

## HEALTH

### HEALTH SYSTEMS BRANCH

#### CERTIFICATE OF NEED AND LICENSING DIVISION

#### OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE

#### Licensing Standards for Dementia Care Homes

#### Special Adopted New Rules: N.J.A.C. 8:37

Adopted: February 6, 2017, by Cathleen D. Bennett, Commissioner, Department of Health.

Filed: February 6, 2017, as R.2017 d. .

Authority: N.J.S.A. 26:2H-157

Effective Date: February 6, 2017

Expiration Date: May 31, 2017.

**Take notice** that the Department of Health has adopted new rules at N.J.A.C. 8:37 to codify new statutory requirements set forth at N.J.S.A. 26:2H-148 et seq. Pursuant to N.J.S.A. 26:2H-148 et seq., the responsibility for licensure, inspections, and the establishment and enforcement of standards with respect to dementia care homes is transferred from the Department of Community Affairs to the Department of Health. N.J.A.C. 8:37 implements the new statutory requirements by establishing the standards for licensure of and the provision of services by dementia care homes in New Jersey under the Department of Health.

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These specially adopted new rules will remain in effect until May 31, 2017, or until the rules are proposed for public comment and readopted through standard rulemaking procedures.

Full text of the special adoption follows.

#### 8:37-1.1 Purpose and Scope

(a) This chapter implements the Dementia Care Home Act, N.J.S.A. 26:2H-148, et seq., P.L. 2015, c. 125 (enacted November 9, 2015) and is to apply to dementia care homes as defined in this chapter.

(b) This chapter is promulgated for the purpose of establishing interim licensing standards for dementia care homes in the State of New Jersey to ensure that they are maintained and operated in such a manner that will protect the health, safety and welfare of its residents and at the same time preserve and promote a home-like atmosphere appropriate to such facilities while the Department works to establish permanent rules pursuant to N.J.S.A. 26:2H-157.

#### 8:37-1.2 Definitions

(a) The following words and terms are defined in the Dementia Care Home Act at P.L. 2015, c. 125, § 17 (N.J.S.A. 26:2H-148) and are used in this chapter as defined in the Act:

"Alzheimer's disease and related disorders";

"Commissioner";

"Department";

"Dementia"; and

"Dementia care home."

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

“Act” means the Dementia Care Home Act, N.J.S.A. 26:2H-148 et seq., P.L. 2015, c. 125, which is legislation that was enacted on November 9, 2015 that provides for the licensure of dementia care homes by the Department.

"Activities of daily living (ADL)" means the functions or tasks for self-care, which are performed either independently or with supervision or assistance. Activities of daily living include dressing, bathing, toilet use, transfer, locomotion, bed mobility, and eating.

“Administrator” means an individual designated by the licensee who is responsible for the overall day to day operations of the dementia care home.

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

“Assistance with transfer” means providing the physical assistance of no more than two facility staff while the resident moves between bed and a standing position or between bed, chair or wheelchair.

"Facility" means a dementia care home licensed pursuant to this chapter.

"Fuel-burning appliance" means a device or apparatus which is designed to utilize natural gas, manufactured gas, mixed gas, liquefied petroleum products, solid fuel, oil or any gas as a fuel for heating, cooling, hot water, cooking, generating light or power or for aesthetics.

"Garbage" means organic waste resulting from the preparation and consumption of

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food.

"Habitable room" means a residential room or space in which the ordinary functions of domestic life are carried on, including bedrooms, living rooms, studies, recreation rooms, kitchens, dining rooms, and other similar spaces, but excluding closets, halls, stairways, laundry rooms, toilet rooms and bathrooms.

"Health care practitioner" means a physician, advanced practice nurse or physician assistant.

"Health care professional" means an individual licensed by this State to administer health care in the ordinary course of business or practice of a profession.

"Health care service" means the term as defined at N.J.S.A. 26:2H-2(b).

"Licensee" means the individual or entity to whom a license to operate a dementia care home is issued.

"Medication administration" means a procedure in which a prescribed medication or biological is given to a resident by an authorized individual in accordance with all laws and regulations governing such procedures. The complete process of administration includes:

1. Removing an individual dose from a previously dispensed, properly labeled container (including a unit dose or unit-of-use container);
2. Verifying it with the prescriber's orders;
3. Giving the individual dose to the resident;
4. Seeing that the resident takes it (if oral); and
5. Recording the required information, including but not limited to the method of

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administration, time administered, initials of individuals who administered the medication, and effect of the medication when "prn" or as-needed medications are administered.

"Medication aide" means a person who is qualified to administer medication in accordance with N.J.A.C. 8:36-9.2.

"NFPA" means the National Fire Protection Association.

"Office of Certificate of Need and Healthcare Facility Licensure" means the health care facility licensing unit within the Division of Certificate of Need and Licensing of the Health Systems Branch of the Department, for which the contact information is Office of Certificate of Need and Healthcare Facility Licensure, Division of Certificate of Need and Licensing, Department of Health, PO Box 358, Trenton, NJ 08625-0358, (609) 292-5960, facsimile number (609) 826-3745, and website address for forms [www.nj.gov/health/forms](http://www.nj.gov/health/forms).

"Physician" means an individual who is licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey, in accordance with N.J.S.A. 45:9-1 et seq. and N.J.A.C. 13:35.

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

"Resident" means a person with Alzheimer's disease or other forms of dementia who is: 18 years of age or older; ambulant with or without assistive devices; certified by a licensed physician to be free from communicable disease and not in need of skilled nursing care 24 hours a day, seven days a week; and, except in the case of a person 65 years of age or over, in need of dietary services, supervision of self-administration of medications,

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supervision of and assistance in activities of daily living, or assistance in obtaining health care services.

“Responsible person” means a person who has been designated as a resident’s healthcare representative, attorney-in-fact, guardian or other legal representative for purposes of making healthcare decisions on behalf of the resident.

