

HEALTH

HEALTH SYSTEMS BRANCH

CERTIFICATE OF NEED AND LICENSING DIVISION

CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE PROGRAM

Standards for Licensure of Adult Family Care Caregivers and Sponsor Agencies

Proposed New Rules: N.J.A.C. 8:43B

Authorized By: Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2Y-1 et seq.

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

Proposal Number: PRN 2022-140.

Submit written comments by January 6, 2023, electronically to

<http://www.nj.gov/health/legal/ecomments.shtml> or by regular mail postmarked on or

before:

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

In 1996, the Department of Health (Department) promulgated rules at N.J.A.C. 8:43B establishing standards for licensure of alternate family care sponsor agencies. 27 N.J.R. 4480(a); 28 N.J.R. 1276(b). In late 2000, the Department proposed to readopt N.J.A.C. 8:43B, with amendments, 32 N.J.R. 3368(a), but did not adopt the notice of proposal, and the chapter expired February 20, 2001.

P.L. 2001, c. 304, the New Jersey Adult Family Care Act (Act), was approved January 2, 2002, became effective April 2, 2002, and is codified at N.J.S.A. 26:2Y-1 through 26:2Y-11. At N.J.S.A. 26:2Y-2, the Legislature declared that “In the absence of appropriate housing with supportive services, many elders or people with physical disabilities are often subject to inappropriate, premature, or overextended institutionalization. This results in the overutilization of costly services and the negative impact of the institutional environment on the individual’s emotional and physical well-being. A need exists to fill this gap in the housing continuum between independent living and institutionalization for those elders and physically disabled citizens who are in need of shelter and services to remain in the community.” The Legislature further declared that “it is the policy of this State to promote the health, safety and welfare of its elderly and physically disabled citizens by encouraging the development of adult family care homes for elders and physically disabled adults and to provide for the licensing of caregivers and regulation of such adult family care homes by the Department of Health.”

Id.

N.J.S.A. 26:2Y-4 and 6, respectively, require the Department to promulgate application forms and fees for licensure of an adult family care caregiver who wants to

provide an adult family care home and an adult family care sponsor agency. N.J.S.A. 26:2Y-7 authorizes the Department to establish annual adult family care home inspection fees. N.J.S.A. 26:2Y-8 directs the Commissioner of the Department of Health (Commissioner) to promulgate rules establishing “minimum standards to ensure the health, safety and well-being of each client of [an] adult family care home.” N.J.S.A. 26:2Y-9 authorizes the Department to establish penalties for violations of the Act. N.J.S.A. 26:2Y-11 directs the Commissioner to promulgate rules to effectuate the purposes of the Act. The Department of Human Services, Division of Medical Assistance and Health Services has requested the Department propose these rules as Alternate Family Care, as they have included this service in the State Plan required by the Centers for Medicare and Medicaid Services.

Pursuant to this authority, the Department proposes new rules at N.J.A.C. 8:43B, Standards for Licensure of Adult Family Care Caregivers and Sponsor Agencies.

Proposed new Subchapter 1 would establish general provisions applicable to all licensees and applicants for licensure. Proposed new N.J.A.C. 8:43B-1.1, Purpose and scope, would set forth the purpose of the chapter as implementing the Act and the applicability of the chapter to adult family care (AFC) caregiver and AFC sponsor agency licensure applicants and licensees. Proposed new N.J.A.C. 8:43B-1.2, Definitions, would establish definitions of words and terms used in the chapter.

Proposed new Subchapter 2 would establish licensing procedures for AFC caregivers and sponsor agencies. Proposed new N.J.A.C. 8:43B-2.1, Licensing of AFC caregiver, would identify the steps an individual must take to obtain an AFC caregiver license from the Department, including the submission to the Department of either a

completed form of Application for a Long-Term Care Facility License, known as form LCS-9, which is available on the Department's website, or the same information requested on the LCS-9, identified at proposed new (a)1i through xvii; submission of a contract with an AFC sponsor agency, records showing that the applicant meets the qualifications of caregivers at proposed new N.J.A.C. 8:43B-4.1, records showing the applicant's payment history with the applicant's mortgagee or lessor, and records showing that the applicant has obtained required immunizations; and submission of an application filing fee and biennial inspection fees. Proposed new N.J.A.C. 8:43B-2.2, Licensing of AFC sponsor agency, would outline the actions that an entity must take to obtain an AFC sponsor agency license, which are submission of a completed application form (similar to that required at N.J.A.C. 8:43B-2.1) and payment of an application filing fee and biennial inspection fees. Proposed new N.J.A.C. 8:43B-2.3, Inspection of applicant for initial licensure and renewal of licensure as AFC caregiver; inspection of premises, would establish a process for inspections of AFC caregiver license applicants' homes and steps the Department could take when a survey or inspection identifies deficiencies. Proposed new N.J.A.C. 8:43B-2.4, Issuance of AFC caregiver license, would identify the conditions that applicants must meet prior to the Department's issuance of an AFC caregiver license. Proposed new N.J.A.C. 8:43B-2.5, Inspection of applicant for AFC sponsor agency license or renewal of license, would establish a process for inspections of applicants for licensure or for renewal of licensure as AFC sponsor agencies. Proposed new N.J.A.C. 8:43B-2.6, Issuance of AFC sponsor agency license, would establish standards for the Department's issuance of AFC sponsor agency licenses. Proposed new N.J.A.C. 8:43B-2.7, Surrender of AFC

caregiver license, and 2.8, Surrender of AFC sponsor agency license, respectively, would set forth the steps AFC caregivers and AFC sponsor agencies must follow to voluntarily surrender a license. Proposed new N.J.A.C. 8:43B-2.9, Enforcement action against a licensee, would identify the enforcement actions the Department might take against a licensee. Proposed new N.J.A.C. 8:43B-2.10, Waiver, would establish a procedure by which entities subject to the chapter could request waivers of chapter provisions.

Proposed new Subchapter 3 would establish criminal record background check procedures required pursuant to N.J.S.A. 26:2Y-5. Proposed new N.J.A.C. 8:43B-3.1, Criminal record background check required, would mandate such a background check for applicants for licensure as AFC caregivers and non-client adults living in an AFC caregiver's home and would disqualify any individual who has been convicted of certain identified crimes or disorderly persons offenses, absent a demonstration of rehabilitation. Proposed new N.J.A.C. 8:43B-3.2, Procedures to obtain fingerprint impressions, would identify procedures for obtaining fingerprint impressions. Proposed new N.J.A.C. 8:43B-3.3, Standards for a rehabilitation review, would identify evidence the Department must consider if an applicant for licensure as an AFC caregiver or a non-client adult resident of an AFC caregiver's home receives a notice of disqualification and wishes to demonstrate rehabilitation. N.J.A.C. 8:43B-3.4, Non-client adult resident of AFC home subject to criminal record background check, would indicate that non-client adults cannot reside in an AFC home, unless the individual submits to a criminal record background check and is not disqualified. Proposed new N.J.A.C. 8:43B-3.5, Remedy of denial of licensure, would establish procedures relating to

disqualifications and denials of licenses. Proposed new N.J.A.C. 8:43B-3.6, Change in AFC caregiver and non-client adult resident of AFC home, would list the steps that must be taken when there is a change in an AFC caregiver or non-client adult resident of an AFC caregiver's home.

Proposed new Subchapter 4 would establish AFC caregiver standards.

Proposed new N.J.A.C. 8:43B-4.1, Qualifications of AFC caregiver, would identify the minimum qualifications to obtain licensure as an AFC caregiver, which are being of a minimum age, passing a criminal record background check, and completing an AFC sponsor agency orientation. Proposed new N.J.A.C. 8:43B-4.2, Qualifications of substitute AFC caregiver, would establish standards for substitute AFC caregivers.

Proposed new N.J.A.C. 8:43B-4.3, AFC caregiver training program, would require an AFC sponsor agency to confirm and document that each applicant for licensure as an AFC caregiver or substitute caregiver successfully completes the AFC sponsor agency-developed training program and is competent to serve as a caregiver. The training program would be administered by a registered professional nurse and would include, at a minimum, the subjects identified at N.J.A.C. 8:43B-4 Appendix.

Proposed new Subchapter 5 would address general requirements for AFC caregivers. Proposed new N.J.A.C. 8:43B-5.1, Compliance with laws and rules would require AFC caregivers to comply with applicable laws. Proposed new N.J.A.C. 8:43B-5.2, Provision of services, would set forth the duties and responsibilities of AFC caregivers, including providing care and services to clients, as described in the client service plan, such as providing homemaking and personal care services, obtaining medical care, notifying a client's care manager and client representative of any

significant changes in the client, and providing transportation to the client, either directly or by arrangement. Proposed new N.J.A.C. 8:43B-5.3, Notice to clients, would describe notices that AFC caregivers must provide to clients.

Proposed new Subchapter 6 would establish general requirements for AFC sponsor agencies. Proposed new N.J.A.C. 8:43B-6.1, Compliance with laws and rules would require AFC sponsor agencies to comply with applicable laws. Proposed new N.J.A.C. 8:43B-6.2, Ownership and location of AFC sponsor agency, would require an AFC sponsor agency to notify the Department regarding any change in ownership or location of the agency, and would require the Department to perform a track record review on the prospective new owner of the AFC sponsor agency. Proposed new N.J.A.C. 8:43B-6.3, Submission of documents and data, would require prospective AFC sponsor agency owners to submit to the Department certain data and documents, an application for licensure as an AFC sponsor agency, applicable Department fees, and to maintain an up-to-date registry of all AFC caregivers and clients containing specifically identified information. Proposed new N.J.A.C. 8:43B-6.4, Policy and procedure manual, would require an AFC sponsor agency to develop and implement a policy and procedure manual, which the AFC sponsor agency must make accessible to caregivers, clients, clients' representatives, and referring agencies during specified hours. The AFC sponsor agency would be required to include within the policy and procedure manual a description of the services that the AFC sponsor agency will provide; an organizational chart; policies relative to reporting suspected or diagnosed client abuse, neglect, exploitation, and misappropriation of participant property; policies regarding confidentiality of client records; and policies requiring the maintenance of personnel

records for each employee and AFC caregiver. Proposed new N.J.A.C. 8:43B-6.5, Evaluation of AFC caregivers, would require AFC sponsor agencies to evaluate of prospective AFC caregivers and to establish a network of AFC caregivers or community agencies available for emergency and temporary placement of clients. Proposed new N.J.A.C. 8:43B-6.6, Acceptance of clients, would set forth the duties of the administrator of an AFC sponsor agency with regard to the acceptance and placement of clients into an AFC caregiver's home. Proposed new N.J.A.C. 8:43B-6.7, Residency agreements, would establish the minimum content of written residency agreements between an AFC sponsor agency, an AFC caregiver, a client, and the client's representative, and would require prior written notice of any changes to the agreement. Proposed new N.J.A.C. 8:43B-6.8, Managed risk agreements, would identify circumstances in which a managed risk agreement is necessary and the minimum content of such agreements. Proposed new N.J.A.C. 8:43B-6.9, Personnel, would require sponsor agencies to list the duties and responsibilities of staff and AFC caregivers in job descriptions and the policy and procedure manual. Proposed new N.J.A.C. 8:43B-6.10, AFC caregiver and employee health status, would require AFC caregivers and AFC sponsor agency employees who provide direct care, to receive an initial health evaluation by a health care professional that includes a documented health history. Thereafter, AFC sponsor agencies would have flexibility to establish their own policies on the content and frequency of subsequent health evaluations, and authority to require other persons residing in the home of an AFC caregiver to receive health evaluations. The section would also require AFC caregivers, residents of an AFC caregiver's home, and employees of an

AFC sponsor agency who provide direct care to clients, to receive a tuberculosis skin test, if eligible.

Proposed new N.J.A.C. 8:43B-6.11, Reporting events, would identify reportable events and reporting procedures. The section would require an AFC sponsor agency to immediately notify the Department by telephone of reportable events, even if the event is reported to the AFC sponsor agency after regular business hours, followed by written confirmation within 72 hours. Reportable events would be suspected or confirmed abuse, neglect, or misappropriation of a client's personal property, crimes involving an AFC caregiver's household, fires, disasters, any other unanticipated event that results in serious injury to or death of a client or an AFC caregiver, and termination of the employment of the AFC sponsor agency's program administrator. Proposed new N.J.A.C. 8:43B-6.12, Termination of AFC caregiver contract, would identify the circumstances in which an AFC sponsor agency would be authorized to terminate a contract with an AFC caregiver, and would require an AFC sponsor agency to have written policies and procedures related to contract termination when an AFC caregiver's actions, or inactions, jeopardize the health or safety of a client. Proposed new N.J.A.C. 8:43B-6.13, Notice to clients, would establish AFC sponsor agency obligations to notify clients of the availability in the AFC sponsor agency's office during business hours of the following information: waivers that the Department has issued, of the survey report, including a list of deficiencies and substantiated complaint investigations for the preceding 12 months, and the AFC sponsor agency's business hours.

