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RULE ADOPTIONS

Reporter

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> COMMUNITY AFFAIRS -- DIVISION OF CODES AND STANDARDS***

Agency

COMMUNITY AFFAIRS > DIVISION OF CODES AND STANDARDS

Administrative Code Citation

Readoption with Amendments: N.J.A.C. 5:27A

Adopted New Rule and Repeal: N.J.A.C. 5:27A-17.4

Adopted New Rules: N.J.A.C. 5:27A-19

Text

Standards for Licensure of Residential Health Care Facilities Not Located With, and Operated By, Licensed Health Care Facilities

Proposed: July 17, 2017, at 49 N.J.R. 1965(a).

Adopted: October 6, 2017, by Charles A. Richman, Commissioner, Department of Community Affairs.

Filed: November 15, 2017, as R.2017 d.235, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2H-5 and 30:11A-3; and Reorganization Plan No. 002-2005.

Effective Dates: November 15, 2017, Readoption;

December 18, 2017, Amendments, Repeal, and New Rules.

Expiration Date: November 15, 2024.

Summary of Public Comments and Agency Responses:

Comments were received from Mitchell Malec, a retired former employee of the Department of Community Affairs (Department).

1. COMMENT: The commenter suggests that the Department revise its rules concerning carbon monoxide and suggests that the Department review carbon monoxide code requirements for Institutional Group I-1.

2. COMMENT: The commenter points out the similarities between the proposed new carbon monoxide regulations at N.J.A.C. 5:27A-19 and the carbon monoxide regulations in N.J.A.C. 5:10, Regulations for Maintenance of Hotels and Multiple Dwellings, and 5:27, Regulations Governing Rooming and Boarding Houses.

RESPONSE TO COMMENTS 1 AND 2: As stated in the Summary of the notice of proposal, "proposed new Subchapter 19 adds rules for the installation of carbon monoxide alarms. This subchapter aligns with the carbon monoxide alarm rules in Subchapter 14 of the Regulations Governing Rooming and Boarding Houses (N.J.A.C. 5:27)." Similar requirements are also contained in the Hotel and Multiple Dwelling Regulations at N.J.A.C. 5:10-28.1. Both boarding homes and residential health care facilities typically are categorized as Group I-1 under the State's Uniform Construction Code.

3. COMMENT: The commenter suggests that N.J.A.C. 5:27A-19.1 be rewritten to address private attached garages without communicating openings, attached open parking garages, and enclosed attached parking garages with ventilation. The commenter points out that, as written, having an attached garage triggers the need for carbon monoxide detection, even if no carbon monoxide hazard exists in the structure.

RESPONSE: As stated in the Response to Comment 1, these requirements were drawn directly from the existing requirements in other rules applicable to similar facilities. It is the Department's position that, as most of the facilities subject to this rule are configured, an attached garage would constitute a potential carbon monoxide hazard. Therefore, the Department declines to make any further refinement to this rule upon adoption. Where circumstances warrant, a facility owner may request a waiver. Additionally, as stated in the Response to Comment 8, a reference to the requirements of the Uniform Fire Code has been added upon adoption.

4. COMMENT: The commenter reiterates his recommendation that the Department review the carbon monoxide regulations for Institutional Group I-1 structures and the direct care staff requirements, and requests that the Department explain the intent of N.J.A.C. 5:27A-19.1(c).

RESPONSE: N.J.A.C. 5:27A-19.1(c) is intended to ensure that a resident who is deaf or hearing impaired is provided with a visual alarm. Group I-1 under the International Building Code (IBC) is broad and includes more than the residential health care facilities subject to these rules.

5. COMMENT: The commenter asks whether a resident that is not deaf or hearing impaired may request a visual type carbon monoxide detection system for a resident that is deaf or hearing impaired.

RESPONSE: The request for a visual alarm could come from the hearing-impaired resident or from someone making the request on the resident's behalf.

6. COMMENT: The commenter asks what benefit a visual alarm type carbon monoxide detector has when installed in a hallway separated by the sleeping room's closed door.

RESPONSE: The language of the rule is "for that unit." It does not state that the visual alarm would be installed in the hallway.

7. COMMENT: The commenter asks if the Department considers a sleeping room to be a unit.

RESPONSE: As used in this section, "unit" would be synonymous with "sleeping room."