"Rubbish" means all waste material other than garbage.

“Skilled nursing care” means nursing care ordered by a physician and given or supervised by a registered professional nurse, but does not include the administration of medications.

"Supervision of self-administration of medication" means a procedure in which an individual designated by the dementia care home provides a prescribed medication or biological in its properly labeled container to a resident for the resident to administer the medication or biological to himself or herself. The complete process of administration includes:

1. Obtaining the resident’s properly labeled container of prescribed medication or biological from the location in the dementia care home where medications are stored;
2. Reading aloud the label and dosing requirements listed on the container in the presence of the resident;
3. Handing the container of medication or biologic to the resident;
4. Observing the resident remove the proper dose of medication and administer the dose to himself or herself;
5. Returning the medication container to the proper storage area; and

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6. Making a record in the resident's file of the name of the medication taken, dosage amount and time of administration.

## Subchapter 2. Licensing

### 8:37-2.1 Provisional Licenses

(a) No person, public or private institution, agency, entity, corporation, or business concern shall own or operate a dementia care home without a license from the Department.

(b) On or about June 1, 2016, the Department shall issue a provisional license to each dementia care home that holds a valid license from the Department of Community Affairs pursuant to N.J.A.C. 5:27 as of that date, which provisional license shall remain in place for one year unless the license is revoked sooner by the Department.

(c) Each dementia care home shall have an administrator who is responsible for the day to day operations of the dementia care home.

1. A dementia care home shall provide the Office of Certificate of Need and Healthcare Facility Licensing with written notification of a change in administrator, including the name of the new administrator, within 72 hours of the change.

(d) No person shall operate a dementia care home, or offer, advertise or hold out a facility as a dementia care home, or hold out a building as available for occupancy by dementia care home residents without a valid license issued by the Department for the operation of that facility in accordance with the provisions of the Act.

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### 8:37-2.2. Access to agency representatives

Authorized Department staff may conduct survey visits at a facility at any time. Such visits may include, but shall not be limited to, the review of all facility documents and resident records as well as conferences with residents, responsible parties of residents, and facility staff.

### 8:37-2.3 Waiver of licensing standards

(a) Pursuant to N.J.S.A. 26:2H-153, the Commissioner or his or her designee may, in accordance with the general purposes and intent of this chapter, waive sections of the rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of residents or the public and the failure to grant the waiver would pose a serious financial hardship to the licensee.

(b) A licensee seeking a waiver of a rule in this chapter shall apply in writing to the Director of the Office of Certificate of Need and Healthcare Facility Licensure of the Department on Form CN-28, Application for Waiver, which is attached as chapter Appendix A and is incorporated herein by reference and is also available on the Department's website at <http://web.doh.state.nj.us/apps2/forms/subforms.aspx?pro=healthfacilities#need-care>.

(c) A written request for waiver shall include the following:

1. A citation to the specific rule or part of the rule for which a waiver is requested;
2. Reasons for requesting a waiver, including a statement of the type and degree of

hardship that would result to the licensee upon full compliance;

3. An alternative proposal, which would ensure resident safety;

4. Documentation to support the application for waiver;

5. Whether the project is currently under review by the Department of Community Affairs, Health Care Plan Review; and

6. Whether the waiver request is based on plan review comments by the Department of Community Affairs.

(d) The Department may request additional information before processing a request for waiver.

(e) The Department's decision to deny a waiver is a final agency decision, of which jurisdiction and venue for judicial review are vested in the New Jersey Superior Court, Appellate Division.

#### 8:37-2.4 Violations

A person or entity found to be in violation of the provisions of N.J.S.A. 26:2H-148 et seq., or any rules or regulations adopted by the Commissioner pursuant thereto with respect to the operation of a dementia care home, shall be subject to the enforcement remedies provided for in N.J.S.A. 26:2H-13 or 26:2H-14, and N.J.A.C. 8:43E-3.1 et seq.

#### 8:37-2.5 Resident admission agreement, financial arrangements and full disclosure

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(a) Prior to or upon admission, the licensee shall enter into a written resident admission agreement with each resident of the dementia care home or the resident's responsible party.

(b) The licensee shall disclose in the resident admission agreement, at a minimum, the services it will provide to the resident, the amount of any required security deposit, transportation it will provide for healthcare appointments and the fee for the transportation, if any, the public programs or benefits that it accepts or delivers, the policies and discharge criteria that affect a resident's ability to remain in the facility, the fees for services provided and charges for supplies routinely provided by the licensee, and the costs of supplies which are specially ordered.

(c) Concerning financial arrangements, the licensee shall:

1. Impose no additional charges, expenses, or other financial liabilities in excess of what is provided in the resident admission agreement, unless at least 30 days written notification is provided to the resident and any responsible person of the charges and there is written documentation evidencing the resident's agreement to pay such charges;

2. Impose no additional charges for increased level of care without documentation of recertification of the physician, as required by N.J.A.C. 8:37-4.1(a), that supports the need for the increase;

3. Maintain a written record of all financial arrangements with the resident and/or his or her responsible person, with copies furnished to the resident and any responsible person; and

4. Provide the resident and any responsible person with information about obtaining

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financial assistance available from third-party payers and/or other payers and referral systems for resident financial assistance.

(d) All residents who have advanced a security deposit to a licensee prior to or upon their admission shall be entitled to receive interest earnings, which have accumulated on such funds or property.

1. The licensee shall hold such funds in trust for the resident and they shall remain the property of the resident and shall be returned to the resident, any responsible person or the resident's estate upon discharge or death minus any outstanding payment owed to the licensee by the resident within 60 days after the person is no longer a resident.

2. All such funds shall be held in an interest-bearing account, in accordance with the requirements set forth at N.J.S.A. 30:13-4.1.

