

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

Licensing Standards for Home Health Agencies

Proposed Readoption with Amendments: N.J.A.C. 8:42

Proposed Repeals: N.J.A.C. 8:42-6.1; N.J.A.C. 8:42 Appendices A and B

Proposed New Rule: N.J.A.C. 8:42-6.7

Proposed Repeals and New Rules: N.J.A.C. 8:42-12.4 and 12.5

Authorized By: Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health, in consultation with the Health Care Administration Licensing Board.

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5.

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

Proposal Number: PRN 2023-_____.

Submit written comments by _____, electronically to
www.nj.gov/health/legal/ecomments.shtml

or by regular mail to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner

New Jersey Department of Health

PO Box 360

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Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The Health Care Facilities Planning Act (Act), N.J.S.A. 26:2H-1 et seq., requires the Department of Health (Department) to develop standards and procedures relating to the licensing of health care facilities and the institution of additional health care services to ensure the efficient and effective delivery of health care services. N.J.A.C. 8:42 implements the Act by establishing the standards for licensure of and the provision of services by home health agencies in New Jersey.

The Department has reviewed N.J.A.C. 8:42 and has determined that the rules proposed for re adoption with amendments, repeals and new rules, continue to be necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were originally promulgated. Additionally, the rules proposed for re adoption with amendments, repeals and new rules would continue to provide the regulatory framework to fulfill the Department's obligation to assure home health agencies provide services of the highest quality. Therefore, the Department proposes to readopt N.J.A.C. 8:42 with amendments, repeals and new rules, as described below.

Home health care remains a growing segment of the health care industry nationwide and, in many cases, has proven to be a viable and desirable alternative to institutional care. Home health care is desirable because it can shorten lengths of stay in acute care facilities and prevent long-term institutionalization. Thus, it is in the public

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interest to maintain standards that ensure quality, identify minimum care requirements, and define service offerings for home health agencies.

The Department licenses home health agencies to provide preventive, rehabilitative, and therapeutic services to patients in their homes or residences. New Jersey home health agencies differ in the number and variety of services they offer. While some agencies provide only basic required services, others provide more comprehensive home care programs, offering a broad range of services that they administer centrally.

N.J.A.C. 8:42 requires home health agencies to provide, at a minimum, nursing, homemaker-home health aide, and physical therapy services, and authorizes them to provide additional services, such as occupational therapy, speech-language and audiology services, social work services, and dietary counseling. This diversity benefits the affected patient population.

The rules were scheduled to expire on June 14, 2023, and the timely filing of this notice of proposed readoption extended the expiration of the rule until December 11, 2023.

A summary of the rules proposed for readoption and the proposed amendments follows.

The Department proposes technical amendments throughout the chapter to correct spelling and grammar and update contact information.

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Subchapter 1 sets forth the general provisions for the licensure of home health agencies. N.J.A.C. 8:42-1.1 would continue to establish the scope and purpose of the chapter.

N.J.A.C. 8:42-1.2 would continue to define words and terms that the chapter uses. The Department proposes to amend this section to delete existing definitions of “activities of daily living” and “self-administration” which are terms the chapter does not use. The Department proposes to amend the existing definition of “branch office.” The Department also proposes to amend the definition of “homemaker-home health aide” to indicate that home-health aides are certified by the Board of Nursing and to note that they must be supervised by a registered professional nurse and perform a delegated nursing regimen and perform delegated tasks. The Department also proposes to amend the term “drug administration” to more specifically identify each step which must be taken when administering a prescribed drug or biological product. The Department also proposes to amend the definition of “home health agency” to include a patient’s place of residence. The Department proposes to amend the definition of “licensed nursing personnel” for clarity purposes. The Department proposes to amend the definitions of “licensed practical nurse,” “occupational therapist,” “physical therapist,” “physician,” and “registered professional nurse,” to include the licensing unit, statute and regulation under which they are licensed. The Department proposes to amend the definition of “Physician Orders for Life-Sustaining Treatment form” to “Practitioner Orders for Life-Sustaining Treatment form” because the name of the Act was amended in 2019. The Department proposes to amend the definition for “restraint” to specify that

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a restraint can be a physical device and to add the fact that a restraint can also be in the form of a chemical (drug). The Department also proposes that the term includes different ways by which the restraint prevents a patient's bodily movement to a position of choice. The Department also proposes to amend the definition of "signature" to include a controlled electronic signature, in order to keep abreast with newer technology used by the medical profession. The Department also proposes to amend the definitions of "social worker" and "speech language pathologist" to include a reference to the regulation under which they are licensed.

