

(a)

DIVISION OF CODES AND STANDARDS**Uniform Construction Code****Rooming and Boarding Houses**

Adopted Amendments: N.J.A.C. 5:23-3.11, 3.14, 6.31; and 5:27-1.4, 1.5, 1.6, 1.9, 2.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.8, 3.9, 3.12, 4.2, 4.9, 6.3, 7.3, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1, 10.1, 11.1, 12.1, 13.1, and 14.1

Proposed: June 5, 2017, at 49 N.J.R. 1276(a).

Adopted: December 20, 2017, by Charles A. Richman, Commissioner, Department of Community Affairs.

Filed: December 20, 2017, as R.2018 d.060, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3) **and with the proposed amendments to N.J.A.C. 5:27-4.1, 4.3 through 4.8, 6.1, 6.2, 7.1, and 7.2 not adopted.**

Authority: N.J.S.A. 52:27D-124 and 55:13B-6.

Effective Date: January 16, 2018.

Expiration Date: March 25, 2022.

Summary of Public Comments and Agency Responses:

Comments were received from Tonia Ahern, Cape May County; Jim Anders; Barbara Anderson, Chief Executive Officer (CEO)/Consultant, Greater Good Group; Nicole Bragg, Serenity House Alumna; Sheila Buckley, Active Recovery Advocate, Camden County; Terri Burns, New Jersey Alliance of Recovery Residences (NJARR); Barbara Byrne, Active Recovery Advocate, Gloucester County; Diane Cain; Patrice Canin; Donna Catlow; Linda Cooper, Egg Harbor Township, New Jersey; Diana Curry; Douglas D'Alfonso, Active Recovery Advocate, Gloucester County; Keith A. Davis, Esq., Nehmad, Perillo, and Davis, PC; Rose DeFinis; Sherlyn DiPaolo, Enlightened Solutions; John Doe, May's Landing; John Drucker, Assistant Construction Official, Borough of Red Bank; Chanel Dupree; Maria Farhat-Tanzola; Warren Flax; Anthony Gallo; William Gee, President, Ocean County Fire Prevention and Protection Association; Dr. Nancy Greenbarg; Laurel Guenther, Pitman, New Jersey; Edwina Hansen, Ole Hansen and Sons, Inc.; Jennifer Hansen, Hansen Foundation; Roger Hansen, Ole Hansen and Sons, Inc.; Emete Hassan, Hassan Clean and Sober House; Steven Hauck, Director, Edgewater House and Lehigh House; Christine Henshaw; Bob Hogg, President, Steelman, Graves, and Waters, Inc.; Meerah Kim, Serenity House Resident; Cliff Koblin, Addiction Recovery Specialist; Ian Koch, Executive Director, Surfside Recovery Services; Alice LaRocca, Active Recovery Advocate, Atlantic County; Bruce Lynch, Principal, Clifton Larson Allen, LLP; Mitchell Malec; Charlene Maycott, C.C.A.R., C.A.R.C.; John Moriarty, III; Marcella Pettorossi, Active Recovery Advocate, Gloucester County; Donna A. Parker, Addiction Counseling Specialist; Janet Passio; Mark Shepard; Leannek Taylor; Lisa Valentine, President, Valentine Foundation, Inc.; Ginny Weigelt, Recovery Coach; and Debra Wentz, Ph.D., President and Chief Executive Officer, New Jersey Association of Mental Health and Addiction Agencies, Inc.

1. COMMENT: Several commenters asked that a public hearing be held.

RESPONSE: The Department thanks the commenters for their request. Because comments that were wide-ranging in both breadth and depth were received on this rule proposal, the Department believes that it is not necessary to hold a public hearing.

2. COMMENT: Several commenters suggested that, rather than the proposed rules, the Department should adopt the current National Alliance of Recovery Residences (NARR) standards.

RESPONSE: The National Alliance of Recovery Residences (NARR) standards cover four different "levels" of facilities. These range from a Level 1, which most closely coincide with Oxford Houses, to Level 4, which provide for paid staff and on-site treatment services. These standards, thus, provide a spectrum of different types of facilities meeting different levels of need by residents. New Jersey has a similar range of facilities available, which also provide different levels of

services. Some of these (such as rooming and boarding houses) are regulated by the Department of Community Affairs ("DCA" or "the Department"), while others are regulated by other State agencies, such as the Department of Health, and the Department of Human Services. Cooperative sober living residences (CSLRs) represent just one type of facility, intended to offer a specific, limited, therapeutic environment, with a live-in owner/operator and no personal services. The Department believes that the CSLRs rule provides a clear definition and a set of standards that are appropriate within the framework of existing New Jersey facilities. In addition, standards for licensing these facilities are established in New Jersey law. The Department believes that this rule establishes clear standards that fit into the current regulatory and statutory framework.

3. COMMENT: Several commenters stated that the rules should not include a 10-resident limit, particularly when compared to the 16-person limit for Oxford Houses, which provide less oversight. They argue that a higher permitted number of residents would be more financially sustainable for facilities. In place of the 10-person limit, the commenters suggest using the NARR standard, which is based on a minimum of 50 square feet per person for each bedroom. Finally, a commenter suggested that the 10-person limit might violate the Americans with Disabilities Act (ADA) and the Federal Fair Housing Act.

RESPONSE: The 10-person occupancy is based on the International Building Code's occupancy limit for a transient congregate dwelling. Because these residences are not required to be sprinklered, to enhance the safety of these residences, the occupant limit was established at the 10-person maximum for a transient congregate dwelling, rather than the 16-person maximum for a non-transient congregate residence. The concern over the ADA/FHA seems premised on the commenter's equating CSLRs with Oxford Houses; the two are not equivalent, as CSLRs involve a level of control by an operator and constitute boarding houses subject to the Rooming and Boarding House Act, unlike Oxford Houses.