3. Immediately upon investment, the licensee shall notify the resident and any responsible person, in writing, of the name and address of the bank or investment company holding the funds and the amount of the deposit.

i. The licensee shall thereafter provide a quarterly statement to each resident and any responsible person for whom it holds security funds in trust identifying the balance, interest earned, and any deductions for charges or expenses incurred in accordance with the terms of the resident admission agreement.

(e) Every licensee to whom a resident's personal funds are entrusted shall maintain a ledger setting forth the date on which each payment was received, the amount of each such payment, the date of each disbursement, the amount of each such disbursement, the

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person to whom each such disbursement was made and the purpose of each disbursement.

1. The resident or the resident's responsible party shall sign the ledger to acknowledge receipt of personal funds or of goods or services purchased with such personal funds.

#### 8:37-2.6 Reportable events

(a) Licensees shall comply with the health care facility reporting requirements at N.J.A.C.

8:43E-10.11.

1. A dementia care home is considered a "home-based service" under N.J.A.C.

8:43E-10.11(a)(1).

#### 8:37-2.7 Personal needs allowances

When applicable, personal needs allowances shall comply with N.J.A.C. 8:36-6.3.

### Subchapter 3. Resident Rights

#### 8:37-3.1 Resident rights

(a) Every resident of a dementia care home shall have the right to:

1. Manage the resident's own financial affairs or to have that responsibility delegated to a family member, an assigned guardian, the facility administrator, or some other individual with power of attorney. The resident's authorization must be in writing, and must be witnessed in writing;

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2. Wear the resident's own clothing;
3. Determine the resident's own dress, hair style, or other personal effects according to individual preference;
4. Retain and use the resident's personal property in the resident's immediate living quarters, so as to maintain individuality and personal dignity, except where the licensee can demonstrate that it would be unsafe, impractical to do so, or infringe upon the rights of others, and that mere convenience is not the licensee's motive to restrict this right;
5. Receive and send unopened correspondence;
6. Unaccompanied access to a telephone at a reasonable hour and to a private phone at the resident's expense;
7. Privacy;
8. Retain the services of the resident's own personal physician at the resident's own expense or under a health care plan and to confidentiality and privacy concerning the resident's medical condition and treatment;
9. Unrestricted communication, including personal visitation with any person of the resident's choice, at any reasonable hour;
10. Make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;
11. Present grievances on behalf of the resident or others to the operator, State governmental agencies, or other persons without threat of reprisal in any form or manner;

12. A safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;

13. Refuse to perform services for the licensee, except as contracted for by the resident and the operator;

14. Practice the religion of the resident's choice, or to abstain from religious practice; and

15. Not be deprived of any constitutional, civil, or legal right solely by reason of residence in a dementia care home.

(b) Each dementia care home shall ensure that a written notice of the rights set forth in paragraph (a) above is given to every resident, their family and any responsible person upon admittance to the facility and to each resident or responsible person upon request.

1. The operator shall also post this notice in a conspicuous public place in the facility.

2. This notice shall include the name, address, and telephone numbers of the complaint program in the Department, Office of the Ombudsman for the Institutionalized Elderly, county welfare agency, and county office on aging.

(c) Pursuant to N.J.S.A. 26:2H-154(c), a resident whose rights as set forth in paragraph (a) above are violated shall have a cause of action against any person committing the violation.

1. The action may be brought in any court of competent jurisdiction to enforce those rights and to recover actual and punitive damages for their violation.

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2. A plaintiff who prevails in the action shall be entitled to recover reasonable attorney's fees and costs of the action.

#### Subchapter 4. Admission and retention of residents

##### 8:37-4.1 Admission and retention; health care monitoring

(a) Prior to a prospective resident's admission to a dementia care home, the prospective resident shall receive a medical assessment from a physician and obtain a certification from that physician stating that a dementia care home is appropriate to meet the needs of the prospective resident.

1. Each resident shall be reassessed and recertified by a physician on a quarterly basis in compliance with N.J.S.A. 26:2H-152(n)(6).

(b) The facility shall place a copy of the physician's certification and each recertification obtained thereafter in the resident's file.

(c) The facility shall take each resident's weight at least monthly at the facility and record it appropriately.

1. The facility shall provide the resident's weight information to the resident's assessing physician for each quarterly review, in accordance with paragraph (a) above.

2. If a resident loses more than five percent of his or her weight in a one-month period (and is not on a prescribed weight reduction plan), the facility must immediately notify the resident's attending physician.

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(d) Absent an emergency, physical or chemical restraints that are being used for the purpose of restricting a person's mobility within the facility are not permitted. Whenever a physical or chemical restraint is being considered for use in a facility, it must be approved in writing by the resident's attending physician with an accompanying rationale for use of same.

(e) Even if a resident has a "Do Not Resuscitate" (DNR) order, staff must call 911 for appropriate assistance in the event of an emergency, so that appropriate medical staff can assist the resident and act, if appropriate.

(f) Prior to admission, and at least annually thereafter, the licensee shall notify the resident and the resident's responsible person in writing of the discharge criteria in N.J.A.C. 8:37-4.2.

(g) In the event the recertification required pursuant to paragraph (a)(1) above determines that the resident requires a transfer to a facility providing a higher level of care, the dementia care home shall:

1. Verbally notify the resident, the resident's family and any responsible person of the assessment results within 24 hours of completion, with written notification to follow within 72 hours of assessment completion;

2. In consultation with the resident, the resident's family and any responsible person, arrange for and/or assist in the orderly transfer of the resident within 15 days; this shall include licensee assistance in seeking out and securing an appropriate placement for the resident; and

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3. Arrange for the provision of all necessary services for the appropriate care of the resident until the resident is discharged.

#### 8:37-4.2 Discharge criteria

(a) The dementia care home shall set forth the criteria for discharge in the admission agreement that it enters into with the resident or the resident's responsible person prior to or upon admission.

