

# RULE PROPOSALS

## INTERESTED PERSONS

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

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF CODES AND STANDARDS

#### Rooming and Boarding Houses

#### Residences Exclusively for the Care of Persons with Alzheimer's Disease or Related Disorders or Other Forms of Dementia

#### Proposed Amendments: N.J.A.C. 5:27-8.4, 13.1, and 13.4

#### Proposed New Rule: N.J.A.C. 5:27-13.7

Authorized By: Richard E. Constable, III, Commissioner,  
Department of Community Affairs.

Authority: N.J.S.A. 55:13B-6.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Proposal Number: PRN 2013-035.

Submit written comments by May 3, 2013 to:

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Department of Community Affairs  
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Trenton, New Jersey 08625  
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The agency proposal follows:

#### Summary

The proposed amendments to N.J.A.C. 5:27-8.4 would increase the record retention period from five to seven years. The amendments would also allow for the storage of records of residents no longer in the facility at off-site locations. Amendment of the recordkeeping rule would conform retention requirements to the retention requirements applicable to the licensed health professionals who created the records.

The proposed amendment to N.J.A.C. 5:27-13.1(c) calls for the supervision of boarding home hospice care to be monitored by a home health agency under a care plan developed by a health professional. The proposed amendments to N.J.A.C. 5:27-13.4(a)1 allow a boarding home to care for patients who are unable to self-evacuate under certain restrictions. The increase in staffing ratios and provision for hospice care within a residence would enhance safety while allowing residents to age in place and remain in the community.

The proposed new rule at N.J.A.C. 5:27-13.7 would require every owner of a boarding house exclusively serving persons with Alzheimer's disease or related disorders or other forms of dementia to enter into a contract with a home health agency (HHA) that is licensed by the Department of Health and certified for participation in the Medicare

program of the U.S. Department of Health and Human Services to provide the nursing services set forth in this section. Pursuant to such contract, and on a quarterly basis, an HHA Registered Nurse would be required to conduct a nursing assessment of each resident for the purpose of identifying and documenting the care and safety needs of the resident, which shall include, but not be limited to, requirements for assistance with the activities of daily living and for nursing care and requirements to ensure environmental safety for the resident. An additional assessment will be required to be conducted if there is a significant change in the resident's condition. There would be a rebuttable presumption that any resident whose individualized nursing assessment indicates that his or her needs are being met consistent with the Rooming and Boarding House Act, N.J.S.A. 55:13B-1 et seq., and regulations governing such residences is deemed to be appropriately placed in the boarding house. The current provision at N.J.A.C. 5:27-13.1(g) requiring that the quarterly assessment be performed by the resident's personal health care professional who is financially independent of the residence is proposed for deletion as it is replaced by the proposed new rule.

The following building safety requirements would also be established by the proposed amendment to N.J.A.C. 5:27-13.4(a)2 for boarding houses exclusively serving persons with dementia:

i. The entrance to the front yard shall be controlled with a non-scalable fence of at least four feet and a gate. The gate will have self-closing and self-latching hardware and be equipped with a doorbell or intercom that controls access into the building and the licensee or an employee of the licensee shall be at all times responsible for responding to the doorbell or the intercom.

ii. Exterior doors shall be locked at all times and access by the residents and visitors will only be permitted with the assistance of a staff member.

iii. All doors to a common cellar or storage area shall remain locked at all times except for ingress or egress in the presence of a staff member.

iv. The main entrance of the residence shall be monitored by a closed circuit monitor.

v. Windows and doors will be equipped with audible alarms that will ring if a door or window is opened.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

Under the proposed amendments, the retention period for records would be increased from five to seven years. Boarding homes would also now be given the option of storing records of patients no longer in the facility at a central or off-site location. In addition, supervision of boarding home hospice care will now be monitored by a home health agency under a care plan as developed by a healthcare professional. The amendments would also allow boarding homes to care for patients who are unable to self-evacuate. Under the proposed new rule, an individualized nursing assessment for each resident would be provided by

a home health agency. There would be a rebuttable presumption that residents of boarding houses that exclusively serve persons with Alzheimer's disease and related disorders or other forms of dementia would be able to remain in the residence, and not have to be moved to a residence with a higher level of care, based on an individualized nursing assessment indicating that each such resident's needs are being met consistent with the Act and the regulations governing such residences.

