUBCHAPTER 10.
DIETARY SERVICES

8:43F-10.1 Dietary services

The adult or pediatric day health services facility shall provide a minimum of one meal per day to participants as well as nutritionally appropriate snacks. The meal shall supply at least one-third of the daily caloric and protein requirements recommended by the Nutrition Board of the National Academy of Sciences, National Research Council, and shall contain three or more menu items, one of which is or includes a high quality protein food such as meat, fish, eggs, or cheese.

8:43F-10.2 Qualifications of the food service supervisor

(a) The food service supervisor shall:

1. Be a dietitian;

2. Be a graduate of a dietetic technician or dietetic assistant training program approved by the American Dietetic Association (Office on Dietetic Credentialing, 216 Jackson Boulevard--7th Floor, Chicago, Illinois 60606-6995); or

3. Be a graduate of a New Jersey State-approved course in food service management and have at least one year of full-time, or full-time equivalent, experience as a food service supervisor in a licensed health care facility.

8:43F-10.3 Qualifications of the dietitian

The dietitian must be registered or eligible for registration by the Commission on Dietetic Registration, Office on Dietetic Credentialing, 216 W. Jackson Boulevard, 7th Floor, Chicago, Illinois 60606-6995.

8:43F-10.4 Administrator's responsibilities for dietary services

(a) If meals are prepared in the facility, the administrator shall designate a food service supervisor who, if not a dietitian, functions with scheduled consultation from a dietitian. The food service supervisor shall be present in the facility during food preparation and service.

1. If the food service supervisor is not a dietitian, the administrator shall designate a consultant dietitian who shall review the dietary services on a regularly scheduled basis, make recommendations, assess the nutritional needs of participants and provide nutritional counseling.

(b) If meals are prepared off-site or catered, the administrator or the administrator's designee shall be responsible for the direction, provision and quality of the dietary services. The administrator or the administrator's designee shall appoint a consultant dietitian who shall review the dietary services on a regularly scheduled basis, make recommendations, assess the nutritional needs of participants and provide nutritional counseling.

1. If the off-site catering service does not employ a food service supervisor who is qualified in accordance with N.J.A.C. 8:43F-10.2, the administrator or administrator's designee shall specify the facility's needs, assess the quality of the services, and ensure that the services conform to the standards of this chapter.

i. If the off-site catering service employs a food service supervisor who is qualified in accordance with N.J.A.C. 8:43F-10.2, the administrator or administrator's designee shall verify the credentials of the food service supervisor. The food service supervisor shall specify the facility's needs, assess the quality of services, and ensure that the services conform to the standards of this chapter.

8:43F-10.5 General requirements for dietary services

(a) The dietary service shall comply with the provisions of N.J.A.C. 8:24.

(b) A current diet manual shall be available to personnel in the facility, and, if applicable, to the off-site food provider.

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

1. Menus shall be prepared with regard for the nutritional and therapeutic needs, cultural backgrounds, food habits, and personal food preferences of participants;

2. 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;

3. Current menus with portion sizes and any changes in menus shall be posted in the food preparation and/or serving area. Menus, with changes, shall be kept on file in the dietary service for at least 30 days;

4. Diets served shall be consistent with the diet manual and shall be served in accordance with physicians' orders;

5. Food shall be prepared by cutting, chopping, grinding, or blending to meet the needs of each participant;

6. Nutrients and calories shall be provided for each participant, as ordered by a physician, based upon current recommended dietary 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 participant;

7. Nutritionally appropriate snacks shall be provided and beverages shall be available at all times for each participant, unless medically contraindicated as documented by a physician, advanced practice nurse or physician assistant in the participant's medical record;

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

i. If food is prepared off-site, the facility shall have a system to inform the caterer each day of the number and types of meals required and any substitutions;

ii. Minimum supplies of food (for example, cereal, peanut butter, tuna, canned fruits and vegetables, and juices) shall be maintained in facilities with an off-site food preparation system so that simple meals can be prepared in the event there are last minute requests or emergency situations;

9. Designated staff shall be responsible for observing meals refused or missed and documenting the name of the participant and the meal refused or missed;

10. Self-help feeding devices shall be provided;

11. All meals shall be attractive when served to participants;

12. All participants shall eat in a dining area with sufficient space to accommodate all participants simultaneously at each meal; and

13. A record shall be maintained in the serving area for each participant, identifying the participant by name, and including diet order, known allergies, and other information, such as meal patterns when on a calculated diet.

SUBCHAPTER 11.
REHABILITATION SERVICES

8:43F-11.1 Rehabilitative/habilitative services

(a) Rehabilitative/habilitative services, which include physical therapy, occupational therapy, audiology and speech-language pathology services, shall be provided by the facility to those participants whose need for these services has been documented in the individualized plan of care and ordered by the attending physician, advanced practice nurse or physician assistant.

(b) Physician, advanced practice nurse or physician assistant orders for physical and occupational therapy, audiology and speech-language pathology services shall include specific modalities and the frequency of treatment, and shall be entered into the participant's medical record.

(c) Physician, advanced practice nurse or physician assistant orders for medically appropriate audiology and speech-language pathology services, physical therapy, and occupational therapy shall be properly followed, and the results of these services shall be entered into the participant's medical record.

(d) Appointments for audiology and speech-language pathology evaluation, physical therapy evaluation, and occupational therapy evaluation shall be made within five days of the participant's program attendance.

8:43F-11.2 Rehabilitation/habilitation supplies and equipment

(a) For participants who require rehabilitative/habilitative services, space for such services shall be provided in the facility, or, if space is unavailable, arrangements shall be made for transportation of these participants to off-site providers of such services.

(b) Visual privacy and provisions for auditory privacy shall be provided for participants during evaluation and rehabilitation and/or habilitation treatment, when clinically indicated.

(c) If the facility provides physical therapy on-site, physical therapy equipment available to the participants shall include at least parallel bars, stairs, mats, and padded tables.

SUBCHAPTER 12.
SOCIAL WORK SERVICES

8:43F-12.1 Qualifications of social workers

All social workers shall be licensed or certified by the New Jersey State Board of Social Work Examiners, pursuant to N.J.S.A. 45:15BB-1 et seq.

8:43F-12.2 Provision of social work services

(a) The facility shall arrange for the provision of social work services to participants who require them, in accordance with N.J.S.A. 45:15BB-1 et seq. and N.J.A.C. 13:44G.

(b) Social workers shall provide at least the following social services:

1. Interviewing the participant and caregiver to obtain a social assessment and evaluation of needs and problems;

2. Providing or arranging for individual, family and group counseling in reference to psychological, social, financial, legal, vocational, and educational needs of the participant;

3. Assisting with obtaining concrete services; for example, housing, shopping, clothing, etc;

4. Referring to and/or developing support groups and educational programs for caregivers and participants;

5. Arranging and/or providing crisis intervention;

6. Providing family outreach;

7. Coordinating participant's care plans with other community resources;

8. Providing in-service training to staff on participant/caregiver psychosocial needs;

9. Participating in the facility's quality improvement program;

10. Participating in professional organizations and seminars;

11. Participating in participants' case conferences; for example, pre-admissions and post-admissions, problem-oriented cases;

12. Documenting assessments, treatment plans, evaluations and clinical notes (as defined at N.J.A.C. 8:43F-1.2); and

13. Coordinating discharge planning for participants, which shall be in compliance with N.J.A.C. 8:86-1.5 and 8:43F-5.4(d), (e), and (f).

i. Discharge planning shall include linking the participant to necessary community services.

(c) A social worker shall provide social work services in the facility for at least 30 minutes per week per participant equivalent, calculated on the basis of the daily census.

SUBCHAPTER 13.
ACTIVITIES SERVICES

8:43F-13.1 Designation of activities director

(a) The facility shall designate an activities director who shall be responsible for the direction, provision, and quality of the activities service. The activities director shall be responsible for, but not limited to, the following:

1. Participating in developing and implementing written objectives, policies, a procedure manual, and an organizational plan;

2. Participating in the facility's quality improvement program;

3. Ensuring that services are provided and are coordinated with other services to provide a continuum of care for the participant;

4. Participating in staff education activities and providing consultation to facility personnel;

5. Developing and posting a current monthly activities schedule where it can be read by participants, staff, and visitors, and maintaining a record of such schedules for one year;

6. Participate in all participant conferences;

7. Participate in professional organizations and seminars; and

8. Document assessments, treatment plans, evaluations and clinical notes.

8:43F-13.2 Qualifications of activities director

(a) The activities director shall:

1. Be certified or eligible for certification as an activity director certified (ADC) by the National Certification Council for Activity Professionals (National Certification Council for Activity Professionals, PO Box 62589, Virginia Beach, VA 23466);

2. Be certified or eligible for certification as a certified therapeutic recreation specialist (CTRS) by the National Council for Therapeutic Recreation (National Council for Therapeutic Recreation, Inc., 7 Elmwood Drive, New City, NY 10956);

3. Have a baccalaureate degree from a college or university approved by a State department of education with a major in recreation, creative arts therapy, music therapy, therapeutic recreation, art, art education, psychology, sociology, occupational therapy, or other health and/or human services related degree such as gerontology or early education;

4. Have a high school diploma and at least three years of full-time, or full-time equivalent, experience in activities in a licensed health care facility and have successfully completed an activities education program approved by the New Jersey Department of Health and Senior Services after a review of the specific curriculum, consisting of 90 hours of training and incorporating the following elements:

i. Overview of the activity profession;

ii. Human development: the late adult years, or for pediatric facilities, early childhood years;

iii. Standards of practice/practitioner behavior;

iv. Activity care planning for quality of life; and

v. Methods of service delivery in the activity profession; or

5. Have served as director of activities in a medical day care facility continuously since February 20, 1990.

i. Activities directors who meet the requirements of (a)5 above and who have completed an activities education course which was previously approved by the Department shall not be required to complete the course described at (a)4 above in order to continue in their present position.

8:43F-13.3 Provision of activities services

(a) Activities staff shall arrange a diversity of programs to maintain adult participants' sense of usefulness and self-respect.

(b) Activities programs shall take place in individual and group settings, on an ongoing basis.

(c) Facility activities programs shall be available to all participants regardless of their financial status, with the exception of special events for which there is a charge for all participants.

(d) Facility staff, under the direction of the activities director, shall provide a planned program of social, physical, spiritual, psychological and cognitive activities. The activities shall reflect and be adapted to the needs, interests and capabilities of the participants.

1. The facility may involve volunteers in the implementation of the activities program.

2. Activities shall include, but not be limited to:

i. Discussion groups (reality orientation, remotivation);

ii. Arts and crafts;

iii. Specialty groups;

iv. Exercise groups;

v. Educational programs;

vi. A participant council;

vii. Special events (parties, entertainment);

viii. Excursions or outings;

ix. Community service projects; and

x. Individualized programs.

3. The participants and their families, when possible, shall be involved in the planning and implementation of the activities program.