The Department proposes to add a definition for "advance practice nurse" and "physician assistant" as a result of changes made pursuant to the Coronavirus Aid, Relief and Economic Security (CARES) Act, which is more fully described below. The Department also proposes to add a definition for "direct patient care" to mean hands-on or face-to-face contact with patients. The Department proposes to add definitions for "occupational therapy assistant" and "physical therapy assistant" and include their scope of practice in the rehabilitation subchapter. The Department also proposes to add definitions for "telehealth" and "telemedicine" in order to keep abreast with newer technology used by the medical profession.

Subchapter 2 addresses licensure procedures. N.J.A.C. 8:42-2.1 would continue to establish Certificate of Need requirements for home health agencies.

N.J.A.C. 8:42-2.2 would continue to establish application submission procedures and associated fees. The Department proposes to delete the reference to Appendix A and, instead, refer potential applicants to the Department's forms webpage.

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N.J.A.C. 8:42-2.3 would continue to establish survey requirements. N.J.A.C. 8:42-2.4 would continue to establish licensure requirements. N.J.A.C. 8:42-2.5 would continue to establish standards for license surrender. N.J.A.C. 8:42-2.6 would continue to establish procedures by which applicants for licensure and licensees can apply for a waiver of the standards in this chapter. The Department proposes to amend existing N.J.A.C. 8:42-2.6(b) to delete the reference to Appendix B and, instead, refer applicants to the Department's forms webpage.

N.J.A.C. 8:42-2.7 would continue to establish standards by which the Department would take action against a licensee. N.J.A.C. 8:42-2.8 would continue to be reserved.

Subchapter 3 describes the chapter's general requirements. N.J.A.C. 8:42-3.1 would continue to require agencies to comply with all applicable rules and laws. The Department proposes to amend N.J.A.C. 8:42-3.1(b) to delete the requirement that home health agencies only contract for nursing services when personnel have reached the maximum caseloads. This creates a dilemma for home health agencies when an employee refuses a case but has not reached the maximum caseload. As the rule is currently written, the home health agency would not be permitted to contract for nursing services and could be a detriment to patient care.

The Department also proposes to amend N.J.A.C. 8:42-3.1(f)1, (f)2 and (g)2 to refer to homemaker home health aides as certified homemaker home health aides or CHHAs to denote the fact that they must go through a certification process prior to being employed as such.

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N.J.A.C. 8:42-3.2 would continue to address ownership requirements. N.J.A.C. 8:42-3.3 would continue to require an agency to submit documents requested of the Department. N.J.A.C. 8:42-3.2 would continue to address ownership requirements. N.J.A.C. 8:42-3.3 would continue to require an agency to submit documents requested of the Department.

N.J.A.C. 8:42-3.4 would continue to address personnel requirements. The Department is proposing to amend N.J.A.C. 8:42-3.4(h) to update the tuberculosis requirements to be consistent with the 2021 CDC recommendations for healthcare workers. N.J.A.C. 8:42-3.5 would continue to address an agency's policy and procedure manual. The proposed amendment to N.J.A.C. 8:43-3.5(a) would lengthen the time frame that home health agencies would have to review and update the agency's policy and procedure manual from one year to three years. This change is proposed by the Department because the process is very time-consuming for each home health agency. The three-year time frame is a minimum; each agency is free to update and amend the manual more frequently, if the agency deems it necessary. The Department also proposes to amend N.J.A.C. 8:43-3.5(c) to delete the requirement that the agency's policy and procedure manual be made available to the public. The Department does not require this from other types of health care facilities and the home health agencies assert that this is proprietary information.

N.J.A.C. 8:42-3.6 would continue to address staffing, staffing schedules, and staff orientation and education plans. N.J.A.C. 8:42-3.7 would continue to require written agreements for contracted and subcontracted services.