The enhanced building safety requirements addressing the special needs of residents with dementia would protect these residents from the hazards to which they would be subject were they to leave the residence on their own and without having adequate supervision.

#### Economic Impact

The owners of the residences might incur any increased costs for the nursing assessment and enhanced building safety features not reimbursed by Medicare, Medicaid, or an insurance company. The requirement for "health monitoring of residents by qualified, licensed health care professionals, including a requirement that a medical assessment be performed ... prior to admission and on a quarterly basis thereafter to ensure that the residence is appropriate to the needs of the resident" is statutory. (See N.J.S.A. 55:13B-6.) The proposed new rule establishes which entity is to perform the assessment. The indicators of resident need to be included in the assessment are in the existing rules.

#### Federal Standards Statement

No Federal standards analysis is required because the amendments and new rule are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

#### Jobs Impact

The Department does not anticipate that the proposed amendments and new rule would result in the creation or loss of any jobs.

#### Agriculture Industry Impact

The Department does not anticipate that the proposed amendments and new rule would impact the agriculture industry.

#### Regulatory Flexibility Analysis

Some boarding houses exclusively serving persons with Alzheimer's disease and related disorders or other forms of dementia may be owned by small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16. Owners of such residences, be they small businesses or not, might incur any costs not reimbursed by Medicare, Medicaid, or an insurance company in order to provide the nursing assessment services required, as well as to provide enhanced building safety appropriate to the needs of persons with dementia. As noted in the Economic Impact statement above, the requirement for such an assessment is statutory. There is no basis for any differential treatment of small businesses. The amendments and new rule are intended to promote the safety and well-being of the residents of boarding homes and, as such, any negatives would be outweighed by the benefits to the boarding home residents. Inasmuch as resident assessments already are required, there are no new recordkeeping or reporting requirements imposed by these proposed amendments and new rule.

#### Housing Affordability Impact Analysis

Inasmuch as the proposed new rule only concerns standards for the care of residents of residences exclusively serving persons with Alzheimer's disease and related disorders or other forms of dementia, there is an extreme unlikelihood that they would have any effect upon housing production costs or affect housing affordability. The proposed amendments also only concern standards of care and record retention for boarding homes and their residents and as such, there is an extreme unlikelihood that they would have any effect upon housing production costs or to affect affordability.

#### Smart Growth Development Impact Analysis

Inasmuch as the proposed new rule and rule amendments only concern standards for boarding homes, there is an extreme unlikelihood that they would have any effect on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

#### 5:27-8.4 Record retention

(a) All required financial records shall be retained for a period of [at least] five years from the date of the record.

(b) All required resident records shall be retained for a period of [at least five] **seven** years after the resident ceases to reside at the rooming or boarding house.

(c) [The Bureau shall have discretion to allow either disposal, or require longer retention, of specific records or categories of records in specific cases.] **Financial records and resident records for residents who no longer reside at the rooming or boarding house may be stored off site or at a central location provided that written notice of the storage location of the records is provided to the Bureau.**

#### SUBCHAPTER 13. ADDITIONAL RULES REGARDING PERSONS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS OR OTHER FORMS OF DEMENTIA

#### 5:27-13.1 Appropriate placement and care

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

(c) The provision of hospice services [in a facility is only allowed with prior notice to the Bureau] **in a residence is permitted under the supervision of a home health agency (HHA) in accordance with N.J.A.C. 5:27-13.7** and with the development of a care plan by a [physician, physician's assistant, registered professional nurse or clinical nurse specialist/nurse practitioner] **registered nurse employed by the hospice service in conjunction with the residence Registered Nurse.** [Once the Bureau is notified and the care plan is in place, the facility, in collaboration with the family, must arrange for 24-hour private duty nursing care to supplement hospice services.] **The residence is responsible for the care plan implementation under the review of the Quality Assurance Nurse and with the assistance of the hospice service. (See N.J.A.C. 5:27-13.7(b).)**

(d)-(f) ((No change.)