SUBCHAPTER 14.
PHYSICAL PLANT REQUIREMENTS

8:43F-14.1 Physical plant

(a) Construction standards for freestanding facilities for new buildings and alterations, renovations, and additions to existing buildings for freestanding adult or pediatric day health services facilities shall comply with N.J.A.C. 5:23-3.2 of the New Jersey Uniform Construction Code; the New Jersey Uniform Fire Code, N.J.A.C. 5:70; and with N.J.A.C. 5:23-7, the Barrier-Free Subcode of the New Jersey Uniform Construction Code.

(b) Construction standards for facilities within long-term care facilities for new buildings and alterations, renovations, and additions for adult day health services facilities in existing buildings which are part of long-term care facilities shall comply with (a) above.

(c) Prior to any construction, plans shall be submitted to the New Jersey Department of Community Affairs, Health Care Plan Review Services Unit (609-633-8151) for review.

(d) Facilities existing as of December 19, 2005 whose physical plant had been approved under rules in this chapter in effect prior to December 19, 2005 are not required to upgrade their physical plant to meet the requirements in this subchapter effective as of December 19, 2005.

8:43F-14.2 Barrier-free compliance

Facilities shall be compliant with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-7, Barrier Free Subcode.

8:43F-14.3 Functional service areas

(a) Each adult or pediatric day health services facility shall provide the following service areas on-site:

1. Administration services;

2. Employees' facilities;

3. Housekeeping services;

4. Social work services;

5. Activities;

6. Nursing services, pharmacy services, medical services; and

7. Dietary services.

(b) Toilet facilities shall be provided to meet the needs of participants, staff and visitors

1. The number of toilet facilities shall be based on one toilet and one sink for every 10 adult participants. Staff may share these facilities without being factored into the ratio. Within the one to 10 toilet ratio, there shall be included a minimum of one single occupant handicap toilet room for participants who need assistance with toileting. (Urinals may be substituted for no more than 20 percent of the required toilets.)

2. Visitors shall have a toilet room, which may also be shared with staff.

3. Pediatric day health services facilities shall have one toilet and one sink for every 15 children as well as two diaper changing areas within 15 feet of a handwashing sink.

8:43F-14.4 Administration areas

(a) The entrance to the facility shall be barrier-free accessible. The entrance shall be located at grade level and shall accommodate wheelchairs and other assistive devices.

(b) The main entrance of the facility shall have a lobby/reception area. This area shall contain space for waiting, a public telephone, a drinking fountain or bottled water, and space for wheelchair storage.

(c) An office shall be provided for the administrator. This office may be shared and may be used for conducting private interviews.

(d) The facility shall make provisions for conducting private interviews related to credit and admission.

(e) General or individual office(s) for business transactions, records, administrative, and professional staff shall be provided.

(f) Clerical space or rooms for typing, clerical work, and filing shall be provided.

(g) General storage facilities for supplies and equipment shall be provided as needed for continuing operation.

8:43F-14.5 Employee facilities area

Employee facilities such as lockers and lounges shall be provided for employees and volunteers.

8:43F-14.6 Housekeeping services area

A janitor's closet shall be provided, on each floor or immediately accessible, which shall contain a service sink and storage for housekeeping supplies and equipment.

8:43F-14.7 Social work services area

There shall be an office for the social worker(s) to conduct private interviewing and counseling. The office shall have a record storage area.

8:43F-14.8 Activities area

(a) A facility shall have a total of 30 square feet per person for activities and dining. The dining area shall accommodate all participants simultaneously at each meal.

(b) Storage space shall be provided for recreational equipment and supplies.

(c) An office or designated area, with a desk, shall be provided for the activities director.

8:43F-14.9 Nursing service areas

(a) An office for nursing staff shall be provided. If the nurse's office will also serve as the pharmacy area, then a minimum of 100 square feet of space shall be provided for the combined use area.

(b) The following shall be provided for pharmaceutical services:

1. A dispensing area with a handwashing facility;

2. A locked storage cart or locked cabinets; and

3. A separate lockable refrigerator or a locked box within a refrigerator for storage of medications.

(c) A storage area for equipment and supplies shall be provided.

(d) An examination room or private treatment space shall be provided and shall have a minimum floor area of 80 square feet, including an area for the storage of participant charts, a sink for handwashing, and a counter or shelf space for writing.

8:43F-14.10 Quiet room/area

(a) Each adult facility shall provide a quiet room or a separate, quiet area for participants who wish to rest or recline. The quiet room/area shall not be counted as activity or dining space.

1. The facility shall provide at least one item of comfortable furniture, such as a bed, lounge, recliner, or equivalent, selected in accordance with assessments of participants' needs to rest or recline, for every 10 adult day health services participant equivalents, calculated on the basis of the licensed capacity. This comfortable furniture shall be available for use in the quiet room/area.

i. A minimum of 40 square feet shall be provided for each bed, lounge, recliner, or equivalent.

8:43F-14.11 Dietary service area

(a) The construction, equipment, and installation of food service facilities shall meet the requirements of the functional program. Services may consist of an on-site conventional food preparation system, a convenience food service system, a catering service or an appropriate combination thereof. The following facilities shall be provided to implement the food service selected:

1. A control station for receiving food supplies;

2. Storage facilities for food supply, including cold storage items;

3. Food preparation facilities as follows:

i. A conventional food preparation system with space and equipment for preparing, cooking and baking; and

ii. A convenience food system, such as frozen prepared meals, bulk packaged entrees, individually packaged portions, and contractual commissary services with space and equipment for thawing, portioning, cooking, and/or baking;

4. Handwashing facility(ies), located in the food preparation area;

5. Warewashing space, which shall be located in the kitchen or an alcove separate from the food preparation and serving area;

6. Waste storage facility(ies), which shall be located in a separate room easily accessible to the outside for direct waste pickup or disposal; and

7. Office(s) or desk space(s) for dietitian(s) or the food service manager.

8:43F-14.12 Occupational therapy service area

(a) If occupational therapy services are provided on site, the following areas shall be provided:

1. Office space (may be shared with general offices);

2. Activity areas; and

3. Storage for supplies and equipment.

(b) The areas designated in (a) above may be planned and arranged for shared use by physical therapy participants and staff, if the program reflects this sharing concept.

8:43F-14.13 Physical therapy service area

(a) If physical therapy services are provided on-site, the following spaces shall be provided:

1. Office space;

2. Treatment area(s) with a handwashing sink; and

3. An exercise area.

(b) The areas designated in (a) above may be planned and arranged for shared use by occupational therapy participants and staff, if the program reflects this shared concept.

8:43F-14.14 Space for speech language pathology and audiology services

(a) If speech language pathology and audiology services are provided on-site, the following shall be provided:

1. Office space for the therapist;

2. Space for evaluation and treatment; and

3. Space for equipment and storage.

8:43F-14.15 Nutritional counseling area

Nutritional counseling shall be provided in the dietitian's office or in a conference room, based on program requirements.

8:43F-14.16 Laundry service area

(a) If laundry services are provided on-site, the following areas shall be provided:

1. A laundry processing room;

2. Separate, clearly identified covered waste containers for soiled linens and/or soiled disposables in a designated area away from participant activities and dining area;

3. Storage for laundry supplies;

4. A clean linen or disposables storage, issuing and holding room or area; and

5. A janitor's closet, containing a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(b) If linen is processed off-site, the following areas shall be provided:

1. A receptacle for holding soiled linen; and

2. A clean linen and/or disposables receiving, holding, inspection, and storage room(s) or area.

8:43F-14.17 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 emergency, equipment breakdown, fire, or other disaster.

(b) The facility shall maintain emergency equipment, including at a minimum, oxygen, suction, airway and ambu-bag.

1. At least one person who is currently certified in cardiac life support shall be immediately available on the premises of the adult day health care facility at all times when participants are present.

(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 participants, procedures for reentry and recovery, frequency of fire drills, and tasks and responsibilities assigned to all personnel.

(d) 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 evacuation as part of their initial orientation and at least annually thereafter.

(e) In the event that the facility is unable to provide services to participants as scheduled due to the occurrence of an emergency, the facility shall immediately notify these participants of the change in schedule.

(f) Drills of emergency plans shall be conducted at least four times a year and documented, including the date, hour, description of the drill, participating staff, and signature of the person in charge. The four drills shall include at least one drill for emergencies due to fire.

(g) The facility shall conduct at least one drill per year for emergencies due to another type of disaster, such as storm, flood, other natural disaster, bomb threat, or nuclear accident. All staff shall participate in at least one drill annually, and program participants may take part in drills.

(h) Fire extinguishers shall be examined annually and maintained in accordance with manufacturers' and National Fire Protection Association (NFPA) requirements. Each fire extinguisher shall be labeled to show the date of such inspection and maintenance.

SUBCHAPTER 15.
MEDICAL RECORDS

8:43F-15.1 Maintenance of medical records

(a) A current, complete medical record shall be maintained for each participant and shall contain documentation of all services provided.

(b) Written objectives, policies, a procedure manual, an organizational plan, and a quality improvement program for medical record services shall be developed and implemented.

(c) A record system shall be maintained in which the participant's complete medical record is filed as one unit in one location within the facility.

8:43F-15.2 Assignment of responsibility

Responsibility for the medical record service shall be assigned to a full-time employee who, if not a medical record practitioner, functions in consultation with a person so qualified.

8:43F-15.3 Contents of medical records

(a) The participant's complete medical record shall include, but not be limited to, the following:

1. Participant identification data, including name, date of admission, address, date of birth, race, religion (optional), sex, referral source, payment plan, marital status, and the name, address, and telephone number of the person(s) to be notified in an emergency, and travel directions to the participant's home;

2. The participant's signed acknowledgment that the participant or the participant's legally authorized representative has been informed of, and given a copy of, participant's rights;

3. An assessment of the participant's home environment;

4. A summary of the admission interview;

5. Documentation of the medical history and physical examination signed and dated by the physician, advanced practice nurse or physician assistant;

6. Assessments developed by each service providing care to the participant;

7. A plan of care;

8. Clinical notes, which shall be entered on the day service is rendered;

9. Progress notes;

10. A record of medications administered, including the name and strength of the medication, date and time of administration, dosage administered, method of administration, and signature of the person who administered the medication;

11. A record of self-administered medications, if the participant self-administers medications;

12. Documentation of allergies in the medical record and on its outside front cover;

13. Documentation of dental, laboratory, and radiological services provided;

14. A record of referrals to other health care providers;

15. Documentation of consultations;

16. Any signed written informed consent forms;

17. Documentation regarding an advance directive, if applicable;

18. A record of any treatment, medication, or service offered by personnel of the facility and refused by the participant;

19. All orders for treatment, medication, and diets, signed by a physician, advanced practice nurse or physician assistant. Physician, advanced practice nurse or physician assistant orders for speech-language pathology, physical therapy, and occupational therapy services shall include specific modalities and the frequency of treatment;

20. An attendance record listing all of the days on which the participant was in the facility;

21. A current photograph of the participant; and

22. The discharge summary, in accordance with N.J.S.A. 26:8-5 et seq.

8:43F-15.4 Medical records policies and procedures

(a) All orders for participant care shall be prescribed in writing and signed and dated by the prescriber.