8. COMMENT: The commenter points out that N.J.A.C. 5:27A-3A.1 requires compliance with the New Jersey Uniform Fire Code (UFC), N.J.A.C. 5:70, and questions whether this means that carbon monoxide detection equipment in compliance with N.J.A.C. 5:70-4.9(d)2i or ii is acceptable in lieu of the requirements of the proposed new rules at N.J.A.C. 5:27A-19 or the provisions of the Uniform Construction Code (UCC), N.J.A.C. 5:23. The commenter points out that the UFC does not consider an open parking structure to be an attached garage, but does not address an enclosed garage with ventilation. The commenter also points out that the UFC attempts to address

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duct work and ventilation shafts in considering the reasons for the Korman and Park's Law, but he does not consider the reference successful.

RESPONSE: The requirements of the Uniform Construction Code would apply to any newly-constructed or renovated building. The requirements of the Uniform Fire Code would apply to existing buildings as they stand, as provided in N.J.A.C. 5:70-4.3. For clarity, a reference to the requirements of the Uniform Fire Code has been added to N.J.A.C. 5:27A-19 upon adoption.

9. COMMENT: The commenter questions how carbon monoxide alarms in the hallway are protecting residents from carbon monoxide poisoning in the event that a facility has forced air furnaces with separate duct work to the sleeping rooms.

RESPONSE: The rule requires that carbon monoxide alarms be provided "in the immediate vicinity of sleeping rooms." Even if the alarm were to be installed outside the sleeping room, it would be audible in the room. Additionally, since the requirements of the Uniform Fire Code would also apply, any potential carbon monoxide hazard in the facility would be addressed.

10. COMMENT: The commenter questions whether the provisions of N.J.A.C. 5:27A-19 are required in a new Group I-1 building that is served by a forced air furnace and has carbon monoxide detection in sleeping areas in accordance with the 2015 International Building Code (IBC), Section 915.2.2, or N.J.A.C. 5:70-4.9(d).

RESPONSE: Newly-constructed buildings would have carbon monoxide detection in accordance with the requirements of the building subcode of the Uniform Construction Code, N.J.A.C. 5:23-3.14.

11. COMMENT: The commenter asks if it is the Department's intent to allow exceptions in the IBC at Section 915, and specifically points out Section 915.1.4.

RESPONSE: The proposed new rules are codified at N.J.A.C. 5:27A-19, part of the Standards for Licensure of Residential Health Care Facilities not Located with, and Operated by, Licensed Health Care Facilities. The commenter's question goes to the building subcode of the Uniform Construction Code, N.J.A.C. 5:23-3.14. Section 915.1.4 of the building subcode provides specific exceptions to the requirements for carbon monoxide in buildings subject to the UCC. See also the Response to Comment 12.

12. COMMENT: The commenter asks if there is any reason that carbon monoxide detection installed in locations specified in the UCC would not be approved by the Department as required by N.J.A.C. 5:27A-19.1(a)1i.

RESPONSE: There would be no reason for the Department not to approve an installation in a newly-constructed or renovated facility or in a building that had undergone a change of use pursuant to the Uniform Construction Code. For retrofit of existing buildings to comply with the [page=3822] provisions of these rules, Departmental approval would be required to ensure that any potential carbon monoxide hazard has been addressed.

13. COMMENT: The commenter points out that the Department's proposed new rules at N.J.A.C. 5:27A-19 mandate the use of carbon monoxide alarms and states that as written, carbon monoxide detectors would not be allowed. The commenter recommends that the Department revise "carbon monoxide alarms" to "carbon monoxide detection equipment," as it has done in other regulations.

RESPONSE: The heading of Subchapter 19 and N.J.A.C. 5:27A-19.1 has been so changed upon adoption as has the reference in N.J.A.C. 5:27A-19.1(a)1i. However, "carbon monoxide alarms" is the correct term for use at N.J.A.C. 5:27A-19.1(a), (a)1, (b), and (c).

14. COMMENT: The commenter questions why the Department did not reference the Group I-1 carbon monoxide provisions of the building subcode of the UCC and suggests that the proposed new rules conflict with the UCC.

RESPONSE: Because an installation in accordance with the Uniform Construction Code may be accepted pursuant to N.J.A.C. 5:27A-19.1(a)1i, there is no conflict. The Uniform Construction Code is not a retrofit standard and, therefore, it would not be appropriate to reference its requirements as the only compliance alternative.