Proposed new Subchapter 7 addresses AFC sponsor agency administration. Proposed new N.J.A.C. 8:43B-7.1, Appointment of AFC program administrator, would

require an AFC sponsor agency to appoint an AFC program administrator and establishes the minimum qualifications of the individual. Proposed new N.J.A.C. 8:43B-7.2, Responsibilities of AFC program administrator, would set forth the duties and responsibilities of the AFC program administrator. Proposed new N.J.A.C. 8:43B-7.3, Nursing staff qualifications; availability; and responsibilities, would establish minimum standards for nursing staff qualifications, availability, and responsibilities. Proposed new N.J.A.C. 8:43B-7.4, Social worker qualifications and responsibilities, would establish social worker qualifications and responsibilities.

Proposed new Subchapter 8 would address client care services. Proposed new N.J.A.C. 8:43B-8.1, Policies and procedures, would require an AFC sponsor agency to establish policies and procedures governing care provided to clients that address the implementation of quality assurance activities for monitoring the quality of care provided to clients, the establishment of criteria for initial and ongoing placement of clients, monitoring and oversight of client personal funds, protocols for transfer or discharge of clients, administration of medications to clients within an AFC caregiver's home, required immunizations, and procedures for obtaining advance directives. Proposed new N.J.A.C. 8:43B-8.2, Client ineligibility and involuntary discharge, would establish standards for determining that a client is ineligible to participate in AFC and for involuntarily discharging a client from AFC, which include client noncompliance, a client's need for a higher level of care than an AFC caregiver can provide, and a client being a danger to self or others. Proposed new N.J.A.C. 8:43B-8.3, Care management services, would identify the case management services that an AFC sponsor agency must provide, including the assignment of a case manager to each client and regular

visits to the caregiver's home to monitor the physical and psycho-social well-being of the client, at least weekly during the first month of placement, and once a month thereafter, or more frequently as needed.

Proposed new Subchapter 9 would address client assessment, client service plan, and health care services. Proposed new N.J.A.C. 8:43B-9.1, Client assessment, would require an AFC sponsor agency to ensure that a registered professional nurse assesses the general and health care needs of a client before placement and reassesses the client at least every six months thereafter, unless the client's health care provider exempts the client from this assessment. Proposed new N.J.A.C. 8:43B-9.2, Client service plan, would require an AFC sponsor agency to develop a client service plan for each client. Proposed new N.J.A.C. 8:43B-9.3, Provision of health care services, would require AFC sponsor agencies to provide health care services to a client under the direction of a registered professional nurse and to notify the client's health care provider of any significant change in the client's physical or psychological condition.

Proposed new Subchapter 10 would establish client rights and responsibilities. Proposed new N.J.A.C. 8:43B-10.1, Rights of each client, would establish specific client rights, which include participation in the planning of one's treatment, access to shared areas of the house, such as the kitchen and living room, and the freedom to make choices concerning services and lifestyle. Proposed new N.J.A.C. 8:43B-10.2, Responsibilities of each client, would identify client responsibilities, which would include showing respect to others, informing the AFC caregiver about health changes, and compliance with the client service plan.

Proposed new Subchapter 11 would establish standards governing physical environment and housekeeping services. Proposed new N.J.A.C. 8:43B-11.1, Scope, would require an AFC sponsor agency to assure that an AFC caregiver's home meets the standards in this subchapter. Proposed new N.J.A.C. 8:43B-11.2, General requirements, would establish general requirements for an AFC caregiver's home, including that it must meet applicable State and local standards, New Jersey Uniform Construction Code standards regarding occupancy of a dwelling, and health and fire standards. The section establishes minimum standards with respect to air temperature parameters, lighting, water, accessibility of a client to areas of the residence, cleanliness, and the availability of a telephone for a client's use. Proposed new N.J.A.C. 8:43B-11.3, Bedroom, would set forth minimum standards for the size and location of, and means of egress from, a client's bedroom, the furnishings that an AFC caregiver must provide, and the requirement of a lockable door. Proposed new N.J.A.C. 8:43B-11.4, Kitchen, would identify the appliances that an AFC caregiver's kitchen must contain, and would require a fire extinguisher, food storage areas, and garbage receptacles. Proposed new N.J.A.C. 8:43B-11.5, Bathroom facilities, would outline the location, accessibility, and amenities that a client's bathroom must contain and provide standards with respect to water temperature, handrails, and non-slip surfaces. Proposed new N.J.A.C. 8:43B-11.6, Housekeeping services, would establish minimum standards for required housekeeping services, including provision of linens, laundry, and cleanliness of items and furnishings in the home that a client is to use. Proposed new N.J.A.C. 8:43B-11.7, Safety and fire protection, would require an AFC caregiver to establish a written fire plan, make electrical outlets available, provide

smoke detectors in specified locations, and obtain local official approval prior to using a wood-burning stove in the home.

Proposed new Subchapter 12 would address records. Proposed new N.J.A.C. 8:43B-12.1, Maintenance of records, would require an AFC sponsor agency to maintain a current and complete record for each client and AFC caregiver for a specified length of time, and maintain the confidentiality of client records in accordance with applicable laws. Proposed new N.J.A.C. 8:43B-12.2, Client records, would identify the client records that an AFC sponsor agency is to maintain. Proposed new N.J.A.C. 8:43B-12.3, Caregiver records, would identify the records that an AFC sponsor agency is to maintain, relative to each AFC caregiver. Proposed new N.J.A.C. 8:43B-12.4, Records maintained by AFC caregiver, would identify the records that AFC caregivers are to maintain with regard to each client.

Proposed new Subchapter 13 pertains to hearings. Proposed new N.J.A.C. 8:43B-13.1, Right to a hearing, would provide the right of applicants who have been denied a license, to a hearing, and require the Department to notify licensees of enforcement actions and individuals who are disqualified after a background check of disqualification determinations. Proposed new N.J.A.C. 8:43B-13.2, Requesting a hearing, would set forth the procedures one must undertake to request a hearing.

N.J.A.C. 8:43B Appendix, Caregiver Training Course Curriculum, sets forth for the training course requirements.

As the Department is providing a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules would promote the development of a long-term care system that offers consumers a greater choice of home and community-based alternatives to nursing home care. An integral component of the AFC setting is the emphasis on providing a uniquely individualized approach to care and promotion of an individual's sense of autonomy, privacy, and self-esteem.

AFC offers individuals with different disabilities and frailties, who are no longer able to live alone, the opportunity to move in and share the home of an AFC caregiver who is capable of providing needed assistance and supervision. AFC provides a home-like environment and encourages participation in the family and community. For many individuals, an AFC caregiver, and his or her family, may become a client's surrogate family.

Undoubtedly, informal AFC living arrangements currently exist throughout the country; however, there is no outside supervision in many instances. The proposed new rules would establish minimum standards to ensure the safety and quality of these arrangements. Further, these rules were developed with the recognition that care is provided in a home environment and should, therefore, not impose overly restrictive physical facilities requirements that could be costly and/or onerous to the homeowner. The rules preserve the essence of the home environment, while assuring that the home is well maintained and adequately accommodates the client's needs. The regulated entities pursuant to the proposed new rules are the caregiver and the sponsor agency and may also include registered nurses and social workers. The sponsor agency develops and oversees a network of caregivers. The Department anticipates that the

entities that are most likely to be interested in becoming sponsor agencies would be home health agencies or health care facilities, because an integral component of the program is ongoing monitoring of the health status of a client by a registered professional nurse and the provision, either directly or through contract, of needed health care services.

The proposed new chapter would ensure that high-quality care and services are provided to older persons and physically disabled persons who receive care in the home of persons who have been trained and licensed as caregivers and overseen and monitored by an AFC sponsor agency. It should encourage the development of a network of caregivers throughout the State who are available to provide shelter and care to individuals no longer capable of living alone.

Economic Impact

The direct economic impact of the proposed new rules is expected to be positive and minimal. The rising cost of nursing home care compounded by the continuing growth of the elderly segment of the population has stimulated interest in creating a more balanced long-term care system. Long-term care services in New Jersey, as in many other states, have been dominated by institutionalized nursing home care, with few other alternatives available. As states increasingly face the need to control Medicaid costs, more consideration is given to community-based programs, which are less costly alternatives to nursing home care.

The Department, in an effort to make this program accessible to as many elderly persons as possible, purposely chose to provide sponsor agencies with the flexibility to

establish their own eligibility criteria for clients. Though not required, it is anticipated that some clients placed in the homes of caregivers would be considered eligible for nursing home care. To what extent AFC serves as a viable alternative to institutionalized care depends largely on the qualifications of caregivers and their willingness to accept clients with differing levels of disabilities and frailties. It is anticipated that the cost of caring for nursing home-eligible clients would be lower in an AFC setting than in a nursing home. An additional cost-benefit of AFC may be its ability to delay or prevent admission to nursing homes.

Applicants for licensure as sponsor agencies will incur the administrative cost of obtaining a license, including a \$1,500 application fee, which shall include the first year of licensure, and also pay a \$500.00 annual fee for license renewal. Licensees shall incur the costs of caregiver approval, training, inspection, and supervision; costs related to the development of program policy and procedure manual; client assessment and service plan development; and the reporting, recordkeeping, and other administrative costs attendant to compliance with these rules. The rules also establish minimum physical environment and housekeeping services standards and recordkeeping requirements for caregivers, the varying costs of which they shall incur cannot be estimated.

Federal Standards Statement

The proposed new rules are not being proposed under the authority of, or in order to implement, comply with, or participate in, any program established under

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

Jobs Impact

The Department anticipates that the proposed new rules would encourage the development of AFC programs throughout the State. The initiation of such programs is likely to result in additional jobs for registered professional nurses, social workers, and administrative staff.

Agriculture Industry Impact

The proposed new rules would not have an impact on the State agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules would establish reporting, recordkeeping, and compliance requirements on applicants for licensure as adult family care (AFC) caregivers and AFC sponsor agencies, licensed AFC caregivers who operate AFC homes, and licensed AFC sponsor agencies, all of which are likely to be small businesses within the meaning of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 through 52:14B-31. The Summary above describes these requirements, and the Economic Impact above describes the costs of compliance and the professional services that entities subject to the chapter must retain. The Department has determined that the proposed new rules would establish the minimum standards

necessary to ensure the safety and quality of AFC services provided to clients. Therefore, the Department proposes no lesser or differing standards based upon business size.

Housing Affordability Impact Analysis

The Department has determined that the proposed new rules will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed new rules would evoke a change in the average costs associated with housing because the proposed new rules would establish standards applicable to AFC caregivers and AFC sponsor agencies, and would have no impact on housing costs.

Smart Growth Development Impact Analysis

The proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed new 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 because the proposed new rules would establish standards applicable to AFC caregivers and AFC sponsor agencies, and would have no impact on smart growth or housing production.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it would not have an impact on pretrial detention, sentencing, probation, or parole policies

concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 43B

STANDARDS FOR LICENSURE OF ADULT FAMILY CARE CAREGIVERS AND SPONSOR AGENCIES

SUBCHAPTER 1. GENERAL PROVISIONS

8:43B-1.1 Purpose and scope

- (a) The purpose of this chapter is to implement the New Jersey Adult Family Care Act, N.J.S.A. 26:2Y-1 through 26:2Y-11 (Act).
- (b) The rules in this chapter apply to applicants for licensure as adult family care (AFC) caregivers and AFC sponsor agencies, licensed AFC caregivers who operate AFC homes, and licensed AFC sponsor agencies.
- (c) The rules in this chapter do not apply to persons who care for individuals in their homes through placement by a nonprofit religious or charitable organization on a voluntary or informal basis, or to the nonprofit religious or charitable organizations that facilitate such placements, provided that an entity that is exempt from the application of this chapter pursuant to this section shall not advertise itself as, or hold itself out to be, an AFC caregiver or an AFC sponsor agency.

8:43B-1.2 Definitions

(a) The following words and terms, as used in this chapter, shall have the meanings established in the Act, specifically at N.J.S.A. 26:2Y-3, unless the context clearly indicates otherwise:

“Activities of daily living” or “ADLs”;

“Adult family care” or “AFC”;

“Adult family care caregiver,” provided the term includes a substitute AFC caregiver;

“Adult family care home” or “AFC home”;

“Adult family care sponsor agency” or “AFC sponsor agency” or “sponsor agency”;

“Client”;

“Commissioner”;

“Department,” provided that the address of the Department for purposes of submissions that this chapter requires is:

Certificate of Need and Healthcare Facility Licensure Program

Certificate of Need and Licensing Division

NJ Department of Health

PO Box 358

Trenton, NJ 08625-0358; and

“Elder.”

(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 New Jersey Adult Family Care Act, N.J.S.A. 26:2Y-1 through 26:2Y-11.

"Advance directive" means a writing executed pursuant to the requirements of the New Jersey Advance Directives for Mental Health Care Act, N.J.S.A. 26:2H-102 et seq.

1. An advance directive may encompass both the designation of a health care representative and a statement of personal wishes regarding health care in the event of loss of decision-making capacity.

"Advanced practice nurse" means a person certified as an advanced practice nurse by the New Jersey Board of Nursing in accordance with N.J.S.A. 45:11-45, the Advanced Practice Nurse Certification Act, and N.J.A.C. 13:37-7.

