

## SUBCHAPTER 4. OWNER RESPONSIBILITY

## 5:14A-4.13 Accident, incident, or mechanical breakdown reporting

(a) Shut down and report: When an incident has occurred involving ejection from a ride, failure of a critical structural or mechanical component, or serious injury/illness that can be attributed to an amusement ride that is regulated by this chapter, the owner shall:

1.-3. (No change.)

4. Prepare an Incident Report form and send it to the Department by email within 24 hours of the incident.

i. The ride owner shall send a copy of this report to the ride manufacturer.

(b) Report within 24 hours: When any incident occurs involving any mechanical malfunction, or an emergency evacuation of the ride, the owner shall:

1. Report the incident to the Department within 24 hours of the incident by telephone or email;

2. Prepare a written incident report and send it to the Department by email within five days of the incident or by mail at PO Box 808, Trenton, NJ 08625 postmarked within five days of the incident. The written incident report shall be on a form designed by the Department and shall include a description of any planned corrective action and a time frame for its completion; and

3. (No change.)

4. Rider removal due to an area-wide power failure, or at the request of rider, or due to rider misbehavior, shall not be considered evacuation for the purposes of this subsection.

(c) Record: When any incident occurs that is not covered by (a) or (b) above involving any type of ride-related minor injury or illness or complaint that was observed by the owner or operator or reported to the owner or operator by the rider, the owner shall keep a record of such incident, including pertinent information, in a form that is easy to access and read and that is readily available for inspection by the Department.

1. The information shall include at least the following:

i.-vi. (No change.)

## (a)

## DIVISION OF CODES AND STANDARDS

## Uniform Construction Code

## Adopted Amendment: N.J.A.C. 5:23-6.8

Proposed: April 19, 2021, at 53 N.J.R. 586(a).

Adopted: July 16, 2021, by Lt. Governor Sheila Y. Oliver,

Commissioner, Department of Community Affairs.

Filed: September 23, 2021, as R.2021 d.121, **without change**.

Authority: N.J.S.A. 52:27D-119 et seq.

Effective Date: October 18, 2021.

Expiration Date: April 20, 2022.

## 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 felt that amending N.J.A.C. 5:23-6.8(e)1i and (h)10i to be consistent with N.J.A.C. 5:23-6.8(h)13i and (h)20i is inappropriate, because the subsections address different subject matters and should remain as written. He posits that N.J.A.C. 5:23-6.8(h)13i and (h)20i apply to only increases because they address combustion air requirements and noted that, if an existing gas furnace has the required combustion air opening, by deduction, a replacement of the same size or smaller will automatically meet the requirements of the code and would not require calculations. Conversely, N.J.A.C. 5:23-6.8(e)1i and (h)10i, require the proper sizing of the appliance and equipment. The commenter stated that these subsections should apply to increases and decreases, as “rules of thumb” were used in the past and resulted in improper sizing of equipment. The commenter feels the Department should require load calculations to prevent oversized equipment from continuing to exist. The commenter stated that “a good Heating, Ventilating, Air Conditioning, and Refrigeration (HVACR) contractor

should know how to determine heating/cooling loads to size equipment and software programs exist to perform calculations,” and cited Manual J and Manual N calculations, which have been required for new and replacement equipment for decades. He noted that energy savings measures often take place and that changes of use may also impact sizing of equipment.

RESPONSE: The Department agrees that, in the past, “rules of thumb” utilized for sizing were often problematic and resulted in oversized equipment. This rulemaking seeks to remedy that issue by allowing for the replacement of equipment with a decrease in British thermal unit (BTU) input without incurring additional costs. The installation of equipment with reduced BTU input ratings and increased efficiencies (for example, annual fuel utilization efficiency (AFUE)) represents an improvement and mitigates the issue of oversized equipment. The Department disagrees that these replacements should require calculations, which could add expenses to the replacement and discourage building owners from making the improvement.