(g) Each resident shall be assessed prior to admission, [and at least quarterly thereafter, to determine if the resident exhibits once or more of the characteristics for transfer listed in (a) above. Such assessment shall be performed] by a physician, physician's assistant, registered professional nurse, or clinical nurse specialist/nurse practitioner licensed to practice in the State of New Jersey. The assessment shall be conducted in person, and a signed, original copy of the assessment report shall be kept on-site at the [facility] **residence.** The licensed professional who carries out this assessment shall be the person's personal health care professional and shall be financially independent of the [facility] **residence.**

(h)-(i) (No change.)

#### 5:27-13.4 Building safety requirements

(a) In addition to being maintained in accordance with the requirements of N.J.A.C. 5:27-1.3(c) and 5:27-4, all [facilities] **residences** subject to this subchapter shall have[,] **the following:**

1. [on] **On** each floor above the ground floor to which one or more persons with Alzheimer's disease or a related disorder or other form of dementia has access, a designated area, approved by the Bureau, to which such persons may be brought, in which they may reasonably be expected to be safe, pending their evacuation, in an emergency situation. **No Class C boarding home shall be permitted to have more than four residents that cannot physically self-evacuate unless the staffing shall be increased to a ratio of one staff member per two residents that cannot self evacuate; and**

2. **Physical security features in compliance with the following:**

i. **The entrance to the front yard shall be controlled with a non-scalable fence of at least four feet and a gate. The gate will have self-closing and self-latching hardware and be equipped with a doorbell or intercom that controls access into the building and the licensee or an employee of the licensee shall be at all times responsible for responding to the doorbell or intercom.**

ii. Exterior doors shall be locked at all times and access by the residents and visitors will only be permitted with the assistance of a staff member.

iii. All doors to a common cellar or storage area shall remain locked at all times except for ingress or egress in the presence of a staff member.

iv. The gate or main entrance of the residence shall be monitored by a closed circuit monitor.

v. Windows and doors will be equipped with audible alarms that will ring if a door or window is opened.

**5:27-13.7 Nursing assessments of residents of boarding houses exclusively serving persons with Alzheimer’s disease or related disorders or other forms of dementia**

(a) The owner of every boarding house exclusively serving persons with Alzheimer’s disease or related disorders or other forms of dementia shall enter into a contract with a home health agency (HHA) that is licensed by the Department of Health and certified for participation in the Medicare program of the U.S. Department of Health and Human Services to provide the nursing services set forth in this section.

(b) In accordance with the contract entered into pursuant to (a) above, prior to admission and on a quarterly basis thereafter, an HHA Registered Nurse (hereinafter referred to as the Quality Assurance Nurse) shall conduct a nursing assessment of each resident for the purpose of identifying and documenting the care and safety needs of the resident, which shall address the issues set forth in N.J.A.C. 5:27-13.1 and shall include, but not be limited to:

1. Requirements for assistance with the activities of daily living;
2. Requirements for nursing care, if any; and
3. Requirements to ensure environmental safety for the resident.

(c) An additional assessment will be conducted if there is a significant change in the resident’s condition.

(d) There shall be a rebuttable presumption that a resident shall be deemed to be appropriately placed in the boarding house provided that the nursing assessment required pursuant to this section indicates that the resident’s identified needs are being met consistent with the Rooming and Boarding Act, N.J.S.A. 55:13B-1 et seq., and regulations governing such residences.

**EDUCATION**

**(a)**

**STATE BOARD OF EDUCATION**

**Bilingual Education**

**Proposed Amendments: N.J.A.C. 6A:15**

Authorized By: New Jersey State Board of Education, Christopher D. Cerf, Commissioner, Secretary, New Jersey State Board of Education.