(b) All entries in the participant's medical record shall be written legibly in ink, dated, and signed by the recording person or, if a computerized medical records system is used, authenticated.

1. If an identifier such as a master sign-in sheet is used, initials may be used for signing documentation, in accordance with applicable professional standards of practice.

2. If computer-generated orders with an electronic signature are used, the facility shall develop a procedure to assure the confidentiality of each electronic signature and to prohibit the improper or unauthorized use of computer-generated signatures.

3. If a facsimile communications system (FAX) is used, entries into the medical record shall be in accordance with the following procedures:

i. The physician, advanced practice nurse or physician assistant shall sign the order, history and/or examination at an off-site location;

ii. The order or document shall be faxed to the facility for inclusion into the medical record;

iii. The physician, advanced practice nurse or physician assistant shall submit the original for inclusion into the medical record within seven days; and

iv. The faxed copy shall be replaced by the original. If the facsimile reports are produced by a plain-paper facsimile process that produces a permanent copy, the plain-paper report may be included as a part of the medical records, as an alternative to replacement of the copy by the original report.

(c) If a participant or the participant's legally authorized representative requests in writing a copy of his or her medical record, a legible photocopy of the record shall be furnished at a fee based on actual costs, which shall not exceed prevailing community rates for photocopying. A copy of the medical record shall be provided to the participant or the participant's legally authorized representative within 30 days of request.

1. The facility shall establish a policy assuring access to copies of medical records for participants who do not have the ability to pay.

2. The facility shall establish a fee policy providing an incentive for use of abstracts or summaries of medical records. The participant or his or her authorized representative, however, has a right to receive a full or certified copy of the medical record.

(d) Access to the medical record shall be limited only to the extent necessary to protect the participant. A verbal explanation for any denial of access shall be given to the participant or legally authorized representative by the physician, advanced practice nurse or physician assistant and there shall be documentation of this in the medical record. In the event that direct access to a copy by the participant is medically contraindicated (as documented by a physician, advanced practice nurse or physician assistant in the participant's medical record), the medical record shall be made available to a legally authorized representative of the participant or the participant's physician, advanced practice nurse or physician assistant.

(e) The participant shall have the right to attach a brief comment or statement to his or her medical record after completion of the medical record.

(f) The record shall be protected against loss, destruction, or unauthorized use. Medical records shall be retained for a period of 10 years following the most recent discharge of the participant. A summary sheet shall be retained for a period of 20 years, and X-ray films or reproductions thereof shall be retained for a period of five years, in accordance with N.J.S.A. 26:8-5.

(g) The facility shall develop policies regarding the specific period of time within which the medical record shall be completed following participant discharge and disciplinary action for non-compliance.

(h) The facility shall develop a procedure for the transfer of participant information when the participant is transferred to another health care facility.

(i) If the facility plans to cease operation, it shall notify the Department in writing, at least 14 days before cessation of operation, of the location where medical records will be stored and of methods for their retrieval.

SUBCHAPTER 16.
INFECTION CONTROL, SANITATION, AND HOUSEKEEPING

8:43F-16.1 Administrator's responsibilities for infection control

(a) The administrator shall ensure the development and implementation of an infection prevention and control program.

(b) The administrator shall designate a person who shall be responsible for the direction, provision, and quality of infection prevention and control services. The designated person shall:

1. Have education, training and completed course work or experience in infection control or epidemiology;

2. Be responsible for developing and maintaining written objectives for infection prevention and control services;

3. Be responsible for developing a policy and procedure manual for infection prevention and control services; and

4. Be responsible for developing an organizational plan and a quality improvement program for infection prevention and control services.

8:43F-16.2 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, incorporated herein by reference:

1. Guideline for Hand Hygiene in Health-Care Settings, PB85-923404, as amended or supplemented;

2. OSHA Standards 29 CFR--1910.1030, Bloodborne pathogens, as amended and supplemented;

3. Prevention and Control of Tuberculosis in Facilities Providing Long-Term Care to the Elderly, and contained in MMWR 39(RR-10), as amended or supplemented; and

4. Prevention of Nosocomial Pneumonia, PB95-176970, January 3, 1997, 46(RR-1), as amended or 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 or (800) 553-6847

or

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

(c) The facility shall document evidence of annual vaccination against influenza for each adult participant, 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 participant has refused the vaccine, in accordance with N.J.A.C. 8:43F-4.2(a)3. Influenza vaccination for all participants accepting the vaccine shall be completed by November 30 of each year. Participants 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 participant.

(d) The facility shall document evidence of vaccination against pneumococcal disease for all participants 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 participant has refused offer of the vaccine in accordance with N.J.A.C. 8:43F-4.2(a)4. The facility shall provide or arrange for pneumococcal vaccination of participants who have not received this immunization, prior to or on admission unless the participant refuses offer of the vaccine.

(e) Each pediatric day health services facility shall maintain an up-to-date immunization record for each participant which is appropriate to the child's age in accordance with N.J.A.C. 10:122-7.3(a)2iii and (a)5 and 6, or documentation that the child is under a prescribed medical program to obtain immunizations in accordance with the provisions of N.J.A.C. 8:57-4.

(f) 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; and

3. Any employee with positive results shall be referred to the employee's personal physician and if active tuberculosis is suspected or diagnosed shall be excluded from work until the physician provides written approval to return.

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

(h) The facility shall assure that all employees have received the Mantoux test upon employment, except those exempted by (f) above.

(i) The facility shall report annually the results of all tuberculin testing of personnel to the Department of Health and Senior Services, Division of Epidemiology, Tuberculosis Program, on forms provided by the Department.

(j) Written infection control policies and procedures shall include, but not be limited to, policies and procedures for the following:

1. In accordance with Chapter II, New Jersey State Sanitary Code, N.J.A.C. 8:59, 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 participants or personnel having these infections, diseases, or conditions;

2. Infection control in accordance with OSHA Standards 29 CFR--1910.1030 Bloodborne pathogens 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 participant contact, including handwashing before and after caring for a participant;

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

7. The prevention of decubitus ulcers; and

8. Where applicable, cleaning, sterilization and disinfection 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 participant 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.

(k) High-level disinfection techniques approved by the New Jersey State Department of Health and Senior Services shall be used for all reusable respiratory therapy equipment and instruments that touch mucous membranes.

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

(m) Personnel who have had contact with participant excretions, secretions, or blood, whether directly or indirectly, in activities such as performing a physical examination and providing catheter care, 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.

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

(o) Needles and syringes used by participants as part of home self-care shall be placed in a puncture-resistive container prior to disposal.

8:43F-16.3 Employee health history and examinations

(a) The facility shall require all new employees to complete a health history and to receive an examination performed by a physician, advanced practice nurse, or physician assistant, within two weeks prior to the first day of employment or upon employment. If the new employee receives a nursing assessment upon employment, the physician, advanced practice nurse or physician assistant examination may be deferred for up to 30 days from the first day of employment. The facility shall establish criteria for determining the content and frequency of physical examinations for employees, and shall develop policies which specify the circumstances under which other persons providing direct participant care services shall receive a physical examination.

(b) The facility shall develop and implement policies and procedures to ensure that all volunteers and students who have direct participant care responsibilities on a routine basis provide documentation that they have received, at a minimum, a Mantoux tuberculin skin test and either a physical examination or a certification of health status from a physician, advanced practice nurse or physician assistant.

(c) Yearly influenza immunization shall be offered to employees at no charge.

8:43F-16.4 Regulated medical waste

(a) Regulated medical waste shall be collected, stored, handled, and disposed of in accordance with applicable Federal and State laws and regulations.

(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 N.J.A.C. 7:26-3A.

8:43F-16.5 Provision of housekeeping, sanitation, and safety

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

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

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

8:43F-16.6 Housekeeping

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

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

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

8:43F-16.7 Participant environment

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

1. The facility and its contents shall be free of dirt, debris, and insect and rodent harborages;

2. Nonskid wax shall be used on all waxed floors;

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

4. All participant areas shall be free of noxious odors;

5. Throw rugs or scatter rugs shall not be used in the facility;

6. All furnishings shall be clean and in good repair, and mechanical equipment shall be in working order. Equipment shall be kept covered to protect from contamination and accessible for cleaning and inspection. Broken or worn items shall be repaired, replaced, or removed promptly;

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

8. All equipment and materials necessary for cleaning, disinfecting, and sterilizing shall be provided;

9. Thermometers which are accurate to within three degrees Fahrenheit shall be maintained in refrigerators, freezers, and storerooms used for perishable and other items subject to deterioration;

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

11. Articles in storage shall be elevated from the floor and away from walls;

12. All poisonous and toxic materials shall be identified, labeled, and stored in a locked cabinet or room that is used for no other purpose;

13. Combustible materials shall not be stored in heater rooms or within 18 feet of any heater located in an open basement;

14. Paints, varnishes, lacquers, thinners, and all other flammable materials shall be stored in closed metal cabinets or containers;

15. Unobstructed aisles shall be provided in storage areas;

16. A program shall be maintained to keep rodents, flies, roaches, and other vermin out of the facility;

17. Toilet tissue, soap dispenser, paper towels or air dryers, and waste receptacles shall be provided in each bathroom at all times;

18. All solid or liquid waste that is not regulated medical waste, garbage, and trash shall be collected, stored, and disposed of in accordance with the rules of the New Jersey Department of Environmental Protection and the New Jersey Department of Health and Senior Services. Solid waste shall be stored in insect-proof, rodent-proof, and fire-proof, non-absorbent, watertight containers with tight-fitting 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;

19. Garbage compactors shall be located on an impervious pad that is graded to a drain. The drain shall be unobstructed and connected to the sanitary sewage disposal system;

20. Plastic bags shall be used for solid waste removal. Bags shall be of sufficient strength to safely contain waste from point of origin to point of disposal and shall be effectively closed prior to disposal;

21. Draperies, upholstery, and other fabrics or decorations shall be fire-resistant and flameproof;

22. Wastebaskets and ashtrays shall be made of noncombustible materials;

23. Latex foam pillows shall be prohibited;

24. The temperature of the hot water used for bathing and handwashing shall not exceed 120 degrees Fahrenheit;

25. Equipment requiring drainage, such as ice machines, shall be drained to a sanitary connection; and

26. The temperature in the facility shall be kept at a minimum of 70 degrees Fahrenheit and a maximum of 85 degrees Fahrenheit when participants are in the facility.

SUBCHAPTER 17.
TRANSPORTATION SERVICES

8:43F-17.1 Transportation services

(a) The facility shall provide safe transportation services, either directly or through contractual arrangements, to all participants who require transportation between the facility and the participant's home. No participant's total transportation time between the facility and the participant's home shall exceed two hours daily.

1. In accordance with N.J.A.C. 8:86, the facility shall accommodate the special transportation needs of the participant and the medical equipment used by the participant.

(b) The facility shall provide safe transportation services to all participants who require transportation between the facility and off-site physical or occupational therapy or speech-language pathology services.

1. Transportation between the facility and off-site rehabilitative services as described in (b) above shall not be counted against the two-hour maximum transportation time in (a) above.