(b) A resident shall be transferred from a dementia care home to a facility that offers a higher level of care if the resident exhibits one or more of the following characteristics:

1. The resident is consistently and totally dependent in eating and toileting;
  - i. "Consistently and totally dependent in eating" means being unable to swallow and/or requiring a feeding tube.
  - ii. "Consistently and totally dependent in toileting" means requiring a colostomy bag and/or catheter.
2. The resident is unable to self-administer medications (oral, topical, injectable) even when monitored; provided, however, that residents who are unable to self-administer medication shall be permitted to remain in the facility provided medication management is provided by a licensed healthcare professional, who is acting within the scope of that person's license;
3. The resident requires treatment of a stage two, three or four pressure sore;
4. The resident exhibits behaviors and/or has cognitive impairments of such severity as to be a danger to self or others;

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5. The resident is in need of a therapeutic diet that cannot be accommodated at the dementia care home and requires nursing monitoring;

i. Examples of prescribed therapeutic diets that would necessitate a transfer of the resident to a facility that could provide a higher level of care are diets that require blood sugar monitoring, monitoring of food and fluid intake, and monitoring of skin integrity and possible dehydration.

6. The resident is bed bound or requires repositioning due to his or her disease progression or due to a medically disabling condition;

7. The resident requires skilled nursing care 24-hours a day, seven days a week;

8. The resident requires more than "assistance with transfer;" or

9. The resident has a medically unstable condition and/or has special health problems, and the necessary therapy regimen for care and/or treatment cannot be appropriately developed and implemented in the dementia care home environment.

(c) The Commissioner may revoke the license of any provider who violates the criteria for discharging residents.

### 8:37-4.3 Referrals

The licensee shall maintain a list of licensed New Jersey long term care facilities and provide it to the resident, the resident's family, and any responsible person when a resident needs a higher level of care.

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## Subchapter 5. Personal Care Services

### 8:37-5.1 Restriction on health care services

(a) An individual who has an ownership interest in the licensed dementia care home shall not provide health care services in that facility.

(b) A licensed health care professional employed by the licensee or by an outside agency, who is acting within the scope of that person's license, may provide health care services to a resident of a dementia care home.

(c) A resident of a dementia care home shall not be given skilled nursing care while a resident, except for:

1. Emergencies;
2. Temporary illness for a period of one week or less; or
3. When it is ordered by a licensed physician and the resident does not require

such care 24-hours a day, seven days a week.

### 8:37-5.2 Services provided by dementia care homes

(a) Dementia care homes shall provide residents with the following services:

1. Dietary services;
2. Recreational activities;
3. Supervision of self-administration of medications;
4. Supervision and assistance in activities of daily living; and
5. Assistance in obtaining necessary health care services.

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### 8:37-5.3 Staffing requirements

(a) No licensee shall employ or continue to employ any person known to the licensee to have engaged in conduct violative of the rights of residents set forth at N.J.A.C. 8:37-3.1 or who the licensee has reason to believe would be likely to engage in such conduct.

(b) Every licensee shall have at least two staff persons on duty at all times who are awake and able to provide assistance to residents.

(c) The staffing level in paragraph (b) is a minimum only and the dementia care home shall employ both professional and unlicensed staff in sufficient number and with sufficient ability and training to provide basic resident care, assistance, and supervision required, based on an assessment of the acuity of residents' needs.

1. Staffing shall meet the standards set at N.J.A.C. 8:37-7.10 for residents who cannot self-evacuate.

### 8:37-5.4 Training and staffing requirements

(a) All staff who are employed by the facility who have regular direct contact with residents and are not licensed healthcare professionals shall successfully complete the following:

1. The home health aide course (75 hours) given by a home health agency approved by the State Board of Nursing;

2. A five-day course given by a Registered Nurse or other healthcare professional, approved by the Department, which shall include orientation to the facility and specific training regarding Alzheimer's disease. The course shall be divided as follows:

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i. Day One: Mission; policies and procedures; rules for residents; rules for staff; scheduling of meals and activities; documentation requirements; residents' rights; confidentiality; and ethical behavior;

ii. Day Two: Safety issues; preventing falls and accidents; fire training and evacuation; infection controls and universal precautions; and Occupational Safety and Health Administration, and related issues;

iii. Day Three: Didactic information concerning Alzheimer's disease; audiovisuals; role plays; definition of dementia; associated behaviors of dementia (such as rummaging, wandering, impulsiveness, etc.); distinctive characteristics of individuals with dementia; and use of Senior Living University or similar tapes;

iv. Days Four and Five: Structured observation at a dementia-specific adult day care program or at a dementia unit of an assisted living facility; trainees to observe a multidisciplinary team in action with clients with dementia and to be given structured worksheets to complete; and trainees to participate in discussion sessions with their supervisor each day; and

3. The Centers for Medicare and Medicaid Services Hand in Hand: A Training Series for Nursing Homes Toolkit on the care of persons with dementia.

i. Information and the manner in which to obtain the toolkit is available at the following website: <http://www.cms-handinhandtoolkit.info/Index.aspx>

(b) During the first 30 days on the job, a new employee shall be paired with an employee with more than one year of work experience in a dementia care home, so that there will be role-modeling and instant feedback for problem-solving.

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#### 8:37-5.5 Assistance in dressing

(a) Assistance in dressing shall be provided only by a person whom the resident consents to have assist him or her.

(b) The resident's preferences in selection of clothing shall be respected.

1. To the extent that the resident gives discretion in the choice of clothing to the person providing assistance in dressing, that discretion shall be exercised so as to dress the resident in comfortable clothing suitable to the season and coordinated in a harmonious manner.

(c) Assistance in dressing and undressing shall be provided at reasonable times so that a resident is not unduly delayed in commencing his or her daily activities or in going to bed.

1. The dementia care home shall provide a sufficient amount of time for the resident to receive assistance with undressing and dressing with consideration given to the resident's physical condition.

