

**HEALTH**

**HEALTH SYSTEMS BRANCH**

**DIVISION OF CERTIFICATE OF NEED AND LICENSING**

**CERTIFICATE OF NEED AND HEALTH CARE FACILITY LICENSURE PROGRAM**

**Licensing Standards for Dementia Care Homes**

**Proposed Readoption with Amendments: N.J.A.C. 8:37**

**Proposed Repeals and New Rules: N.J.A.C. 8:37-2.1, 7.1, 7.3, and 7.6**

**Proposed New Rules: N.J.A.C. 8:37-2.2 and 2.3**

Authorized By: Cathleen D. Bennett, Commissioner, Department of Health, with the approval of the Health Care Administration Board.

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

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

Proposal Number: PRN 2017-104.

Submit written comments by September 1, 2017, electronically to

[www.nj.gov/health/legal/ecomments.shtml](http://www.nj.gov/health/legal/ecomments.shtml) or by regular mail to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

## Summary

On February 7, 2017, the Licensing Standards for Dementia Care Homes, N.J.A.C. 8:37, was adopted as special new rules at 49 N.J.R. 461(a) in accordance with N.J.S.A. 26:2H-157. Pursuant to N.J.S.A. 26:2H-157, N.J.A.C. 8:37 was scheduled to expire on May 31, 2017. As the Department of Health (Department) submitted this notice of readoption with amendments to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to November 27, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2).

From 1998 to 2016, the Department of Community Affairs (DCA) licensed dementia care homes as a subset of rooming and boarding houses regulated under N.J.S.A. 55:13B-1 et seq., and N.J.A.C. 5:27. The licensing of dementia care homes was transferred to the Department from the DCA by the Dementia Care Home Act (the Act), N.J.S.A. 26:2H-148 et seq., and N.J.S.A. 55:13B-5.1 (P.L. 2015, c. 125), effective June 1, 2016. Consistent with N.J.S.A. 26:2H-157, the Department adopted N.J.A.C. 8:37 as special new rules, which implemented the new statutory requirements set forth at N.J.S.A. 26:2H-148 et seq. The special new rules implemented the Act by establishing interim standards for licensure of, and the provision of services by, dementia care homes in New Jersey under the Department, while it worked to establish permanent rules for the licensure and oversight of these facilities.

Since the special adoption of N.J.A.C. 8:37, the Commissioner has reviewed the chapter and has determined that it is appropriate to readopt the majority of its provisions as they remain necessary, proper, reasonable, efficient, understandable, and responsive for the purposes for which they were originally promulgated. However, the

Commissioner has determined that certain amendments to the chapter are necessary to ensure that dementia care homes are safe and properly licensed by the Department. Specifically, the Commissioner proposes to amend the chapter to include the process, fees, and standards for licensure of dementia care homes and to update the physical plant requirements for dementia care homes to better reflect the standards that are necessary for the health and safety of residents. A summary of the rules proposed for readoption with amendments follows.

The Department proposes a technical amendment throughout the chapter that updates the name of the program responsible for the oversight of dementia care home licensure from “Office of Certificate of Need and Healthcare Facility Licensure” to “Certificate of Need and Healthcare Facility Licensure Program.” The Department also proposes technical amendments throughout the chapter to improve grammar and readability.

N.J.A.C. 8:37-1.1 would continue to establish the purpose and scope of this chapter, which is the licensing of dementia care homes in accordance with the Act.

N.J.A.C. 8:37-1.2 would continue to define the words and terms used throughout the chapter. The Department proposes to amend this section to delete the existing definition of “rubbish” because the chapter no longer uses this term.