"Client representative" means an individual or entity who is empowered by law, judicial order, power of attorney, or otherwise to make decisions on behalf of a client or a prospective client and includes a client's spouse and immediate next of kin.

"Client service plan" means an individualized written plan based on an assessment of the client's need for services that outlines the method proposed to meet those needs.

"Conviction" means a finding of guilt by a trial judge or jury, a plea of guilty, or a plea of no contest or similar pleading.

"Health care professional" means a physician, an advanced practice nurse, or a physician assistant, licensed pursuant to Title 45 of the Revised Statutes, acting within the professional's licensed scope of practice.

“Licensed practical nurse” means a person so licensed by the New Jersey Board of Nursing pursuant to N.J.S.A. 45:11-23 and N.J.A.C. 13:37.

“Licensee” means a person or entity that the Department licenses as an AFC caregiver or AFC sponsor agency.

“Physician” means a person licensed to practice medicine by the State Board of Medical Examiners, pursuant to N.J.S.A. 45:9-1 and N.J.A.C. 13:35.

“Physician assistant” means a person so licensed by the New Jersey State Board of Medical Examiners, pursuant to the Physician Assistant Licensing Act, N.J.S.A. 45:9-27.10, and N.J.A.C. 13:35-2B.

“Registered professional nurse” means a person so licensed by the New Jersey Board of Nursing, pursuant to N.J.S.A. 45:11-23 and N.J.A.C. 13:37.

“Self-administration” means a procedure in which a client takes medication orally, nasally, by injection or insertion, topically, or otherwise, by the client administering the medication to the client’s self.

“Social worker” means a person who is certified or licensed by the State Board of Social Work Examiners, pursuant to the Social Workers’ Licensing Act of 1991, N.J.S.A. 45:15BB-1, and N.J.A.C. 13:44G, as a certified social worker, a licensed clinical social worker, or a licensed social worker.

“Substitute AFC caregiver” means an individual who meets the qualifications of an AFC caregiver in accordance with this chapter and is approved by an AFC sponsor agency to be responsible for the care of a client during an AFC caregiver’s absence.

SUBCHAPTER 2. LICENSING PROCEDURES FOR AFC CAREGIVERS AND AFC SPONSOR AGENCIES

8:43B-2.1 Licensing of AFC caregiver

(a) A person seeking to obtain licensure as an AFC caregiver shall submit the following to the Department:

1. A completed application using the application form designated LCS-9, which is available on the Department's forms page at <https://www.nj.gov/health/forms>, which contains the following information, as applicable:

- i. The words "Application for a long-term care facility license";
- ii. The type of application, date of application, date of check or money order, check or money order number, and amount of the check or money order;
- iii. The official name of the facility and employer identification number (EIN) at which the person will practice as an AFC caregiver, site address, including the county and mailing address, including the county, if different, telephone number, email address, name and license number of administrator, if applicable, emergency contact name, telephone number, and email address;
- iv. The owner/corporate name (licensed operator) and EIN number, the DBA, if applicable, address, including the county, telephone and fax number, and email address;
- v. The management company, if applicable, address, including the county, telephone and fax number, and email address, along with the name and title of a contact person of the facility at which the person will practice as an AFC caregiver;

vi. The official name of the facility (provider name) and EIN number, primary type of facility – either adult family caregiver or adult family care sponsor agency, and the quantity of all beds/slots at the location;

vii. The type of ownership: for-profit or non-profit, and whether it is a corporation, proprietorship, limited liability corporation, partnership, limited partnership, religious affiliation, or other;

viii. The building ownership; whether wholly owned by a licensed operator identified at (a)1iv, above or leased and, if leased, identify the owner of the building and submit a copy of the lease;

ix. The name, title, and address of the individual or current registered agent upon whom orders may be served (must be a New Jersey resident);

x. The name, title, address, Social Security number or EIN number, and the percentage of ownership of each and every owner, officer, partner, stockholder, or corporate officer of the facility, which must add up to 100 percent;

xi. The counties served by the facility;

xii. Whether any person identified in this application has ever had an interest, directly or indirectly, in any application for a health care facility in New Jersey or any other state, that was denied or revoked;

xiii. Whether any of the principals have ownership, management, or operational interest in any other licensed health care facility in New Jersey or any other state;

xiv. Whether any principals, owners, operators, or managers of the facility have ever been found guilty of a criminal or administrative charge of resident/patient

fraud, abuse, and/or neglect and whether any of these have ever been indicted for the same charge;

xv. Whether any principals, owners, operators, or managers of the facility have ever been indicted for or convicted of a felony crime;

xvi. With regard to (a)1xii, xiii, xiv, or xv above, identify the individual by name and provide details; and

xvii. A certification, with the certifier's name, title, signature, and date, which reads: "The applicant certifies that all information contained in this application and attachments is true and correct, to the best of his/her knowledge and belief, and that willful misrepresentation of these facts may make the applicant subject to civil penalties; that the application has been duly authorized by the governing body of the applicant; and that the facility has been and will be operated in accordance with applicable licensing requirements";

2. A copy of a contract with an AFC sponsor agency;

3. Documentation that evidences compliance with N.J.A.C. 8:43B-4.1,

Qualifications of caregivers;

4. Payment verification from the caregiver's mortgagor or lessor documenting the applicant's payment history for the 12 months preceding the filing of the application and, if the caregiver has no mortgagor or lessor for the preceding 12 months, proof that the AFC caregiver owns the home;

5. Proof that all AFC caregivers are up-to-date with influenza, pneumococcal, and COVID-19 vaccines in accordance with the recommendations for healthcare providers, and the applicable initial and catch-up schedules, of the Advisory Committee

on Immunization Practices (ACIP), subject to ACIP recommendations regarding contraindications, all of which are available at

<https://www.cdc.gov/vaccines/schedules/hcp/index.html>;

6. A non-refundable filing fee of \$200.00 for initial licensure as an AFC caregiver, and biennially thereafter, upon application for license renewal; and

7. A \$200.00 fee for Department inspection of the applicant's home that is to be used as an AFC home, and biennially thereafter upon application for license renewal, provided:

i. The Department shall not impose this fee more frequently than biennially, even if inspections occur more frequently;

ii. Failure to pay an inspection fee shall result in the denial of an initial license for new AFC caregivers and non-renewal of a license for existing AFC caregivers; and

iii. This fee is refundable if an application is denied prior to Department inspection of the premises at which the applicant would provide AFC caregiver services due to an applicant failing to meet the qualification standards at N.J.A.C. 8:43B-4.1 or being disqualified following a criminal record background check pursuant to N.J.A.C. 8:43B-3.

(b) A person who is already functioning as AFC caregiver through a licensed AFC sponsor agency as of (the effective date of this rulemaking) shall have until (90 days after the effective date of this rulemaking) to comply with the licensure requirement.

(c) No person shall advertise or hold themselves out to be an AFC caregiver, unless the person is licensed by the Department as an AFC caregiver in accordance with this chapter.

8:43B-2.2 Licensing of AFC sponsor agency

(a) An entity seeking to be licensed as an AFC sponsor agency shall submit to the Department:

1. A completed application using the application form designated LCS-9, which is available on the Department's forms page at <https://www.nj.gov/health/forms>, which contains the following information, as applicable:

- i. The words "Application for a long-term care facility license";
- ii. The type of application, date of application, date of check or money order, check or money order number, and amount of the check or money order;
- iii. The official name of the facility and employer identification number (EIN) at which the person will practice as an AFC caregiver, site address, including the county and mailing address, including the county, if different, telephone number, email address, name, and license number of administrator, if applicable, emergency contact name, telephone number, and email address;
- iv. The owner/corporate name (licensed operator) and EIN number, the DBA, if applicable, address, including the county, telephone and fax number, and email address;

v. The management company, if applicable, address, including the county, telephone and fax number, and email address, along with the name and title of a contact person of the facility at which the person will practice as an AFC caregiver;

vi. The official name of the facility (provider name) and EIN number and primary type of facility – either adult family caregiver or adult family care sponsor agency and the quantity of all beds/slots at the location;

vii. The type of ownership: for-profit or non-profit, and whether it is a corporation, proprietorship, limited liability corporation, partnership, limited partnership, religious affiliation, or other;

viii. The building ownership; whether wholly owned by a licensed operator identified at (a)1iv above or leased and, if leased, identify the owner of the building and submit a copy of the lease;

ix. The name, title and address of the individual or current registered agent upon whom orders may be served (must be a New Jersey resident);

x. The name, title, address, Social Security number or EIN number and the percentage of ownership of each and every owner, officer, partner, stockholder, or corporate officer of the facility, which must add up to 100 percent;

xi. The counties served by the facility;

xii. Whether any person identified in the application has ever had an interest, directly or indirectly, in any application for a health care facility in New Jersey or any other state, that was denied or revoked;

xiii. Whether any of the principals have ownership, management, or operational interest in any other licensed health care facility in New Jersey or any other state;

xiv. Whether any principals, owners, operators, or managers of the facility have ever been found guilty of a criminal or administrative charge of resident/patient fraud, abuse, and/or neglect and whether any of these have ever been indicted for the same charge;

xv. Whether any principals, owners, operators, or managers of the facility have ever been indicted for, or convicted of, a felony crime;

xvi. For (a)1xii, xiii, xiv, and xv, identify the individual by name and provide details; and

xvii. A certification, with the certifier's name, title, signature, and date that reads: "The applicant certifies that all information contained in this application and attachments is true and correct, to the best of his/her knowledge and belief, and that willful misrepresentation of these facts may make the applicant subject to civil penalties; that the application has been duly authorized by the governing body of the applicant; and that the facility has been and will be operated in accordance with applicable licensing requirements";

2. A copy of a contract with an AFC sponsor agency;

3. Documentation that evidences compliance with N.J.A.C. 8:43B-4.1, Qualifications of caregivers;

4. Payment verification from the caregiver's mortgagor or lessor documenting the applicant's payment history for the 12 months preceding the filing of the application and,

if the caregiver has no mortgagor or lessor for the preceding 12 months, proof that the AFC caregiver owns the home;

5. Proof that all AFC caregivers are up to date with influenza, pneumococcal, and COVID-19 vaccines in accordance with the recommendations for healthcare providers, and the applicable initial and catch-up schedules, of the Advisory Committee on Immunization Practices (ACIP), subject to ACIP recommendations regarding contraindications, all of which are available at <https://www.cdc.gov/vaccines/schedules/hcp/index.html>;

6. A non-refundable filing fee of \$200.00 for initial licensure as an AFC caregiver, and biennially thereafter upon application for license renewal;

7. A \$200.00 fee for Department inspection of the applicant's home that is to be used as an AFC home, and biennially thereafter upon application for license renewal, provided:

i. The Department shall not impose this fee more frequently than biennially, even if inspections occur more frequently;

ii. Failure to pay an inspection fee shall result in the denial of an initial license for new AFC caregivers and non-renewal of a license for existing AFC caregivers;

iii. This fee is refundable if an application is denied prior to Department inspection of the premises at which the applicant would provide AFC caregiver services due to an applicant failing to meet the qualification standards at N.J.A.C. 8:43B-4.1 or being disqualified following a criminal record background check pursuant to N.J.A.C. 8:43B-3.

8. A non-refundable filing fee of \$1,500 for initial licensure of an AFC sponsor agency, and biennially thereafter upon application for license renewal; and

9. A nonrefundable \$200.00 fee for Department inspection of the AFC sponsor agency upon initial application for licensure, and biennially thereafter upon application for license renewal, provided:

i. This fee shall be imposed only every other year, even if inspections occur more frequently; and

ii. Failure to pay an inspection fee shall result in the denial of an initial license for new AFC sponsor agencies and non-renewal of a license for existing AFC sponsor agencies.

(b) An entity that is already functioning as an AFC sponsor agency as of (the effective date of this rulemaking) shall have until (90 days after the effective date of this rulemaking) to comply with the licensure requirement.

(c) No entity or other health care provider shall advertise or hold itself out as an AFC sponsor agency, unless the entity or provider is licensed by the Department as an AFC sponsor agency.

8:43B-2.3 Inspection of applicant for initial licensure and renewal of licensure as AFC caregiver; inspection of premises

(a) When an applicant for licensure or for renewal of licensure as an AFC caregiver (applicant) submits an application, and prior to an initiation of AFC services by an

applicant for initial licensure, the Department shall conduct an inspection to determine if the applicant and the prospective adult family care home comply with this chapter.

1. The Department shall inspect, annually thereafter, each adult family care home.

(b) For each inspection of an adult family care home, the Department shall prepare an inspection report that is written in clear and concise language that is easy to understand, and provide the applicant and the AFC sponsor agency a copy of the report, which will identify any deficiencies the Department finds.

1. If the inspection report identifies deficiencies, the applicant shall submit, to the Department and the AFC sponsor agency, in writing, a plan of correction that will identify how the applicant will correct the deficiencies and the actions the applicant will take to prevent reoccurrence of the deficiencies.

2. The applicant shall notify the Department and sponsor agency, in writing, when the applicant has corrected the deficiencies.

3. The Department will schedule one or more follow-up inspections of the applicant's home to confirm that the applicant has corrected the deficiencies.