4. COMMENT: Several commenters stated that the rules should further define the term "adequate means of egress." They propose that two points of egress, the back and front doors, should be a sufficient standard.

RESPONSE: The term "means of egress" is a code term that is well-understood. The Uniform Construction Code consists of adopted subcodes, which establish technical requirements. The means of egress requirements are established in the International Building Code, which is the adopted building subcode of the Uniform Construction Code (N.J.A.C. 5:23-3.14), and is the code section amended by this rulemaking. An "adequate" means of egress would be a code-compliant one. The reference to "adequate means of egress" is in the summary statement, not in the rule text, so the Department sees no need to further amend this section.

5. COMMENT: Several commenters contended that the term phrase "lack of probity" is vague and should be further defined.

RESPONSE: The Department believes that the phrase "lack of probity" is readily understandable and does not require further explanation. It should also be noted that this term is existing language (at N.J.A.C. 5:27-3.3(b)) and is not proposed for change.

6. COMMENT: Several commenters stated that the rules are not clear as to what types of alarms are required for a CSLR.

RESPONSE: The types of alarms required are, in fact, clearly spelled out in the rules. Specifically, proposed N.J.A.C. 5:27-1.5(c)iii states that each facility shall have smoke alarms that comply with the Uniform Fire Code (UFC). The rules go on to say that fire alarm systems installed in accordance with the one- and two-family dwelling subcode shall also be deemed to be compliant. Smoke alarms are required to be located in each sleeping room, in the area outside separate sleeping rooms, and on each additional story of the dwelling, including basements and habitable attics. In addition, the rules separately require carbon monoxide alarms (N.J.A.C. 5:27-14.1). Because alarm requirements have changed over time, the specific type of smoke alarm required depends on the code under which the building was constructed.

7. COMMENT: Two commenters stated that the rules require a Federal Standards Statement.

RESPONSE: At the time the rules were published in the New Jersey Register for public comment, the Department noted in that publication that “No Federal standards analysis is required because the amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under any State law that incorporates or refers to Federal law, standards, or requirements.” This rulemaking amends the Rooming and Boarding House rules and the Uniform Construction Code rules. It establishes a new classification of rooming house. As stated in the Federal Standards Statement, it does not “implement, comply with, or participate in any program established under Federal law or under any State law that incorporates or refers to Federal law, standards, or requirements.” This statement is accurate and tracks precisely the requirement of the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30-5.1(c)4.

8. COMMENT: Several commenters contended that the rules should not include an annual licensing fee of \$356.00, as the yearly cost will be difficult for non-profits facilities to absorb.

RESPONSE: All rooming and boarding houses licensed by the Department under the Rooming and Boarding House Act require payment of an annual licensing fee. This is true whether the licensee is a non-profit or for-profit entity. Such a fee helps offset the Department’s costs for regulation of the facility.

9. COMMENT: A number of commenters suggested that the rules should not prohibit CSLR facilities from offering food, laundry, financial, and other personal services to residents. Some of those commenters argue that licensees of these types of facilities provide these types of services on occasion, and that they are beneficial to residents. Some commenters also suggest that the rules need to be clearer on what exactly is permitted and what is prohibited in these areas.

RESPONSE: The Rooming and Boarding House rules provide separate licenses for various types of facilities (Class A to Class F). These facilities provide different levels of services to residents, and, thus, fill different niches in terms of residents’ needs. Rooming houses provide no services; boarding houses provide a range of services. A Class B facility is permitted to provide meals and laundry services only, while a Class C facility is able to offer a full range of services, including all of those suggested by the commenters. Should an owner decide to offer these services, the residence could be appropriately licensed as a boarding house. Providing a category of rooming houses without services ensures that there are various options available to a prospective resident depending on his or her needs. The Department would like to make it clear that these rules do not prohibit the provision of the means for the residents to provide services, such as cooking and laundry, for themselves. The sponsoring organization may not provide regular meal, laundry, or other services for the residents. The residents are expected to live together and to meet these basic needs themselves.

10. COMMENT: One commenter recommended that the rules should include a provision for weekly house meetings.

RESPONSE: These rules require the owners/operators to establish house rules. The house rules are not set by regulation. Weekly house meetings could be included in the house rules.

11. COMMENT: Several commenters suggested that the rules seem to be “micro-managing” how licensees of these types of facilities operate, which may violate the Federal Fair Housing Act.

RESPONSE: The Department does not agree that the proposed rules amount to a “micro-managing” of the operation of a CSLR. The rules recognize and adhere to the general template for how sober homes operate, including the limited role assigned to the operator. Rather than “micro-managing” the operation of a CSLR, the rules, in fact, respect the manner in which these types of facilities operate.

12. COMMENT: Two commenters suggested that the rules should change the name CSLR to Cooperative Recovery Residence, in order to bring it up to date with the Substance Abuse and Mental Health Services Administration (SAMHSA) recommended terminology.

RESPONSE: The Department declines to make the change suggested. The rules are clear as to the definition of a CSLR, and there should not be any confusion resulting from the terminology employed.

13. COMMENT: A commenter raised a concern over possible discrimination against individuals who are taking psychotropic

medications and/or receiving medication-assisted treatment for substance abuse disorders. The commenter feels that such individuals should not be excluded from opportunities for the recovery support offered by CSLR facilities. Another commenter made a similar argument as to persons with HIV.