2. COMMENT: The commenter provided examples related to natural gas furnace sizing and recommended, “the Department look into taking some educational courses on why correct appliance/equipment sizing is important for both new and replacement installations.” He notes that, pursuant to the proposal, if these sections are applicable only to increases, then the replacement of a 100,000 BTU furnace (80 percent AFUE, 80,000 BTU output) with an 80,000 BTU furnace (80 percent AFUE, 64,000 BTU output) would be allowed even though the replacement may result in an undersized unit. The commenter also stated that, as written, the rule would allow for a replacement of a unit with the same size where the original equipment was sized based on “rule of thumb” and was never properly sized. The commenter asked that, without requiring a sizing calculation, how is an HVACR contractor to determine the size of the unit? The commenter provided examples of factors to be considered when replacing a unit, including new insulation, energy efficient doors and windows have been installed, duct work has been sealed, trees have been removed, and a basement has been changed into a living space, all of which could change the amount of heating needed.

RESPONSE: As stated in the Response to Comment 1, these replacements can be done appropriately without the need for detailed calculations. As the commenter noted, the vast majority of systems were oversized based on rules of thumb, and it is unlikely that decreasing the equipment size will lead to situations where an undersized unit is installed, especially considering that the replacement equipment will be more efficient.

3. COMMENT: The commenter noted that the notice of proposal Summary states that the amendments would mean that replacement equipment having better efficiency ratings will no longer be subject to N.J.A.C. 5:23-6.8(h)10i. The commenter argued that the proposed amendments have no link to AFUE, nor do they require that the AFUE be equal or better than the unit being replaced. Thus, a 95 percent AFUE could be replaced with a 90 percent AFUE unit of the same input rating without requiring a calculation. He further noted that AFUE does not include heat losses of the duct system or piping and inquired as to whether the Department would allow for an oversized unit knowing that the system is leaking 35 percent. The commenter provided a history of AFUE percentages in equipment over time and stated that the minimum efficiency level was set at 78 percent in 1992. Since then, appliances have been able to achieve over 95 percent AFUE. He stated that if leaky piping is replaced or the energy efficiency of the building is otherwise improved, it may be possible for a 100,000 BTU (80 percent AFUE, 80,000 BTU output) unit to be replaced with an 80,000 BTU (90 percent AFUE, 72,000 BTU output), or smaller, unit. The commenter stated that this should warrant calculations, and the proposed amendments should not be adopted. The commenter also stated that new construction in the State has required heat loss and cooling load calculations for quite some time, and that perhaps, if proper sizing calculations were completed and no changes have been made to the building and system components, then a like-for-like replacement could be allowed without requiring new calculations. He noted that the Manual J load calculations does not tell a user what size heating or cooling system is needed, but how much heating and cooling the system needs to provide. He asked if a calculation is required where an 80 percent AFUE single-stage unit is changed to an 80 percent AFUE

two-stage unit where first stage is less than the current BTU unit rating but the second stage is slightly larger than the current BTU rating? He stated that his understanding of this scenario would be that a two-stage 80 percent AFUE unit runs more efficiently than a single-stage 95 percent AFUE unit.

RESPONSE: While there is no direct link to AFUE in the rulemaking, as the commenter notes, equipment has evolved over time, making it possible to decrease BTU input while maintaining sufficient heating capacity. Thus, smaller units are more efficient now than in the past, and this rulemaking reflects that. As stated above, the intent of the rehabilitation subcode is to allow for work to be undertaken in existing buildings in a cost-effective way while ensuring the work does not make the existing structure any less safe. This rulemaking is consistent with that concept; it ensures that the new unit will not result in the building being any more energy wasteful than it was prior to the replacement, and in most cases, due to evolving efficiencies, the replacement will be an improvement. This should be promoted by making the replacement as cost effective as possible. Two-stage systems are designed with a single overall AUFUE and may not be any more efficient than a single-stage system. However, as noted by the commenter, AUFUEs are not the subject of this rulemaking, which relates to input ratings.