4. An applicant shall not provide AFC services until the Department notifies the applicant, in writing, that it accepts the plan of correction and approves the application for licensure or renewal of licensure as an AFC caregiver.

5. Based on the results of the inspection, the Department may deny an application for licensure.

(c) An AFC caregiver shall post the most recent inspection report in the entry or another equally prominent location in the AFC home and, upon request, shall provide a copy of the report to each client, potential client, and client representative.

1. The AFC caregiver may charge a fee for the copy of the report based on the AFC caregiver's actual costs of copying, which shall not exceed prevailing community rates.

8:43B-2.4 Issuance of AFC caregiver license

(a) The Department may issue an AFC caregiver license to an applicant when all of the following conditions are met:

1. Reports of Department inspections reflect that the applicant and the applicant's home comply with N.J.A.C. 8:43B-2.3;

2. The applicant has submitted to the Department a copy of a contract with an AFC sponsor agency that is signed by the applicant and by an authorized representative of the AFC sponsor agency;

3. The Department has received the applicant's application and determined it to be complete;

4. The Department has received applicable licensure and inspection fees;

5. The Department has received a completed payment verification from the caregiver's mortgagor or lessor documenting the applicant's payment history for the 12 months preceding the filing of the application and, if the caregiver has no mortgagor or lessor for the preceding 12 months, proof that the AFC caregiver owns the home; and

6. The applicant and any non-client adult residents of the adult family care home receive clearance following a criminal record background check conducted in accordance with N.J.A.C. 8:43B-3.

(b) The Department shall deny an application if the applicant or any non-client adult resident of the proposed AFC home do not receive clearance following a criminal record background check conducted in accordance with N.J.A.C. 8:43B-3.

(c) An AFC caregiver license shall specify the name of the AFC caregiver and the address of the AFC home.

1. An AFC caregiver license is not assignable or transferable to another person or address, and shall become null and void if the AFC caregiver voluntarily, or involuntarily, ceases operations or moves to another address.

(d) Upon issuing an AFC caregiver license, the Department shall provide a copy of the license to the municipality in which the AFC home is located.

(e) Upon receiving an AFC caregiver license, the licensee shall notify the police department, fire department, and emergency medical service provider of, or serving, the municipality in which the AFC home is located.

1. The AFC sponsor agency with which the AFC caregiver contracts shall ensure and confirm that these notifications have been made.

(f) The AFC caregiver shall post the AFC caregiver license in a conspicuous location near the main entrance of the AFC home.

(g) An AFC caregiver license shall be valid for two years.

(h) The Department shall send to the AFC caregiver a notice of renewal and a request for applicable fees at least 30 days prior to the expiration of the license.

1. The Department shall not renew a license unless it receives applicable fees.

(i) An AFC caregiver shall grant Department representatives access to enter and inspect an AFC home at any time.

1. An AFC caregiver shall ensure that Department representatives have access to meet with, and privately interview, clients and to inspect records that the AFC caregiver maintains regarding each client.

8:43B-2.5 Inspection of applicant for AFC sponsor agency license or renewal of license

(a) When an applicant for licensure or for renewal of licensure as an AFC sponsor agency (applicant) submits a license application, and prior to an initiation of AFC sponsor agency services by an applicant for initial licensure, the Department may conduct an inspection to determine if the applicant complies with the requirements of this chapter.

(b) The Department shall notify the applicant of the findings of the inspection in a report that is written in clear and concise language that is easy to understand, including any deficiencies found and provide the AFC sponsor agency with a copy of the report.

1. If the inspection identifies deficiencies, the applicant shall submit to the Department, in writing, a plan of correction that identifies how the applicant will correct the deficiencies and the actions the applicant will take to prevent reoccurrence of the deficiencies.

2. The applicant shall notify the Department, in writing, when the deficiencies are corrected.

3. The Department may conduct additional inspections of an AFC sponsor agency at any time, that may comprise of, among other actions, the review of all AFC sponsor agency documents, client records, and records of home visits and client conferences.

4. Based on the results of the inspection, the Department may deny an application for licensure.

8:43B-2.6 Issuance of AFC sponsor agency license

(a) The Department may issue or renew an AFC sponsor agency license to an applicant when all of the following conditions have been met:

1. Department inspections reflect that the sponsor agency complies with this chapter;

2. The Department receives the applicant's application or information set forth at N.J.A.C. 8:43B-2.1(a)1 and determines it to be complete;

3. The Department receives applicable licensure and inspection fees;

4. The applicant meets the staffing requirements in this chapter; and

5. The applicant has submitted to the Department proof of a current liability insurance policy.

(b) An AFC sponsor agency license is not assignable or transferable to another entity and shall be null and void if the AFC sponsor agency ceases operations or changes ownership.

(c) The Department may deny an application for licensure or for renewal of licensure if, during the 12 months preceding the date of the application:

1. The applicant was found to have violated State licensing or Federal certification requirements for the operation of a health care facility or State licensing requirements for AFC caregivers or sponsor agencies; and the Department finds a serious and immediate threat to the health, safety, or welfare of patients or residents; and

2. The violation resulted in the imposition of civil penalties, an action for revocation of a license, or curtailment of admissions.

(d) A person who was convicted of a crime relating adversely to the person's ability to manage or operate an AFC sponsor agency is ineligible to manage or operate an AFC sponsor agency, including homicide, assault, kidnapping, sexual offenses, robbery, and crimes against the family, children, or incompetents.

(e) The AFC sponsor agency shall post the AFC sponsor agency license in a conspicuous location at the AFC sponsor agency's office.

(f) An AFC sponsor agency license is valid for two years.

(g) The Department shall send to the sponsor agency a notice of renewal and a request for applicable fees at least 30 days prior to the expiration of the license.

1. The Department shall not renew a license unless it receives applicable fees.

(h) An AFC sponsor agency may apply before or within 30 days after the expiration of its existing license for renewal of an AFC sponsor agency license, unless the Department has suspended or revoked the license.

1. A renewed AFC sponsor agency license will show the original licensure date, regardless of the date the license is renewed.

8:43B-2.7 Surrender of AFC caregiver license

(a) An AFC caregiver may voluntarily terminate operations by providing, at least 60 days prior to termination, written notice of the proposed termination to each client, the AFC sponsor agency with which the AFC caregiver contracts, and the Department.

(b) An AFC caregiver seeking to terminate operations shall submit a termination plan to the Department for approval 30 days prior to implementation that addresses, at a minimum, the procedures for the appropriate transfer of all services necessary to protect the health and welfare of clients.

(c) An AFC caregiver shall return the AFC caregiver license to the Department within seven business days after the date of revocation or non-renewal of the license, or voluntary termination of operations.

8:43B-2.8 Surrender of AFC sponsor agency license

(a) An AFC sponsor agency may voluntarily terminate operations by providing, at least 90 days prior to termination, written notice of the proposed termination to each client, client representative, AFC caregiver with whom the AFC sponsor agency contracts, and the Department.

(b) An AFC sponsor agency seeking to terminate operations shall submit a termination plan to the Department for approval 30 days prior to implementation. The plan shall address, at a minimum, the procedures for the appropriate transfer of all services necessary to protect the health and welfare of clients.

(c) An AFC sponsor agency shall return its AFC sponsor agency license to the Department within seven business days after the date of revocation or non-renewal of the license, or the voluntary termination of operations.

8:43B-2.9 Enforcement action against a licensee

(a) Pursuant to N.J.S.A. 26:2Y-9, the Department may impose the following enforcement remedies against any licensee for violations of, or failure to comply with, this chapter:

1. Civil monetary penalties;
2. Denial of an application for a license or renewal of a license;
3. Imposition of probationary or provisional status on a licensee;
4. Revocation or suspension of a license; or
5. Relocation of clients.

(b) Prior to taking any action set forth at (a) above, the Department shall serve written notice of the proposed action to the licensee, setting forth the specific violations, charges, or reasons for the action and the process by which the licensee may request a hearing pursuant to N.J.A.C. 8:43B-13.1.

1. The Department will serve the notice on the licensee or the registered agent thereof, in person, or by certified mail.

(c) Pursuant to N.J.S.A. 26:2Y-9, the Department may assess a penalty for violation of licensure rules in accordance with the following standards:

1. For operating as an AFC caregiver or AFC sponsor agency without first obtaining the license required pursuant to this chapter, or for operating after revocation or suspension of that license, not more than \$2,500 for each day of such operation;

2. Except in the case of an emergency, for maintaining more clients than the AFC home is licensed to maintain, an amount equal to the daily charge collected from those clients, plus \$25.00 for each day multiplied by the number of clients maintained over the authorized limit; and

3. For violation of any licensure rule pertaining to the care of clients or physical plant standards, not more than \$2,500 for each day in violation of the rules.

(d) The Department may decrease the penalty assessed in accordance with (c) above, based on:

1. The compliance history of the licensee;
2. The number, frequency, and/or severity of violations;
3. The measures taken by the licensee to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty; and/or
5. Specific circumstances of the violation and the licensee.

(e) The Department may increase the penalties at (c) above up to the statutory maximum per violation per day in consideration of the economic benefit realized by the licensee for noncompliance.

8:43B-2.10 Waiver

(a) The Commissioner, in accordance with the general purposes and intent of this chapter, may waive sections of this chapter if, in the Commissioner's opinion, such waiver would not endanger the life, safety, or health of clients or the public.

(b) An AFC caregiver or AFC sponsor agency seeking a waiver of the rules in this chapter shall apply, in writing, to the Department using the form known as form CN-28, which is available from the Department's forms page at <https://www.nj.gov/health/forms>.

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

1. The specific rule(s) of which a waiver is requested;
2. The reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the caregiver or sponsor agency upon compliance;
3. An alternative proposal that would ensure client safety; and
4. If applicable, documentation necessary to support the request.

(d) The Department reserves the right to request additional information before processing a request for waiver.

SUBCHAPTER 3. CRIMINAL RECORD BACKGROUND CHECK

8:43B-3.1 Criminal record background check required

(a) Each applicant for licensure, and for renewal of licensure, as an AFC caregiver and each non-client adult resident of a proposed AFC home shall submit to a criminal record background check, as required pursuant to N.J.S.A. 26:2Y-5.

(b) A person shall be disqualified for licensure as an AFC caregiver and a home shall not be approved or licensed as an AFC home if the criminal record background check of the applicant or non-client adult resident of a proposed AFC home reveals a conviction for any of the crimes or disorderly persons offenses enumerated at N.J.S.A. 26:2Y-5.b.

1. A conviction of a crime or disorderly persons offense enumerated at N.J.S.A. 26:2Y-5.b shall not result in disqualification, if the person provides the Department with clear and convincing evidence that affirmatively demonstrates rehabilitation and the Department issues a written determination of rehabilitation to the applicant, pursuant to N.J.A.C. 8:43B-3.3.

2. If an applicant or non-client adult resident of a proposed AFC home has a disqualifying conviction and does not affirmatively demonstrate rehabilitation, as required at N.J.S.A. 26:2Y-5.c, the Department shall deny the license application and provide written notice to the client specifying the reasons for denial.

i. At no time shall the Department disclose information about the conviction to anyone other than the disqualified individual, in accordance with N.J.A.C. 13:59-1.2(b)3 and 28 CFR 20.33(b).

(c) An applicant whose application for licensure the Department denies as a result of a criminal record background check shall have a right to a hearing to contest the denial, in the Office of Administrative Law, in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and this chapter.

8:43B-3.2 Procedures to obtain fingerprint impressions

(a) Each applicant for licensure as an AFC caregiver and non-client adult resident of a proposed AFC home shall submit impressions of their fingerprints in a manner specified by the New Jersey State Police. Instructions are available at:

<https://www.nj.gov/health/legal/fingerprinting.shtml>.

1. If the initial fingerprint impressions are not readable by either the New Jersey State Police or the Federal Bureau of Investigation, the applicant caregiver or non-client adult resident of the AFC home shall submit a new set of fingerprint impressions.

8:43B-3.3 Standards for a rehabilitation review

(a) Within 30 days of the date of the Department issuing a notice of disqualification pursuant to N.J.A.C. 8:43B-3.1, the disqualified applicant and/or non-client adult resident of the proposed AFC home may submit to the Department evidence that affirmatively demonstrates rehabilitation.

(b) In determining whether a disqualified person is rehabilitated, the Department shall consider the following factors, as applicable:

1. The nature and seriousness of the offense;
2. The circumstances under which the offense was committed;
3. The date of the offense;
4. The age of the person when the offense was committed;
5. Whether the offense was an isolated or repeated incident;
6. Any social conditions that may have contributed to the offense; and

7. Any evidence of rehabilitation, including good conduct in prison or the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision.

(c) Each request for a determination of rehabilitation shall include, at a minimum:

1. A personal statement from the person that provides details of the offense, including:

i. The nature of the offense;

ii. The circumstances of the offense;

iii. The person's age at the time of the offense;

iv. Any circumstances that may have contributed to the offense, but have since changed, such as a prior substance use disorder; and

v. Any additional information that the person wishes the Department to consider, such as letters of reference from employers or instructors, character letters, or proof of completion of educational or vocational training; and

2. Any person who had been under a term of probation or parole must submit documents indicating that the person has completed all requirements of his or her supervision and has been discharged from probation or parole.