RESPONSE: The proposed rules do not exclude individuals who are taking psychotropic medications and/or receiving medication assisted treatment from residing in a CSLR. While the licensee would not be permitted to provide medication management, the rules do not prohibit CSLR residents who are undergoing a treatment regimen or who are HIV positive.

14. COMMENT: One commenter asked whether, if a facility “doesn’t offer supervision” (in the manner of an Oxford House), the CSLR rules would apply to such facility.

RESPONSE: As explained in detail in the Response to Comment 24, Oxford Houses are outside the jurisdiction of the Rooming and Boarding House Act. Residences that are similar in operation to Oxford Houses, but are not part of Oxford House, Inc, are reviewed on a case-by-case basis to determine whether they, like Oxford Houses, fall outside the jurisdiction of the Rooming and Boarding House Act, or whether they fall within its jurisdiction. As discussed in the Response to Comment 24, CSLRs, as defined in these rules, do not operate in the same manner as Oxford Houses and are subject to Department regulation and licensure.

15. COMMENT: Two commenters stated that the rules should differentiate between CSLRs and partial care housing, such as partial hospital programs (PHP).

RESPONSE: The Department believes that the difference between these facilities is clear and further differentiation in the rules is not required. PHPs provide outpatient care for people who are living in an off-site residence. The patients who are in recovery from substance abuse and who are receiving this outpatient care might reside in a CSLR, but the residence itself would not be licensed to provide any program in-house.

16. COMMENT: One commenter stated that the rules need to recognize CSLR facilities as part of the “treatment continuum.”

RESPONSE: The Department believes that CSLRs, which are the threshold level at which licensure for the residence is required, are part of the continuum of residential housing available to people in recovery. Because treatment does not take place in the CSLR, the residence itself is not on the programmatic “treatment continuum.” However, the Department believes that by initiating licensure for residences that house people in recovery who are able to live in a home with some oversight and with some autonomy and responsibility, the continuum of available recovery residences is expanded.

17. COMMENT: Several commenters suggested that the rules should require CSLR facilities to maintain professional staff, such as a case manager, an activities coordinator, as well as other support personnel. In addition, the rules should address paid staff, such as cooks, who may not always be on site. Another commenter suggested that the rules require that a CSLR offer “life skills education and development.”

RESPONSE: The Rooming and Boarding House Act requires a live-in owner/operator, but does not allow services to be provided. This is statutory. There are other facilities, outside the jurisdiction of the Rooming and Boarding House Act, but within the jurisdiction of the Department of Health or the Department of Human Services, that require the kind of additional oversight and supervision these commenters recommend.

18. COMMENT: A commenter argued that CSLRs should be required to enter into memoranda of understanding with treatment providers for referral of residents who may relapse.

RESPONSE: Mandating these types of agreements is outside the scope of a CSLR. These rules do not prohibit a provider from having a referral plan in place in the event of a resident’s relapse, but the residences themselves are not required to have such a plan in order to be licensed.

19. COMMENT: A commenter stated that CSLR facilities require funding in order to cover costs, such as regular inspections and to market themselves, as is done in other states.

RESPONSE: This comment is beyond the scope of these rules. The licensing fee helps to cover the costs to the Department of work

associated with licensing the facility. The Department does not contemplate providing funding for inspections that the owner might have conducted outside the scope of the rules or for advertising.

20. COMMENT: A commenter stated that the rules should address the issue of residents' rights.

RESPONSE: The issue of the rights of residents of rooming and boarding houses is already addressed in the statute governing such facilities. Specifically, the Rooming and Boarding House Act contains a section setting forth the rights of all residents of "boarding facilities." N.J.S.A. 55:13B-18 and 19. CSLRs are covered by the Rooming and Boarding House Act and are, thus, subject to these provisions, which include ensuring that residents may manage their own financial affairs, receive and send unopened correspondence, practice the religion of their choice, and have unrestricted communication, including personal visitation, with any person of his or her choice, at any reasonable hour.

21. COMMENT: A commenter stated that the rules should include standards governing residents' behavior.

RESPONSE: This subject has already been addressed by existing rules. Pursuant to N.J.A.C. 5:27-3.2(a), a licensee for a rooming or boarding house is required to establish "reasonable rules governing the conduct of persons within the rooming or boarding house." This rule applies to CSLRs.

22. COMMENT: A commenter stated that CSLR facilities will need to comply with local zoning and other municipal codes.

RESPONSE: The enforcement of municipal zoning ordinances is outside State jurisdiction. Enforcement of local zoning ordinances lies with the municipality. The Department is unclear as to what "other municipal codes" might apply and, therefore, cannot comment further on this observation.

23. COMMENT: One commenter questioned the value in requiring that a CSLR have a live-in owner/operator and recommended that this requirement be removed.

RESPONSE: The requirement is statutory; the Rooming and Boarding House Act (N.J.S.A. 55:13B-1 et seq.) requires that a rooming house have a live-in owner/operator who, in addition to ensuring that the residents comply with house rules, is able to accept service of notices or other communication between the Department and the owner and provide access to the home for required inspections.

24. COMMENT: One commenter referenced guidance given in a memorandum provided by the Department in 1990, as if that guidance were regulatory. Similarly, this commenter made references to guidance in Bulletin 04-2 (Oxford House) concerning the Uniform Construction Code (UCC) as if it were regulatory. Specifically, the commenter observed that these documents provide guidance on Oxford Houses, which may have up to 16 residents and may be four stories, as long as a second means of egress is provided.