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N.J.A.C. 8:42-3.8 would continue to address reportable events. The Department proposes to amend N.J.A.C. 8:42-3.8(a) to update the Department's reportable events telephone number. The Department proposes to insert as subsection (b) a written notice requirement of the reportable event to the Department.

N.J.A.C. 8:42-3.9 would continue to contain the notices agencies are required to post. The proposed amendment to N.J.A.C. 8:42-3.9(a)4 would delete the requirement that the agency's committees, the members of each committee and the committee report be posted. The Department also proposes to delete the requirement that changes to a governing authority be reported to the Department within 30 days and replace that language with the requirement that each agency shall place the names and contact information for the owners and the members of the governing authority on a conspicuously posted notice within the agency.

N.J.A.C. 8:42-3.10 would continue to address reporting to professional boards.

N.J.A.C. 8:42-3.11 would continue to be reserved.

Subchapter 4 outlines the responsibilities of an agency's governing authority and N.J.A.C. 8:42-4.1 would continue to address the responsibilities of an agency's governing authority. The Department is proposing to amend N.J.A.C. 8:42-4.1(a)2, which would lengthen the time frame that agencies would have to review and update the written bylaws from one year to three years. This change is proposed by the Department because the process is very time-consuming for each agency. The three-year time frame is a minimum; each agency is free to update and amend the bylaws more frequently, if the agency deems it appropriate.

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Subchapter 5 would continue to detail an agency's administration. N.J.A.C. 8:42-5.1 would continue to address the appointment of an administrator. The Department proposes to change the word "designed" to "designated" which appears to be the intent of the prior writer.

N.J.A.C. 8:42-5.2 would continue to address an administrator's responsibilities. The Department proposes to amend N.J.A.C. 8:42-5.2(a) to add paragraph 7. This proposed change would codify the requirements of 42 C.F.R. 484.102 – Condition of participation: Emergency preparedness. N.J.A.C. 8:42-5.3 would continue to address the responsibilities of the director of nursing.

Subchapter 6 would continue to delineate patient care services. The Department proposes to delete the requirement of an advisory group, which can be found at N.J.A.C. 8:42-6.1. This requirement was deleted from the last Centers for Medicare and Medicaid Services update.

The Department proposes to renumber N.J.A.C. 8:42-6.2 through 6.7 to N.J.A.C. 8:42-6.1 to 6.6. Additionally, the Department is proposing to amend the section that is currently numbered as N.J.A.C. 8:42-6.2 – Policies and Procedures, to lengthen the time frame that agencies would have to review and update the policies and procedures governing patient care from one year to three years. This change is proposed by the Department for the same reason as noted above.

Proposed new N.J.A.C. 8:42-6.2 would continue to address advance directives. Proposed new N.J.A.C. 8:42-6.3 would continue to identify standards for the provision of pharmaceutical services.

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Proposed new N.J.A.C. 8:42-6.4 would highlight Practitioner Orders for Life-Sustaining Treatment (POLST). The Department proposes to substitute the word “physician” with “practitioner” with reference to the POLST Act. The proposed rule would require an agency to comply with the requirements of the Practitioner Orders for Life-Sustaining Treatment Act, N.J.S.A. 26:2H-129 et seq.

Proposed new N.J.A.C. 8:42-6.5 would establish the circumstances under which a patient may be transferred to another agency, as well as provide a new provision for the transfer of a patient in conformance with the POLST Act.

Proposed new N.J.A.C. 8:42-6.6 would continue to address the declaration of death for patients. Proposed new N.J.A.C. 8:42-6.7 would permit the addition of telehealth services to patient care. Telehealth services would be in addition to, not in lieu of, direct patient care and clinical notes for all such services would be required to be entered into the patient’s medical records, as per the agency’s policies and procedures.

Subchapter 7 would continue to address the provision of nursing services. N.J.A.C. 8:42-7.1 would continue to require a facility to provide nursing services to patients who need these services and N.J.A.C. 8:42-7.2 would continue to require an agency to have a written organizational chart and policies and procedures regarding the provision of nursing services. N.J.A.C. 8:42-7.1 would continue to require a facility to provide nursing services to patients who need these services and N.J.A.C. 8:42-7.2 would continue to require an agency to have a written organizational chart and policies and procedures regarding the provision of nursing services. The Department proposes to amend N.J.A.C. 8:42-7.2(b)2 to lengthen the time frame that home health agencies

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would have to review and update the nursing services policy and procedure manual from one year to three years for the same reason as cited above.