(c) Vehicles shall be maintained in safe operating order.

(d) The facility shall maintain insurance on the vehicles.

(e) The facility shall comply with all applicable Department of Transportation rules promulgated under N.J.S.A. 39:1-1 et seq.

8:43F-17.2 Security and accountability during transportation

The facility shall develop and implement plans for security and accountability for the participant and the participant's personal possessions while transportation services are being provided.

SUBCHAPTER 18.
QUALITY IMPROVEMENT

8:43F-18.1 Quality improvement program

(a) The facility shall establish and implement a written plan for a quality improvement program for participant care. The plan shall specify a timetable and designate a coordinator(s) of the quality improvement program and shall provide for ongoing monitoring of staff and participant care services.

(b) Quality improvement activities shall include, but not be limited to, the following:

1. At least annual review of staff qualifications and credentials;

2. At least annual review of staff orientation and staff education;

3. Evaluation of participant care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, participant care statistics, and discharge planning services;

4. Evaluation by participants and their families of care and services provided by the facility;

5. Review of medication errors and adverse medication reactions by the consultant pharmacist;

6. Audit of participant medical records (including those of both active and discharged participants) on an ongoing basis to determine if care provided conforms to criteria established by each participant care service for the maintenance of quality of care; and

7. Establishment of objective criteria for evaluation of the participant care provided by each service.

(c) The coordinator of the quality improvement program shall submit the results of the quality improvement program to the licensed operator at least annually and the results shall include, at a minimum, the deficiencies found and recommendations for corrections or improvements.

1. The coordinator of the quality improvement program shall immediately report deficiencies that jeopardize participant safety to the licensed operator.

2. The administrator shall implement measures to ensure that corrections or improvements are made.

8:43F-18.2 Use of restraints

(a) The facility shall develop policies and procedures that support a restraint-free environment for all adult participants.

(b) The use of any restraining device shall be based on an assessment and shall require a physician, advanced practice nurse or physician assistant order.

(c) The least restrictive device shall be used, in compliance with the prescriber's order.

(d) A specific plan of care shall be developed for the use of any restraining device.

(e) In pediatric day health services facilities, pediatric safety guards may be used, in accordance with assessments and care plans.

8:43F-18.3 Personal care services

(a) To insure quality personal care, facility staff shall make daily checks to assure that participants are maintaining personal hygiene, receiving medications as prescribed (which includes assuring the renewal of prescriptions as necessary and the disposition of outdated or discontinued medications), and participating in appropriate social and recreational activities.

(b) Personal care services shall include education in assistance with activities of daily living and supervision of personal hygiene.

SUBCHAPTER 19.
PEDIATRIC DAY HEALTH SERVICES FACILITIES

8:43F-19.1 Services

(a) Each pediatric day health services facility shall comply with the applicable provisions in N.J.A.C. 8:43F-1 through 18.

(b) Pediatric day health care services shall be provided for a minimum of six hours per day, exclusive of transportation time, not to exceed five days per week.

1. In accordance with N.J.A.C. 8:86-1.4(b), exceptions to the six-hour requirement may be made for specific participants, if all conditions as delineated at N.J.A.C. 8:86-1.4(b) are met.

(c) Each pediatric day health services facility shall have a system to ensure that each child's nutritional needs are met, based upon individual assessments. Parents may send foods with participants or foods may be prepared in the facility, in accordance with facility policies and procedures. The facility shall ensure that appropriate snacks and fluids are available for each child.

(d) Each pediatric day health services facility shall have arrangements for the provision of services by appropriate pediatric specialists (for example, pulmonologists, cardiologists).

(e) A medical evaluation of all participants shall be provided or arranged for by the medical consultant as needed, but at least every 60 days. The documented components of the medical evaluation for children shall be a history and physical, including developmental status, immunization status, laboratory data and a clear identification of medical needs.

(f) In pediatric day health services facilities, activities of daily living include appropriate developmental stimulation, diaper changing, and toilet training.

(g) A diversified program of activities for pediatric participants shall be planned and implemented, based on evaluation of the developmental status and needs of each child.

(h) The records of all pediatric participants shall be reviewed by the pharmaceutical consultant at least every 60 days to assure that the medication records are accurate, up-to-date and that these records indicate that medications are administered or self-administered in accordance with physician's orders.

(i) Pediatric records shall be reviewed by the pharmaceutical consultant at least every 60 days to assure medication regimen, laboratory tests, special dietary requirements, and foods used or administered concomitantly with other medications to the same recipients, are monitored for potential adverse reaction, allergies, medication interaction, contraindications, rationality, medication evaluation, and test modification; and that all irregularities or recommended changes are documented on the participant's record and reported to the medical consultant or attending physician, advanced practice nurse or physician assistant.

(j) The record shall be protected against loss, destruction, or unauthorized use. Medical records shall be retained for a period of 10 years following the most recent discharge of the participant or until the participant reaches the age of 23 years, whichever is the longer period of time, a summary sheet shall be retained for a period of 20 years, and X-ray films or reproductions thereof shall be retained for a period of five years, in accordance with N.J.S.A. 26:8-5.

(k) If a health care facility licensed by the Department provides pediatric day health services in addition to other health care services, the facility shall adhere to the rules in this chapter and to the rules for licensure of facilities providing the other health care services.

(l) A pediatric day health services facility may retain a participant who is more than six years of age, with a physician's order and assessment on at least a quarterly basis by the registered professional nurse to assure that the participant's needs are met.

8:43F-19.2 Staffing

(a) In pediatric day health services facilities, the ratio shall be one staff person to three children. There shall be at least two registered professional nurses available to participants of the facility, including one registered professional nurse on the premises of the pediatric day health services facility during all hours of operation. The ratio shall include the administrator/director and all other personnel (except the medical consultant) who are involved in direct participant care, excluding volunteers. Additional staff members shall be provided when assessment of the acuity of participant need indicates that additional staff members are required, in accordance with the facility's policies and procedures for determining staffing levels.

1. Without compromising the above required staff-participant ratio of one to three for pediatric day health services facilities, the administrator/director may be a social worker or activities director, performing dual functions of the director/social worker or the director/activities director.

(b) When there are technology dependent children served in the facility, a registered professional nurse certified for intravenous administration must be available during the hours of operation.

8:43F-19.3 Use of restraints

In pediatric day health care facilities, pediatric safety guards may be used, in accordance with assessments and care plans.

8:43F-19.4 Provision of cribs or mats

(a) Pediatric facilities shall provide one crib or sleeping mat for each child.

(b) Pediatric day health care facilities shall provide space for one crib and/or sleeping pad for each child.

8:43F-19.5 Staff qualifications

(a) In a pediatric day health services facility, one of the on duty registered professional nurses shall have, at a minimum, the following credentials:

1. Possess a Bachelor of Science in Nursing degree; or

2. Have at least one year full-time pediatric experience.

(b) In a pediatric day health services facility, the director of nursing services shall have pediatric nursing experience.

(c) In a pediatric day health services facility, the administrator/director shall be a qualified health professional, such as a physician, licensed social worker or licensed clinical social worker with a pediatric concentration; a registered professional nurse with a Master of Science (MSS), or Bachelor of Science in Nursing (BSN), or Pediatric Nurse Practitioner (PNP), with pediatric experience.

(d) For pediatric day health services facilities, all direct care staff shall have current certification in cardio-pulmonary resuscitation (CPR) and shall have had pediatric experience. Those without recent pediatric experience shall be educated by the facility in growth and development and in the care of children with special needs.

(e) The medical consultant of a pediatric facility shall be board certified in pediatrics.

(f) All personnel shall receive orientation at the time of employment and at least annual in-service education regarding, at a minimum, emergency plans and procedures, the infection prevention and control services, and identification of child abuse.

(g) In pediatric facilities, the social worker shall have experience in providing social services to children.

(h) In pediatric facilities, the activities director shall have experience in planning and implementing activities for children, in addition to meeting the qualifications of activities director at N.J.A.C. 8:43F-13.2(a).

(i) Staff employed by a pediatric day health services facility shall have had pediatric experience or shall be educated by the facility in growth and development and in the care of children with special needs, and shall be provided with ongoing training regarding children with special needs.

8:43F-19.6 Facility

(a) Construction standards for freestanding facilities for new buildings and alterations, renovations, and additions to existing buildings for freestanding pediatric day health services facilities shall comply with N.J.A.C. 8:43F-14.

(b) Construction standards for facilities within long-term care facilities for new buildings and alterations, renovations, and additions for pediatric day health services facilities in existing buildings which are part of long-term care facilities shall comply with N.J.A.C. 8:43F-14.

N.J.A.C. 8:43E

GENERAL LICENSURE PROCEDURES AND ENFORCEMENT OF LICENSURE REGULATIONS

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CHAPTER 43E

GENERAL LICENSURE PROCEDURES AND ENFORCEMENT OF LICENSURE REGULATIONS

SUBCHAPTER 1. SCOPE AND GENERAL PURPOSE

8:43E-1.1 Scope

The rules in this chapter pertain and apply to all health care facilities licensed by the Department pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. The rules set forth the procedures for the conduct of surveys of health care facilities, the basis and procedures for imposition of penalties and other enforcement actions and remedies, and the rights and procedures available to facilities to request a hearing to contest survey findings and the imposition of penalties.

8:43E-1.2 Purpose

The rules in this chapter are intended to promote the health, safety, and welfare of patients or residents of health care facilities through establishing rules and regulations implementing the Department's legislative mandate to enforce violations of licensing regulations. The rules also are intended to afford health care facilities with appropriate and adequate due process rights and procedures upon the finding of a violation or assessment of a penalty or other enforcement action.

8:43E-1.3 Definitions

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

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

"Curtailment" means an order by the Department which requires a licensed health care facility to cease and desist all admissions and readmissions of patients or residents to the facility or affected service.

"Deficiency" means a determination by the Department of one or more instances in which a State licensing regulation or Federal certification regulation has been violated.

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

"Division" means Division of Health Care Systems Analysis, New Jersey Department of Health and Senior Services.

"Facility" means the entity which has been issued a license to operate a health care facility pursuant to N.J.S.A. 26:2H-1 et seq. For the purposes of this chapter, "facility" includes ambulance and invalid coach services.

"Immediate and serious threat" means a deficiency or violation that has caused or will imminently cause at any time serious injury, harm, impairment, or even death to residents or patients of the facility and therefore requires immediate corrective action.

"Patient" means an individual under the medical and nursing care and supervision of a licensed health care facility. For purposes of this chapter, "patient" is synonymous with "resident."

"Plan of correction" means a plan developed by the facility and reviewed and approved by the Department which describes the actions the facility will take to correct deficiencies and specifies the time frame in which those deficiencies will be corrected.

"Resident" means an individual residing in a licensed health care facility and under the supervision of that facility for the purpose of receiving medical, nursing, and/or personal care services. For purposes of this chapter, "resident" is synonymous with "patient."

"Survey" means the evaluation of the quality of care and/or the fitness of the premises, staff, and services provided by a facility as conducted by the Department and/or its designees to determine compliance or non-compliance with applicable State licensing regulations, statutes, or Federal Medicare/Medicaid certification regulations or statutes.