N.J.A.C. 8:37-2.1 is proposed for repeal and replacement to set forth the requirement that a dementia care home receive a license issued by the Department in order to operate and also provide the process, fees, and standards for licensure of the homes. The proposed changes delete the provisional licensure provisions for dementia care homes, which were promulgated for the sole purpose of providing a temporary

license to already existing dementia care homes licensed under DCA while the Department worked to establish permanent licensing rules for the homes, as they are now obsolete by the new licensing standards. The new rule requires a dementia care home to post its license in the facility and prohibit the assignment of a license. The new rule also requires licensure applications to be submitted using the Application for a New or Amended Acute Care Facility License, which would be incorporated into the rule by reference as proposed new N.J.A.C. 8:37 Appendix B and would be available for download from the Department's forms webpage.

Proposed new N.J.A.C. 8:37-2.2(a) would set forth the procedure for licensure of newly constructed, renovated, and expanded dementia care homes, including provisions for requiring approval by the Health Care Plan Review Unit of the Department of Community Affairs prior to initiation of renovation, expansion, or construction projects. Proposed new N.J.A.C. 8:37-2.2(b) would provide a licensure applicant for newly constructed, renovated, or expanded dementia care homes with an opportunity to request a functional review with the Department to review plans and discuss licensure conditions. Proposed new N.J.A.C. 8:37-2.2(c) would require newly constructed, renovated, and expanded dementia care homes to conform to the New Jersey Uniform Construction Code standards and require each newly constructed, renovated, and expanded dementia care home licensure application to include the written approval of final construction of the physical plant by the Health Care Plan Review Unit of the Department of Community Affairs. Proposed new N.J.A.C. 8:37-2.2(d) would require the submission of the certificate of occupancy issued by the local

municipality to the Department prior to issuance of a license for newly constructed, renovated, or expanded dementia care home.

Proposed new N.J.A.C. 8:37-2.3 would relocate the provisions from N.J.A.C. 8:37-2.1(c), proposed for repeal, and continue to require each dementia care home to have an administrator responsible for day-to-day operations and further provide that the Department must be given notice within 72 hours of any change of administrator.

Recodified N.J.A.C. 8:37-2.4 continues to provide for access to the dementia care home, its staff, residents, responsible parties of residents, documents, and resident records by Department personnel at any time.

Recodified N.J.A.C. 8:37-2.5 continues to provide for a waiver provision of licensing standards in the chapter, including the manner in which a dementia care home may apply for a waiver, and is proposed with the general amendments discussed above.

Recodified N.J.A.C. 8:37-2.6 continues to provide for enforcement remedies for violations of statutes or rules by dementia care homes.

Recodified N.J.A.C. 8:37-2.7 continues to require a written resident admission agreement that includes what services are to be provided, require notice before additional charges can be levied against a resident, govern the requirements for a security deposit, require the dissemination of information about financial assistance to residents and their responsible parties, and require a ledger documenting all transactions if the dementia care home is entrusted with a resident's personal funds.

Recodified N.J.A.C. 8:37-2.8 continues to cover reportable events and would continue to require a dementia care home to report such events in the manner set forth at N.J.A.C. 8:43E-10.11.

Recodified N.J.A.C. 8:37-2.9 continues to cover personal needs allowances and requires the dementia care home to comply with the personal needs allowance standards found at N.J.A.C. 8:36-6.3.

N.J.A.C. 8:37-3.1 would continue to address resident rights, including the statutory resident's rights requirements found at N.J.S.A. 26:2H-154, and require the dementia care homes to provide each resident, his or her family, and any responsible person a copy of these rights upon admission, as well as post them in a conspicuous public place in the facility. Paragraph (a)1 is proposed for amendment to delete "the facility administrator" from the list of individuals to whom the responsibility to manage the resident's financial affairs may be delegated.

N.J.A.C. 8:37-4.1 would continue to address the admission and retention of residents, as well as health care monitoring of residents. The rule also continues to codify the statutory requirements found at N.J.S.A. 26:2H-152.n(6), which requires a prospective dementia care home resident to obtain a certification from a physician stating that a dementia care home is appropriate for the individual and, after the individual becomes a resident, requires the individual to obtain quarterly physician recertifications reaffirming his or her appropriateness for a dementia care home. The rule would also continue to address the use of restraints and "do not resuscitate" orders, require a facility to weigh a resident at least monthly, require notice to residents and their responsible parties of discharge criteria prior to admission and annually thereafter,

and require the transfer of a resident to another facility that offers a higher level of care when such care is required.