RESPONSE: Oxford Houses are outside the regulatory authority of the Rooming and Boarding House Act of 1979, so they are not licensed by the Bureau of Rooming and Boarding House Standards. The Oxford House model places significant control in the hands of the residents who live together as a single housekeeping unit, share all expenses jointly, pay their expenses from a common bank account, establish house rules cooperatively, and make decisions together, including who will be allowed to move in when a resident leaves and space becomes available. In addition, the Oxford House by-laws preclude Oxford House, Inc. or any of its charters from owning the dwelling that serves as a recovery residence. CSLRs differ from that model. The CSLRs have more supervision and oversight than do Oxford Houses. The CSLR's sponsoring agency owns or holds the lease on the dwelling, controls the placement of residents in the home, and establishes the rules for residency. The rules for residency include establishing house rules; they may also set requirements for participation in off-site recovery programs. CSLRs do not provide in-house programs or services, as do other, more regulated and more comprehensive recovery environments; on the continuum of recovery care facilities, they are the threshold at which licensure is required. Regarding the number of stories permitted, please see the Response to Comment 26.

25. COMMENT: One commenter asked about the Department's substantiation for the changes to the building subcode and asked whether

these changes would be submitted to the International Codes Council (ICC) as proposed changes to the International Residential Code (IRC).

RESPONSE: Upon adoption of the 2015 edition of the International Building Code (IBC), the Department added language to retain the Group R-5 designation for buildings that are constructed under the International Residential Code (IRC). The change to the Building Subcode referenced by the commenter is to clarify that CSLRs are to be designated as Group R-5 and are to be constructed under the IRC, which is adopted in the Uniform Construction Code (UCC) as the one- and two-dwelling subcode (N.J.A.C. 5:23-3.20).

Throughout the years, the Department has sought to provide clarification on the proper use group designation for various medical and therapeutic treatment arrangements. The length of time that individuals reside in the facility, the number of people housed by the facility, the level of independent living, the ability of occupants to self-egress, and the time it takes occupants to self-egress all affect the building subcode group designation of the facility. Treatment levels, therapeutic settings, the size of treatment groups, as well as the names that identify these facilities, evolve over time as the state-of-the-art of medical, therapeutic, and psychiatric care changes. The change to the building subcode is needed to ensure that the CSLRs are designated as a consistent use group under the building subcode. Due to the level of independent living, level of treatment, egress ability of the occupants, and occupant load, the Department believes that a Group R-5 designation is appropriate.

The ICC publishes the International Building Code (IBC) and the International Residential Code (IRC) as separate codes. The IBC is adopted as the building subcode of the UCC; the IRC is adopted as the one- and two-family dwelling subcode of the UCC. The IBC does not reference the IRC and does not include a Group designation for buildings constructed to comply with the IRC. The designation of Group R-5 for buildings constructed to comply with the IRC (which is adopted as the one- and two-family dwelling subcode) is an administrative change made in the Uniform Construction Code for clarity. Since the International Code Council (ICC) does not have a Group R-5 designation, and the amendment is being made to New Jersey's designation of Group R-5 in the UCC, the Department does not believe that submitting a State-sponsored code change to the ICC would be appropriate. It would essentially mean proposing a change to a section of the IBC that does not exist.

26. COMMENT: One commenter asked whether the designation of CSLR as Group R-5 would prohibit such facilities from being located in a four-or-more story building.

RESPONSE: CSLRs are subject to the height and area limitations of Group R-5 and, therefore, are limited to three stories.

27. COMMENT: One commenter asked whether the placement of CSLRs within Group R-5 meant that CSLRs could be located only within a single-family dwelling or if one could be located within a two-family dwelling. This commenter asked a similar question concerning the amendments to the Rehabilitation Subcode, which are specific to Group R-5: Could a CSLR be in group occupancies other than single-family homes?

RESPONSE: CSLRs would be permitted to be located in any building arrangement covered by the one- and two-family dwelling subcode. Although the Department expects the majority of these CSLRs to be housed in traditional single-family detached dwellings, a duplex, which is also Group R-5, would also be permitted.

28. COMMENT: A commenter asked if a CSLRs could be considered to be Group R-4 and have 16 occupants.

RESPONSE: By definition, a CSLR cannot exceed 10 occupants. Treatment facilities that have greater than 10 occupants may be constructed under the provisions for Group R-4, but they would not be CSLRs by definition.

29. COMMENT: A commenter asked why the definition of CSLRs was included in the rooming and boarding house regulations in lieu of in the Uniform Construction Code (UCC).

RESPONSE: Types of treatment facilities are typically not defined in the building subcode of the UCC, rather, they are defined by the rules that certify, license, or oversee the facility. Defining CSLRs in the Rooming and Boarding Home rules is consistent with this regulatory approach.

30. COMMENT: A commenter asked whether the proposed amendments to N.J.A.C. 5:23-6.31, Change of Use, are intended to apply only to changes of use of single-family homes (Group R-3 or Group R-5) or whether buildings with other group designations could undergo a change of use to a CSLR.

RESPONSE: The amendments to N.J.A.C. 5:23-6.31 clearly state that subsection (q) is applicable only to dwellings of Group R-3 or R-5; thus, buildings with other group designations cannot undergo a change of use to a CSLR. The Department does not intend to extend the rules beyond Groups R-3 and R-5.

31. COMMENT: One commenter asked the Department to explain why the Department would be the sole enforcing agency for these regulations.

RESPONSE: The Department asserted jurisdiction over these facilities to ensure uniformity of enforcement and consistency between two bureaus in the Department that have complementary, but distinct, jurisdiction and authority.

32. COMMENT: One commenter questioned whether the egress windows in a newly constructed single-family home that are 5.0 square feet and that comply with new construction standards are required to be altered to meet the 5.7 square foot standard in these regulations?