SUBCHAPTER 2.
SURVEY PROCEDURES

8:43E-2.1 Scope and types of surveys

(a) The Department, or another State agency to which the Department has delegated the authority for conduct of surveys either partially or fully, may conduct periodic or special inspections of licensed health care facilities to evaluate the fitness and adequacy of the premises, equipment, personnel, policies and procedures, and finances, and to ascertain whether the facility complies with all applicable State and Federal licensure regulations and statutes.

(b) The Department or its designee may also conduct periodic surveys of facilities on behalf of the U.S. Department of Health and Human Services or other Federal agency for purposes of evaluating compliance with all applicable Federal regulations or Medicare and Medicaid certification regulations.

(c) The Department may evaluate all aspects of patient care, and operations of a health care facility, including the inspection of medical records; observation of patient care where consented to by the patient; inspection of all areas of the physical plant under the control or ownership of the licensee; and interview of the patient or resident, his or her family or other individuals with knowledge of the patient or care rendered to him or her.

(d) All information pertaining to an individual patient shall be maintained as confidential by the Department and shall not be available to the public in a manner that identifies an individual patient, unless so consented to by the patient or pursuant to an order by a court of law.

(e) The Department may conduct a survey of a facility upon the receipt of complaint or allegation by any person or agency, including a patient, his or her family, or any person with knowledge of the services rendered to patients or operations of a facility.

(f) The Department may evaluate the quality of patient care rendered by a facility through analysis of statistical data reported by facilities to the Department or other agency, or by review of reportable event information or other notices filed with the Department pursuant to regulation. Upon receipt of information indicating a potential risk to patient safety or violations of licensing regulations, the Department may conduct a survey to investigate the causes of this finding, or request a written response from the facility to ascertain the validity of the data and to describe the facility's plan or current actions to address the identified findings.

(g) Following a reasonable opportunity for facilities to review and comment on the validity of the Department's statistical data related to the quality of patient care by facilities, the Department may make such information, as appropriately amended available to the public.

8:43E-2.2 Deficiency findings

(a) A deficiency may be cited by the Department upon any single or multiple determination that the facility does not comply with a licensure regulation. Such findings may be made as the result of either an on-site survey or inspection or as the result of the evaluation of written reports or documentation submitted to the Department, or the omission or failure to act in a manner required by regulation.

(b) At the conclusion of a survey or within 10 business days thereafter, the Department shall provide a facility with a written summary of any factual findings used as a basis to determine that a licensure violation has occurred, and a statement of each licensure regulation to which the finding of a deficiency relates.

8:43E-2.3 Informal dispute resolution

(a) A facility may request an opportunity to discuss the accuracy of survey findings with representatives of the Department in the following circumstances during a survey:

1. During the course of a survey to the extent such discussion does not interfere with the surveyor's ability to obtain full and objective information and to complete required survey tasks; or

2. During the exit interview or other summation of survey findings prior to the conclusion of the survey.

(b) Following completion of the survey, an acute care facility may contact the Inspections, Complaints and Compliance Program and a long term care facility may contact the Long Term Care Assessment Survey Program to request an informal review of deficiencies cited. The request must be made in writing within 10 business days of the receipt of the written survey findings. The written request must include:

1. A specific listing of the deficiencies for which informal review is requested; and

2. Documentation supporting any contention that a survey finding was in error.

(c) The review will be conducted within 10 business days of the request by supervisory staff of the Inspections, Complaints and Compliance Program or the Long Term Care Assessment Survey Program, as applicable, who did not directly participate in the survey. The review can be conducted in person at the offices of the Department or, by mutual agreement, solely by review of the documentation as submitted.

(d) A decision will be issued by the Department within seven business days of the conference or the review, and if the determination is to agree with the facility's contentions, the deficiencies will be removed from the record. If the decision is to disagree with the request to remove deficiencies, a plan of correction is required within five business days of receipt of the decision. The facility retains all other rights to appeal deficiencies and enforcement actions taken pursuant to these rules.

8:43E-2.4 Plan of correction

(a) The Department may require that the facility submit a written plan of correction specifying how each deficiency that has been cited will be corrected along with the time frames for completion of each corrective action. A single plan of correction may address all events associated with a given deficiency.

(b) The plan of correction shall be submitted within 10 business days of the facility's receipt of the notice of violations, unless the Department specifically authorizes an extension for cause. Where deficiencies are the subject of informal dispute resolution pursuant to N.J.A.C. 8:43E-2.3, the extension shall pertain only to the plans of correction for the deficiencies under review.

(c) The Department may require that the facility's representatives appear at an office conference to review findings of serious or repeated licensure deficiencies and to review the causes for such violations and the facility's plan of correction.

(d) The plan of correction shall be reviewed by the Department and will be approved where the plan demonstrates that compliance will be achieved in a manner and time that assures the health and safety of patients or residents. If the plan is not approved, the Department may request that an amended plan of correction be submitted within five business days. In relation to violations of resident or patient rights, the Department may direct specific corrective measures that must be implemented by facilities.

SUBCHAPTER 3.
ENFORCEMENT REMEDIES

8:43E-3.1 Enforcement remedies available

(a) Pursuant to N.J.S.A. 26:2H-13, 14, 15, 16 and 38, the Commissioner or his or her designee may impose the following enforcement remedies against a health care facility for violations of licensure regulations or other statutory requirements:

1. Civil monetary penalty;

2. Curtailment of admissions;

3. Appointment of a receiver or temporary manager;

4. Provisional license;

5. Suspension of a license;

6. Revocation of a license;

7. Order to Cease and Desist operation of an unlicensed health care facility; and

8. Other remedies for violations of statutes as provided by State or Federal law, or as authorized by Federal survey, certification, and enforcement regulations and agreements.

8:43E-3.2 Notice of violations and enforcement actions

The Commissioner shall serve notice to a facility of the proposed assessment of civil monetary penalties, suspension or revocation of a license, or placement on a provisional license, setting forth the specific violations, charges or reasons for the action. Such notice shall be served on a licensee or its registered agent in person or by certified mail.

8:43E-3.3 Effective date of enforcement actions

The assessment of civil monetary penalties, or revocation of a license, or the placement of a license on provisional status shall become effective 30 days after the date of mailing or the date personally served on a licensee, unless the licensee shall file with the Department a written answer to the charges and give written notice to the Department of its desire for a hearing in which case the assessment, suspension, revocation or placement on provisional license status shall be held in abeyance until the administrative hearing has been concluded and a final decision is rendered by the Commissioner. Hearings shall be conducted in accordance with N.J.A.C. 8:43E-4.1.

8:43E-3.4 Civil monetary penalties

(a) Pursuant to N.J.S.A. 26:2H-13 and 14, the Commissioner may assess a penalty for violation of licensure regulations in accordance with the following standards:

1. For operation of a health care facility without a license, or continued operation of a facility after suspension or revocation of a license, $1,000 per day from the date of initiation of services;

2. For violation of an order for curtailment of admissions, $250.00 per patient, per day from the date of such admission to the date of discharge or lifting of the curtailment order;

3. For failure to obtain prior approval from the Inspections, compliance and Complaints Program or the Long Term Care Assessment and Survey Program, as applicable, for occupancy of an area or initiation of a service following construction or application for licensure, $250.00 a day;

4. For construction or renovation of a facility without the Department of Community Affairs' approval of construction plans, $1,000 per room or area renovated and immediate suspension of use in the room or area from the date of initial use until determined by the Department to be in compliance with licensure standards. This determination shall take into account any waivers granted by the Department.

5. For the transfer of ownership of a health care facility without prior approval of the Department, $500.00 per day from the date of the transfer of interest to the date of discovery by the Department. Such fine may be assessed against each of the parties at interest;

6. For maintaining or admitting more patients or residents to a facility than the maximum capacity permitted under the license, except in an emergency as documented by the facility in a contemporaneous notice to the Department, $25.00 per patient per day plus an amount equal to the average daily charge collected from such patient or patients;

7. For violations of licensure regulations related to patient care or physical plant standards that represent a risk to the health, safety, or welfare of patients or residents of a facility or the general public, $500.00 per violation where such deficiencies are isolated or occasional and do not represent a pattern or widespread practice throughout the facility;

8. Where there are multiple deficiencies related to patient care or physical plant standards throughout a facility, and/or such violations represent a direct risk that a patient's physical or mental health will be compromised, or where an actual violation of a resident's or patient's rights is found, a penalty of $1,000 per violation may be assessed for each day noncompliance is found;

9. For repeated violations of any licensing regulation within a 12-month period or on successive annual inspections, or failure to implement an approved plan of correction, where such violation was not the subject of a previous penalty assessment, $500.00 per violation, which may be assessed for each day noncompliance is found. If the initial violation resulted in the assessment of a penalty, within a 12-month period or on successive annual inspections, the second violation shall result in a doubling of the original fine, and the third and successive violations shall result in a tripling of the original fine;

10. For violations resulting in either actual harm to a patient or resident, or in an immediate and serious risk of harm, $2,500 per violation, which may be assessed for each day noncompliance is found;

11. For failure to report information to the Department as required by statute or licensing regulation, after reasonable notice and an opportunity to cure the violation, $250.00 per day;

12. For failure to implement a Certificate of Need condition of approval, $1,000 per day, which shall be assessed either from the date specified in the Certificate of Need for implementation of the specific condition of approval, if identified, or from the date on which the Certificate of Need was considered to be implemented; or

13. For violations of regulations governing the prohibition of mandatory overtime contained in N.J.A.C. 8:43E-8, $1,000 per violation, which may be assessed for each day noncompliance is found.

(b) Except for violations deemed to be immediate and serious threats, the Department may decrease the penalty assessed in accordance with (a) above, based on the compliance history of the facility; the number, frequency and/or severity of violations by the facility; the measures taken by the facility to mitigate the effects of the current violation, or to prevent future violations; the deterrent effect of the penalty; and/or other specific circumstances of the facility or the violation.

(c) The Department may increase the penalties in (a) above up to the statutory maximum per violation per day in consideration of the economic benefit realized by the facility for noncompliance.

8:43E-3.5 Failure to pay a penalty; remedies

(a) Within 30 days after the mailing date of a Notice of Proposed Assessment of a Penalty, a facility which intends to challenge the enforcement action shall notify the Department of its intent to request a hearing pursuant to the Administrative Procedure Act.

(b) The penalty becomes due and owing upon the 30th day from mailing of the Notice of Proposed Assessment of Penalties, if a notice requesting a hearing has not been received by the Department. If a hearing has been requested, the penalty is due 45 days after the issuance of a Final Agency Decision by the Commissioner, if the Department's assessment has not been withdrawn, rescinded, or reversed, and an appeal has not been timely filed with the New Jersey Superior Court, Appellate Division pursuant to New Jersey Court Rule 2:2-3.