N.J.A.C. 8:37-4.2 would continue to provide discharge criteria and the standards for when discharge of a resident to a facility providing a higher level of care is required.

N.J.A.C. 8:37-4.3 would continue to require a facility to maintain a list of long-term care facilities and to provide that list to a resident, the resident's family members, and the resident's responsible party when the resident requires a higher level of care.

N.J.A.C. 8:37-5.1 would continue to address the statutory restriction on the provision of health care services by an individual who has an ownership interest in a dementia care home. This section also continues to provide the only circumstances in which skilled nursing care may be provided in the facility.

N.J.A.C. 8:37-5.2 would continue to list the services that a dementia care home must provide.

N.J.A.C. 8:37-5.3 would continue to address staffing requirements. Facilities would still be required to have a sufficient number of trained staff available, with a minimum of two staff members on duty at all times.

N.J.A.C. 8:37-5.4 would continue to establish training requirements for staff who have regular direct contact with residents, which include completion of a home health aide course, a five-day course given by a registered nurse that includes an orientation to the facility, as well as the completion of the Centers for Medicare & Medicaid Services Hand in Hand: A Training Series for Nursing Homes Toolkit on the care of persons with dementia.

N.J.A.C. 8:37-5.5 would continue to address the assistance in dressing standards.

N.J.A.C. 8:37-5.6 would continue to address the assistance in bathing and personal hygiene standards.

N.J.A.C. 8:37-5.7 would continue to require facilities to provide their residents with transportation to health care services.

N.J.A.C. 8:37-5.8 would continue to establish housekeeping standards.

N.J.A.C. 8:37-5.9 would continue to set forth laundry services standards. The proposed amendment would make it clear that facilities are required to provide laundry services for their residents.

N.J.A.C. 8:37-5.10 would continue to require facilities to assist each resident with living with as much independence and community interaction that is reasonably possible, as well as to provide residents with regularly scheduled recreational activities.

N.J.A.C. 8:37-6.1 would continue to govern the supervision of self-administration of medicine and require the facility to maintain a daily record of a resident's self-administration of medication.

N.J.A.C. 8:37-6.2 would continue to address the administration of medication and permit facilities to employ certified medication aides.

N.J.A.C. 8:37-6.3 would continue to establish the standards for the storage of medications, set the requirements for the labelling of medications, and address the destruction of medications.

N.J.A.C. 8:37-7.1 is proposed for repeal and replacement and would continue to establish the standards for a facility's water supply, relocate the hot water temperature

requirements from N.J.A.C. 8:37-7.2(f), which are relocated to proposed new subsection (b), and add the standards for the maintenance of ice machines, if applicable, and sewage disposal systems. Additionally, the proposed amendments to N.J.A.C. 8:37-7.1(c) would require the maintenance of equipment requiring draining to comply with the standards set forth in the International Mechanical Code, 2015 Edition, as amended and supplemented, which sets forth guidelines for sanitary draining of equipment and is incorporated into the rule by reference.

N.J.A.C. 8:37-7.2 would continue to set physical plant requirements. The proposed amendments would require a facility to have a water closet, lavatory, and a bathtub or shower for every four residents, rather than for every eight residents as set forth in the current rule and delete subsection (f) as discussed above.

N.J.A.C. 8:37-7.3 is proposed for repeal and replacement, but would continue to establish the requirements for waste and garbage storage, while clarifying that the standards for collecting, storing, and disposing of waste and garbage must comply with the waste regulations promulgated by the Department of Environmental Protection and the requirements of N.J.A.C. 8:24. Additionally, proposed N.J.A.C. 8:37-7.3(c) would require a facility's use of garbage compactors to comply with the standards set forth in the International Mechanical Code, 2015 Edition, as supplemented and amended, which sets forth guidelines for the use of garbage compactors and is incorporated into the rule by reference.