N.J.A.C. 8:42-7.3 would continue to specify nursing staff qualifications and responsibilities. The Department proposes to amend recodified N.J.A.C. 8:42-7.3(b) by eliminating the requirement that a full-time nursing supervisor or alternate be available at each agency branch office and instead require a registered professional nurse to be available, which is consistent with the proposed amended definition of “branch office” set forth at N.J.A.C. 8:42-1.2. N.J.A.C. 8:42-7.4 would continue to require nursing personnel to appropriately document a patient’s health record. N.J.A.C. 8:42-7.5 would continue to specify standards for the provision of CHHA services. The Department proposes to repeal the rule and replace it with a new rule that reorganizes and restates the standards for homemaker-home health aide services to make the rule easier to read. Proposed new N.J.A.C. 8:42-7.5(a)1 would continue to address the employment criteria of CHHAs by home health agencies. Proposed new N.J.A.C. 8:42-7.5(a)2 would continue to address the scope of practice of CHHAs and the responsibilities of supervising registered professional nurses with specific citation to the rules promulgated by the New Jersey Board of Nursing that pertain to the practice scope of CHHAs and the responsibilities of supervising registered nurses, which are not included in the current rule text. Proposed new N.J.A.C. 8:42-7.5(a)3 would continue to address medical record documentation of CHHA services provided to patients.

Subchapter 8 would continue to outline the provision of rehabilitation services.

N.J.A.C. 8:42-8.1 would continue to require an agency to provide physical therapy

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services and would allow an agency to also provide occupational therapy and speech-language pathology services to patients who need those services. Proposed N.J.A.C. 8:42-8.2 would continue to specify the responsibilities of rehabilitation personnel. The Department proposes to amend N.J.A.C. 8:42-8.2(a) by including a reference to the statutory authority that outlines the scope of practice of physical therapy assistants and occupational therapy assistants, which would ensure that the job responsibilities crafted by home health agencies are consistent with the practice scope of these personnel. N.J.A.C. 8:42-8.3 would continue to require physical therapists, occupational therapists, and speech-language pathologists to appropriately document the plan of care and clinical notes in a patient's medical record. The Department proposes to delete references to progress notes, because the term is duplicative to clinical notes.

Subchapter 9 would continue to describe the provision of social work services. N.J.A.C. 8:42-9.1 would continue to provide that social work services may be provided directly or through written agreement, N.J.A.C. 8:42-9.2 would continue to specify the social worker's responsibilities, and N.J.A.C. 8:42-9.3 would continue to require a social worker to appropriately document the plan of care and clinical notes in a patient's medical record. The Department is proposing to delete the reference to progress notes because the use of both clinical notes and progress notes is duplicative.

Subchapter 10 would continue to provide the standards for dietary counseling services. N.J.A.C. 8:42-10.1 would continue to provide that dietary counseling services may be provided directly or through written agreement. N.J.A.C. 8:42-10.2 would continue to specify the dietitian's responsibilities, and N.J.A.C. 8:42-10.3 would continue

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to require a dietitian to appropriately document the plan of care and clinical notes in a patient's medical record. The Department is proposing to delete the reference to progress notes for the same reason noted in the preceding paragraph.

Subchapter 11 would continue to detail the standards for medical/health records. N.J.A.C. 8:42-11.1 and 11.2 would continue to specify the policies and procedures that an agency must establish regarding medical records. The Department is proposing to delete N.J.A.C. 8:42-11.2(a)5iii, which requires an agency to provide a copy of a patient's medical/health record within 30 days of a written request. The applicable federal regulation, 42 CFR 484.110(a)6, is more restrictive than the State's requirement. As such, the Division of Health Facility Survey and Field Operations would follow the more restrictive federal requirement during field surveys and the Department proposes to follow it, as well.