15. COMMENT: The commenter recommends that the Department develop a comparison chart that contains all carbon monoxide detection provisions, including these facilities, all provisions in the UCC, the UFC, and all other Department regulations, and address any presumed conflicts before adopting this rule.

RESPONSE: The Department disagrees that a comparison chart is necessary. Each of the chapters has a different scope and derives from different enabling legislation. Additionally, the requirements for carbon monoxide detection were incorporated at different times. If confusion arises in the enforcement of these requirements, then the Department will consider proposed amendments, as necessary.

16. COMMENT: The commenter recommends the Department review and consider the text of Part 1228 of Title 19 New York Codes, Rules, and Regulations (NYCRR), specifically section 1228.4, Carbon Monoxide Detection in Commercial Buildings, to address buildings not covered by the model building code, and comments 8 and 9 from the June 5, 2017, New Jersey Register adoption notice of the Department.

RESPONSE: As stated in the response to comments in 49 N.J.R. 1381(b), the Department did consider the New York Codes, Rules, and Regulations in the preparation of this rulemaking.

Summary of Agency-Initiated Changes:

1. A change is made to N.J.A.C. 5:27A-6.3 to correct the reference to the Division of Youth and Family Services to the Division of Family Development.
2. A change is made to N.J.A.C. 5:27A-9.2 to update the Minimum Data Set form used for resident assessment and care screening to the most recent version.
3. A change is made to N.J.A.C. 5:27A-19.1(a)1i to change the term from carbon monoxide "alarm" to "detection equipment" and to include the Uniform Fire Code, N.J.A.C. 5:70-4.9.

Federal Standards Statement

No Federal standards analysis is required because the rules readopted with amendments, a repeal, and new rules are not adopted under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or any State statute that incorporates or refers to Federal law, standards, or requirements.

Regulations

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 5:27A.

Full text of the adopted amendments and new rules follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 1. DEFINITIONS AND QUALIFICATIONS

5:27A-1.3 Definitions

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

...

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

...

5:27A-1.4 Qualifications of the administrator of a residential health care facility

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

1. (No change.)

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

3. Complete an assisted living administrator training course approved by the Department of Health as specified at N.J.A.C. 8:36-3.2(b).

(b) (No change.)

SUBCHAPTER 2. LICENSURE PROCEDURES

5:27A-2.1 Application for licensure

(a)-(h) (No change.)

(i) Each residential health care facility shall be assessed an annual inspection fee of \$ 225.00. This fee shall be assessed along with the annual licensure fee each 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 denial of an initial license for new facilities. This fee shall only be imposed once annually even if inspections occur more frequently and only for the inspection required to either issue an initial license or to renew an existing license. This fee shall not be imposed for any other type of inspection.

5:27A-2.4 Surveys and license

(a) When the written application for licensure is approved, the fee for filing the application has been received, the preliminary conference has been completed, and the building is ready for occupancy pursuant to N.J.A.C. 5:23, the Uniform Construction Code, a survey of the facility by the Department's representatives of the Residential Health Care Evaluation Program shall be conducted, in order to determine if the facility adheres to the rules in this chapter.

1.-2. (No change.)

(b)-(i) (No change.)

SUBCHAPTER 3. PHYSICAL PLANT FOR NEW CONSTRUCTION, RENOVATIONS, AND ADDITIONS

5:27A-3.3 Room sizes and features

(a)-(c) (No change.)

(d) Each facility shall provide a minimum of 30 square feet of lighted storage space per resident, in accordance with the following allotments:

1. At least 10 square feet of locked personal storage, which may be in a room or common area other than the resident's bedroom; and

2. (No change.)

SUBCHAPTER 3A. PHYSICAL ENVIRONMENT FOR EXISTING RESIDENTIAL HEALTH CARE FACILITIES

5:27A-3A.2 Resident bedrooms

(a) (No change.)

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(b) Sleeping rooms occupied by more than one resident shall have a minimum of 50 square feet of clear floor area per resident. There shall be three feet of clear space between beds and at the foot of each bed to ensure comfort and safety to residents. Space for storage of personal possessions and a non-folding arm chair shall be provided for each bed.

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

(f) Every mattress and box spring shall be encased in separate tear-proof covers that are fully sealed and free of rips, punctures, or openings of any kind.