RESPONSE: The Department anticipates that the residences used as CSLRs will be existing dwellings that undergo a change in the character of use. However, there was no intent to require an existing residence with 5.0 square foot windows on the first floor, built in compliance with the building subcode, to have to alter the window size. To eliminate the inconsistency in these regulatory requirements, this rule is changed upon adoption to require egress windows that comply with the UCC.

33. COMMENT: One commenter stated that the Rooming and Boarding House statute, N.J.S.A. 55:13B-6, requires the Department to adopt regulations that ensure that every rooming and boarding house is constructed and operates in a manner that protects the health, safety, and welfare of its residents while promoting a homelike atmosphere. By exempting CSLRs from the habitability provisions of the Rooming and Boarding House regulations (N.J.A.C. 5:27), the Department appears to have failed to meet its statutory obligations for these recovery residences. Please explain.

RESPONSE: In proposing that specific habitability requirements be excluded from the licensing requirements of CSLRs, the Department wishes to clarify that it did not intend to imply that these residences were not bound by the statutory requirement that they be habitable. The Department recognized the requirements of both statutory and case law as requiring a safe, habitable dwelling. In *Trentacost v. Brussel*, 82 N.J. 214 (1980), the New Jersey Supreme Court stated that, "When engaged in the business of providing shelter, present-day landlords do not furnish merely four walls, a floor and ceiling. They have come to supply, and tenants now expect, the physical requisites of a home... At a minimum, the necessities of a habitable residence include sufficient heat and ventilation, adequate light, plumbing and sanitation and proper security and maintenance." Because this commenter read the rule as specifically excluding basic habitability standards, the Department is retaining upon adoption those requirements that specify a habitable residence. To leave the rule without clarification could result in the nonsensical situation in which a dwelling could be licensed as a CSLR, but could not be occupied because it would not be deemed by other laws to be habitable. In addition, the Department would like to make it clear that these standards will be part of the licensing inspection.

The Department is not adopting the proposed amendments to N.J.A.C. 5:27-4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 6.1, 6.2, 7.1, and 7.2; thereby deleting the qualifier that "This section shall not apply to Cooperative Sober Living Residences." Similar changes are also made upon adoption at N.J.A.C. 5:27-3.9 and 4.9, but other amendments are adopted and/or changes made upon adoption. The Department realized that these rules, as proposed, could be read to allow the licensing of a facility that did not comply with habitability standards required through the Rooming and Boarding House Act, other State laws, and case law. That was not the Department's intent. N.J.A.C. 5:27-1.6(b)6, states that "Cooperative Sober Living Residences shall be required to comply with all applicable statutory requirements." However implausible such a circumstance might be, the Department is resolving that theoretical

ambiguity upon adoption by identifying those sections in these rules that delineate the standards of habitability that apply. Deleting "This section shall not apply to Cooperative Sober Living Residences" in the designated sections will ensure that these rules and the residences licensed through them comply with "all applicable statutory requirements." A companion change is made at N.J.A.C. 5:23-1.9(f)7, 8, and 9 to delete the sections that had been identified as being exempt from these rules. The Department notes that, at N.J.A.C. 5:27-4.9, while not adopting the potentially ambiguous changes, it is still adopting the change of "these regulation" to "this chapter."

34. COMMENT: One commenter observed that, despite stepping back from requiring ventilation, natural and electrical lighting, heating, maintenance, and structural stability, the Department nonetheless requires a "full kitchen." This commenter asked for an explanation as to what is meant by a "full kitchen" and why a full kitchen is required.

RESPONSE: The Department believes that the components of a "full kitchen" are well-understood. A full kitchen would include appliances that allow for cooking meals and cleaning up; therefore, a full kitchen would have a stove, an oven, a refrigerator, and a sink.

35. COMMENT: One commenter asked whether collegiate recovery programs or communities of two-year or four-year public institutions, whether on campus or in rental houses, are subject to these proposed regulations.

RESPONSE: Residences that house recovery programs for college students would be subject to the same requirements that apply to other types of housing for college students. Off-campus housing would be evaluated for its use and occupancy and a determination would be made on a case-by-case, fact-specific basis as to whether or not the residence was outside the jurisdiction of the Rooming and Boarding House Act.

Summary of Agency-Initiated Changes:

1. At N.J.A.C. 5:27-1.4(b), 1.6(b)6, 2.1, 3.8(b), and 4.9, "these regulations" is changed to "this chapter" for consistency with the standards set by the Office of Administrative Law.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being 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.

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

CHAPTER 23 UNIFORM CONSTRUCTION CODE

SUBCHAPTER 3. SUBCODES

5:23-3.11 Enforcement activities reserved to the Department

(a)-(j) (No change.)

(k) The Department shall be the sole enforcing agency for Cooperative Sober Living Residences licensed as Class F rooming houses pursuant to N.J.A.C. 5:27.

5:23-3.14 Building subcode

(a) (No change.)

(b) The following chapters of the building subcode shall be modified as follows:

1.-2. (No change.)

3. Chapter 3, Use and Occupancy Classification, shall be amended as follows:

i.-xvi. (No change.)

xvii. New Section 310.7, Residential Group R-5, shall be inserted as follows: "Residential Group R-5 occupancies shall include all detached one- and two-family dwellings not more than three stories in height with a separate means of egress and multiple single-family townhouses not more than three stories in height with a separate means of egress designed and constructed in accordance with the International Residential Code. This Group shall also include:

Care facilities that provide accommodations for five or fewer persons receiving care;

Single residential occupancies, accessory to a dwelling unit, having no more than five roomers or lodgers. (Single occupancies, accessory to a dwelling unit, having more than five roomers or lodgers shall be classified as Group R-2 or I-2, as appropriate.);

Group Homes with five or fewer occupants in accordance with Section 308.3.4;

Rooming houses with five or fewer residents;

Cooperative sober living residences with not more than 10 occupants, excluding staff; each occupant, including staff, shall be capable of prompt self-evacuation.