#### 8:37-5.6 Assistance in bathing and personal hygiene

(a) Assistance in bathing and personal hygiene shall be provided only by a person whom the resident consents to have assist him or her.

(b) Assistance in bathing and personal hygiene shall be provided at reasonable times so that a resident is not unduly delayed in commencing his or her daily activities or in going to bed.

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1. The dementia care home shall provide a sufficient amount of time for the resident to receive assistance with bathing and hygiene with consideration given to the resident's physical condition.

(c) Any bath or shower used by residents requiring assistance shall have handrails and treads.

(d) Assistance in personal hygiene shall include assistance in oral hygiene, hair washing and grooming, manicure, pedicure and shaving, as required.

#### 8:37-5.7 Transportation to health care services

(a) A licensee shall provide its residents with transportation to medical and dental offices and other health facilities as required for treatment and for the quarterly assessments as required by N.J.A.C. 8:37-4.1(a)(1).

1. A licensee shall set forth the fee for the transportation, if any, and the maximum distance that it will travel for a resident's medical and dental appointments in the resident's agreement.

(b) In any emergency requiring the transportation of a resident to a hospital, it shall be the duty of the licensee to promptly notify the nearest first aid or emergency squad.

#### 8:37-5.8 Housekeeping

(a) A licensee shall supply to every resident a fresh change of bed linen and towels, all of which shall be in good condition, at least once a week and whenever there is a change of occupancy.

1. Soap and toilet paper shall also be provided by the licensee.

(b) A licensee shall provide housekeeping and interior maintenance at least once weekly and whenever there is a change in occupancy.

#### 8:37-5.9 Laundry services

(a) A licensee providing laundry services may have clothes cleaned either on or off the premises of the dementia care home.

(b) Each resident's laundry shall be properly identified to prevent loss.

(c) All clothing given to the licensee for cleaning shall be returned to the resident properly cleaned, folded or ironed, as appropriate, and in a condition where it can readily be stored in a drawer or closet.

#### 5:37-5.10 Independence and community interaction; recreational activities

(a) 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.

(b) A licensee shall provide regularly scheduled recreational activities for residents.

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## 8:37-6. Pharmacy

### 8:37-6.1 Supervision of self-administration of medication

(a) When necessary for the health, safety or welfare of a resident, a designated dementia care home employee shall provide the resident with supervision of self-administration of medications.

1. A resident's need for supervision of self-administration of medications shall be determined by the resident's physician and documented in the physician certification and/or recertification required under N.J.A.C. 8:37-4.1(a).

(b) Supervision of self-administration of medicine shall not include the following services:

1. Placement or pouring of the dosage in a container for the resident;
2. Placing of medication in the mouth or the food of the resident;
3. Administration of injections.

(c) Any employee who is designated to provide resident supervision of self-administration of medications shall receive training from a licensed registered professional nurse or a licensed pharmacist.

1. The dementia care home shall document the training provided to each employee designated to provide resident supervision of self-administration of medications in the employee's file.

(e) An employee designated to supervise a resident's self-administration of medication shall maintain a daily record of the type and amount of medication taken by every resident and the time at which the medication is taken.

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1. The dementia care home shall keep the daily medication record in the resident's file.

(f) An employee designated to supervise a resident's self-administration of medication shall seek to ensure that a resident complies with the instructions of the health care practitioner who prescribed such medication and shall immediately report to such health care practitioner any deviation from such instructions or any use of other medication not prescribed or expressly allowed to be used by the health care practitioner

1. Any deviation from the instructions of a prescribing health care practitioner which results in a change in the resident's behavior shall be immediately reported to the prescribing health care practitioner.

#### 8:37-6.2 Administration of Medication

(a) Medication may only be administered by a health care professional who is acting within the scope of his or her license.

1. Facilities employing certified medication aides to administer medications to residents shall comply with the requirements at N.J.A.C. 8:36-11.5.

(b) Notwithstanding the definition of "health care service," the administration of medication, in and of itself, shall not be considered a health care service.

#### 8:37-6.3 Storage of medications

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(a) The licensee shall provide an appropriate and safe medication storage area in a common area for all resident medications.

1. Resident medications shall not be stored or kept in individual resident rooms.
2. The storage area requirement may be satisfied through the use of a locked medication cart.
3. The storage area shall be kept locked when not in use.
4. The storage area shall be used only for storage of medications and medical supplies.
5. The key to the storage area shall be kept on the person of the employee on duty who is responsible for medication supervision.
6. Each resident's medications shall be kept separated within the storage area, with the exception of large volume medications which may be labeled and stored together in the storage area.
7. Medications shall be stored in accordance with manufacturer's instructions and with U.S.P. (United States Pharmacopoeia) requirements at USP 39, NF 34, published by U.S. Pharmacopoeia Convention, 12601 Twinbrook Parkway, Rockville, MD 20852, [www.usp.org](http://www.usp.org), incorporated herein by reference, as amended and supplemented.

(b) All medications shall be kept in their original containers and shall be properly labeled and identified.

1. The label of each resident's prescription medication container shall be permanently affixed and contain the resident's full name, prescribing health care practitioner's name, prescription number, name and strength of drug, lot number, quantity,

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date of issue, expiration date, manufacturer's name if generic, directions for use, and cautionary and/or accessory labels.

i. If a generic substitute is used, the drug shall be labeled according to the requirements at N.J.S.A. 24:6E-9.

ii. Required information appearing on individually packaged, single dose drugs or within an automated medication delivery system need not be repeated on the label.

2. All over-the-counter (OTC) medications repackaged by the pharmacy shall be labeled with an expiration date, name and strength of the drug, lot number, date of issue, manufacturer's name if generic, and cautionary and/or accessory labels, in accordance with U.S.P. requirements cited in paragraph (a)(7) above.

i. Original manufacturer's containers shall be labeled with at least the resident's name, and the name label shall not obstruct any of the aforementioned information.