N.J.A.C. 8:37-7.4 would continue to set forth the requirements for lighting and electrical service. The proposed amendments would delete the requirements for

specific lumens in specified areas of the facility and require each facility to have an annual electrical inspection.

N.J.A.C. 8:37-7.5 would continue to establish standards for ventilation and would continue to prohibit windows from opening more than six inches, so that residents cannot use them as an exit. The proposed amendment would merge existing subsections (a) and (b), while adding that mechanical ventilation and windows used for ventilation shall be in accordance with the Uniform Construction Code, N.J.A.C. 5:23.

N.J.A.C. 8:37-7.6 is proposed for repeal and replacement and would continue to set the standards for heating systems, as well as add requirements for air conditioning. In addition, the changes to the rule would address the maintenance of filters for the heating and air conditioning system.

N.J.A.C. 8:37-7.7 would continue to address maintenance standards.

N.J.A.C. 8:37-7.8 would continue to set use and occupancy of space standards, maintaining the requirement for a minimum of 150 square feet for the first resident and a minimum of 100 square feet for each additional resident, 80 square feet of floor space in each bedroom occupied by one individual and an additional 60 square feet of floor space for an additional occupant in a bedroom. The rule also continues to address the requirements for ceiling height and bedrooms below ground level.

N.J.A.C. 8:37-7.9 continues to provide for the control of access for entrance and interior doors and continues the requirement for the main exterior door to have a doorbell. The proposed amendment to this section would remove the specific standards for locks on the entrance and interior doors.

N.J.A.C. 8:37-7.10 would continue to set building safety requirements. The building safety standards continue to include a requirement for additional staffing when more than four residents cannot self-evacuate, as well as requirements for a fence with a self-locking gate, a closed-circuit camera on the gate or main entrance, and audible alarms on doors and windows.

N.J.A.C. 8:37-7.11 would continue to provide the requirements for resident bedrooms. The bedroom requirements continue to include space requirements, conditions for sharing of a bedroom, and requirements for a dresser and closet space.

N.J.A.C. 8:37-7.12 would continue to set the standards for living and dining rooms. The rule will continue to require the provision of space for at least two-thirds of the facility's licensed resident capacity in the living room, as well as a sufficiently sized dining room to sit all of the residents at one time.

N.J.A.C. 8:37-7.13 would continue to set the requirements for outdoor facilities and recreation equipment. Facilities would continue to be required to have an outdoor area with seating, as well as, when feasible, recreation equipment.

N.J.A.C. 8:37-7.14 would continue to require and set the standards for carbon monoxide alarms.

N.J.A.C. 8:37-7.15 would continue to require compliance with the smoke free air rules at N.J.A.C. 8:6.

N.J.A.C. 8:37-8.1 would continue to set the minimum standards for what is to be included in a resident's record.

N.J.A.C. 8:37-8.2 would continue to set the standards for financial records.

N.J.A.C. 8:37-8.3 would continue to require facilities to retain records in accordance with N.J.S.A. 26:8-5 et seq.

N.J.A.C. 8:37-9.1 would continue to set the requirements for resident diets and facility menus. The diet and menu requirements continue to include weekly menus, the nutritional standards for daily diets, and the retention of menus for three weeks following the date of service.

N.J.A.C. 8:37-9.2 would continue to set the standards for a facility's food service, which includes three meals a day and snacks.

N.J.A.C. 8:37-9.3 would continue to set the standards for food sanitation, including temperatures for freezers and refrigerators.

As the Department has provided a 60-day comment period on this notice of proposal, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice meets the exception from the rulemaking calendar requirement set forth at N.J.A.C. 1:30-3.1 and 3.2.