The Department also proposes to amend N.J.A.C. 8:42-11.2(c)6 to permit verbal and telephone orders, which is more descriptive. Additionally, the Department proposes to include advanced practice nurses and physician's assistants as those individuals who may prescribe treatment. This change is being made pursuant to the Coronavirus Aid, Relief and Economic Security (CARES) Act, (Pub. L. No. 116-136, March 27, 2020, which was enacted by the United States Congress in response to the coronavirus pandemic. The CARES Act permanently authorizes advanced practice nurses and physician assistants to order home health care services for their patients. The Department also proposes to delete N.J.A.C. 8:42-11.2(c)8, because the use of both

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terms (progress notes and clinical notes) is duplicative. The remainder of the paragraphs in subsection (a) would be renumbered to reflect the deletion.

The Department proposes to amend newly renumbered N.J.A.C. 8:42-11.2(c)16 to require shorter time frames for the completion of a discharge summary; 30 days is excessive. Also, the Department is proposing to require an agency to complete the New Jersey Universal Transfer Form when a patient is transferred to a health care facility.

The Department also proposes to amend newly renumbered N.J.A.C. 8:42-11.2(d) to delete the duplicative information required when a patient is transferred. Instead, the Department is proposing to require only the completion of the New Jersey Universal Transfer Form and documents which are required to be attached thereto, as per #19 on the form. The Department is also proposing to include a web link to the Universal Transfer Form on the Department's home page.

Subchapter 12 would continue to address infection prevention and control. N.J.A.C. 8:42-12.1 would continue to address the requirement that an agency has an infection prevention and control program.

Proposed N.J.A.C. 8:42-12.2 would continue to specify the policies and procedures for the infection control program. The Department is proposing to amend N.J.A.C. 8:42-12.2(b)1 to update a website link for the CDC publication referenced therein.

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N.J.A.C. 8:42-12.3 would continue to specify the guidelines for the infection control measures. The Department proposes to update the date of the CDC publication and the website links for the CDC publications referenced therein.

The Department is proposing to delete N.J.A.C. 8:42-12.4 Use and sterilization of patient care items and N.J.A.C. 8:42.12.5 Care and use of sterilizers because almost all of the home health agencies do not sterilize and reuse patient care items. However, for the few agencies that continue to sterilize equipment and supplies, the Department proposes to require the agencies to comply with its policy and procedure manual and with the manufacturers' directions for use. This requirement would be codified as N.J.A.C. 8:42-12.4.

Newly numbered N.J.A.C. 8:42-12.5 would establish guidelines for the collection, storage, handling, and disposal of medical waste. Newly numbered N.J.A.C. 8:42-12.6 concerns communicable diseases and dead bodies. The Department proposes to omit the requirement, in newly numbered N.J.A.C. 8:42-12.6(a), that agencies develop protocols for the identification and handling of deceased bodies infected with communicable diseases and complete a Department "Communicable Disease Alert" in applicable cases. When a patient expires, the agency contacts the county medical examiner.

N.J.S.A. 26:6-8.2 requires the medical examiner to place with the remains written notification of the condition.

Subchapter 13 would continue to address patient rights. N.J.A.C. 8:42-13.1 would continue to require agencies to establish and implement written policies and

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procedures regarding the rights of patients and the implementation of these rights. Further, N.J.A.C. 8:42-13.1 would continue to require that patients receive a copy of a statement of these rights. N.J.A.C. 8:42-13.1(a)2 would require the agency to make a reasonable response to a patient's request for services, including a request for an interpreter in a language other than English, if ten percent or more of the population in the agency's service area speaks that language.

Subchapter 14 would continue to describe quality assurance. N.J.A.C. 8:42-14.1 would continue to provide that the governing authority of the facility shall be responsible for the quality assurance program and that the facility shall establish and implement a written plan for a quality assurance program for patient care. N.J.A.C. 8:42-14.2 would continue to establish standards for the quality assurance program. The Department proposes to delete the sentence that references "advisory groups" because advisory groups were omitted, as per above. The Department proposes to delete N.J.A.C. 8:42 Appendix A - Application for a New or Amended Acute Care Facility License, Form CN-7 and, instead refer individuals to the Department's website, as referenced above in N.J.A.C. 8:42-2.2. The Department also proposes to delete N.J.A.C. 8:42 Appendix B - Form CN-28, Application for Waiver, as explained above in N.J.A.C. 8:42-2.6.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

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The rules proposed for readoption with amendments, repeals, and new rules would specify the licensing requirements for all home health agencies and would therefore impact these agencies and the senior citizens they serve. There are currently 42 existing Medicare-certified home health agencies in New Jersey.