3. If a unit of use drug distribution system is used, each dose of medication shall be individually packaged in a hermetically sealed, tamper-proof container, and shall carry full manufacturer's disclosure information on each discrete dose. Disclosure information shall include, but not be limited to, the following: product name and strength, lot number, expiration date, and manufacturer's or distributor's name.

(c) Single use and disposable items shall not be reused.

(d) No stock supply of prescription medications shall be maintained, unless prior approval is obtained from the Department in writing from the Office of Certificate of Need and

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Healthcare Facility Licensing, to which the facility shall direct the request to maintain a stock supply of prescription medications.

(e) The licensee shall ensure that discontinued or expired medications are destroyed within 30 days in the facility, or, if unopened and properly labeled, returned to the pharmacy for credit, if allowable, and in conformance with N.J.A.C. 13:39 and all applicable State and Federal laws, codes and regulations.

## Subchapter 7. Physical Plant

### 8:37-7.1 Water supply

(a) Every facility shall be provided with a safe supply of potable water meeting the standards as set forth in the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., as amended, and the New Jersey Department of Environmental Protection's Safe Drinking Water Act regulations, N.J.A.C. 7:10-1 et seq., as amended.

(b) The source of such water supply shall be approved by the New Jersey Department of Environmental Protection and/or the local health agency.

(c) The minimum rate for the flow of hot or cold water issuing from a faucet or fixture shall be not less than one gallon per minute.

### 8:37-7.2 Physical plant requirements

(a) Every facility shall contain a kitchen sink of nonabsorbent impervious material.

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(b) Every facility shall provide a minimum of one flush type water closet, lavatory, and a bathtub or shower for every eight persons or part thereof.

(c) Every water closet, lavatory, and bathtub or shower shall be accessible from within the facility without passing through any part of any other rooming unit and shall be located on the same floor as the rooming units to be served.

1. Such water closet, lavatory and bathtub or shower shall be contained in a room or rooms which are separated from all other rooms by walls, doors, or partitions that afford privacy.

(d) Every plumbing fixture shall be connected to water and sewer systems approved by the New Jersey Department of Environmental Protection and/or the local health agency, and shall be maintained in good working condition.

(e) Every kitchen sink, water closet, lavatory, and bathtub or shower required by this section shall be connected to both hot and cold water lines.

(f) Every facility shall have hot water heating systems that are installed and maintained in good and safe working condition, connected to the hot water lines required under the provisions of (e) above, and capable of delivering water at a minimum temperature of not less than 105 degrees Fahrenheit and at a maximum temperature of not more than 120 degrees Fahrenheit at all times in accordance with anticipated needs.

### 8:37-7.3 Garbage and rubbish storage

(a) Garbage or other organic waste shall be stored in insect-proof, rodent-proof, fireproof, nonabsorbent, watertight containers with tightfitting covers.

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1. The licensee shall provide a sufficient number of garbage receptacles to properly store garbage and other organic waste produced by the dementia care home.

(b) Rubbish shall be stored in insect-proof, rodent-proof, fireproof, nonabsorbent, watertight containers with tightfitting covers.

1. The licensee shall provide a sufficient number of rubbish receptacles to properly store the rubbish produced by the dementia care home.

#### 8:37-7.4 Lighting and electrical service

(a) Every habitable room shall have at least one window or skylight facing directly to the outdoors.

1. The minimum total window or skylight area measured between stops, for every habitable room shall be eight percent of the floor area of such room.

2. Whenever walls or other portions of structures face a window of any habitable room and are located less than three feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be included in calculating the required minimum total window area.

(b) Every facility shall be provided with electrical service.

(c) Every habitable room shall contain sufficient wall type electric outlets and lamps or light fixtures to enable occupants to use the room for its intended function.

1. Every such outlet and lamp shall be maintained in good and safe condition, and shall be connected to the facility's source of electric power.

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2. No temporary wiring shall be used except extension cords which run directly from portable electrical fixtures to convenience outlets, and which do not lie under rugs or other floor coverings, nor extend through doorways, transoms, or other openings through structural elements.

(d) Every portion of each staircase, hall, cellar, basement, landing, furnace room, utility room, and all similar non-habitable space shall have either natural or artificial light available at all times, with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portions.

(e) Every portion of any interior or exterior passageway or staircase shall be illuminated naturally or artificially at all times with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portion of the normally traveled stairs and passageways.

(f) Every bathroom and water closet compartment shall have either natural or artificial light available at all times, with an illumination of at least three lumens per square foot (three foot-candles).

1. Such light shall be measured 36 inches from the floor at the center of the room.

2. Artificial lighting shall be controlled by a wall switch so located as to avoid danger of electrical hazards.

#### 8:37-7.5 Ventilation

(a) Means of ventilation shall be provided for every habitable room.

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1. Such ventilation may be provided either by an easily operable window or skylight having an openable area of no more than six inches and which will provide at least two air changes per hour.

(b) Means of ventilation shall be provided for every bathroom and water closet compartment.

1. Such ventilation may be provided either by an easily operable window or skylight having an openable area of no more than six inches and which will provide at least six air changes per hour.

#### 8:37-7.6 Heating

(a) Every facility shall have a heating system that is properly installed, maintained in good and safe working condition, and capable of safely and adequately heating all habitable rooms, bathrooms, and water closet compartments located therein.

(b) Every licensee shall supply heat adequate to maintain a minimum inside temperature in all habitable rooms, bathrooms, and water closet compartments of 68 degrees Fahrenheit from October 1 of each year to the next succeeding May 1.

1. The temperature shall be read at a height of three feet above floor level at the center of the room.

#### 8:37-7.7 Maintenance

(a) Every foundation, floor, wall, ceiling, door, window, roof, and other part of a facility shall be kept in good repair and capable of the use intended by its design, and any exterior part or parts thereof subject to corrosion or deterioration shall be kept well painted.