### **Social Impact**

The rules proposed for readoption with amendments, repeals, and new rules would continue to provide the regulatory framework to fulfill the Department's obligation to license dementia care homes. Thus, the rules proposed for readoption, repeals, and new rules impact dementia care homes and the individuals they serve.

The Department expects the rules proposed for readoption with amendments, repeals, and new rules to have a favorable social impact on residents of dementia care homes because they ensure minimum standards of acceptable care. In short, the rules proposed for readoption with amendments, repeals, and new rules would continue to ensure that dementia care homes employ qualified staff, maintain a safe and clean

physical plant environment, offer nutritional foods, protect patient rights, and utilize adequate recordkeeping policies and procedures to oversee the delivery of care for each resident. As such, the licensure standards proposed for readoption with amendments, repeals, and new rules would continue to support an existing foundation of services that improve the quality of life for residents of dementia care homes, ensure the effective delivery of care to residents and protect the health, safety, and general welfare of the residents of these facilities. As a result, the rules proposed for readoption with amendments, repeals, and new rules would have a positive social impact on dementia care home residents. Therefore, the Department expects that the general public would react favorably to the rulemaking.

### **Economic Impact**

As stated in the Summary above, the responsibility for licensure of dementia care homes was transferred from DCA to the Department under N.J.S.A. 26:2H-148 et seq. Due to this transfer, dementia care homes are now classified as health care facilities under the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. See N.J.S.A. 26:2H-2.a. Because dementia care homes now fall under the Health Care Facilities Planning Act, the Department is required to charge the homes licensure and inspection fees. Specifically, N.J.S.A. 26:2H-12 requires the Department to charge a fee for the filing of an application for and issuance of a health care facility license, a fee for any renewal thereof, and a fee for a biennial inspection of the facility. Pursuant to this statutory mandate, the rules proposed for readoption with amendments, repeals, and new rules include the licensure and inspection fees that will be assessed by the Department for dementia care homes. It is anticipated that the revenue collected from

the licensure and inspection fees will ensure the capability of the Department to provide a thorough review of the dementia care home applications, as well as a more effective level of scrutiny by way of survey inspections of the homes, thereby providing a level of protection and safety to the residents of these facilities.

The proposed fees are also reasonable as they are in-line with similarly situated health care facilities, namely assisted living facilities. Additionally, the license application, renewal, and inspection fees represent a small percentage of the annual budgets of dementia care homes and remain below the fee caps set forth in N.J.S.A. 26:2H-12. Because the proposed fees are below the statutory licensure and inspection fee caps, represent only a small portion of a dementia care home's operating budget, and are the same as the fees charged for similar health care facilities, the Department does not anticipate that the facilities or their residents will endure any significant financial consequences as a result of the fees established in the rules proposed for readoption with amendment, repeals, and new rules.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking a comparison with Federal law. The Department's authority for regulating dementia care homes comes solely from State statute, specifically, the Dementia Care Home Act, N.J.S.A. 26:2H-148 et seq. As such, the dementia care home rules proposed for readoption with amendments, repeals, and new rules are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under

Federal law or under a State statute that incorporates or refers to Federal laws, Federal standards, or Federal requirements. Therefore, a Federal standards analysis is not required.

### **Jobs Impact**

The Department does not expect the rules proposed for readoption with amendments, repeals, and new rules would result in an increase or decrease in the number of jobs available in the State.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments, repeals, and new rules would not have an impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

All existing dementia care homes are considered small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules for readoption with amendments, repeals, and new rules will continue to impose various reporting, recordkeeping, and compliance requirements upon dementia care homes. These requirements are discussed in the Summary and Economic Impact statement above. The operational requirements for dementia care homes that are contained in the rules proposed for readoption with amendments, repeals, and new rules, including the notification requirement of reportable events, as well as the retention and maintenance of resident records concerning admissions and discharges, are contained in existing rules. There is no basis for any modification of these requirements based on the size or nature of the facility as the clear intent of the enabling legislation is to ensure that residents of dementia care homes receive appropriate and safe care. Thus, no lesser requirements

or exceptions can be provided based upon business size in the interest of public health, quality of care, and safety.