(c) Failure to pay a penalty within 30 days of the date it is due and owing pursuant to (b) above may result in one or more of the following actions:

1. Institution of a summary civil proceeding by the State pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.); or

2. Placing the facility on a provisional license status.

8:43E-3.6 Curtailment of admissions

(a) The Department may issue an order curtailing all new admissions and readmissions to a health care facility in the following circumstances:

1. Where violations of licensing regulations are found that have been determined to pose an immediate and serious threat of harm to patients or residents of a health care facility;

2. Where the Department has issued a Notice of Proposed Revocation or Suspension of a health care facility license, for the purpose of limiting the census of a facility if patients or residents must be relocated upon closure;

3. Where the admission or readmission of new patients or residents to a health care facility would impair the facility's ability to correct serious or widespread violations of licensing regulations related to direct patient care and cause a diminution in the quality of care; or

4. For exceeding the licensed or authorized bed or service capacity of a health care facility, except in those instances where exceeding the licensed or authorized capacity was necessitated by emergency conditions and where immediate and satisfactory notice was provided to the Department.

(b) The order for curtailment may be withdrawn upon a survey finding that the facility has achieved substantial compliance with the applicable licensing regulations or Federal certification requirements and that there is no immediate and serious threat to patient safety, or in the case of providers exceeding licensed capacity, has achieved a census equivalent to licensed and approved levels. Such order to lift a curtailment may reasonably limit the number and priority of patients to be admitted by the facility in order to protect patient safety.

8:43E-3.7 Appointment of a receiver

(a) Pursuant to N.J.S.A. 26:2H-42 et seq., the Department may seek an order or judgment in a court of competent jurisdiction, directing the appointment of a receiver for the purpose of remedying a condition or conditions in a residential health care facility, assisted living facility, or long-term care facility, that represent a substantial or habitual violation of the standards of health, safety, or resident care adopted by the Department or pursuant to Federal law or regulation.

(b) The Department shall review and approve the receiver's qualifications prior to submission for court approval. The receiver shall have experience and training in long-term care, assisted living, or residential health care, as appropriate, and, if the facility is a licensed long-term care provider, the receiver shall possess a current New Jersey license as a nursing home administrator and be in good standing. The Department shall maintain a list of interested and approved receivers.

(c) No receiver may be a current owner, licensee, or administrator of the subject facility or a spouse or immediate family member thereof.

8:43E-3.8 Suspension of a license

(a) Pursuant to N.J.S.A. 26:2H-14, the Commissioner may order the summary suspension of a license of a health care facility or a component or distinct part of a facility upon a finding that violations pertaining to the care of patients or to the hazardous or unsafe conditions of the physical structure pose an immediate threat to the health, safety, and welfare of the public or the residents of the facility.

(b) Upon a finding described in (a) above, the Commissioner or the Commissioner's authorized representative shall serve notice in person or by certified mail to the facility or its registered agent of the nature of the findings and violations and the proposed order of suspension. Except in the case of a life-threatening emergency, the notice shall provide the facility with a 72-hour period from receipt to correct the violations and provide proof to the Department of such correction.

(c) If the Department determines the violations have not been corrected, and the facility has not filed notice requesting a hearing to contest the notice of suspension within 48 hours of receipt of the Commissioner's notice pursuant to (e) below, then the license shall be deemed suspended. Upon the effective date of the suspension, the facility shall cease and desist the provision of health care services and effect an orderly transfer of patients.

(d) The Department shall approve and coordinate the process to be followed during an evacuation of the facility or cessation of services pursuant to an order for suspension or revocation.

(e) If the facility requests a hearing within 48 hours of receipt of the Notice of Proposed Suspension of License in accordance with N.J.S.A. 26:2H-14, the Department shall arrange for an immediate hearing to be conducted by the Commissioner and a final agency decision shall be issued within 48 hours by the Commissioner. If the Commissioner shall affirm the proposed suspension of the license, the order shall become final. The licensee may apply for injunctive relief against the Commissioner's order in the New Jersey Superior Court, in accordance with the provisions set forth in N.J.S.A. 26:2H-14.

(f) Notwithstanding the issuance of an order for proposed suspension of a license, the Department may concurrently or subsequently impose other enforcement actions pursuant to these rules.

(g) The Department may rescind the order for suspension upon a finding that the facility has corrected the conditions which were the basis for the action.

8:43E-3.9 Revocation of a license

(a) A Notice of the Proposed Revocation of a health care facility license may be issued in the following circumstances:

1. The facility has failed to comply with licensing requirements, posing an immediate and serious risk of harm or actual harm to the health, safety, and welfare of patients or residents, and the facility has not corrected such violations in accordance with an approved plan of correction or subsequent to imposition of other enforcement remedies issued pursuant to these rules;

2. The facility has exhibited a pattern and practice of violating licensing requirements, posing a serious risk of harm to the health, safety and welfare of residents or patients. A pattern and practice may be demonstrated by the repeated violation of identical or substantially-related licensing regulations during three consecutive surveys, or the issuance of civil monetary penalties pursuant to N.J.A.C. 8:43E-3.4 or other enforcement actions for unrelated violations on three or more consecutive surveys;

3. Failure of a licensee to correct identified violations which had led to the issuance of an order for suspension of a license, pursuant to N.J.A.C. 8:43E-3.6 or 3.8; or

4. Continuance of a facility on provisional licensure status for a period of 12 months or more.

(b) The notice shall be served in accordance with N.J.A.C. 8:43E-3.2, and the facility has a right to request a hearing pursuant to N.J.A.C. 8:43E-4.1.

8:43E-3.10 Provisional license

(a) The Department may place a health care facility on provisional license status in the following circumstances:

1. Upon issuance of a Notice for Revocation or Suspension of a License, pursuant to N.J.A.C. 8:43E-3.8 or 3.9, for a period extending through final adjudication of the action;

2. Upon issuance of an order for curtailment of admissions pursuant to N.J.A.C. 8:43E-3.6, for a minimum period of three months and for a maximum period extending through 90 days following the date the Department finds the facility has achieved substantial compliance with all applicable licensing regulations;

3. For failure to satisfy a civil penalty due and owing pursuant to N.J.A.C. 8:43E-3.4; or

4. Upon a recommendation to the Federal government or the New Jersey Division of Medical Assistance and Health Services for termination of a provider agreement for failure to meet the Federal certification regulations.

(b) A facility placed on provisional license status shall be placed on notice of same, in accordance with the notice requirements set forth in N.J.A.C. 8:43E-3.2. Provisional license status is effective upon receipt of the notice, although the facility may request a hearing to contest provisional license status in accordance with the requirements set forth in N.J.A.C. 8:43E-4.1. Where a facility chooses to contest provisional license status by requesting a hearing in accordance with the provisions set forth herein and in N.J.A.C. 8:43E-4.1, provisional license status remains effective at least until the final decision or adjudication (as applicable) of the matter, or beyond in instances where the Department's action is upheld, in accordance with these rules. In addition, provisional license status remains effective in cases where the underlying violations which caused the issuance of provisional licensure status are the subject of appeal and/or litigation, as applicable, in accordance with these rules.

(c) While a facility is on provisional license status, the following shall occur:

1. Withholding of authorization or review of any application filed with the Department for approval of additional beds or services;

2. Notification of the action to the Certificate of Need Program, for consideration during any pending application. It may result in withholding of Certificate of Need approval or denial of the Certificate of Need, in accordance with Certificate of Need rules at N.J.A.C. 8:33, or applicable licensing regulations; and

3. Notification of facility placement on provisional license status to any public agency that provides funding or third party reimbursement to the facility or that has statutory responsibility for monitoring the quality of care rendered to patients or residents.

(d) A facility placed on provisional license status shall post the provisional license in a location within the facility which is conspicuous.

8:43E-3.11 Cease and desist order

(a) Pursuant to N.J.S.A. 26:2H-14 and 15, the Commissioner or his or her designee may issue an order requiring the operation of an unlicensed or unauthorized care facility or service to cease and desist.

(b) The Commissioner may also impose other enforcement actions pursuant to these rules for operation of an unlicensed health care facility.

(c) The Department may maintain an action in the New Jersey Superior Court to enjoin any entity from operation of a health care facility without a license or after the suspension or revocation of a license pursuant to these rules.

SUBCHAPTER 4.
HEARINGS

8:43E-4.1 Hearings

(a) Notice of a proposed enforcement action shall be afforded to a facility pursuant to N.J.A.C. 8:43E-3.2.

(b) A facility shall notify the Department of its intent to request a hearing in a manner specified in the Notice within 30 days of its receipt.

(c) The Department shall transmit the hearing request to the Office of Administrative Law.

(d) Hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1.

8:43E-4.2 Settlement of enforcement actions

(a) The facility may request that the matter be settled in lieu of conducting an administrative hearing concerning an enforcement action.

(b) If the Department and the facility agree on the terms of a settlement, a written agreement specifying these terms shall be executed.

(c) Pursuant to N.J.S.A. 26:2H-16, civil penalties may be settled by the Department in cash or in-kind services to patients where circumstances warrant such agreement and the settlement does not compromise the health, safety, or welfare of patients. In no case shall such settlement reduce a penalty below $250.00, or $500.00 for second and subsequent offenses.

(d) The Department may agree to accept payment of penalties over a schedule not exceeding 18 months where a facility demonstrates financial hardship.

(e) All funds received in payment of penalties shall be deposited in the Health Care Facilities Improvement Fund. Such fund shall be designated for use by the Commissioner to make corrections in a health care facility which is in violation of a licensure standard and in which the owner or operator is unable or unwilling to make the necessary corrections. The owner of the facility shall repay the fund any monies plus interest at the prevailing rate that were expended by the State to correct the violation at the facility. If the owner fails to promptly reimburse the fund, the Commissioner shall have a lien in the name of the State against the facility for the cost of the corrections plus interest and for any administrative cost incurred in filing the lien.

(f) If a facility fails to meet the conditions of the settlement, the Department may immediately impose the original enforcement action without any further right to an administrative hearing.

SUBCHAPTER 5.
LICENSURE PROCEDURES

8:43E-5.1 Track record evaluation

(a) In the case of an application for licensure of a long-term care facility, subacute care unit in an acute care general hospital, assisted living residence, comprehensive personal care home, assisted living program, alternate family care sponsor agency, or residential health care facility, for which a certificate of need is required, the applicant's track record shall be evaluated as part of the certificate of need application process, in accordance with N.J.A.C. 8:33-4.10.

(b) In the case of an application for which a certificate of need is not required, including an application for transfer of ownership of a long-term care facility, subacute care unit in an acute care general hospital, assisted living residence, comprehensive personal care home, assisted living program, alternate family care sponsor agency, adult day health care facility, or residential health care facility, an application to establish or expand an adult day health care facility or to expand a residential health care facility, and an application for any long-term care beds or services offered as part of a continuing care retirement community, the track record rules regarding certificate of need applications at N.J.A.C. 8:33-4.10 shall be applied. These rules include, but are not limited to, those addressing criteria for denial of applications, the scope of the track record review, the use of categories of health care service similarity or relatedness, the meaning of the term "applicant," and the duration of the waiting period following application denial.