8:43B-3.4 Non-client adult resident of AFC home subject to criminal record background check

An AFC caregiver shall not permit a non-client adult to reside in an AFC home unless that person submits to a criminal record background check and is not disqualified under the terms of this subchapter.

8:43B-3.5 Remedy of denial of licensure

(a) If the Department denies an application for an AFC caregiver license as the result of a criminal record background check, the applicant shall have the right to remedy the denial by:

1. Removing the non-client adult resident from the AFC home and re-filing the application; or

2. Requesting a hearing pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and N.J.A.C. 8:43B-13 to contest the denial.

(b) If the applicant fails to seek a remedy within 30 days of the date of the Department's notice of denial, the denial shall become the final agency decision.

8:43B-3.6 Change in AFC caregiver and non-client adult resident of AFC home

(a) If there is a change in an AFC caregiver as listed on the initial application or the addition of a non-client adult resident to an AFC home, the AFC caregiver shall notify the AFC sponsor agency with which the AFC caregiver contracts, 30 days prior to the change, as well as written notice to the Department.

(b) If prior notice is not possible due to emergent circumstances, the caregiver shall notify the sponsor agency within five calendar days of the change.

(c) Each new AFC caregiver and non-client adult resident of an AFC home must comply with the criminal record background check requirements in this subchapter.

(d) If a new AFC caregiver or non-client adult resident is disqualified as a result of a criminal record background check, the AFC caregiver shall have the right to remedy, as set forth in this chapter.

SUBCHAPTER 4. AFC CAREGIVERS

8:43B-4.1 Qualifications of AFC caregiver

(a) To qualify as an AFC caregiver, an applicant shall:

1. Have clearance from the criminal record background check conducted in accordance with N.J.A.C. 8:43B-3;

2. Be at least 21 years of age;

3. Have successfully completed an orientation to AFC by the AFC sponsor agency with which the applicant contracts;

4. Be physically, emotionally, and mentally capable of complying with the requirements of the AFC program and providing appropriate care to a client, as confirmed, in writing, by the applicant's health care professional following an examination performed with the objective of determining general health status;

5. Have adequate oral and written communication skills;

6. Provide proof of home ownership or a lease agreement for the home that the applicant plans to use as the AFC home, and full-time residency in that home;

7. Provide proof of having resided in the municipality in which the proposed AFC home is located for at least one year immediately preceding the date of the application for initial licensure;

8. Provide proof of homeowner's insurance or renter's insurance;

9. Provide a copy of a contract with an AFC sponsor agency;

10. Provide proof that all vehicles that the applicant plans to use to transport clients comply with all applicable safety and licensing rules established by the New Jersey Motor Vehicle Commission; and

11. Meet at least one of the following conditions:

i. The applicant successfully completes the required caregiver training program as required at N.J.A.C. 8:43B-4.3 and offered by the AFC sponsor agency covering the subject matter set forth at N.J.A.C. 8:43B Appendix A, incorporated herein by reference, with which the applicant contracts;

ii. The applicant has a certificate as a nurse aide in long-term care and is registered in good standing on the New Jersey Nurse Aide Registry, as set forth at N.J.A.C. 8:39-43.2, Requirements for nurse aide certification;

iii. The applicant has a certificate as a New Jersey homemaker/home health aide that is in good standing;

iv. The applicant is a registered professional nurse; or

v. The applicant is a licensed practical nurse.

8:43B-4.2 Qualifications of substitute AFC caregiver

(a) To qualify as a substitute caregiver in the AFC program, an applicant shall:

1. Have clearance from the criminal record background check conducted in accordance with N.J.A.C. 8:43B-3;
2. Be at least 18 years of age;
3. Have adequate oral and written communication skills; and
4. Be physically, emotionally, and mentally capable of providing appropriate care to a client.

(b) An applicant for licensure as substitute AFC caregivers whom an AFC sponsor agency approves, and who is functioning as an AFC sponsor agency-approved caregiver prior to (the effective date of this rulemaking), is exempt from the age requirement at (a)2 above.

(c) Any person who provides a client care, on average, for at least three hours within a 24-hour period or at least 20 hours per week shall be a substitute AFC caregiver.

(d) A person who has a certificate in good standing as a nurse aide in long-term care or a New Jersey homemaker/home health aide, is a licensed practical nurse, or is a registered professional nurse is exempt from the caregiver training program requirements set forth at N.J.A.C. 8:43B-4.3.

8:43B-4.3 AFC caregiver training program

(a) An AFC sponsor agency shall ensure and document that each applicant for licensure as an AFC caregiver or substitute AFC caregiver successfully completes the training program and is competent to serve as a caregiver.

(b) The training program shall be developed by the AFC sponsor agency and shall be provided to AFC caregivers and prospective AFC caregivers under the direction of a

registered professional nurse. The curriculum of the training course shall include, at a minimum, the subjects identified at N.J.A.C. 8:43B Appendix A, incorporated herein by reference.

(c) Any caregivers who administer medication to clients shall do so in accordance with N.J.A.C. 8:43B-8.1(b)3.

SUBCHAPTER 5. GENERAL REQUIREMENTS FOR CAREGIVERS

8:43B-5.1 Compliance with laws and rules

The caregiver shall comply with all applicable Federal, State, and local laws, rules, and regulations.

8:43B-5.2 Provision of services

(a) Each caregiver shall fulfill the following responsibilities:

1. Provide supervision and assistance with ADLs, as specified in a client service plan;

2. Provide homemaking and personal care essential to a client's comfort at home, including three nutritionally balanced meals daily, laundry, shopping, obtaining prescription medications and refills as prescribed, cleaning, and general housekeeping in the client's bedroom, bathroom, and areas of socialization;

3. Ensure that transportation is provided for clients as needed, either directly or by arrangement;

4. Ensure that the client wears clothing appropriate for the weather;

5. Obtain prompt medical care if the client becomes ill or requests the caregiver to schedule a medical appointment; and

6. Notify the client's care manager and client's representative if there is a significant change in the client's condition or if the client's service plan cannot be met due to changes or unexpected circumstances.

8:43B-5.3 Notice to clients

(a) The AFC caregiver shall inform all clients that the following information is available for review by clients, prospective clients, and the client's legal representative:

1. All waivers granted by the Department; and
2. A copy of the inspection report and a list of deficiencies, if applicable, from the last annual licensure inspection and any substantiated complaint investigation during the past 12 months.

(b) The caregiver shall post the following emergency numbers in a conspicuous place in the AFC home and, where possible, near a telephone:

1. "911" for the police department and the fire department that serves the municipality in which the AFC home is located;
2. The complaints hotline of the Department (1-800-792-9770);
3. The Office of the State Long-Term Care Ombudsman (1-877-582-6995); and
4. The AFC sponsor agency with which the AFC caregiver contracts.

SUBCHAPTER 6. GENERAL REQUIREMENTS FOR AFC SPONSOR AGENCY

8:43B-6.1 Compliance with laws and rules

The AFC sponsor agency shall comply with all applicable Federal, State, and local laws, rules, and regulations.

8:43B-6.2 Ownership and location of AFC sponsor agency

(a) An AFC sponsor agency shall notify the Department, in writing, of any proposed relocation of its offices at least 60 days prior to the change.

(b) The ownership and governance of an AFC sponsor agency shall be disclosed to the Department in an applicant's initial application for licensure as an AFC sponsor agency.

(c) Prior to transferring ownership of an AFC sponsor agency, a prospective new owner shall submit to the Department the transfer of ownership fee in the amount of \$500.00 and an application for change of ownership comprising the following:

1. A cover letter stating the applicant's intention to purchase the AFC sponsor agency, specifically identifying the AFC sponsor agency by name, address, and county;

2. A description of the proposed transaction, including:

i. Identification of the current owners of the AFC sponsor agency;

ii. Identification of the proposed new owners, including the names and addresses of all principals with at least a 10 percent interest or, for non-profit entities, the names and addresses of the members of the Board; and

iii. If applicable, a copy of the applicant's organizational chart that describes the parent corporations and wholly owned subsidiaries of the applicant;

3. A copy of the agreement of sale and, if applicable, a copy of any lease and management agreements; and

4. Disclosure of any licensed health care facilities in any state that the proposed owner or any of the principals owns, operates, or manages; and letters from the regulatory agencies in each respective state having jurisdiction over a facility, verifying

that, during the 12 months immediately preceding the date of the application, the facilities have operated in substantial compliance and had no enforcement actions imposed.

(d) Approval of a change of ownership is also contingent upon the Department's review of the applicant's history of service, in accordance with N.J.A.C. 8:43E-5.1.

(e) If the Department determines the application to be acceptable, the Department shall send the applicant an approval letter and a license application.

(f) Within five business days after the transaction to change ownership has been completed, the applicant shall submit the following documents to the Department:

1. A completed application for licensure as an AFC sponsor agency; and
2. A notarized letter stating the date on which the transaction occurred.

8:43B-6.3 Submission of documents and data

(a) Upon request of the Department, an AFC sponsor agency shall submit any documents that are required by this chapter to be maintained and shall submit data related to the utilization, demographics, costs, charges, staffing, and other planning and financial data necessary to evaluate the quality of the AFC program.

(b) An AFC sponsor agency shall maintain an ongoing registry of the names and addresses of all AFC caregivers with which it contracts and the names of all clients residing within each AFC caregiver's home in accordance with the following standards:

1. The registry shall be kept up to date at all times;
2. Placements, transfers, discharges, and the destination shall be recorded within 48 hours of the event;

3. All entries shall be clear, legible, written in ink or typed, and signed or initialed by the author; and

4. The AFC sponsor agency shall transmit a copy of the registry to the Department at the address provided at N.J.A.C. 8:43B-1.2 every quarter.

8:43B-6.4 Policy and procedure manual

(a) Each AFC sponsor agency shall:

1. Develop and implement a policy and procedure manual for the organization and operation of its AFC program;

2. Review the manual at intervals specified in the manual and document each review; and

3. Make the manual available at the AFC sponsor agency's office at all times for review by the Department.

(b) The manual shall include the following:

1. A comprehensive description of the services to be provided by the AFC sponsor agency and the AFC caregivers with which it contracts;

2. An organizational chart delineating the lines of authority, responsibility, and accountability for the administration of the AFC program;

3. Policies and procedures for identifying and reporting all diagnosed and suspected cases of client abuse, neglect, exploitation, or misappropriation of client property;

4. Policies and procedures for maintaining the confidentiality of client records;

5. Policies and procedures for the maintenance of personnel records for each employee of the AFC sponsor agency including, at a minimum, the employee's name, previous employment, educational background, credentials and verification of credentials, license number with effective date and date of expiration, if applicable, certification, if applicable, records of physical examinations, job descriptions, records of staff orientation and staff education, and evaluations of job performance; and

6. Policies and procedures for the maintenance of personnel records for each AFC caregiver with which the AFC sponsor agency contracts, including, at a minimum, the AFC caregiver's name, previous employment, educational background, reference checks, copy of the contract with the sponsor agency, home assessment, verification of credentials, if applicable, records of physical examinations and initial and annual evaluation of the AFC caregiver's capacity to provide required services to the client, and evidence of an Interferon-Gamma Release Assay (IGRA) or a two-step Mantoux test in accordance with N.J.A.C. 8:43B-6.10(c) and (d).

(c) An AFC sponsor agency shall make all policies and procedures manuals available and accessible to clients, prospective clients, clients' legal representatives, AFC caregivers, and referring agencies during normal business hours or by appointment.

8:43B-6.5 Evaluation of AFC caregivers

(a) An AFC sponsor agency shall interview and evaluate prospective AFC caregivers to determine the appropriateness of the prospective AFC caregiver to care for a client in the AFC caregiver's home, and ensure that prospective AFC caregivers meet the requirements outlined at N.J.A.C. 8:43B-4.1.

(b) The AFC sponsor agency's evaluation process shall include, but not be limited to, the following:

1. Conducting an initial interview with the prospective AFC caregiver and all residents of the prospective AFC caregiver's household;
2. Obtaining personal and employment references; and
3. Evaluating the safety and appropriateness of the home as an AFC home.

(c) The sponsor agency shall establish a network of AFC caregivers and/or community agencies available for emergency and temporary placement of clients.

8:43B-6.6 Acceptance of clients

(a) The administrator of an AFC sponsor agency, or a designated staff person, shall meet with the client and, if available, the client's family or legal guardian, prior to placement of the client in an AFC home.

1. The information provided to the client during this meeting shall include, at a minimum, orientation to the policies and procedures of the AFC program, services provided, client rights and responsibilities, and a fee schedule for services.

(b) The AFC sponsor agency shall arrange and conduct a preliminary meeting between the client and the AFC caregiver with whom the client is proposed to be placed, to determine whether the proposed placement is acceptable to each party.

(c) If the placement of a client in an AFC home would be inappropriate in view of the client's care needs, the sponsor agency shall notify the client, in writing, of the reasons for the determination.

8:43B-6.7 Residency agreements

(a) An AFC sponsor agency shall enter into a written residency agreement with each AFC caregiver and client.