### **Housing Affordability Impact Analysis**

The Department does not expect the rules proposed for readoption with amendments, repeals, and new rules to have any impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules only apply to dementia care homes.

### **Smart Growth Development Impact Analysis**

The Department anticipates that the rules proposed for readoption with amendments, repeals, and new rules would have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules only apply to dementia care homes.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:37.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:37-2.1, 7.1, 7.3, and 7.6.

**Full text** of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 1. GENERAL PROVISIONS

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

(a) (No change.)

(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) (No change.)

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

...

**"Certificate of Need and Healthcare Facility Licensure Program" 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 Certificate of Need and Healthcare Facility Licensure Program, 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).**

...

["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).]

...

["Rubbish" means all waste material other than garbage.]

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## SUBCHAPTER 2. LICENSING

### **8:37-2.1 Application for licensure**

**(a) 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.**

**(b) Any person, organization, or corporation desiring to operate a dementia care home shall make application to the Commissioner for a license on Form CN-7, Application for a New or Amended Acute Care Facility License, which is incorporated herein by reference as N.J.A.C. 8:37 Appendix B and is also available on the Department's website at:**

**<http://www.nj.gov/health/forms/cn-7.pdf>.**

**(c) The Department shall charge a nonrefundable fee of \$1,500 plus \$15.00 per bed for the filing of an initial application for licensure as a dementia care home and for each annual renewal thereof. These fees shall not exceed the maximum**

**caps as set forth at N.J.S.A. 26:2H-12.**

**(d) The Department shall charge a nonrefundable fee of \$750.00 for the filing of an application to add bed- or non-bed-related services to an existing dementia care home license.**

**(e) The Department shall charge a nonrefundable fee of \$375.00 for the filing of an application to reduce bed- or non-bed-related services at an existing dementia care home.**

**(f) The Department shall charge a nonrefundable fee of \$375.00 for the filing of an application for the relocation of a dementia care home.**

**(g) The Department shall charge a nonrefundable fee of \$1,500 for the filing of an application for the transfer of ownership of a dementia care home.**

**(h) Approval of an application shall be contingent upon the applicant demonstrating capacity to operate a dementia care home in accordance with this chapter. The demonstration of the capacity to operate a dementia care home shall include:**

**1. An acceptable track record review of past and current compliance with State licensure requirements and applicable Federal requirements, in accordance with N.J.A.C. 8:43E-5.1(b) or (c), as applicable;**

**2. Establishment that the premises, equipment, personnel, including principals and management, finances, rules and bylaws, and standards of health care are fit and adequate and that there is reasonable assurance that the dementia care home will be operated in accordance with the standards required by this chapter; and**

**3. An applicant's prior history in safely, properly, and effectively operating a dementia care home either in New Jersey or in other states.**

**(i) When determining whether an applicant is capable of operating a dementia care home, the Department shall consider any evidence of licensure violations representing serious risk of harm to residents, any evidence of an applicant's violation of any State licensing or Federal standards in connection with an inappropriate discharge or denial of admission of a resident or patient, and an applicant's record of criminal convictions involving fraud, patient or resident abuse or neglect, a crime of violence, a crime of moral turpitude, or any other crime that presents a risk of harm to the safety or welfare of residents.**

**1. Evidence of the violations and/or crimes listed in (i) above may be cause for the Department to deny the application.**

**2. The Department shall consider all applicants with a criminal history record pursuant to the requirements of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq.**

**(j) An applicant, for purposes of this section, includes any person who was or is an owner or principal of a licensed health care facility, or who has managed, operated, or owned in whole, or in part, any health care facility, excluding individuals or entities who are limited partners with no managerial control or authority over the operation of the facility and who have an ownership interest of 10 percent or less in a corporation that is the applicant and who also do not serve as officers or directors of the applicant corporation;**