4. COMMENT: The commenter implied that the Department is pushing for the installation of high efficiency units even though the overall energy savings may not offset the initial costs.

RESPONSE: The Department recognizes that, over time, increasingly efficient equipment is being produced more readily, and this rulemaking seeks to reflect that. The Department also recognizes that homeowners are seeking to make their households more efficient, and equipment sizing is one of the many ways this is being done; this rulemaking allows for replacements to be less burdensome while still ensuring that overall building energy usage is not increased, except where warranted.

5. COMMENT: The commenter stated that a qualified HVACR contractor with proper experience and technology should be able to figure out all missing components of the sizing equations and should evaluate the total system to determine corrective measures to make the system more efficient. He stated that HVACR contractors who can't or won't do a load calculation would be unable to size the equipment properly and stated that homeowners should insist that a proper Manual J load calculation be performed before signing a contract, or at least request that cycle timing data at two reference temperatures be obtained and extrapolated to a lower temperature to determine the amount of heating and cooling the system needs to provide. He further opined that a good HVACR contractor may even ask to look at the gas bills, which have average daily temperatures for the month, and utilize that information to calculate the equipment sizing.

RESPONSE: These comments are not applicable to the requirements of the proposed amendments. The Department does not control how an owner and a contractor agree to perform work. This meaning of this rulemaking is that there will be no requirement for a contractor to perform these calculations in the event of a decrease. Whether a contractor chooses to perform calculations for equipment replacement with a decrease in rating is up to the contractor.

6. COMMENT: The commenter stated that if the Department adopts these amendments, the Department should review the Home Energy Rating System (HERS) Program of California and require that New Jersey HVACR contractors seal and test the ducts when an HVACR system is installed or replaced, and after such test, a HERS rater verifies the leakage amounts of the duct system are within the established limits. In addition, the commenter stated that the Air Conditioning Contractors of America (ACCA) Standard 5, HVAC Quality Installation Specifications, details the nationally recognized minimum criteria for the proper installation of HVAC systems in residential and commercial applications and applies to HVACR equipment/components being installed in new and existing residential and commercial buildings. The commenter recommended the Department review this standard, specifically Section 3.2.1(b).

RESPONSE: The Department thanks the commenter for his recommendation. The State has rules for the installation of equipment pursuant to the Uniform Construction Code, and HVACR contractors are licensed pursuant to the State Board of Examiners of Heating, Ventilating, Air Conditioning, and Refrigeration Contractors rules at N.J.A.C. 13:32A.

These rules are appropriate for the State's needs. The Department does not adopt ACCA Standard 5 as part of the Uniform Construction Code; thus, its requirements are inapplicable to this rulemaking. The installation standards are contained within the applicable portions of the mechanical subcode and the one- and two-family dwelling subcode of the UCC.

7. COMMENT: The commenter opined that the proposed amendments are a "code change," and as such, requested that the Department submit it as a proposed code change and "see the reaction. Or, take a few more steps backward and allow rule of thumb calculations again for replacement units."

RESPONSE: Changes to the rehabilitation subcode are separate and distinct from changes to the adopted subcodes of the Uniform Construction Code; the rehabilitation subcode ensures that work undertaken in existing structures is performed in a way that makes the building no less safe than it was prior to rehabilitation. The adopted subcodes of the Uniform Construction Code apply to new construction and ensure new buildings are made in the safest possible way using the most recently available techniques and materials. Not all of the requirements for new construction can feasibly be translated to work in existing buildings. Because of that, the Department carefully considers how to apply sections in the adopted subcodes to work undertaken in existing buildings. This rulemaking is for replacements of equipment in existing buildings; as such, there is no need for the Department to submit this change to the International Codes Council as a proposed requirement for new construction, because that is not the intent of this rulemaking. Further, the Department feels that, because this rulemaking was reviewed and approved by the Uniform Construction Code Advisory Board and published in the New Jersey Register with a 60-day public comment period, there is no expected further reaction from code users. This change is not expected to cause any unintended negative consequences.