1. The residency agreement shall be signed by the AFC sponsor agency, the AFC caregiver, and the client or client representative. The client or client representative shall receive a copy of the residency agreement prior to placement in the AFC home.

2. The residency agreement shall specify each party's rights and responsibilities, the services to be provided, and the payment arrangements and charges.

(b) At the time of placement, an AFC sponsor agency shall enter into a written agreement with the AFC caregiver and the client or the client representative establishing the name, address, and telephone number of a family member, legal guardian, or responsible person who shall be notified by the caregiver in the event of the client's illness or emergency, the health care professional to be called in case of the client's illness, and the person to be called if the client is opposed to medical treatment.

(c) Prior to, or at the time of a client's placement in an AFC home, an AFC sponsor agency shall provide each client with a written client service plan.

(d) An AFC sponsor agency shall provide each client a minimum of 30 days' prior written notification of any change in the residency agreement.

8:43B-6.8 Managed risk agreements

(a) The choice and independence of action of a client may need to be limited when the client's individual choice, preference, or action places the client or others at risk, leads

to an adverse outcome, or violates the norms of the AFC home, AFC program, or the majority of the residents.

(b) If a client assessment process at N.J.A.C. 8:43B-8.2(a)2 indicates that there is a high probability that a choice or action of the client has resulted or will result in any of the conditions at (a) above, the AFC caregiver shall:

1. Identify the specific causes for concern;
2. Provide clear, understandable information about the possible consequences of the client's choice, preference, or action to the client and, if the client agrees, the client's family or client representative;
3. Seek to negotiate a managed risk agreement with the client or client representative and the AFC caregiver that will minimize the possible risk and adverse consequences of the client's choice, preference, or action while still respecting the client's preferences; and
4. Document the process of negotiation and, if no agreement can be reached, the lack of agreement, and the decisions of the parties involved.

(c) Managed risk agreements shall be negotiated with the client or client representative, the AFC caregiver, and the AFC sponsor agency and shall address the following areas, in writing:

1. The specific causes for concern;
2. The probable consequences if the client continues the choice, preference, or action that is identified as a cause for concern;
3. The client's preferences;
4. Possible alternatives to the client's current choice, preference, or action;

5. The final agreement reached by the client or client representative, the AFC caregiver, and the AFC sponsor agency; and

6. The date the agreement is executed and, if needed, the time frames in which the agreement will be reviewed.

(d) The AFC sponsor agency shall:

1. Provide a copy of the managed risk agreement to the client or client representative, and the AFC caregiver;

2. Retain a copy of the agreement in the client's file; and

3. Document the managed risk agreement in the client service plan when it is implemented.

8:43B-6.9 Personnel

(a) An AFC sponsor agency shall ensure that the duties and responsibilities of its staff and all AFC caregivers are delineated in job descriptions and the policies and procedures manuals.

(b) All AFC sponsor agency staff providing client care shall be licensed, certified, or authorized under the applicable laws or rules of the State of New Jersey to provide such care.

8:43B-6.10 AFC caregiver and employee health status

(a) All AFC caregivers and all employees of an AFC sponsor agency providing direct care to clients shall receive an initial health evaluation by a health care professional that includes a documented medical history.

(b) An AFC sponsor agency shall establish a policy and procedure addressing the content and frequency of health evaluations subsequent to the initial health evaluation required at (a) above, and policies and procedures addressing precautionary measures to prevent the transmission of communicable diseases (as that term is defined at N.J.A.C. 8:57-1.3) to clients.

(c) Subject to (d) below, an AFC sponsor agency shall ensure that, prior to the placement of a client in an AFC home, and annually thereafter, all AFC caregivers, residents of the AFC home, and employees of an AFC sponsor agency providing direct care to clients shall receive either an Interferon-Gamma Release Assay (IGRA) or a two-step Mantoux tuberculin skin test with five tuberculin units of purified protein derivative.

(d) The following are exempt from the requirement at (c) above:

1. Individuals with documented negative IGRA or negative Mantoux skin test results (zero to nine millimeters of induration) within the last year;

2. Individuals with documented positive IGRA or positive Mantoux skin test results (10 or more millimeters of induration) who have received appropriate medical treatment for tuberculosis; or

3. Individuals for whom IGRA and Mantoux skin tests are medically contraindicated.

(e) For those tested through the Mantoux skin test in accordance with (c) above, if the result is:

1. Between zero and nine millimeters of induration, the test shall be repeated one to three weeks later; and

2. 10 millimeters or more of induration, a chest x-ray shall be performed and, if necessary, followed by chemoprophylaxis or therapy.

(f) An AFC sponsor agency shall have policies addressing health evaluations and medical screening tests for individuals residing in the AFC home.

8:43B-6.11 Reporting events

(a) An AFC sponsor agency shall notify the following of the occurrence of any event jeopardizing the health or safety of clients or caregivers:

1. The Department immediately by telephone, at (800) 792-9770 or (609) 392-2020 after business hours, followed within 72 hours by written confirmation; and

2. The Office of the State Long-Term Care Ombudsman at (877) 582-6995.

(b) Events that shall be reported to the Department and the Office of the State Long-Term Care Ombudsman pursuant to (a) above include, but are not limited to:

1. All suspected or confirmed cases of client abuse or neglect or misappropriation of a client's personal property;

2. All alleged or suspected crimes by an AFC caregiver or other residents of the AFC home that endanger the life or safety of a client;

3. All fires, disasters, accidents, or other unanticipated events that result in serious injury to or death of a client or an AFC caregiver; and

4. A client's unplanned absence from an AFC home for more than 24 hours.

(c) An AFC sponsor agency shall notify the Department immediately by telephone at (609) 633-9034, followed within 72 hours by written confirmation, when the employment of its AFC program administrator terminates.

8:43B-6.12 Termination of contract with a caregiver

(a) An AFC sponsor agency shall have written policies and procedures addressing the termination of its contract with an AFC caregiver due to conduct jeopardizing the health or safety of a client, shall review these policies and procedures annually, and shall revise them, as needed.

(b) The policies and procedures for termination of a contract with an AFC caregiver based on conduct shall include, at a minimum:

1. Identification of the grounds for termination, which may include:

i. Failure to provide care in accordance with this chapter and with the policies and procedures of the AFC sponsor agency, including, but not limited to, abuse or neglect of the client;

ii. Violation of a client's rights;

iii. Misappropriation of a client's personal funds or property; and

iv. Failure to maintain eligibility requirements, as specified at N.J.A.C.

8:43B-4.1; and

2. Procedures for immediate notification to the Department of the AFC sponsor agency's plan to terminate the AFC caregiver's contract and ensure the safe and expeditious transfer of the client to another site.

(c) An AFC sponsor agency shall notify the Department, in writing, before the termination of its contract with an AFC caregiver and shall note, with specificity, the reasons for, and the date of, the termination.

8:43B-6.13 Notice to clients

(a) An AFC sponsor agency shall inform all clients that the following information is available in the AFC sponsor agency's office during business hours:

1. All waivers granted by the Department;
2. A copy of the survey report and a list of deficiencies, if applicable, from the last annual licensure inspection and any substantiated complaint investigation during the past 12 months; and
3. The business hours of the AFC sponsor agency.

SUBCHAPTER 7. AFC SPONSOR AGENCY ADMINISTRATION

8:43B-7.1 Appointment of AFC program administrator

(a) An AFC sponsor agency shall:

1. Appoint an AFC program administrator who is to be responsible for all aspects of the AFC program; and
2. Designate, in writing, an employee to act in the absence of the AFC program administrator.

(b) The AFC program administrator shall have a baccalaureate degree.

(c) Neither the AFC program administrator, nor the employee designated pursuant to

(a)2 above, shall have been convicted of a crime involving moral turpitude, fiscal malfeasance, or of a similar nature.

(d) If qualified, the AFC program administrator may serve in a dual role as either the registered professional nurse or social worker that N.J.A.C. 8:43B-7.3 and 7.4 require the AFC sponsor agency to retain.

(e) The AFC program administrator or adult designated pursuant to (a)2 above shall be available during the normal business hours of the AFC sponsor agency.

8:43B-7.2 Responsibilities of AFC program administrator

(a) An AFC program administrator is responsible for:

1. Planning and administration of the managerial, operational, fiscal, and reporting components of an AFC sponsor agency's AFC program;
2. Establishing and maintaining liaison relationships, communication, and integration with AFC caregivers, clients, and clients' families, in accordance with the philosophy and objectives of the AFC program; and
3. Ensuring the development, implementation, and enforcement of all policies and procedures, including client rights.

8:43B-7.3 Nursing staff qualifications, availability, and responsibilities

(a) An AFC sponsor agency shall designate a registered professional nurse to be responsible for the direction and quality of nursing services provided to clients.

(b) The registered professional nurse designated pursuant to (a) above shall have at least one year of experience working with older persons or persons with physical disabilities in the community or in an institutional setting.

(c) An AFC sponsor agency shall have at least one registered professional nurse, with the minimum experience identified at (b) above, who is available at all times, on-call, and capable of being reached by telephone.

(d) The responsibilities of the registered professional nurse, identified at (a) above, shall include, but are not limited to:

1. Developing nursing practice policies and procedures;
 2. Performing nursing assessments of each client and preparing a health care component in the client service plan, if indicated;
 3. Coordinating the provision of all health care services specified in the client service plan developed for each client;
 4. Participating in the initial training and ongoing training of the AFC caregiver;
- and
5. Providing training for supervision and assistance with self-administration of medication, or medication administration, in accordance with N.J.A.C. 8:43B-8.1(b)3.

8:43B-7.4 Social worker qualifications and responsibilities

(a) An AFC sponsor agency shall designate a social worker to be responsible for the direction and quality of social work services provided to clients.

(b) The social worker shall have at least one year of experience working with older persons or persons with physical disabilities in the community or in an institutional setting.

(c) The sponsor agency shall provide social work services to clients who require them, in accordance with N.J.A.C. 13:44G.

(d) The responsibilities of the social worker shall include, but are not limited to:

1. Performing social work assessments of each client and preparing a social work component in the client service plan, if indicated;
 2. Providing social work counseling to a client, the client's family, and the AFC caregiver, as needed;
 3. Participating in the initial training and ongoing training of the AFC caregiver;
- and
4. Contacting social services and other community resources for information, referrals, and services.

SUBCHAPTER 8. CLIENT CARE SERVICES

8:43B-8.1 Policies and procedures

(a) An AFC sponsor agency shall establish written policies and procedures governing care provided to clients.

1. These policies and procedures shall be reviewed on an annual basis and shall be revised, as needed.

(b) The policies and procedures governing care shall include:

1. Criteria for initial and ongoing placement of clients that are based on a client's needs and shall assure the ability of the AFC caregiver and AFC sponsor agency to safely meet the needs of the client;

2. Policies and procedures for assessing and monitoring the needs of clients, including at least:

- i. Periodic monitoring of clients;

ii. Referral of clients to health care professionals or community agencies, as appropriate; and

iii. Maintenance of records;

3. Policies and procedures for the administration of medications to clients within an AFC home, including at least:

i. Client self-administration in accordance with labeled prescription containers;

ii. Training requirements for AFC caregivers who will assist clients with the self-administration of medications or who will administer medications. Such training shall include, at a minimum, Module VIII of N.J.A.C. 8:43B Appendix;

iii. Circumstances in which medications may be administered by a qualified person, such as a registered professional nurse;

iv. A system for caregivers to report suspected drug errors and adverse drug reactions to the sponsor agency's registered professional nurse;

v. A system that includes keeping all medications in their original containers and labeled in accordance with the New Jersey Board of Pharmacy requirements at N.J.A.C. 13:39;

vi. A system in which over-the-counter medications repackaged by a pharmacy or other licensed pharmacy provider, manufacturer, or repackager, will be labeled with the name and strength of the medication, date of issue, expiration date, usual dose, lot number, manufacturer's name, and cautionary and/or accessory labels. Original manufacturers' containers shall be marked or labeled with the client's name, and the name shall not obstruct any of the aforementioned information;

vii. A system in which single-use and disposable items will not be reused;

and

viii. Medications that require refrigeration shall be properly maintained;

4. A policy requiring the tuberculin screening of all clients prior to placement pursuant to N.J.A.C. 8:43B-6.10;

5. A policy that, if eligible, keeps all clients up to date with influenza, pneumococcal, and COVID-19 vaccines in accordance with recommendations of the Advisory Committee on Immunization Practices. Persons who are not up to date shall be immunized in accordance with the minimum intervals outlined in the catch-up schedules. Schedules are available at

<https://www.cdc.gov/vaccines/schedules/hcp/index.html> and

<https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us>;

6. Policies and procedures concerning advance directives, including:

i. Requirements for an inquiry to be made of each client regarding the existence and location of an advance directive;

ii. Requirements for provision to clients of a written statement of client rights regarding advance directives, approved by the Department, prior to placement;

and

iii. Requirement for documentation of the existence and location of the client's advance directive in the client's record;

7. Policies and procedures for monitoring and providing oversight of client funds when requested by the client, including:

i. Obtaining a client's written authorization for delegation of responsibility to an AFC caregiver or other designated individual, provided that this authorization shall be witnessed, in writing, by a designated representative of the AFC sponsor agency and either a member of the client's family or the client representative, if applicable;

ii. Providing a client and the client's family or legal guardian, if applicable, a quarterly written financial record of the client's funds if the client has delegated financial management responsibilities to an AFC caregiver, which record shall show the amount of funds at the beginning and end of the accounting period, including a list of all deposits and withdrawals, substantiated by receipts given to the client or the client representative; and

iii. Prohibiting AFC caregivers from accepting any form of gift or bequest from a client or any designation of an AFC caregiver as a beneficiary of a client's insurance policy, trust, will, or any other testamentary devices;

8. Protocols to assure that transportation to all services identified in the client service plan is provided directly or by arrangement;

9. Protocols for transfer or discharge of the client, including the development of a written plan that includes at least:

- i. The reason for, and date of, transfer or discharge;
- ii. The condition of the client upon transfer or discharge;
- iii. A copy of the current client service plan; and
- iv. The destination of the client; and

10. Policies and procedures to conduct an initial assessment that shall indicate whether the client requires health care services.