As the number of senior citizens increases, and as the Department encourages alternatives to nursing homes and decreases in the length of hospital stays, the need for licensing rules for home health agency services remains vitally important. The rules proposed for readoption with amendments, repeals and new rules would continue to benefit home health care patients, their families and caregivers, the provider agencies, and health care professionals. The Department recognizes the social impact of home health care upon patient care in this State. For many patients, including those with both acute and chronic illnesses, home health care has been used as an alternative to institutionalization, including both long-term placement and hospitalization, and as a means of maintaining independent living status in the community. This method of service delivery has had a significant positive impact upon the quality of life of patients by allowing patients to receive necessary care while residing at home.

Under the current licensing standards proposed for readoption with amendments, repeals, and new rule, both patients receiving home health care and their families benefit. Patients who remain in their homes to receive care often respond better to treatment and recover more quickly. The psychological benefits associated with receiving care within a familiar home environment have been demonstrated to contribute significantly to recovery. There is also a preventive aspect to home health

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care, in that the services provided, in some instances, help prevent disease, avert disability, and postpone or reduce the likelihood of institutionalization. For many patients, home care is less stressful than inpatient institutional care because feelings of isolation and dependence are reduced. Disruption of the patient's personal and family life is also minimized due to the patient's ability to remain and receive care in the home. Additionally, the patient and family retain a sense of control over the situation. Given the potential benefits to patients accruing from home health care, it is important that the agencies providing these services maintain high quality patient care.

The proposed readoption of N.J.A.C. 8:42 with amendments, repeals and new rules would have a beneficial social impact on the patients of home health agencies. In accordance with the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., the Department is responsible for promoting the health and safety of the residents of New Jersey. Licensure regulations provide one means by which the Department monitors the quality of the health care services afforded to the patients of home health agencies.

Economic Impact

The Department foresees minimal financial consequences as a result of the readoption of the rules with amendments, repeals, and new rules for home health agencies. Because the current rules are in effect and the Department has a survey process in place to ensure that home health agencies are in compliance with the rules, the Department expects no additional costs to the State as a result of the rules proposed for readoption with amendments, repeals, and new rules.

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With regard to the industry, the Department also expects minimal financial impact to home health agencies. The Department proposes to maintain the fees charged; no increases are proposed. Further, the readoption with amendments, repeals and new rules of N.J.A.C. 8:42 would continue to allow sufficient flexibility in agency management and administration by permitting the development of policies and procedures best suited to an agency's circumstances, by allowing agencies to hire and allocate staff to best meet patient care needs and by allowing agencies to decide whether and in what way to provide certain services. This would allow the agencies to conserve resources by determining the most efficient deployment of services and personnel. Thus, it is beneficial to maintain flexibility in the qualifications of supervisory nursing personnel and the use of contracted nursing personnel under certain circumstances. Further, the use of professional staff members in patient assessment, treatment planning, and delivery of care promotes continuity and coordination of care to reduce duplication, overlap, and fragmentation of services while ensuring that patients receive all necessary services.

Further, home health care delivered by licensed home health care agencies can result in considerable savings over institutional alternatives because home health care can be a less expensive method than institutionalization for the delivery of long-term care services and acute post-hospital care. With the ability to provide patients living at home with many of the service modalities that were once only available in the long-term or acute care settings coupled with the rising costs for both acute and long-term care services throughout the nation, home health services are seen as a viable way to

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maintain patients in their homes and either forestall the need for costly institutional care or reduce the length of a patient's institutional stay by postponing the need for institutional care or by allowing earlier discharge. Indeed, the use of home health care reduces the drain on personal finances for many patients and their families.

Based upon the foregoing, the Department believes that the readoption of these rules with amendments, repeals and new rules would continue the positive economic impact that home health care has had upon patients and the health care sector in this State.