#### Federal Standards Statement

No Federal standards analysis is required for the adopted amendments because the amendments are not being adopted 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.

Full text of the adoption follows:

#### SUBCHAPTER 6. REHABILITATION SUBCODE

##### 5:23-6.8 Materials and methods

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

(e) Mechanical Materials and Methods: The following sections of the mechanical subcode (N.J.A.C. 5:23-3.20) shall constitute the mechanical materials and methods requirements for this subchapter:

1. All of Chapter 3, entitled "General Regulations" except Sections 301.2, 301.10, 301.11, 301.16, 301.18, 303.5, 303.6, 303.7, 306, 307.2.3, 309, and 312;

i. Section 312 shall apply when appliance/equipment input ratings are increased.

2.-12. (No change.)

(f) Fuel Gas Materials and Methods: The following sections of the fuel gas subcode (N.J.A.C. 5:23-3.22) shall constitute the fuel gas materials and methods requirements of this subchapter:

1. All of Chapter 3, entitled "General Regulations" except Sections 301.2, 301.6, 301.11, 301.12, 303.7, and 306 (excluding Section 306.6);

i. (No change.)

2.-5. (No change.)

(g) (No change.)

(h) Residential Materials and Methods: The following sections of the one- and two-family dwelling subcode (N.J.A.C. 5:23-3.21) shall constitute the residential materials and methods requirements for this subchapter:

1.-9. (No change.)

10. All of Chapter 14, entitled "Heating and Cooling Equipment," except Sections M1401.2, M1401.3, and M1401.5;

i. Section M1401.3 shall apply when appliance/equipment input ratings are increased.

11.-20. (No change.)

(i)-(l) (No change.)

## HUMAN SERVICES

(a)

### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Nursing Facility Patient Care Ratio Requirements Adopted New Rules: N.J.A.C. 10:49A

Proposed: April 19, 2021, at 53 N.J.R. 605(a).

Adopted: September 14, 2021, by Sarah Adelman, Acting Commissioner, Department of Human Services.

Filed: September 14, 2021, as R.2021 d.120, **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. 30:4D-1 et seq., and 30:4J-8 et seq.; and P.L. 2020, c. 89.

Agency Control Number: 21-A-01.

Effective Date: October 18, 2021.

Expiration Date: October 18, 2028.

#### Summary of Public Comments and Agency Responses:

Comments were received from the following agencies/individuals:

Martin Friedman CPA, PC (Abi Goldenberg)

Health Care Resources (A. Katherine Blissit)

One letter signed by the three Trade Organizations listed below:

- NJ Hospital Association (Theresa Edelstein, Senior Vice President)
- Health Care Association of NJ (Andrew Aronson, President & CEO)
- LeadingAge NJ & DE (James W. McCracken, President & CEO)

NJ National Academy of Elder Law Attorneys (NJ NAELA) (Laura L. Ergood, President)

AARP NJ (Evelyn Liebman, Director of Advocacy)

Disability Rights NJ (DRNJ) (Mary Ciccone, Director of Policy)

Office of the State Comptroller (OSC) (Joshua Lichtblau, Director, Medicaid Fraud Division)

#### N.J.A.C. 10:49A-1.2, Definitions

1. COMMENT: One commenter asked how “care of individual beneficiaries” is defined.

RESPONSE: This phrase is not defined because it appears only in the notice of proposal Summary and is not a term used in the actual rules.

2. COMMENT: Patient care ratio (PCR) reporting year. Three commenters requested that the reporting year change from the State fiscal year to the calendar year. This would align the PCR reporting year with most facility fiscal/tax years and avoid a burdensome mid-year accrual and reconciliation process. One commenter noted that Medicare reporting to the Federal Centers for Medicare and Medicaid Services (CMS) is on the calendar year. Another commenter noted that Medicaid began requiring calendar year cost reporting in 2010.