**(k) Each dementia care home shall be assessed an inspection fee of \$750.00. This**

**fee shall be assessed in the year the dementia care home will be inspected, along with the annual licensure fee for that year.**

**1. The inspection fee shall be added to the initial licensure fee for new dementia care homes.**

**2. This fee shall be imposed biennially, that is, every other year, even if inspections occur more frequently.**

**3. Failure to pay the inspection fee shall result in non-renewal of the license for existing dementia care homes and the refusal to issue an initial license for new dementia care homes.**

**(l) If an application is denied, the applicant may challenge the denial by requesting a hearing within 30 days of the date of the denial.**

**1. The requested hearing shall be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

**(m) The license shall be conspicuously posted in the facility.**

**(n) The license is not assignable or transferable and it shall be immediately void if the facility ceases to operate or if its ownership changes.**

**(o) The license, unless sooner suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter, but dated as of the original licensure date.**

**1. The facility will receive a request for a renewal fee 30 days prior to the expiration of the license.**

**2. A renewal license shall not be issued unless the licensure fee is received**

by the Department.

**8:37-2.2 Newly constructed, renovated, or expanded dementia care homes**

**(a) Any dementia care home with a renovation, expansion, or construction program shall submit plans to the Health Care Plan Review Unit, Division of Codes and Standards, New Jersey Department of Community Affairs, PO Box 815, Trenton, New Jersey 08625-0815, for review and approval, prior to the initiation of the renovation, expansion, or construction project.**

**(b) Prior to submitting plans in accordance with (a) above, an applicant for a license to operate a dementia care home may request that the Certificate of Need and Healthcare Facility Licensure Program schedule an appointment to conduct a functional review of the proposed project to review the conditions for licensure and operation, which request the Program shall grant.**

**(c) Newly constructed, renovated, and expanded dementia care homes shall conform with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-3, Use Group I-2 of the subcode.**

**1. The licensure application for a newly constructed, renovated, and expanded dementia care home shall include written approval of final construction of the physical plant by the Health Care Plan Review Unit, Division of Codes and Standards, New Jersey Department of Community Affairs, in accordance with this chapter.**

**(d) A copy of the certificate of occupancy issued by the local municipality shall be submitted to the Health Care Plan Review Unit and to the Certificate of Need and**

**Healthcare Facility Licensure Program prior to licensure or approval of newly constructed, renovated, or expanded dementia care homes.**

**8:37-2.3 Administrator**

**(a) 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 Certificate of Need and Healthcare Facility Licensure Program with written notification of a change in administrator, including the name of the new administrator, within 72 hours of the change.**

8:37-[2.2]2.4 (No change in text.)

8:37-[2.3]2.5 Waiver of licensing standards

(a) (No change.)

(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] **Program** on Form CN-28, Application for Waiver, which is [attached as chapter Appendix A and is] incorporated herein by reference **as N.J.A.C. 8:37**

**Appendix A**, 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)-(e) (No change.)

Recodify existing 8:37-2.4 through 2.7 as **2.6 through 2.9** (No change in text.)

### 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;

2.-15. (No change.)

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

1.-2. (No change.)

(c) (No change.)

### SUBCHAPTER 5. PERSONAL CARE SERVICES

#### 8:37-5.9 Laundry services

(a) A licensee [providing] **shall provide** laundry services **for its residents**.

1. **A licensee** may have clothes cleaned either on or off the premises of the dementia care home.

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

## SUBCHAPTER 6. PHARMACY SERVICES

### 8:37-6.3 Storage of medications

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

(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 Healthcare Facility Licensure **Program**, to which the facility shall direct the request to maintain a stock supply of prescription medications.

(e) (No change.)