Authority: N.J.S.A. 18A:4-15 and 18A:35-15 to 26.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-040.

Submit written comments by May 3, 2013 to:

Barbara Gantwerk, Assistant Commissioner  
New Jersey Department of Education  
River View Executive Plaza  
Building 100, P.O. Box 500  
Trenton, New Jersey 08625-0500

The agency proposal follows:

**Summary**

The Department of Education proposes to amend N.J.A.C. 6A:15, the rules for bilingual education. The proposed amendments will align the rules with current Department policies and practices and edit the chapter for clarity and consistency in style and grammar.

The requirement for school districts to provide bilingual education services is established in State law, N.J.S.A. 18A:35-15 to 26, Bilingual Education. The law mandates that school districts establish bilingual education programs when the enrollment of limited English proficient (LEP) students in any single language group reaches or exceeds 20 students. Bilingual education programs must be designed to prepare students to transition into mainstream programs and meet the standards of the regular public school curriculum.

In the 2003 re adoption of N.J.A.C. 6A:15, only one amendment was made to comply with Title III of the Federal No Child Left Behind Act, P.L. 107-110 of 2001 (NCLB) by expanding the level of accountability for LEP student performance. The amendment strengthened the provision to assess students enrolled in the bilingual, English as a Second Language (ESL), or English language services (ELS) programs by requiring school districts to annually assess students on their growth in English language proficiency, as well as on their readiness for exiting the language assistance program.

The rules readopted in 2008 maintained the focus on achieving results for LEP students, while holding school districts accountable for the results.

The newly proposed amendments are in response to the recommendations of the Education Transformation Task Force and for Department-initiated clarifications. Amendments are proposed to eliminate unnecessary administrative reporting requirements that do not relate to improving educational results for LEP students. To this end, the rules as amended would no longer require school districts to submit to the Department for approval a three-year plan detailing how they intend to provide language assistance services to LEP students. Other proposed amendments would reference current data collections and eliminate data collections that are no longer necessary as a result of the New Jersey Standards Measurement and Resource for Teaching (NJSMART), which is a comprehensive data warehouse, student-level data reporting, and unique Statewide student identification (SID) system.

The following summary provides an overview of each section and the proposed amendments:

**Subchapter 1. General Provisions**

**N.J.A.C. 6A:15-1.1 General requirements**

This section describes the purpose of the rules and identifies the parties to whom it applies.

An amendment is proposed at N.J.A.C. 6A:15-1.1(a)1 to clarify that the statute defines LEP students.

**N.J.A.C. 6A:15-1.2 Definitions**

Amendments to this section are proposed to eliminate redundancies, as well as for clarity, style, and grammar. An amendment is proposed to the definition of “bilingual education programs” to eliminate the ESL requirement, as it is already in N.J.A.C. 6A:15-1.4(d)1.

A definition of “CCCS” is proposed to be added, referencing the definition in N.J.A.C. 6A:8-1.3. All references in the rules to the Core Curriculum Content Standards will be indicated as “CCCS.”

The definition for “English language fluency” is proposed to be eliminated as the term is not used in the chapter.

An amendment is proposed to change the term “ESL standards for Pre-K to 12 Students” to “English language development standards,” and to incorporate by reference, as amended and supplemented, the most current version of the standards. As a member state of the World Class Instructional Design and Assessment (WIDA) consortium, New Jersey utilizes the WIDA English language development standards. The standards are periodically updated and were recently amplified to align to the Common Core State Standards.

**N.J.A.C. 6A:15-1.3 Identification of eligible limited English proficient (LEP) students**

This section delineates the steps school districts must take to identify LEP students.

An amendment is proposed at N.J.A.C. 6A:15-1.3(a)2 to delete an unnecessary requirement to report annually on the fall LEP Enrollment Summary because the data is now collected via NJSMART.