(b) Every inside and outside stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition and good repair.

1. Every stairway having three or more steps shall be properly banistered and safely balustraded.

(c) Every porch, balcony, roof, and/or similar place higher than 30 inches above the ground, used for egress or for use by occupants, shall be provided with adequate railings or parapets.

1. Such protective railings or parapets shall be properly balustraded and be not less than three feet in height.

(d) Every roof, wall, window, exterior door, and hatchway shall be free from holes or leaks that would permit the entrance of water within a facility or be a cause of dampness.

(e) Every foundation, floor, and wall of a facility shall be free from chronic dampness.

(f) Every facility shall be free from rodents, vermin and insects.

1. Every openable window, exterior door, skylight, and other opening to the outdoors shall be supplied with properly fitting screens in good repair from May 1 until October 1 of each year.

2. Such screens shall have a mesh of not less than No. 16.

(g) Every facility, including all exterior areas of the premises, shall be clean and free from garbage or rubbish and hazards to safety.

1. Lawns, hedges and bushes shall be kept trimmed and shall not be permitted to become overgrown and unsightly.

2. Fences shall be kept in good repair.

(h) Every water closet compartment floor and bathroom floor shall be so constructed and maintained as to be reasonably impervious to water so as to permit such floor to be kept in a clean condition.

(i) No licensee shall cause or permit any services, facilities, equipment, or utilities which are required under this chapter to be removed from, shut off in, or discontinued in the dementia care home or part thereof, except for such temporary interruption as may be necessary while actual repairs or alterations are in process or during temporary emergencies when discontinuance of service is authorized by the Department.

1. In the event that any service or utility is discontinued, the licensee shall take immediate steps to cause the restoration of such service or utility.

(j) No licensee shall allow a vacant rooming unit to be occupied or let to a prospective resident unless it is clean and sanitary.

(k) Every licensee is responsible for maintaining in a clean and sanitary condition all areas of the facility.

(l) It is the responsibility of the licensee to provide for the orderly maintenance of the premises.

1. The storage of objects or materials shall be done in an orderly manner so as to not constitute a health, safety, or fire hazard.

#### 8:37-7.8 Use and occupancy of space

(a) Every facility shall contain at least 150 square feet of floor space for the first occupant thereof and at least 100 additional square feet of floor space for every additional occupant thereof, the floor space to be calculated on the basis of total habitable room area.

(b) Every rooming unit occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space, and every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet of floor space for each occupant.

(c) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet.

1. The floor area of that part of any room where the ceiling height is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(d) A room located in part below the level of the ground may be used for sleeping provided that the walls and floor thereof in contact with the earth have been damp-proofed in accordance with a method approved by the Department; and provided that all requirements otherwise applicable to habitable rooms generally are satisfied.

#### 8:37-7.9 Control of access

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(a) Every exterior door shall be equipped with heavy duty dead latching locksets (series 161, FF-H-106a, minimum, with a minimum 7/8 inch by 5/8 inch with 1/2 inch minimum throw latch bolt with automatic dead-locking plunger).

(b) Every resident of every dementia care home shall be provided with a key, if applicable, to his or her rooming unit door, free of charge.

1. Replacement keys, when required, may be provided at cost.

(c) All doors providing a means of egress shall be freely openable from the inside at all times.

(d) All exterior doors to common cellar or storage areas shall be lockable.

(e) Every entrance door to a rooming unit in every dementia care home shall be equipped with a medium duty dead latching lockset (series 160, FF-H-106a, minimum with a minimum 11/16 inch by 1/2 inch with 1/2 inch minimum throw latch bolt with automatic deadlocking plunger) or with a dead bolt lock separate from the latch set. Each such door shall also be equipped with a viewing device.

1. In all dementia care homes that have locks on entrance doors to rooming units, a master key capable of opening all such locks shall be retained by the licensee and shall be readily available in event of an emergency.

(f) All openable windows, sliding doors, basement windows and windows opening onto areas affording easy access to the premises shall be equipped with a locking device of some kind.

1. Grilles lockable from the inside may be placed on the inside or outside of windows only if the windows do not serve to provide access to exits.

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(g) Exposed hinges on exterior doors, and on entrance doors to rooming units where locks are required, shall have hinges with non-removable hinge pins.

(h) Every entrance door leading to living areas shall be kept locked at all times except when in actual use, except when a licensee or an employee of the licensee is stationed nearby for the purpose of controlling or supervising entry or other reasonable provision has been made for entry control.

(i) The main entrance door shall be equipped with an exterior doorbell, audible throughout the building when in use. In every dementia care home, the licensee or an employee of the licensee shall at all times be responsible for answering the doorbell.

#### 8:37-7.10 Building safety requirements

(a) All facilities shall have the following:

1. On each floor above the ground floor to which one or more residents have access, a designated area which such persons may be brought where they may reasonably be expected to be safe, pending their evacuation in an emergency situation.

i. No facility shall be permitted to have more than four residents that cannot physically self-evacuate unless the staffing is increased to a ratio of one staff member per two residents that cannot self-evacuate.

2. Physical security features in compliance with the following:

i. The entrance to the front yard shall be controlled with a non-scalable fence of at least four feet and a gate.

ii. The gate will have self-closing and self-latching hardware and be equipped

with a doorbell or intercom that controls access into the building and the licensee or an employee of the licensee shall, at all times, be responsible for responding to the doorbell or intercom.

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

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

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

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

#### 8:37-7.11 Bedrooms

(a) Each resident shall be provided with a comfortable bed of adequate size and with sufficient blankets and other bedding of standard quality.

(b) Only spaces unobstructed by doors, windows and radiators shall be used for placement of beds.