(c) In the case of an application to add one or more beds in accordance with N.J.A.C. 8:39-2.12, for which a certificate of need is not required, the track record rules regarding certificate of need applications at N.J.A.C. 8:33-4.10 shall be applied only to the facility which is requesting the additional beds.

8:43E-5.2 Facility surveys

(a) When the written application for licensure is approved and the building is ready for occupancy, a survey of the facility by representatives of the Department's Inspections, Complaints and Compliance Program or the Long Term Care Assessment and Survey Program, as applicable, shall be conducted to determine if the facility complies with the rules in this chapter.

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

2. The facility shall notify the Department's Inspections, Complaints and Compliance Program or Long Term Care Assessment and Survey Program, as applicable, when the deficiencies, if any, have been corrected, and the program so notified will schedule one or more resurveys of the facility prior to occupancy.

(b) No facility shall admit patients to the facility until the facility has the written approval and/or license issued by the Certificate of Need and Acute Care Licensure Program or the Long Term Care Licensure Program of the Department.

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

8:43E-5.3 Facility licensure

(a) A license shall be issued only where the survey conducted pursuant to N.J.A.C. 8:43E-5.2 demonstrates that the facility meets the requirements as set forth in N.J.S.A. 26:2H-1 et seq. and the applicable rules duly promulgated pursuant thereto.

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

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

(d) The license is not assignable or transferable, and it shall be immediately void if the facility ceases to operate, if the facility's ownership changes, or if the facility is relocated to a different state.

(e) The license, unless suspended or revoked in accordance with these rules, shall be renewed annually on the anniversary date of the issuance of the original license, or within 30 days thereafter. In cases where the license issues after, but within 30 days of, the anniversary date, it shall be deemed to have issued on the anniversary date and dated accordingly. The facility shall receive from the Department a request for licensure renewal fee 30 days prior to the expiration of the license. A renewed license shall not issue unless and until the licensure renewal fee is received by the Department.

(f) The license may not be renewed if local rules, regulations and/or other applicable requirements are not met, or if the Department determines that the facility is in violation of applicable licensure standards.

8:43E-5.4 Conditional license

A conditional license may be issued to a health care facility providing a type or category of health care service neither listed nor otherwise addressed in the applicable licensure chapter for that type of facility.

8:43E-5.5 Surrender of license

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

8:43E-5.6 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and the licensure rules applicable to the type of facility in question, waive sections of applicable licensure rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of patients or the public.

(b) A facility seeking waiver pursuant to this rule shall apply in writing to the Director of the Certificate of Need and Acute Care Licensure Program or the Long Term Care Licensure Program, as applicable.

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

1. The specific rule(s) or part(s) of the rule(s) for which waiver is sought;

2. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility if the waiver does not issue;

3. An alternative proposal, ensuring patient safety and compliance with the general intent and purpose of the applicable licensure rules; and

4. Documentation to support the request for waiver.

(d) In cases where the Department requests additional information before or during the course of processing a waiver request, the facility shall comply with the request for additional information or the waiver shall be denied.

SUBCHAPTER 6.
PAIN MANAGEMENT PROCEDURES

8:43E-6.1 Pain management standards; scope

The standards set forth in this subchapter apply to all health care facilities licensed in accordance with N.J.S.A. 26:2H-1 et seq.

8:43E-6.2 Purpose

The rules in this subchapter are intended to promote the health, safety, and welfare of patients or residents of health care facilities by establishing requirements for the assessment, monitoring and management of pain.

8:43E-6.3 Definitions

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

"Pain" means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

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

"Pain rating scale" means a tool that is age cognitive and culturally specific to the patient or resident population to which it is applied and which results in an assessment and measurement of the intensity of pain.

"Pain treatment plan" means a plan, based on information gathered during a patient/resident pain assessment, that identifies the patient's/resident's needs and specifies appropriate interventions to alleviate pain, to the extent feasible and medically appropriate.

8:43E-6.4 Pain assessment procedures

(a) A facility shall formulate a system for assessing and monitoring patients'/residents' pain using a pain rating scale.

1. A facility serving different patient/resident populations shall utilize more than one pain scale, as appropriate.

(b) Assessment of a patient's/resident's pain shall occur, at a minimum, upon admission, on the day of a planned discharge, and when warranted by changes in a patient's/resident's condition, self-reporting of pain and/or evidence of behavioral cues indicative of the presence of pain. In the case of individuals receiving home health care services, assessment shall coincide with a visit by staff of the home health service agency and assessment on the day of discharge is not required if the individual has been admitted to an inpatient or residential health care facility and discharge from the home health service agency takes place after the admission.

(c) If pain is identified, a pain treatment plan shall be developed and implemented within the health care facility or the patient/resident shall be referred for treatment or consultation.

(d) If the patient/resident is cognitively impaired or non-verbal, the facility shall utilize pain rating scales for the cognitively impaired and non-verbal patient/resident. Additionally, the facility shall seek information from the patient's/resident's family, caregiver or other representative, if available and known to the facility. The results of the pain rating scales and the response to the additional inquiry shall be documented in the patient's/resident's medical record.

(e) Pain assessment findings shall be documented in the patient's/resident's medical record. This shall include, but not be limited to, the date, pain rating, treatment plan and patient/resident response.

(f) The facility shall establish written policies and procedures governing the management of pain that are reviewed at least every three years and revised more frequently as needed. They shall include at least the following:

1. A written procedure for systematically conducting periodic assessment of a patient's/resident's pain, as specified in (b) above. At a minimum, the procedure must specify pain assessment upon admission, upon discharge, and when warranted by changes in a patient's/resident's condition and self-reporting of pain;

2. Criteria for the assessment of pain, including, but not limited to: pain intensity or severity, pain character, pain frequency or pattern, or both; pain location, pain duration, precipitating factors, responses to treatment and the personal, cultural, spiritual, and/or ethnic beliefs that may impact an individual's perception of pain;

3. A written procedure for the monitoring of a patient's/resident's pain;

4. A written procedure to insure the consistency of pain rating scales across departments within the health care facility;

5. Requirements for documentation of a patient's/resident's pain status on the medical record;

6. A procedure for educating patients/residents and, if applicable, their families about pain management when identified as part of their treatment; and

7. A written procedure for systematically coordinating and updating the pain treatment plan of a patient/resident in response to documented pain status.

8:43E-6.5 Staff education and training programs

(a) Each facility shall develop, revise as necessary and implement a written plan for the purpose of training and educating staff on pain management. The plan shall include mandatory educational programs that address at least the following:

1. Orientation of new staff to the facility's policies and procedures on pain assessment and management;

2. Training of staff in pain assessment tools; behaviors potentially indicating pain; personal, cultural, spiritual and/or ethnic beliefs that may impact a patient's/resident's perception of pain; new equipment and new technologies to assess and monitor a patient's/resident's pain status;

3. Incorporation of pain assessment, monitoring and management into the initial orientation and ongoing education of all appropriate staff; and

4. Patient/resident rights.

(b) Implementation of the plan shall include records of attendance for each program.

8:43E-6.6 Pain management continuous quality improvement

The facility's continuous quality improvement program shall include a systematic review and evaluation of pain assessment, management and documentation practices. The facility shall develop a plan by which to collect and analyze data in order to evaluate outcomes or performance. Data analysis shall focus on recommendations for implementing corrective actions and improving performance.

SUBCHAPTER 7.
REQUIREMENT TO USE NEEDLES AND SHARP INSTRUMENTS CONTAINING INTEGRATED SAFETY FEATURES OR NEEDLELESS DEVICES

8:43E-7.1 Use of needles and sharp instruments containing integrated safety features

(a) All facilities shall purchase, for use by health care workers only, available sharp devices containing integrated safety features or available needleless devices designed to prevent needle stick injuries, in accordance with N.J.S.A. 26:2H-5.10 through 5.16, as well as this subchapter.

(b) In cases where there is no available sharp device containing integrated safety features or needleless device, for a specific patient use, facilities shall utilize the appropriate sharp device that is available for that specific patient use, including any sharp device which employs non-integrated, add-on safety features, until such time as an appropriate sharp device containing integrated safety features becomes available.

(c) The provisions of this section shall apply to both empty and pre-filled syringes upon the effective date of these rules.

8:43E-7.2 Definitions

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

"Available" means cleared or approved for marketing by the Federal Food and Drug Administration and commercially offered for distribution.

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

"Emergency" means an unforeseen circumstance involving a patient in need of immediate medical attention in order to save the patient's life and/or limb or prevent serious and/or permanent injury.

"Evaluation committee" means a group of individuals appointed within each facility or health care system which satisfies the requirements of N.J.S.A. 26:2H-5.13 and N.J.A.C. 8:43E-7.3.

"Facility" means a health care facility licensed by the Department, pursuant to the provisions set forth in the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., as amended.

"Health care system" means a licensed health care provider/entity that either owns and operates more than one licensed facility within the State of New Jersey or can document operational control over more than one licensed facility within the State of New Jersey, but which is not a management company.

"Health care worker" or "health care professional" means a physician, physician assistant, advanced practice nurse, registered nurse, licensed practical nurse, or any other individual employed by the facility or having privileges at the facility whose job duties require the use of sharp devices, as that term is defined herein.

"Integrated safety features" means needles and all other sharp instruments with engineered injury prevention protections in the form of a built-in safety feature or mechanism designed to protect the user of the sharp device from needle stick injuries.

"Needleless device" means a device that does not use needles for the following procedures:

1. The collection or withdrawal of bodily fluids after initial venous or arterial access is established;
2. Administration of medication or other fluids; or
3. Any other procedure involving potential for exposure to blood or other potentially exposed infectious material.

"Needle stick injury" means the actual or potential parenteral introduction, into the body of a health care worker, of blood or other potentially exposed infectious material, by any type of sharp device, as that term is defined in this section.

"Sharp device(s)" means needles and all other sharp instruments used by health care workers to administer patient care, the use of which creates the potential for exposure to blood or other potentially exposed infectious material, regardless of whether the specific patient being treated has been diagnosed with a bloodborne disease or infection.

8:43E-7.3 Requirement and responsibilities of evaluation committees

(a) Every licensed health care facility or health care system shall appoint an evaluation committee which shall be responsible for evaluating and selecting sharp devices with integrated safety features or needleless devices for use by health care workers at the facility or facilities.

(b) At least one half of all members of the evaluation committee shall be direct-care health care workers employed by the facility or health care system, whose job duties include the use of sharp devices to treat patients of the facility and resulting potential exposure to blood and other potentially exposed infectious material through accidental needle stick injuries. In the case of a health care system, not only shall at least one half of the evaluation committee be comprised of direct-care health care workers, but the evaluation committee shall also include at least one direct-care health care worker from every facility within the health care system.

(c) In determining which needles and other sharp devices or needleless devices to purchase in compliance with these rules, every evaluation committee shall establish and follow guidelines for determining which devices are to be purchased for use by facility staff. An example of such guidelines may be found in the June 1999 edition of the "California Guide to Preventing Sharps Injuries." That manual is available by contacting the California Healthcare Association by telephone at (800) 494-2001 or (916) 928-5123, via the internet at www.calhealth.org or in writing at the following address:

California Healthcare Association
Publication Sales Center
1101 North Market Boulevard, #9
Sacramento, CA 95834

Guidelines may also be found at www.tdict.org.