4.-26. (No change.)

SUBCHAPTER 6. REHABILITATION SUBCODE

5:23-6.31 Change in use

(a)-(p) (No change)

(q) A change in the character of use of a single-family home to a cooperative sober living residence shall comply with this subchapter except as modified below. (Plan review--Building, Fire, Inspection—Building, Fire.)

1. Single-family dwellings of Group R-3 or R-5 that are being converted to a cooperative sober living residence shall meet the requirements of this section.

i. There shall be not more than 10 occupants, excluding staff; each occupant, including staff, shall be capable of prompt self-evacuation;

ii. Each home shall have smoke alarms that comply with the Uniform Fire Code (N.J.A.C. 5:70-4.19). Fire alarm systems installed in accordance with the One- and Two-Family Dwelling Subcode shall also be deemed to comply. Smoke alarms shall be located in each sleeping room, in the area outside separate sleeping rooms, and on each additional story of the dwelling, including basements and habitable attics;

iii. In the vicinity of each sleeping area, each home with a fuel burning appliance or with an attached garage shall have carbon-monoxide alarms that comply with the Uniform Fire Code (N.J.A.C. 5:70-4.19) or with N.J.A.C. 5:27-14.1; and

iv. Each bedroom shall have an operable ***egress*** window *[with a maximum sill height of 44 inches, a width of at least 20 inches, a height of at least 24 inches, and a minimum total area of 5.7 square feet measured from head to sill and from side to side]* ***that complies with the Uniform Construction Code (N.J.A.C. 5:23)***.

CHAPTER 27

REGULATIONS GOVERNING ROOMING AND BOARDING HOUSES

SUBCHAPTER 1. ADMINISTRATION AND ENFORCEMENT

5:27-1.4 Continuation of lawful existing use

(a) The lawful occupancy and use of any rooming or boarding house existing on the effective date of the act may be continued unless a change is required by the provisions of this chapter and unless it is owned or operated by a person who has not obtained a license from the Bureau on or before December 31, 1980.

(b) Any facility that is operating as a cooperative sober living residence, as that term is defined in *[these regulations]* ***this chapter***, shall be required to obtain a Class F license in order to continue operating. This includes facilities that are currently operating pursuant to a different class of license previously issued pursuant to *[these regulations]* ***this chapter***.

5:27-1.5 Construction and alteration; change of use

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

(c) A certificate of occupancy shall be required in the event of any change in use other than a conversion from a one or two-unit dwelling to a rooming or boarding house occupied or intended to be occupied by five or fewer residents.

1. A certificate of occupancy shall not be required for the change in the character of use of Class F, cooperative sober living residences pursuant to N.J.A.C. 5:23-6 provided that:

i. Single-family dwellings of Group R-3 or R-5 that are being converted to a cooperative sober living residence shall meet the requirements of this section;

ii. There shall be not more than 10 occupants, excluding staff; each occupant, including staff, shall be capable of prompt self-evacuation;

iii. Each home shall have smoke alarms that comply with the Uniform Fire Code (N.J.A.C. 5:70-4.19). Fire alarm systems installed in accordance with the One- and Two-Family Dwelling Subcode shall also be deemed to comply. Smoke alarms shall be located in each sleeping room, in the area outside separate sleeping rooms, and on each additional story of the dwelling, including basements and habitable attics;

iv. In the vicinity of each sleeping area, each home with a fuel burning appliance or with an attached garage shall have carbon-monoxide alarms that comply with the Uniform Fire Code (N.J.A.C. 5:70-4.19) or with the Regulations Governing Rooming and Boarding Houses, N.J.A.C. 5:27-14.1; and

v. Each bedroom shall have an operable ***egress*** window *[with a maximum sill height of 44 inches, a width of at least 20 inches, a height of at least 24 inches, and a minimum total area of 5.7 square feet measured from head to sill and from side to side]* ***that complies with the Uniform Construction Code (N.J.A.C. 5:23)***.

(d) A certificate of occupancy shall be required in the event of any change in occupancy or intended occupancy that will increase the number of residents from five or fewer to six or more or from 20 or fewer to 21 or more.

1. A certificate of occupancy shall not be required for the change in the character of use of Class F cooperative sober living residences pursuant to N.J.A.C. 5:23-6. However, a cooperative sober living residence shall comply with the standards established in (c)1 above.

(e)-(f) (No change.)

5:27-1.6 Licenses

(a) (No change.)

(b) There shall be six classes of licenses, which shall be as follows:

1.-5. (No change.)

6. Class F license: Valid only for cooperative sober living residences, as defined in *[these regulations]* ***this chapter***. Cooperative sober living residences shall be subject to *[these regulations]* ***this chapter*** only as specifically noted below. Cooperative sober living residences shall be required to comply with all applicable statutory requirements.

(c) The annual fees for licenses shall be as follows:

1. Class A and Class F licenses: \$356.00 plus the amount determined in accordance with (c)6 below;

2.-7. (No change.)

(d)-(j) (No change.)

(k) On or after July 1, 1987, no license to own or operate a boarding house shall be issued to, or shall be continued to be held by, any person who has not completed a training course approved by the Department of Community Affairs. This subsection shall not apply to persons holding or applying for only Class A (rooming house) licenses or Class F (cooperative sober living residence) licenses and shall only be effective so long as there exists a training program funded by the Department of Human Services.

(l) (No change.)

(m) (No change in text.)