(c) No person shall be housed in the same bedroom as another person not related by blood or marriage except by mutual consent, provided that a provision for general consent to sharing of a bedroom may be included in an admission agreement.

(d) Each resident shall be provided with sufficient dresser and closet space within the bedroom for the storage of his or her clothing and other personal articles.

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#### 8:37-7.12 Living and dining rooms

(a) At least one living room shall be provided for use by residents.

1. Such living room(s) shall contain comfortable chairs sufficient to provide seating for at least two-thirds of the facility's maximum licensed resident capacity at any one time.

(b) Living rooms shall have sufficient space for socializing and for such recreational activities as card playing, reading, letter writing and watching television.

(c) Dining rooms shall be of sufficient size and properly equipped to provide comfortably seating for the facility's maximum licensed resident capacity at any one time.

#### 8:37-7.13 Outdoor facilities and recreation

(a) In every facility having a lawn, deck or porch or other outdoor area suitable for use by residents, sufficient chairs shall be available to accommodate as many residents as can comfortably be seated there.

(b) Where feasible in a facility, recreational equipment suitable for use by the residents shall be provided.

#### 8:37-7.14 Carbon monoxide alarms

(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.

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. 5:23-3.20).

(b) Carbon monoxide alarms shall be manufactured, listed and labeled in accordance with Underwriters Laboratories (UL) 2034 and shall be installed in accordance with the requirements of this subchapter and NFPA 720.

1. Carbon monoxide alarms shall be battery-operated, hard-wired or of the plug-in type.

(c) At the request of a resident who is deaf or hearing-impaired, the licensee shall provide and install a visual alarm type carbon monoxide detector for that resident's sleeping area.

#### 8:37-7.15 Smoke free air

Dementia care homes that permit smoking on their grounds shall comply with N.J.A.C. 8:6.

## Subchapter 8. Resident records

### 8:37-8.1 Resident records

(a) It shall be the duty of each licensee to maintain an orderly file with respect to each resident containing at least the following information:

1. Full name of resident;
2. Date of birth;
3. Last previous address;
4. Name and address of the persons and/or agencies, if any, responsible for referring the resident to the dementia care home and maintaining contact with him;
5. Name, address and telephone number of personal physician, if any;
6. Name, address and telephone number of next of kin, resident's representative or other person interested in the resident's well-being;
7. Date of commencement of occupancy;
8. Last date of occupancy and reason for the resident leaving the facility;
9. Any complaints made by or about the resident, the date of such complaint and action taken by the licensee in response to the complaint;
10. Certification and re-certifications issued by a physician stating that the resident is appropriate for a dementia care home and is free from communicable diseases;
  - i. Re-certifications shall be updated quarterly.
11. Copy of the resident admission agreement, signed by both the licensee and the resident or any responsible person;

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12. Acknowledgement by the resident or the resident's responsible person that he or she has received a copy of the rules and regulations of the facility and agrees to abide by them;

13. A record of all property of the resident entrusted to the licensee, including, in the case of any resident receiving financial services, a ledger as required pursuant to N.J.A.C. 8:37-2.5; and

14. Any other written agreement between the licensee and the resident.

(b) No resident's file shall be made available without the resident's consent to any person other than the licensee, the resident, or a responsible person having reasonable cause to have access to the file, all of whom shall have access to the file at any reasonable time.

#### 8:37-8.2 Financial records

(a) Every licensee shall keep orderly and complete records of the source and amount of all funds received in connection with the operation of each dementia care home and the nature and amount of each expenditure made in connection therewith.

(b) All financial records maintained by any licensee in connection with any facility shall be made available by the licensee to the Department upon request of any duly authorized representative of the Department.

#### 8:37-8.2 Record retention

Records shall be retained and preserved in accordance with N.J.S.A. 26:8-5 et seq.

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## Subchapter 9. Dietary

### 8:37-9.1 Diet and menu

(a) Every resident shall be provided with an appetizing, nutritionally adequate diet that is of good quality food, served at the proper temperature, correctly prepared, attractively and properly served in sufficient quantity and in a form and texture that will meet his or her nutritional needs, taking into account his or her food preferences.

(b) The daily diet for each resident shall include servings from each of the following food groups in an amount that is nutritionally adequate in light of the resident's age, weight and physical condition:

1. Milk or milk products;
2. Vegetables and fruits, including at least one serving per day of citrus fruit or juice;
3. Whole grain, enriched or fortified bread or cereal; and
4. Meat, poultry, fish and eggs.

(c) Menus shall be prepared on a weekly basis.

1. All menu items shall be specifically stated.

(d) All menu changes and substitutions shall be recorded.

1. Records of foods served shall be retained for three weeks following the date of service.

### 8:37-9.2 Food service

(a) Each resident shall be served at least three well-balanced and appetizing meals per day on a regular schedule and at reasonable intervals.

(b) Food and beverages shall be available to residents in reasonable quantities for between-meal and evening snacks.

(c) Any modified diet prescribed by a physician shall be conscientiously followed.

(d) Adequate dishes, utensils and napkins shall be provided.

1. Salt, pepper and sugar and other condiments shall be provided as appropriate and in suitable containers.

(e) A reasonable amount of time shall be allowed for each resident to eat his or her meal.

### 8:37-9.3 Food sanitation

(a) All food shall be clean, wholesome and free from spoilage, adulteration and contamination.

(b) Only pasteurized milk shall be used.

(c) All areas in which food is kept, prepared or served and all utensils, dishes, glasses, pots and equipment used in the preparation or serving of food shall be maintained in a sound and sanitary condition and free from any hazard to health.

(d) Refrigerators in which food is kept shall be maintained at a temperature of at least 32 degrees Fahrenheit and not more than 45 degrees Fahrenheit.

1. Freezers and freezer compartments of refrigerators shall be maintained at a temperature of not more than 0 degrees Fahrenheit.

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2. Refrigerators and freezers shall be cleaned and defrosted regularly.