(c) An AFC sponsor agency shall assure appropriate placement of clients who are transferred or discharged.

8:43B-8.2 Client ineligibility and involuntary discharge

(a) A client may be determined ineligible for or involuntarily discharged from the AFC program only for the following reasons:

1. The client has a medical condition that requires:

i. A higher level of care than the AFC caregiver can provide; or

ii. A regimen or therapy that the AFC caregiver cannot adequately provide in the AFC home;

2. The client is determined to be a danger to self or others following assessment by the AFC sponsor agency care manager in accordance with N.J.A.C. 8:43B-9; or

3. The client does not comply with the written residency agreement.

(b) An AFC sponsor agency shall notify the Office of the State Long-Term Care Ombudsman of the proposed discharge of a client.

(c) Except in an emergency, an AFC caregiver and an AFC sponsor agency shall provide a client 30 days' notice before involuntary discharge or discharge of the client from the AFC home.

8:43B-8.3 Care management services

(a) An AFC service provider shall assign a care manager to each client before the client's placement in the home of an AFC caregiver.

(b) The care manager shall be either a registered professional nurse or a social worker and may be the same person, as provided at N.J.A.C. 8:43B-7.4, or the AFC sponsor agency's registered professional nurse.

(c) The care manager shall be present in the AFC home on the day of client placement to review and finalize the client service plan with the client and the AFC caregiver.

(d) The care manager shall monitor the physical and psychosocial well-being of the client on a regular and ongoing basis.

(e) The care manager shall visit the client in the caregiver's home on the following schedule:

1. Weekly during the first month of placement; and
2. Once a month thereafter, and more frequently, as needed.

(f) If the care manager is a social worker, the quarterly monitoring visit by a registered professional nurse that (c) above requires for clients who have been determined to have health care needs may substitute for that month's scheduled visit by the care manager.

(g) The care manager shall ensure that services of another discipline or organization that the client requires are provided directly or upon referral.

(h) If the client is enrolled in an NJ FamilyCare program that requires care management services, the AFC care manager shall coordinate care with the NJ FamilyCare care manager and shall not be required to follow the contact schedule outlined at (e) above or to conduct any activities that are required of the NJ FamilyCare care manager.

SUBCHAPTER 9. CLIENT ASSESSMENT, CLIENT SERVICE PLAN, AND HEALTH CARE SERVICES

8:43B-9.1 Client assessment

(a) The AFC sponsor agency's registered professional nurse shall perform an initial assessment of each client to determine the client's need for general and health care services.

1. The initial nursing assessment is not required if a health care professional specifies, in writing, within 60 days before placement, that the client has no health care service needs and is appropriate for the AFC program.

(b) If the initial assessment conducted pursuant to (a) above indicates that the client requires health care services, a registered professional nurse shall complete a health care assessment within 14 days of placement using an assessment instrument available from the Department, or an equivalent instrument that includes an evaluation of the following:

1. Need for assistance with ADLs and IADLs;
2. Cognitive patterns;
3. Communication/hearing patterns;
4. Vision patterns;
5. Physical functioning and structural problems;
6. Continence;
7. Psychosocial well-being;
8. Mood and behavior problems;

9. Activity pursuit patterns;
10. Disease diagnoses;
11. Health conditions and preventive health measures including, but not limited to, pain, falls, and lifestyle;
12. Oral/nutritional status;
13. Oral/dental status;
14. Skin conditions;
15. Medication use;
16. Special treatment and procedures;
17. Restraint use; and
18. Outside service utilization.

(c) A registered professional nurse shall perform a semiannual reassessment of each client.

8:43B-9.2 Client service plan

(a) A client service plan shall be person-centered and in place on, or before, the day of placement, developed by the AFC sponsor agency with the participation of the client, the client representative, if available, and at the client's request, the AFC caregiver, and shall be signed by the client or the client representative, the AFC caregiver, and the AFC sponsor agency representative.

(b) The AFC caregiver shall be involved with the development of the client service plan and shall not be permitted to deny the needs of a client as determined by the professional registered nurse.

(c) A client service plan shall address at least the following:

1. The client's need for assistance in ADLs, including the designation of persons who will assist;

2. The client's need for supervision of, or assistance with, the self-administration of medication or medication administration;

3. The client's needs, if any, for assistance with transportation, shopping, and errands;

4. Requirements for assistance with activities for socialization and recreation, as necessary;

5. The length of time that the client may be left alone and unsupervised, if at all; and

6. The client's own needs and preferences.

(d) A client service plan shall include a health care component for each client who is assessed to need health care services that addresses at least the following:

1. Provision of nursing and health services including the designation of persons who will provide such services;

2. Orders for treatment or services, medications, and diet, if needed;

3. The specific goals of treatment or services, if appropriate;

4. The time intervals at which the client's response to treatment will be reviewed; and

5. The measures to be used to assess the effects of treatment.

(e) Any change to the client service plan shall require the care manager to conduct a development meeting to prepare a new client service plan that is signed by the client or the client representative, the AFC caregiver, and the AFC sponsor agency.

(f) The care manager shall review the client service plan with the client at least every six months and, if necessary, revise the client service plan with the participation of the client or the client representative, and at the client's request, the AFC caregiver. The revised client service plan shall be signed by the client and/or the client representative, the AFC caregiver, and the AFC sponsor agency, and the revision shall be documented in the client's record by the AFC caregiver.

8:43B-9.3 Provision of health care services

(a) An AFC sponsor agency shall arrange for health care services to be provided to clients, as needed, in accordance with assessments and the client service plan.

(b) A care manager shall notify the client's health care professional of any significant change in the client's physical or psychological condition.

(c) A registered professional nurse or the client's health care professional shall be called by the AFC caregiver at the onset of illness of any client to arrange for an assessment of the client's nursing care needs or medical needs and needed nursing care intervention or medical care.

(d) If it is determined by a health care professional that there is a medical need for a transfer to another AFC home or a health care facility because the AFC caregiver cannot meet the client's needs, then the AFC sponsor agency shall ensure that such transfers are initiated promptly.

(e) The AFC sponsor agency's registered professional nurse shall ensure that the client receives appropriate care during the transfer.

(f) The AFC sponsor agency's registered professional nurse shall not be responsible for the administration of medications when the AFC caregiver and the client enter into a private agreement allowing the AFC caregiver to provide supervision of, and assistance with, the administration of medications in accordance with the policies at N.J.A.C.

8:43B-8.1(b)3.

SUBCHAPTER 10. CLIENT RIGHTS AND RESPONSIBILITIES

8:43B-10.1 Rights of each client

(a) Each client shall have, at a minimum, the following rights, none of which shall be abridged by an AFC caregiver, other residents of the AFC home, or AFC sponsor agency staff:

1. The right to be treated as an adult, with respect, dignity, courtesy, and consideration, and have individual needs for privacy recognized and upheld, which shall include the right to independence and individuality;

2. The right to be informed of all client rights and house rules and to be provided with a written statement of such rights and rules.

- i. The AFC home shall require each client or client representative to sign a copy of the written statement; and

- ii. The AFC caregiver shall post the written statement in a conspicuous, community space in the AFC home;

3. The right to make choices concerning the client's care, services, and lifestyle;

4. The right to be informed of the client's condition and the right to consent to, or refuse, care and services after the client has been informed, in language that the client understands, of the possible consequences of the decision;

5. The right to participate, to the fullest extent that the client is able, in planning for the client's care and services;

6. The right to receive appropriate care and services, as needed, including personalized services and care in accordance with the client's individualized service plan and a level of care and services that addresses the client's changing physical and psychosocial status;

7. The right to a safe and secure environment, including the right to live in safe and clean conditions in an AFC home that does not admit more clients than it can safely accommodate while providing services and care;

8. The right to be free from abuse, exploitation, and neglect;

9. The right to complete privacy when receiving care and services;

10. The right to associate and communicate privately with any person the client chooses;

11. The right to participate in activities of social, religious, and community groups;

12. The right to have medical and personal information kept confidential.

i. Information in the client's records shall not be released to anyone, other than an employee of the AFC home, without the client's approval, unless the client transfers to another health care facility or unless the release of the information is required by law, a third-party payment contract, or the Department;

13. The right to keep and use a reasonable amount of personal clothing and belongings, and have a reasonable amount of private, secure storage space;

14. The right to manage the client's own money and financial affairs, unless the client is legally restricted from doing so;

15. The right to receive, from the AFC caregiver, a written agreement regarding the care and services to be provided, and the terms and conditions for termination of residency from the home;

16. The right to be provided, by the AFC caregiver, a written statement of the rates to be charged and 30 days' written notice of any change in the rates;

17. The right to make suggestions and complaints without fear of retaliation;

18. The right to be free from chemical and physical restraints, unless a health care provider authorizes the use thereof for a limited time to protect the client or others from injury.

i. Under no circumstances shall a client be confined in a locked room or restrained for punishment, for the convenience of an AFC caregiver or staff, or with the use of excessive drug dosages not prescribed by a health care provider;

19. The right to refuse to participate in experimental research, including the investigation of new drugs and medical devices.

i. The client shall participate in experimental research only if the client gives informed, written consent to such participation;

20. The right to associate and communicate privately with any person the client chooses, which includes the right to have a private telephone in the client's living quarters at the client's own expense, the right to meet with any visitors of the client's

choice, at any time, the right to have reasonable opportunities for private and intimate physical and social interaction with other people, and the opportunity to share a room with another individual.

i. Any restriction of the choice of visitors, time of visits, and/or sharing of a room shall be documented in the person-centered care planning process;

21. The right to send and receive mail unopened and the right to request and receive assistance in reading and writing correspondence, unless it is medically contraindicated and documented in the record by a health care provider;

22. The right to have reasonable access to and privacy in the use of electronic communications, such as email and video communications, and for internet research:

i. If the access is available at the AFC home;

ii. At the client's expense; if any additional expense is incurred by the AFC home to provide such access to the client; and

iii. In compliance with applicable State and Federal law;

23. The right to have the client's personal possessions secured from theft, loss, and misplacement;

24. The right to have daily access during specified hours to money and property that the client deposits with an AFC sponsor agency, and to delegate, in writing, this right of access to the client representative;

25. The right to receive a quarterly written account of all client's funds and itemized property that are deposited with an AFC home for the client's use and safekeeping and all of the client's financial transactions with the client, next of kin, or legal guardian.

i. This record shall show the amount of property in the account at the beginning and end of the accounting period, and a list of all deposits and withdrawals, substantiated by receipts given to the client or the client representative;

26. The right to practice the religion of the client's choice, or to abstain from religious practices, including the right to request visits at any time by representatives of the religion of the client's choice and, upon the client's request, to attend outside religious services at his or her own expense.

i. No religious beliefs or practices shall be imposed upon any client;

27. The right to be free of discrimination regarding race, religion, creed, color, disability, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, or nationality, including the right to recreation and social activities without being subjected to discrimination.

i. Any restriction on the choice of recreation or social activities shall be documented in the person-centered care planning process;

28. The right to privacy, including the requirement that only appropriate staff are provided door keys to the client's room;

29. The right to have or not to have the participation of families and friends in the client's service planning and implementation;

30. The right to receive pain management, as needed, in accordance with N.J.A.C. 8:43E-6;

31. The right to choose a health care provider;

32. The right to obtain medications from a pharmacy of the client's choosing provided the pharmacy complies with the AFC home's medication administration system, if applicable.

33. The right to engage in competitive integrated employment;

34. The right of access to all community spaces in the AFC home.

i. Any restriction of this choice shall be documented in the person-centered care planning process;

35. The right to refuse to perform services for the AFC home;

36. The right to participate in meals and have access to food and snacks at all times.

i. Any restriction of this choice shall be documented in the person-centered planning process;

37. The right not to be moved to a different bed or room in the AFC home if the relocation is arbitrary and capricious;

38. The right to be transferred or discharged only in accordance with the terms of the residency agreement and N.J.A.C. 8:43B-8.2;

39. The right to receive at least 30 days advance written notice from the AFC caregiver if the AFC caregiver requests the client's transfer or discharge, except in an emergency.

i. The written notice shall include the name, address, and telephone number of the New Jersey Office of the Long-Term Care Ombudsman; and

ii. The AFC caregiver shall provide written notice at least 30 days in advance of the proposed transfer to the client representative, if applicable, or, with the client's consent, the client's family; and

40. The right to hire a private caregiver and/or companion at the client's expense and responsibility, provided the caregiver and/or companion complies with the AFC home's policies and procedures.