[page=3823] SUBCHAPTER 6. RESIDENT CARE POLICIES

5:27A-6.3 Personal needs allowance

(a) The administrator or his or her representative shall reserve for each resident who receives a Supplemental Security Income (SSI) or General Public Assistance a monthly personal allowance of at least the amount specified by the Division of *[Youth and Family Services]* ***Family Development*** of the New Jersey State Department of Human Services pursuant to N.J.S.A. 44:7-87(h) and N.J.A.C. 10:123-3 and under the following conditions:

1.-3. (No change.)

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

SUBCHAPTER 8. DIETARY SERVICES

5:27A-8.2 Requirements for dietary services

(a)-(e) (No change.)

(f) The facility and personnel shall comply with the provisions of Chapter XII of the New Jersey Sanitary Code, N.J.A.C. 8:24. The facility shall have and keep for reference a copy of the most recent edition of N.J.A.C. 8:24 by contacting the Department of Health.

SUBCHAPTER 9. HEALTH SERVICES

5:27A-9.2 Provision of health services

(a)-(d) (No change.)

(e) The nursing assessment required by (d) above shall be documented on the Minimum Data Set for resident assessment and care screening (MDS 2.0*, **3.0, or the latest version required by the Center for Medicare and Medicaid Services***), or an equivalent assessment instrument, which has been developed by the facility and approved by the Department of Health prior to its use. Copies of the MDS *[2.0]* may be obtained by contacting the Department of Health.

(f)-(m) (No change.)

SUBCHAPTER 10. MEDICATIONS

5:27A-10.1 Self-administration of medications

(a) A designated employee shall provide supervision and/or assistance during a resident's self-administration of medications in accordance with the prescriber's orders. Prior to providing such assistance, the designated employee shall be trained by the health maintenance and monitoring director, the provider pharmacist, or the consultant pharmacist.

1. (No change.)

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2. The facility shall maintain a daily record of the type and amount of medication taken by the resident and the time at which such medication is taken.

(b) (No change.)

SUBCHAPTER 14. RESIDENT RIGHTS

5:27A-14.2 Rights of each resident

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

1.-18. (No change.)

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

i.-iii. (No change.)

iv. Each resident residing in a residential health care facility who receives benefits generated from the Home Energy Assistance Program in accordance with N.J.A.C. 5:49 shall not be required to provide the owner, operator, employee, or his or her representative with any portion of monies provided through the Home Energy Assistance Program. No owner, operator, employee, or representative of the facility shall coerce, intimidate, or exploit any residents into providing them with any portion of their home energy assistance checks;

20.-23. (No change.)

SUBCHAPTER 15. HOUSEKEEPING, SANITATION, SAFETY, AND MAINTENANCE

5:27A-15.3 Resident environment

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

1.-10. (No change.)

11. Items that come in contact with open skin or mucous membranes shall be sterilized, or, at a minimum, receive high-level disinfection;

12.-13. (No change.)

(b) The following safety conditions shall be met:

1.-3. (No change.)

4. Combustible materials shall not be stored in heater rooms or within 18 inches of any heater;

5.-10. (No change.)

5:27A-15.4 Waste removal

(a) All solid or liquid waste that is not regulated medical waste, garbage, or trash shall be collected, stored, and disposed of in accordance with the rules of the New Jersey State Department of Environmental Protection and the New Jersey State Department of Health (N.J.A.C. 8:24). Solid waste shall be stored in insectproof, rodentproof, fireproof, nonabsorbent, watertight containers with tightfitting covers and collected from storage areas regularly so as to prevent nuisances such as odors. Procedures and schedules shall be established and implemented for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24.

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

SUBCHAPTER 16. INFECTION PREVENTION AND CONTROL SERVICES

5:27A-16.4 Employee health and resident policies and procedures for infection prevention and control

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

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

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

(g) The facility shall maintain records documenting communicable diseases contracted by employees during employment.

(h) The facility shall maintain listings of all residents and personnel who have infections, diseases, or conditions that are reportable to the Department of Health pursuant to Chapter II, New Jersey State Sanitary Code, Communicable Diseases, N.J.A.C. 8:57, unless prohibited by Federal or State law.

(i) (No change.)