(d) All facilities shall develop and maintain policies and procedures for the continual review and evaluation of sharp devices or needleless devices as they are newly introduced and become available. Review of newly marketed devices shall occur at a minimum frequency of once annually. The policies and procedures shall include a requirement that all health care workers receive appropriate training in the use of all safety devices, whether sharp or needleless, purchased for use during the course of their duties. Training shall be provided to the extent necessary to ensure the proper and appropriate use of all devices with integrated safety features or needleless devices used within the facility. The policies and procedures shall be reviewed and reevaluated every three years.

8:43E-7.4 Waiver from the requirement to utilize available sharp devices with integrated safety features or needleless devices

(a) All facilities shall develop policies and procedures setting forth a mechanism for health care professionals to request non-emergency waivers from the requirements set forth in N.J.A.C. 8:43E-7.1. All waiver requests shall be submitted to the evaluation committee on forms prescribed by the Department.

(b) Non-emergency waiver requests shall be presented to the evaluation committee for approval and shall be considered only for a specific device to be used for a specific medical procedure that shall be performed on a specific class of patients. In cases where the evaluation committee determines that the use of a sharp device with integrated safety features may potentially have a negative impact on patient safety or the success of a specific medical procedure, the waiver request shall be granted by the evaluation committee.

(c) In the case of an emergency, a health care professional may utilize sharp devices which do not contain integrated safety features without a waiver, provided:

1. The professional determines that use of a sharp device with integrated safety features potentially may have a negative impact on patient safety or the success of a specific medical procedure; and

2. The professional making the determination required in (c)1 above, notifies the evaluation committee, in writing, on a form prescribed by the Department, within five days of the date the sharp device was used, of the reasons why it was necessary to use a sharp device without integrated safety features.

8:43E-7.5 Recording requirements

All facilities shall maintain a record of needle stick injuries, either in a Sharps Injury Log or an OSHA 300 Log. All entries made pursuant to this subchapter shall include a description of the injury and the type and brand name of the sharp device involved in the injury.

SUBCHAPTER 8.
MANDATORY OVERTIME

8:43E-8.1 Mandatory overtime; scope and general purpose

The procedures set forth in this subchapter apply to all health care facilities licensed in accordance with N.J.S.A. 26:2H-1 et seq., including a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to N.J.S.A. 56:8-1.1 et seq. The rules set forth the standards and procedures governing the use by health care facilities of required overtime by hourly wage employees involved in direct patient care activities or clinical services in health care facilities.

8:43E-8.2 Applicability

(a) The rules in this subchapter do not apply to the following:

1. Physicians;

2. Volunteers;

3. Employees who volunteer to work overtime;

4. Employees of assisted living facilities that are licensed in accordance with N.J.A.C. 8:36 and who receive room and board as a benefit of employment and reside at the facility on a full-time basis;

5. Employees who assume on-call duty;

6. Employees participating in a surgical or therapeutic interventional procedure that is in progress, when it would be detrimental to the patient if the employee left. However, in the case of elective procedures, the rules do apply if the procedure was scheduled such that the length of time ordinarily required to complete the procedure would exceed the end of the employee's scheduled shift; and

7. Employees not involved in direct patient care activities or clinical services.

8:43E-8.3 Definitions

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

"Chronic short staffing" means a situation characterized by long standing vacancies in that portion of the facility's master staffing plan applicable to the work unit of an employee who files a complaint where such vacancies are the result of open positions that continually remain unfilled over a period of 90 days or more despite active recruitment efforts.

"Commissioner" means the Commissioner of Health and Senior Services.

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

"Direct patient care activities" or "clinical services" means activities/services in which an employee provides direct service to patient/residents in a clinical setting, including the emergency department, inpatient bedside, operating room, other clinical specialty treatment area, or, in the case of a patient served by a home health care agency or health service firm, the individual's home.

"Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services and receives an hourly wage, but shall not include a physician.

"Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.

"Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.), a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L. 1960, c.39 (N.J.S.A. 56:8-1 et seq.).

"Licenses" means the action taken by a State agency to license, certify, or register a health care facility subject to the jurisdiction of that State agency.

"On-call time" means time spent by an employee who is not currently working on the premises of the place of employment, but who is compensated for availability, or as a condition of employment has agreed to be available, to return to the premises of the place of employment on short notice if the need arises.

"Reasonable efforts" means that the employer shall:

1. Seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance;

2. Contact all qualified employees who have made themselves available to work extra time;

3. Seek the use of qualified per diem staff; and

4. Seek qualified personnel from a contracted temporary agency when such staff is permitted by law, regulation or applicable collective bargaining agreements.

"Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

8:43E-8.4 Purpose

The rules in this subchapter are intended to promote the health, safety, and welfare of patients, residents and clients of health care facilities as well as of certain hourly wage employees of those facilities through establishing rules implementing the statutory limitations on health care facilities' authority to require certain hourly wage employees, involved in direct patient care activities or clinical services, to work overtime.

8:43E-8.5 Overtime procedures

(a) Except as provided for in (b) below, an employer shall not require an employee involved in direct patient care activities or clinical services to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week. The acceptance by any employee of work in excess of this shall be strictly voluntary. The refusal of an employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the employee.

(b) The requirements of (a) above shall not apply in the case of an unforeseeable emergent circumstance when:

1. The overtime is required only as a last resort, and is not used to fill vacancies resulting from chronic short staffing; and

2. The employer has exhausted reasonable efforts to obtain staffing. However, exhaustion of reasonable efforts shall not be required in the event of any declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services or causes the facility to activate its emergency or disaster plan.

(c) In the event that an employer requires an employee to work overtime pursuant to (b) above, the employer shall provide the employee with necessary time, up to a maximum of one hour, which may be taken on or off the facility's premises, to arrange for the care of the employee's minor children, or elderly or disabled family members.

(d) On-call time shall not be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

8:43E-8.6 Records; dissemination of information

(a) An employer shall establish a system for keeping records of circumstances where employees are required to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, or in excess of 40 hours per week. The records shall include, but not be limited to:

1. The employee's name and job title;

2. The name of the employee's work area or unit;

3. The date the overtime was worked, including start time;

4. The number of hours of overtime mandated;

5. The employee's daily work schedule for any week in which the employee is required to work excess time;

6. The reason why the overtime was necessary;

7. A description of the reasonable efforts that were exhausted prior to requiring overtime. This shall include:

i. The names of employees contacted to work voluntary overtime;

ii. A description of efforts to secure per diem staff; and

iii. A list of the temporary agencies contacted; and

8. The signature of individual authorizing the required mandatory overtime.

(b) An employer shall provide the employee with a copy of the documentation in accordance with the requirements set forth in (a) above upon requiring that the employee work overtime, except that the total number, rather than the names, of employees contacted in accordance with (a)7i above shall be provided.

(c) Records as set forth in (a) above shall be kept a period of two years.

(d) A facility shall post in a conspicuous place a notice prepared by the New Jersey Department of Labor concerning New Jersey Mandatory Overtime Restrictions for Health Care Facilities (N.J.S.A. 34:11-56a et seq.)

8:43E-8.7 Enforcement and administrative penalties

(a) If the Commissioner of Labor determines that a facility has violated provisions of this subchapter, the Commissioner of Labor may issue sanctions in accordance with the wage and hour regulations contained at N.J.A.C. 12:56.

(b) In cases where the State agency that licenses the facility and/or Department of Labor requests additional information from a facility concerning mandatory overtime usage, the facility shall comply with this request within 10 working days. The State agency that requested the information from the facility may, at its discretion, grant an extension to this time frame if the facility can demonstrate good cause. Failure to provide these records shall result in the issuance of administrative penalties in accordance with N.J.A.C. 12:56-1.2 and 8:43E-3.4(a)13.

(c) If the State agency that licenses a facility subject to this chapter determines through a survey or complaint investigation that the facility exhibits a pattern or practice of noncompliance with N.J.A.C. 8:43E-8.5, that State agency shall notify the Department of Labor of the violation. The Department of Labor may also share with State agencies that license facilities subject to this chapter any information it develops on Statewide and facility-specific trends, such as number of mandatory overtime complaints filed; the number of complaints found to be valid; the number of enforcement actions appealed; and the number of enforcement actions upheld.

(d) In the event a facility licensed by the Department fails to develop and implement the required recordkeeping in accordance with N.J.A.C. 8:43E-8.6 and the required policies and procedures in accordance with this section, the Department shall take enforcement action in accordance with the provisions of N.J.A.C. 8:43E-3.4(a)13.

(e) Nothing in this subchapter shall be construed to relieve a facility of its obligation to comply with State licensure standards pertaining to minimum employee staffing levels.

8:43E-8.8 Policies and procedures

(a) A facility shall develop, revise as necessary and implement policies and procedures for the purpose of training and educating staff on mandatory overtime. The policies and procedures shall include mandatory educational programs that address at least the following:

1. The conditions under which an employer can require mandatory overtime;

2. Overtime procedures;
3. Employee rights; and

4. Complaint procedures.

(b) A facility shall establish a staffing plan designed to facilitate compliance with the requirements of this subchapter.

1. The staffing plan shall include procedures to provide for replacement staff in the event of sickness, vacations, vacancies and other employee absences.

(c) Upon request, the staffing plan and all related policies and procedures shall be made available to the Department of Labor and/or the State agency that licenses the facility.

8:43E-8.9 Discharge or discrimination against an employee making a complaint

An employer shall not discharge or in any other manner discriminate against an employee because such employee has made any complaint to his or her employer, including the employer's representative; to the Commissioner of Labor; or to the State agency that licenses the facility where the employee works that the employee has been required to work overtime in contravention to the provisions of this chapter.

8:43E-8.10 Complaint system

(a) An employee covered by this subchapter shall have a right to file a complaint up to two years following the date of the assigned mandatory overtime if he or she believes the overtime was not in response to an unforeseen emergent circumstance, and/or required reasonable efforts were not exhausted, and/or he or she was not provided the allowed time to make arrangements for the care of family members. All such complaints shall be submitted to:

Labor Standards and Safety Enforcement Directorate
Division of Wage and Hour Compliance of the
Department of Labor
PO Box 389
Trenton, New Jersey 08625-0389

1. If requested, records of such reports shall be made available upon request to the Department or to the Department of Law and Public Safety or to the Department of Human Services.

8:43E-8.11 Protection of the right to collective bargaining

Nothing in this subchapter shall be construed to impair or negate any employer-employee collective bargaining agreement or any other employer/employee contract in effect as of January 1, 2003 for licensed general hospitals and July 1, 2003 for all other facilities subject to these rules as set forth at N.J.A.C. 8:43E-8.1.

8:43E-8.12 Data

A facility shall submit data related to the effects of prohibiting mandatory overtime in accordance with this chapter as well as data required to determine whether chronic staffing shortages exist, as the State agency which licenses the facility shall request from time to time directly from each facility.