The rules proposed for adoption with amendments, repeals and new rules are expected to have no economic impact on the general public because they do not impose any new costs on the State budget. The rules will not place any economic burdens on the patients who are served by home health agencies.

Federal Standards Statement

The rules proposed for readoption with amendments, repeals, and new rules would continue to impose standards on home health agencies in New Jersey that do not exceed the Federal standards for home health agencies, with limited exceptions that are necessary for patient safety and well-being. The Federal home health agency standards are established by Medicare and are set forth at 42 CFR Part 484. Additionally, 42 CFR 440.70(d) provides that home health agencies must comply with the Medicare home health agency requirements as a condition of participation in the Medicaid program. As such, both programs maintain the same requirements for participation. Because the Medicaid requirements for home health agencies are the

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same as those for the Medicare program, this analysis applies equally to the Medicaid and the Medicare programs.

Additionally, N.J.A.C. 8:42-7.3(d) would continue to require that a home health agency have a registered nurse (RN) available 24 hours a day. Federal law does not require on-call coverage by a registered nurse. However, in order to ensure that a patient's needs are addressed appropriately, the Department believes that agencies must have 24 hour on-call RN coverage.

N.J.A.C. 8:42 would also continue to impose a prohibition on full contracting of nursing services and provides that the subcontracting of nursing services shall only be permitted under certain conditions. Federal law does not limit the subcontracting of nursing services by home health agencies. The Department believes that the subcontracting of nursing services by home health agencies should only be permitted under limited circumstances in order to ensure continuity of care for patients.

The Department is unable to estimate the cost of providing two therapeutic services in addition to nursing services and 24/7 coverage by a registered nurse, or any increase in costs because of the limitation on subcontracting of services. However, the Department believes that patient safety is paramount, and that the costs of these requirements are justified because they serve to ensure patient health and safety through the provision of high-quality care. The Department believes the proposal to readopt N.J.A.C. 8:42 with amendments, repeals and new rules is sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes, and expected consequences of the proposal.

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Jobs Impact

The Department does not anticipate that the proposed readoption with amendments, repeals and new rules would result in the generation or loss of jobs in the State. The change to the time frame for updating the policy and procedure manual for the operation of the agency, the policy and procedure manual for patient care, the policy and procedure manual for the provision of nursing services and updating the written bylaws would free up the individuals responsible for those tasks to perform other tasks.

The requirement regarding the emergency preparedness policies and procedures is new for the State; however, agencies would still have been required to abide by this requirement because it was required by the Federal government.

Although some of the staff responsibilities would be decreased, the Department does not believe the proposed readoption with amendments, repeals and new rules would decrease the overall number of staff required; therefore, no jobs are expected to be created or lost as a result of the proposed readoption with amendments, repeals, and new rules. The rules proposed for readoption have not resulted, and the Department does not anticipate that the rules proposed for readoption and the proposed amendments, repeals, and new rules, would result, in the generation or loss of any jobs.

Agriculture Industry Impact

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The rules proposed for readoption have not had, and the Department does not anticipate that the rules proposed for readoption and the proposed amendments, repeals, and new rules, would have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments, repeals, and new rules would impose requirements on the licensed home health agencies in New Jersey. The State's 42 existing Medicare-certified home health agencies are all considered "small businesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as would most new applicants for licensure under the rules proposed for readoption.

The readoption of N.J.A.C. 8:42 would maintain the current recordkeeping, reporting, and other compliance requirements. Home health agencies are required to obtain both a certificate of need (CN) and a license, and to incur administrative application costs for both. The various fees would also be maintained.

Agencies would have the option of, but would not be required to, employ outside professionals, at varying fees, to assist them in the licensure process. Home health agencies would be required to report certain events, such as service interruptions, and they must follow reporting requirements of professional licensing boards. The agencies would be required to have policies relating to various aspects of patient care, advance directives, and pharmacy and supplies. Minimal requirements for nursing care and for nursing entries in the medical/health records of patients would be imposed.