SUBCHAPTER 17. SURVEY PROCEDURES

5:27A-17.2 Deficiency findings

(a) (No change.)

(b) At the conclusion of a survey or within 10 business days thereafter, the Department shall provide a facility with a written summary citing the rules as a basis to determine that a licensure violation has occurred.

5:27A-17.3 Informal dispute resolution and administrative hearings

(a) (No change.)

(b) Any person aggrieved by a finding of deficiency shall be entitled to an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq.

(c) The administrative hearing shall be conducted by an administrative law judge of the Office of Administrative Law, and the final decision shall be issued by the Commissioner.

(d) The application for such hearing must be filed with the hearing coordinator within 15 days of the receipt by the applicant of notice of the ruling, action, or decision complained of.

[page=3824] 5:27A-17.4 Exceptions and extensions

(a) Upon receipt of notice of the ruling, action, or decision at issue, an owner may request an extension of time to comply or an exception waiving or modifying the application of any rule pursuant to N.J.S.A. 26:2H-1 et seq.

(b) Requests for exceptions or extensions shall be made to the Chief of the Bureau of Rooming and Boarding House Standards, who shall have the authority to approve or deny such requests in accordance with the standards set forth in N.J.S.A. 26:2H-1 et seq. Requests shall be made upon forms to be supplied by the Bureau.

(c) A request for an exception shall be submitted within 30 days of the receipt by the owner of notice of the ruling, action, or decision at issue. No request thereafter shall be considered, unless the owner advises the Bureau by mail or e-mail of his or her desire to file an exception request within 15 days of his or her receipt of notice of filing, action, or decision at issue and was unable to submit the application within the 30-day period allowed. The Chief of the Bureau shall have authority to waive these time requirements when the interests of justice so require.

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(d) If the licensee finds an extension of time necessary to abate any violation, a letter shall be submitted not fewer than two weeks prior to the date of compliance. This letter shall include:

1. The violations abated to date;
2. The reason why each unabated violation cannot be corrected prior to the date of penalty; and
3. The date by which all violations can be abated.

SUBCHAPTER 18. ENFORCEMENT REMEDIES

5:27A-18.2 Notice of violations and enforcement actions

The Commissioner shall serve notice to a residential health care 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 or a bona fide employee of the licensee, corporation, or company, or a person above the age of 14 at the licensee's dwelling in person or by certified mail.

5:27A-18.4 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 rules in accordance with the following standards:

1.-5. (No change.)

6. For maintaining or admitting more patients or residents to a residential health care facility than the maximum capacity permitted under the license, \$ 25.00 per patient per day plus an amount equal to the average daily charge collected from such patient or patients;

7. For all violations of licensure regulations related to patient care or physical plant standards, a penalty up to the statutory maximum of \$ 5,000 may be assessed.

Recodify existing 11.-12. as 8.-9. (No change in text.)

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

5:27A-18.6 Curtailment of admissions

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

1. (No change.)

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

3. Where the admission or readmission of new patients or residents to a residential 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.

(b) (No change.)

5:27A-18.10 Provisional license

(a)-(c) (No change.)

(d) A residential health care facility placed on provisional license status shall conspicuously post the provisional license within the facility.

SUBCHAPTER 19. CARBON MONOXIDE *[ALARMS]* ***DETECTION EQUIPMENT***

5:27A-19.1 Carbon monoxide *[alarms]* ***detection equipment***

(a) Carbon monoxide alarms shall be installed and maintained in full operating condition in the following locations:

1. Single station carbon monoxide alarms shall be installed and maintained in the immediate vicinity of every sleeping room in buildings that contain a fuel-burning appliance or that have an attached garage.

i. As an alternative to (a)1 above, carbon monoxide *[alarms]* ***detection equipment*** may be installed in the locations specified in the Uniform Construction Code, N.J.A.C. 5:23, ***or the Uniform Fire Code, N.J.A.C. 5:70-4.9,*** with the approval of the Department.

(b) Carbon monoxide alarms shall be manufactured, listed, and labeled in accordance with UL 2034 and shall be installed in accordance with the requirements of this subchapter and NFPA 720. Carbon monoxide alarms shall be battery-operated, hard-wired, or of the plug-in type.

(c) At the request of a tenant of a unit in which a person who is deaf or hearing impaired resides, the owner shall provide and install a visual alarm type carbon monoxide detector for that unit.

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