5:27-1.9 Exceptions and exemptions

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

(f) Owners and operators who have been issued Class F licenses for cooperative sober living residences are exempt from the following requirements of this chapter:

1. N.J.A.C. 5:27-3.2(d);

2. N.J.A.C. 5:27-3.3(a) through (c);

3. N.J.A.C. 5:27-3.4(c);

4. N.J.A.C. 5:27-3.5(a), with respect to certification by a medical professional, and 3.5(b) with regard to the responsibility for obtaining medical treatment;

5. N.J.A.C. 5:27-3.6;
 6. N.J.A.C. 5:27-3.8(b);
 7. N.J.A.C. 5:27-3.9(a)6 and 7*[, and (b), (c), and (d)]*; ***and***
 *[8. N.J.A.C. 5:27-4.1;
 9. N.J.A.C. 5:27-4.3-4.9; and]*
 [10.] ***8.*** N.J.A.C. 5:27-5.1 through 13.7.

SUBCHAPTER 2. DEFINITIONS

5:27-2.1 Definitions

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

...
 “Cooperative sober living residences” means a residential setting that serves solely as a home for individuals who are recovering from drug or alcohol addiction and is intended to provide an environment where the residents can support each other’s sobriety and recovery. In addition to the other requirements specified in *[these regulations]* ***this chapter***, a cooperative sober living residences shall satisfy the following criteria:

1. Management by an entity or organization that provides an operator who shall reside in the residence and exercise some level of control over the operation of the residence and establishes the residence’s rules;
2. Occupancy shall not exceed 10 individuals, exclusive of the operator;
3. The requirement of the maintenance of an alcohol and drug free environment;
4. No provision of on-site counseling, therapy, clinical treatment, or alcohol and/or drug treatment by the licensee;
5. No provision of food, laundry, financial, or other personal services by the licensee;
6. Ability of licensee, at its discretion, to provide non-clinical recovery and support services. The licensee may also elect to mandate or encourage residents to attend self-help recovery programs, participate in activities related to maintaining sobriety and continuing recovery, or receive off-site services deemed desirable or necessary to maintain sobriety; and
7. Ability of licensee, at its discretion, to require drug or alcohol testing of residents.

...

SUBCHAPTER 3. RIGHTS OF RESIDENTS

5:27-3.2 House rules

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

(d) In other than Class F facilities, cooperative sober living residences, any rule determined by the Bureau to be unreasonable shall not be enforced and shall be deleted from the house rules.

5:27-3.3 Harassment; fraud; eviction without due cause

(a) In other than Class F facilities, cooperative sober living residences, no licensee or employee or agent of a licensee shall engage in any conduct or permit residents or others to engage in any conduct that is unreasonable under the circumstances and that tends to cause annoyance to any resident.

(b) In other than Class F facilities, cooperative sober living residences, no licensee or employee or agent of a licensee shall, in the course of his or her dealings with residents or with their property, engage in any conduct evidencing a lack of probity, integrity, or trustworthiness.

(c) Unless otherwise directed or authorized by the Bureau, no licensee shall cause any resident to be evicted from any rooming or boarding house except for good cause, as defined in N.J.S.A. 2A:18-61.1 et seq., and except in accordance with the procedural requirements of N.J.S.A. 2A:18-61.1 et seq.

1. A licensee may bring to the attention of the Bureau any situation in which the licensee believes that a directive from the Bureau, pursuant to this subsection, is necessary in order to facilitate appropriate placement of a resident, in accordance with N.J.A.C. 5:27-3.5(b), and to protect the right of all residents to a safe, healthful, and decent living environment, in accordance with N.J.A.C. 5:27-3.1(a)12. This shall not apply to Class F licensed facilities, cooperative sober living residences.

2. The references to N.J.S.A. 2A:18-61.1 et seq., in (c) above notwithstanding, a resident of a cooperative sober living residence may be evicted from the residence by determination of the operator or vote of the residents depending on the procedure set forth in the house rules of the cooperative sober living residence regarding a violation of those rules, including, but not limited to, prohibitions against the possession or use of alcohol or drugs.

5:27-3.4 Access to agency representatives

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

(c) A licensee shall give notice to the county welfare board at least three working days prior to instituting any action to evict any resident or to any transfer of a resident initiated by a licensee, unless the county welfare board allows shorter notice.

1. The provision in (c) above shall not apply to a cooperative sober living residence licensed as a Class F facility regarding a violation of house rules that require residents to be in recovery from, and not in possession or under the influence of, drugs or alcohol.

(d) (No change.)

5:27-3.5 Appropriate placement

(a) No licensee shall accept as a resident in a boarding house a person who is not capable of self-evacuation with or without assistive devices, who is not certified by a licensed physician, or by a licensed nurse practitioner or licensed clinical nurse specialist legally authorized to issue such certification, to be free of communicable diseases and not in need of nursing care or who requires services not available in such boarding house.

1. The requirement for certification from a licensed medical professional shall not apply to residents of a cooperative sober living residence licensed as a Class F facility.

(b) In the event that a resident ceases to be capable of self-evacuation, acquires a communicable disease, or requires nursing care, supervision of self-administration of medication, or services not available in the rooming or boarding house, it shall be the responsibility of the licensee to so notify the county welfare board forthwith so that the resident may be transferred to a facility suitable to his or her needs.

1. The requirement that the licensee notify the county welfare board shall not apply to cooperative sober living residences. The residents of cooperative sober living residences shall be responsible for contacting their primary care physician or health care professional.

5:27-3.6 Independence and community interaction

In other than Class F facilities, cooperative sober living residences, a licensee shall take such affirmative action as may be necessary to assist each resident in living with as much independence and autonomy and with as high a degree of interaction with the community as may be reasonably possible.