RESPONSE: The Department of Human Services (Department) agrees with the comment and will incorporate the change upon adoption. This revision is not considered too substantial to make upon adoption because the total number of months to be reported per reporting year remains as 12. The change from State fiscal year to calendar year aligns the reporting period for the PCR with the reporting periods for other Medicare and Medicaid financial reporting, which means that the first reporting period will start on January 1, 2022.

3. COMMENT: Related party. One commenter requested that the definition of related party align with the Federal Medicare definition and disclosure threshold found at 42 CFR 455.104. The Federal definition quoted in the letter has several standards for the disclosing Medicaid entity.

RESPONSE: This change will not be incorporated upon adoption because the proposed language is already consistent with the Federal definition.

4. COMMENT: Revenue. One commenter requested that the definition state that only Medicaid/NJ FamilyCare Revenue will be used in calculating a nursing facility’s PCR and rebate.

RESPONSE: This change will not be incorporated upon adoption because the comment is about the calculation proposed in the rule, rather than the substance of the definition.

#### N.J.A.C. 10:49-2.1, General Requirements

5. COMMENT: Regarding paragraph (a)1, two commenters requested that the due date of the report be lengthened from three months after the close of the PCR reporting year to the longer time period permitted by CMS for Medicare cost reports. One commenter requested five months and another requested four months.

RESPONSE: The Department agrees with the commenters and will change the regulation upon adoption to require submission by the sixth month following the end of the PCR reporting year, rather than the fourth month. This revision is not considered too substantial to make upon adoption because the requirement to submit the information is not changing, only the month in which the information is to be submitted, to allow more time for submission.

6. COMMENT: Regarding subsection (e), two commenters requested that the reporting of detailed transactions change to a summary by vendor, which is what CMS allows for Medicare cost reports, because there are hundreds of transactions. One of the two commenters also noted a typographical error with the word “transition” at N.J.A.C. 10:49A-2.11(e)5. Another commenter noted their support for related party reporting.

RESPONSE: The Department will correct the noted typographical error and clarify that the substantive analysis is intended to be a summary by vendor, although a detailed report of each transaction is required. This revision is not considered too substantial to make upon adoption because it is clarifying that the substantive analysis is performed in summary for each related party, with no change to reporting the transaction detail.

7. COMMENT: Regarding paragraph (e)5, one commenter requested that the substantive analysis be worded as optional, with facilities alternatively noting the methodology for setting the price. The commenter also noted that substantive analysis is not defined or used in other healthcare contexts.

RESPONSE: The change will not be incorporated upon adoption because the analysis is required for the rule to serve its intended purpose, which is to accurately report the cost of patient care. The outcome of the analysis is defined, which is that a facility must demonstrate a fair market price. The form of analysis is necessarily flexible so that, as requested, facilities can choose a methodology appropriate to the transaction type.

#### N.J.A.C. 10:49A-2.2, Revenue Reporting Requirements

8. COMMENT: Three commenters noted the legislative distinction between total revenues and aggregate revenues and requested that the rule use aggregate revenue from all payers in determining the reporting and rebate requirements of the PCR.

RESPONSE: This change will not be incorporated upon adoption because the proposed rule requires reporting of total revenue and calculates the rebate on all revenue, as is permissible under the Department’s regulatory authority.

9. COMMENT: One commenter asserted that Medicaid services are loss leaders and asked about the treatment of non-Medicaid funds and incentives to either create additional ancillary companies or discourage acceptance of Medicaid residents.

RESPONSE: The Department does not believe that the rule will discourage the acceptance of Medicaid beneficiaries into the nursing facilities.

10. COMMENT: One commenter requested that, in addition to Generally Accepted Accounting Principles (GAAP), facilities could elect to report revenue consistent with Other Comprehensive Basis of Accounting (OCBA), which collectively refers to several non-GAAP accounting systems. This is because not all facilities use GAAP and requiring GAAP as the only standard may result in increased costs to facilities, particularly for individual or small facilities.