(b) An AFC caregiver shall ensure that a written notice of the rights set forth at (a) above is given to each client.

1. The written notice shall include the name, address, and telephone number of the New Jersey Office of the Long-Term Care Ombudsman; and

2. The AFC caregiver shall post the written notice in the entry or another equally prominent location in the AFC home.

8:43B-10.2 Responsibilities of each client

(a) The sponsor agency shall develop a written statement of client responsibilities, which shall be provided to each client upon placement. This statement shall encourage clients to function as independently as possible and shall include, at a minimum, the responsibility to:

1. Comply with the client service plan developed with the participation of the client, the client's representative, the client's family, if available, and the caregiver;

2. Inform their caregiver about health changes; and

3. Treat sponsor agency staff, caregiver, and residents of the caregiver's household in a respectful manner.

SUBCHAPTER 11. PHYSICAL ENVIRONMENT AND HOUSEKEEPING SERVICES

8:43B-11.1 Scope

The sponsor agency shall ensure that any caregiver's home that serves as a placement site for one or more clients meets the standards set forth in this subchapter.

8:43B-11.2 General requirements

- (a) An AFC home shall meet all applicable local and State laws, including the State Uniform Construction Code, N.J.A.C. 5:23, regarding occupancy of a dwelling and health and fire standards.
- (b) The home and grounds shall be well-maintained at all times. The exterior of the house shall be adequately maintained regarding paint, stairs, railings, windows, screens, storm windows, and grounds.
- (c) All areas of the home shall be clean and free of vermin, rodents, trash, and offensive odors.
- (d) The home shall be maintained at a comfortable temperature for the clients. The temperature shall not be below 70 degrees Fahrenheit during the day or 68 degrees Fahrenheit at night and shall not exceed 81 degrees Fahrenheit.
 - 1. The sponsor agency shall have a heat emergency plan to monitor indoor temperatures and be capable of implementing interventions for clients, when necessary.
- (e) Lighting in the house shall be sufficient to prevent accidents. Stairs and hallways used by the client shall be illuminated with nightlights. There shall be no exposed wiring anywhere in the home.

(f) Major plumbing, drains, sewer lines, and septic systems shall be operable.

(g) The home shall be equipped and made accessible, as necessary, to meet the specific physical needs of the clients residing therein.

1. All stair treads and landings shall be equipped with non-slip surfaces.

2. Every porch, balcony, staircase, or place higher than 30 inches above the ground and accessible to clients shall be equipped with railings.

3. All inside and outside stairways accessible to clients and consisting of two or more steps shall be equipped with a secure handrail.

(h) Hot and cold running, potable water shall be available in adequate supply at all times.

(i) Each AFC home shall have at least one telephone for use by the caregiver and the clients.

8:43B-11.3 Bedroom

(a) The client shall be furnished with a bedroom, which may be shared with only one other client.

(b) Occupancy shall be limited to floors on or above grade level. Exceptions may be granted under the following conditions:

1. More than half the height of the room is above ground;

2. The room is provided with two or more independent means of egress, at least one of which leads directly outside; and

3. There are no other conditions that might be adverse to the health, safety, or welfare of clients.

(c) Non-ambulatory clients shall not have bedrooms above or below the first floor of any home.

(d) For each client in a bedroom, there shall be a chair, bedside table, lamp, mirror, and appropriate storage for personal belongings. There shall be an adequate clear floor area to meet the specific physical needs of the client. "Clear floor area" means space exclusive of fixed closets, fixed wardrobes, alcoves, or vestibules.

1. A client's bedroom shall contain the following minimum areas per person:

i. Eighty square feet for single occupancy; and

ii. One hundred and thirty square feet for double occupancy.

(e) Each client shall be provided with a bed, box spring or bedspring, mattress, and pillows. These items shall be unsoiled and in good condition.

(f) The bedroom shall have a lockable door to ensure privacy and at least one operable window.

(g) A client's bedroom shall not be a means of access to any other room, nor shall the primary access to the client's bedroom be through a bathroom or other bedroom.

8:43B-11.4 Kitchen

(a) The kitchen shall be equipped with a refrigerator and stove and shall be clean and adequately maintained.

(b) Storage areas for food shall be clean and adequate in size. Food shall be safely stored and prepared.

(c) Garbage and trash shall be kept in receptacles and shall be disposed of promptly.

(d) There shall be a Class B dry chemical fire extinguisher within easy reach for grease fires.

8:43B-11.5 Bathroom facilities

(a) The client shall have access to a bathroom with a handwashing sink, toilet, bathtub or shower, and a lockable door. The bathroom shall be accessible without disturbing the private space of another occupant of the home.

(b) There shall be at least one toilet, together with a handwashing sink, for every six persons living in the home.

(c) The temperature of the hot water used for bathing and handwashing shall be at least 105 degrees and shall not exceed 120 degrees Fahrenheit.

(d) Handrails shall be installed, if needed by the client.

(e) Non-slip surfaces shall be available in each shower or bath.

8:43B-11.6 Housekeeping services

(a) The caregiver shall provide the client a change of linen weekly, or more frequently, if needed.

(b) The caregiver shall provide laundry services for bedding, towels, and washable personal clothing or make available laundry equipment for the client's personal use.

(c) All areas of the home used by both the client and occupants of the home shall be properly maintained and kept clean.

(d) All furnishings available for use by the client shall be clean and in good repair. Items that are broken or worn to the extent that they may cause discomfort or present a danger to the client shall be promptly repaired, replaced, or removed.

8:43B-11.7 Safety and fire protection

(a) The caregiver shall provide a safe, comfortable, sanitary environment for the clients.

(b) There shall be a written fire plan outlining various escape routes, which shall be routinely reviewed with the client.

(c) All escape routes out of the home shall be unobstructed.

(d) The home shall have at least one operable smoke detector on each floor and in each client's bedroom which, when activated, sets off an alarm that is audible in all sleeping areas. The caregiver shall check the battery every month.

(e) Each client's bedroom shall be provided with sufficient electrical outlets and lamps or light fixtures. No temporary wiring shall be used except U.L.-listed extension cords that do not run under rugs, through walls, or doorways.

(f) The sponsor agency shall develop policies for the use or non-use of portable area- or space-heaters.

(g) Wood burning stoves shall be permitted only if proof of inspection and approval by the local building official is provided.

1. An A-rated fire extinguisher shall be available in the same room as the wood-burning stove.

2. Protective screening shall be provided, as necessary.

SUBCHAPTER 12. RECORDS

8:43B-12.1 Maintenance of records

- (a) The sponsor agency shall maintain a current, complete record for each client and caregiver.
- (b) All records shall be maintained for three years after the release of a client from the program.
- (c) Records and information regarding the client shall be considered confidential, and the client shall have the opportunity to examine such records in accordance with the sponsor agency's policies and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the regulations promulgated thereunder. The written consent of the client shall be obtained for release of his or her records to any individual not associated with the sponsor agency, except in the case of the client's transfer to a health care facility, or as required by law, third-party payer, or authorized government agencies.

8:43B-12.2 Client records

- (a) The AFC sponsor agency's record for each client shall include:
 - 1. A completed admission application and all records forwarded to the sponsor agency;
 - 2. Client identification data, including the client's name, last address, date of birth, address and telephone number of the physician, advanced practice nurse, or

physician assistant to be called, and the name and address of a responsible person who may be notified in the event of an emergency;

3. A copy of the client service plan, including physician orders and reports, if applicable, and progress notes by the registered professional nurse, social worker, and care manager;

4. A copy of the client's nursing and social worker assessments based on the client's needs;

5. Written authorization by the client for management of the client's personal funds by the caregiver, if applicable;

6. Documentation of the existence or nonexistence of an advance directive and documentation of the sponsor agency's inquiry to the client, family, or health care representative;

7. A copy of the written statement of all client rights signed by the caregiver and the client, or the client's legal guardian;

8. Documentation of the client's influenza vaccine and pneumococcal vaccine, or the refusal of the client to receive either or both, unless medically contraindicated; and

9. A copy of the New Jersey Office of the Long-Term Care Ombudsman Disclosure Consent Form.

8:43B-12.3 Caregiver records

(a) The sponsor agency's record for each caregiver who has a client residing in his or her home shall include:

1. Documentation from the initial interview, including copies of the caregiver's letters of reference, proof of criminal record background check, and the assessment of the caregiver's home;

2. Proof of satisfactory completion of the required training program;

3. A copy of the signed contract between the sponsor agency and the caregiver;

4. A written residency agreement for each client. The residency agreement shall include protections for the eviction process and appeals that are comparable to those provided to tenants pursuant to State law;

5. Records of physical examinations and evaluations of the caregiver's capacity to provide required services to the client; and

6. A copy of each client's written authorization for the caregiver to manage the client's personal funds, if applicable.

8:43B-12.4 Records maintained by the caregiver

(a) The caregiver shall maintain a current record for each client placed in his or her home. Each client's record shall include at least the following:

1. Client identification data including the client's name, last address, date of birth, name, and address of the responsible person who can be notified in the event of an emergency, and the telephone number of the physician, advanced practice nurse, or physician assistant to be called;

2. A copy of the residency agreement signed by the sponsor agency, caregiver, and client or the client's legal guardian;

3. A copy of the written statement of all client rights signed by the caregiver and the client, or the client's legal guardian;

4. A copy of the client's written authorization for management of his or her personal funds, if applicable, and the quarterly financial records;

5. A copy of the current client service plan; and

6. A record of visits by physicians and other health care providers not employed by the sponsor agency, including dates and comments, if applicable.

SUBCHAPTER 13. HEARINGS

8:43B-13.1 Right to a hearing

(a) Any applicant denied a license, any licensee notified of a proposed enforcement action by the Department, and any individual disqualified after a criminal record background check shall have the right to request a hearing pursuant to 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, with the Office of Administrative Law.

(b) Any applicant failing to remedy a denial of licensure within the 30 days set forth at N.J.A.C. 8:43B-3.5, or any individual who fails to request a rehabilitation review within the 30 days set forth at N.J.A.C. 8:43B-3.3, shall not be eligible to request a hearing pursuant to this subchapter.

8:43B-13.2 Requesting a hearing

(a) The applicant, licensee, or individual shall request a hearing within 30 days of the date of the adverse notice by submitting the request, in writing, to the Department.

(b) The Department shall transmit the request to the Office of Administrative Law.

(c) Prior to the transmittal of any hearing request to the Office of Administrative Law, the Department may schedule a conference to attempt to settle the matter.

APPENDIX

CAREGIVER TRAINING COURSE CURRICULUM

1. Module I. Overview of AFC Program

i. Expectations and responsibilities of the sponsor agency and caregiver.

2. Module II. Working with the Elderly and Disabled

i. Concepts of communication,

ii. Understanding basic human needs and sensitivity to cultural differences,

iii. Psychological/social concerns of the elderly/disabled,

iv. Understanding mental health and mental illness, dementia and memory loss,

v. Relocation and readjustment,

vi. From independence to dependence,

vii. Sensitization to sensory changes, and

viii. Recognizing common diseases.

3. Module III. Personal Care Services

i. Bathing, skincare, dressing, mouth care, foot care, hair care,

ii. Preventing the spread of disease,

iii. Simple procedures--vital signs, dressing changes,

iv. Medications; drug use; adverse reactions, side effects, and

v. Incontinence and constipation.

4. Module IV. Nutrition and Home Management

i. Basics of good nutrition, including hydration,

ii. Special diets, and

iii. Food preparation and spoilage.

5. Module V. Rehabilitation/Restoration Care

- i. Body mechanics,
- ii. Assisting with ambulation/transfer, and
- iii. Range of motion exercises.

6. Module VI. Accident Prevention and Safety in the Home

- i. Emergency care and procedures,
- ii. Safe proofing the home,
- iii. Fire safety, and
- iv. First aid.

7. Module VII. Agency Procedures

- i. Contract requirements,
- ii. Recordkeeping, including plan of care,
- iii. Supervision,
- iv. Respite care,
- v. Client rights, and
- vi. Financial management of client funds.

8. Module VIII. Medication

- i. Understanding the caregiver's scope and limits of responsibility;
- ii. Administration and assisting the client with self-administration of medications;
- iii. Identification of medication terminology and abbreviations;
- iv. Identification of general classes of medications;
- v. Recognition of medication purposes and effects;
- vi. Interpretation of prescription labels;

- vii. Knowledge of medication use, adverse reactions, side effects, and potential drug-drug or drug-food interactions;
- viii. The five rights of medication administration;
- ix. Measuring vital signs;
- x. Documentation of vital signs, medication errors, and client's refusal to take medications;
- xi. Proper storage of medications;
- xii. Storage in accordance with labeling and/or manufacturer's instructions;
- xiii. Storage conditions: space, temperature, light, and humidity; and
- xiv. Disposal of medications.