## SUBCHAPTER 7. PHYSICAL PLANT

### 8:37-7.1 Water supply

**(a) The water supply used for drinking or culinary purposes shall be adequate in quantity, of a safe and sanitary quality, and from a water system that is constructed, protected, operated, and maintained in conformance with the New Jersey Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the New Jersey Department of Environmental Protection's Safe Drinking Water Act rules, N.J.A.C. 7:10, and local laws, ordinances, and regulations.**

**(b) 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 N.J.A.C. 8:37-7.2(e), 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.**

**(c) Equipment requiring drainage, such as ice machines, shall drain to a sanitary connection, in accordance with the International Mechanical Code, 2015 Edition, incorporated herein by reference, as amended and supplemented, and local codes.**

**1. Copies of the International Mechanical Code are available from:**

**International Code Council at 1-800-786-4452 or on the Internet at**

**<http://www.iccsafe.org/>.**

**(d) The sewage disposal system shall be maintained in good repair and operated in compliance with N.J.S.A. 52:27D-123 et seq., the Uniform Construction Code, N.J.A.C. 5:23, and local ordinances and codes.**

8:37-7.2 Physical plant requirements

(a) (No change.)

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

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

[(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 Waste removal**

**(a) All solid or liquid waste, garbage, and trash shall be collected, stored, and disposed of in accordance with the rules of the New Jersey Department of Environmental Protection and this chapter.**

**1. Solid waste that is stored within the building shall be stored in insect-proof, rodent-proof, fireproof, nonabsorbent, watertight containers with tightfitting covers and collected from storage areas regularly, so as to prevent nuisances, such as odors.**

**(b) Each facility shall establish and implement procedures and schedules for the cleaning of storage areas and containers for solid or liquid waste, garbage, and trash, in accordance with N.J.A.C. 8:24.**

**(c) If garbage compactors are used, they shall comply with the International Mechanical Code, 2015 Edition, incorporated herein by reference, as amended and supplemented, and local codes. Copies of the International Mechanical Code are available from: International Code Council at 1-800-786-4452 or on the Internet at <http://www.iccsafe.org/>.**

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

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

[(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.]

**(d) An electrician licensed in accordance with N.J.A.C. 13:31 shall annually inspect and provide a written statement to the facility that the electrical circuits and wiring in the facility are satisfactory and in safe condition.**

**1. The written statement shall include the date of inspection, and shall indicate that circuits are not overloaded, that all wiring and permanent fixtures are in safe condition, and that all portable electrical appliances, including lamps, are Underwriters Laboratories (U.L.) approved; and**

**2. The written statement shall be available for review by the Department during survey.**

8:37-7.5 Ventilation

(a) Means of ventilation **by either easily operable windows or by mechanical ventilation** shall be provided for **in every habitable room and in every bathroom and water closet compartment in accordance with the Uniform Construction Code, N.J.A.C. 5:23.**

1. [Such ventilation may be provided either by an easily operable window or skylight having] **Windows shall have** 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 and air conditioning**

**(a) The heating and air conditioning system shall be adequate to maintain the required temperature in all areas used by residents. Residents may have individually controlled thermostats in residential units in order to maintain temperatures at their own comfort level.**

**1. During the heating season, the temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) during the day ("day" means the time between sunrise and sunset) and 68 degrees Fahrenheit (20 degrees Celsius) at night, when residents are in the facility.**

**2. Neither the facility nor its residents shall utilize portable heaters.**

**3. During warm weather conditions, the temperature within the facility shall not exceed 82 degrees Fahrenheit.**

**i. The facility shall provide for and operate adequate ventilation in all areas used by residents.**

**ii. All areas of the facility used by residents shall be equipped with air conditioning and the air conditioning shall be operated, so that the temperature in these areas does not exceed 82 degrees Fahrenheit.**

**4. Residents who can regulate temperature controls in their residential units may, by choice, exceed 82 degrees Fahrenheit.**

**(b) Filters for heaters and air conditioners shall be provided as needed and maintained in accordance with manufacturer's specifications.**

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

(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)] **a lock**.

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

(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. (No change.)

(f)-(i) (No change.)

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

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

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

## 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.-12. (No change.)

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]**2.7**; and

14. (No change.)

(b) (No change.)