5:27-3.8 Employees

(a) (No change.)

(b) In other than Class F facilities, cooperative sober living residences, every licensee shall have on duty at all times as many employees as may be needed to properly safeguard the health, safety, and welfare of the residents, as required by *[these regulations]* ***this chapter***. Such employees shall be adequately trained and supervised.

5:27-3.9 Disclosure of licensee identity

(a) A statement containing the following information shall be posted in a prominent place in every rooming and boarding house, except that only (a)1 through 5 below shall be required in Class F facilities, cooperative sober living residences:

1.-7. (No change.)

(b) In other than Class F facilities, cooperative sober living residences, copies of the statement required pursuant to (a) above shall be given to each resident at the commencement of residence and provided to the Bureau and to the county welfare board, marked with proof of filing in the office of the clerk of the municipality in which the rooming or boarding house is located.

(c) *[In other than Class F facilities, cooperative sober living residences, revised]* ***Revised*** statements shall be furnished within seven days of any change in the information required to be set forth.

(d) *[In other than Class F facilities, cooperative sober living residences, all]* *All* statements and revised statements furnished pursuant hereto shall be signed by the owner or the duly authorized representative of the owner and shall stipulate the date of preparation.

5:27-3.12 Limited tenure hotel guests

In other than Class F facilities, cooperative sober living residences, in the event that a hotel, motel, or established guest house is classified as a rooming or boarding house for purposes of the Act by reason of having fewer than 85 percent of the dwelling units offered for limited tenure only, a resident occupying such a unit on a limited tenure basis shall have the legal rights of a hotel guest and the rights set forth in section 3 of P.L. 1979, c. 500 (N.J.S.A. 55:13B-19) but shall not have any of the additional rights of residents established by this subchapter.

SUBCHAPTER 4. GENERAL BUILDING REQUIREMENTS

5:27-4.2 Facilities

(a) No change.

(b) Every cooperative sober living residence shall contain a full kitchen.

Recodify existing (b)-(f) as (c)-(g) (No change in text.)

5:27-4.9 Matters not covered

In other than Class F facilities, cooperative sober living residences, any matter or requirement essential for the structural safety of a rooming or boarding house or essential for the safety or health of the residents thereof or of the public, and which is not covered by the provisions of this chapter, shall be the subject of determination by the Bureau in specific cases.

SUBCHAPTER 6. SECURITY

5:27-6.3 Criminal acts

(a) This section shall not apply to cooperative sober living residences.

Recodify existing (a)-(c) as (b)-(d) (No change in text.)

SUBCHAPTER 7. RESIDENTS' COMFORT

5:27-7.3 Living and dining rooms

(a) This section shall not apply to cooperative sober living residences.

Recodify existing (a)-(e) as (b)-(f) (No change in text.)

5:27-7.4 Outdoor facilities and recreation

(a) This section shall not apply to cooperative sober living residences.

Recodify existing (a)-(c) as (b)-(d) (No change in text.)

SUBCHAPTER 8. MAINTENANCE OF RECORDS

5:27-8.1 Resident records

(a) This section shall not apply to cooperative sober living residences.

Recodify existing (a)-(e) as (b)-(f) (No change in text.)

5:27-8.2 Financial records

(a) This section shall not apply to cooperative sober living residences.

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

5:27-8.3 Additional requirements

(a) This section shall not apply to cooperative sober living residences.

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

5:27-8.4 Record retention

(a) This section shall not apply to cooperative sober living residences.

Recodify existing (a)-(c) as (b)-(d) (No change in text.)

SUBCHAPTER 9. FOOD AND LAUNDRY SERVICES

5:27-9.1 Applicability

(a) This subchapter shall not apply to cooperative sober living residences.

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

SUBCHAPTER 10. OTHER PERSONAL SERVICES

5:27-10.1 Applicability

(a) This subchapter shall not apply to cooperative sober living residences.

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

SUBCHAPTER 11. FINANCIAL SERVICES

5:27-11.1 Applicability

(a) This subchapter shall not apply to cooperative sober living residences.

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

SUBCHAPTER 12. FIRE SAFETY LOANS

5:27-12.1 Purpose; delegation to the Bureau

(a) This subchapter shall not apply to cooperative sober living residences.

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

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) This subchapter shall not apply to cooperative sober living residences.

Recodify existing (a)-(i) as (b)-(j) (No change in text.)

SUBCHAPTER 14. CARBON MONOXIDE ALARMS

5:27-14.1 Carbon monoxide alarms

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

1. (No change.)

2. As an alternative to the requirements above, carbon monoxide alarms may be installed in the locations specified in the Uniform Construction Code (N.J.A.C. 5:23).

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

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES LOCAL FINANCE BOARD

Electronic Disbursements and Claimant Certification

Adopted Repeals and New Rules: N.J.A.C. 5:30-9A.4 and 9A.6

Adopted Amendments: N.J.A.C. 5:30-9A.1, 9A.2, 9A.3, 9A.5, and 9A.7 and 5:31-4.1 and 4.2

Adopted Repeal: N.J.A.C. 5:30-9A.8

Proposed: June 19, 2017, at 49 N.J.R. 1584(a).

Adopted: December 13, 2017, by Local Finance Board, Timothy J. Cunningham, Chair.

Filed: December 13, 2017, as R.2018 d.026, **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. 40A:5-16.c and d, 40A:5-16.5, and 40A:5A-10.c.

Effective Date: January 16, 2018.

Expiration Dates: January 15, 2023, N.J.A.C. 5:30;
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Summary of Public Comments and Agency Responses:

Public comments, summarized below, were submitted by the following individuals: Mr. Gerald C. Seneski, Chief Financial Officer