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Nursing, certified homemaker-home health aide, and physical therapy services would have to be provided. Additional services, such as occupational therapy, speech-language therapy, social work, and dietary counseling may also be offered if needed by the patient. Requirements pertaining to medical/health records, infection prevention and control, patient rights, and quality assurance would be imposed. The cost of these requirements to the agencies would vary depending upon a number of factors, such as their size, location, and staff resources. As the requirements imposed are necessary to provide safe, efficient, and appropriate care, the costs are not considered inappropriately burdensome. The agencies must employ various professional staff, such as nurses and social workers, at such cost as agreed to between the employer and employee. No lesser requirements or exceptions can be provided based upon business size in the interest of public health, quality of care, and safety.

Housing Affordability Impact Analysis

The rules proposed for readoption have not had, and the Department does not anticipate that the rules proposed for readoption and the proposed amendments, repeals, and new rules, would evoke a change in the average costs associated with housing because the rules establish the licensing standards for home health agencies.

Smart Growth Development Impact Analysis

The rules proposed for readoption have not had, and the Department does not anticipate that the rules proposed for readoption and the proposed amendments, repeals and 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

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Plan in New Jersey because the rules establish licensing standards for home health agencies.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will 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 rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:42.

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

SUBCHAPTER 1. GENERAL PROVISIONS

8:42-1.2 Definitions

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

...

["Activities of daily living (ADL)" means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include at least mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.]

...

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“Advanced practice nurse,” also known as a nurse practitioner (see N.J.S.A. 45:11-46c), means the same as that term is defined pursuant to N.J.S.A. 45:11-23.

...

“Branch office” means an agency site from which services are provided to patients in their homes or place of residence; which is physically separate from the home health agency but shares administrative oversight and services; which meets all requirements for licensure; and which has available a registered professional nurse [on the premises,] **available when the branch office is open to the public.**

...

“[Homemaker-home] Certified homemaker-home health aide” or “CHHA” means a person who has completed a training program approved by the New Jersey Board of Nursing and who is so certified by that Board **in accordance with N.J.A.C. 13:37-14 and who, under supervision of a registered professional nurse, follows a delegated nursing regimen or performs tasks that are delegated.**

...

“Communicable disease” means an illness due to a specific infectious agent or its toxic products, which occurs through **the transmission of that agent or its products from a reservoir to a susceptible host.**

...

“Direct patient care” means hands-on or face-to-face contact with patients.

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“Division of Health Facility Survey and Field Operations” or “DHFSFO
means the Division within the Department that surveys and inspects licensed
health care facilities. The contact information for the DHFSFO is PO Box 367, 120
South Stockton Street, Lower Level, Trenton NJ 08625-0367,
<https://www.nj.gov/health>.

...

“Drug administration” means a procedure in which a prescribed drug or biological **product** is given to a patient by an authorized person in accordance with all laws and rules governing such procedures. The complete procedure of administration [includes removing] **consists of:**

- 1. Removing** an individual dose from a previously dispensed, properly labeled container (including a unit dose container)[, verifying it with];
- 2. Verifying that the dose matches** the prescriber’s orders[, giving];
- 3. Verifying the patient’s identity;**
- 4. Giving** the individual dose to the patient[, seeing that];
- 5. Observing** the patient [takes] **take** it (if oral)[,]; and [recording]
- 6. Recording** the required information, including the method of administration.

...

“Home health agency” or “agency” means an entity licensed by the Department to provide preventive, rehabilitative, and therapeutic services to patients on a visiting basis in a [place of residence used as a] patient’s home **or place of residence**. All

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home health agencies shall provide at a minimum nursing, homemaker-home health aide, and physical therapy services and are eligible for Medicare-certification.

...

“Licensed nursing personnel” [(licensed nurse)] **or “licensed nurse”** means a registered professional [nurses] **nurse** and **a licensed** practical (vocational) [nurses] **nurse** licensed by the New Jersey Board of Nursing.

“Licensed practical nurse” **or “LPN”** means [a person who is so licensed by the] **an individual to whom the New Jersey Board of Nursing in the Division of Consumer Affairs of the Department of Law and Public Safety issues licensure as a licensed practical nurse pursuant to N.J.S.A. 45:11-23, et seq., and N.J.A.C. 13:37.**

...

“Occupational therapist” means [a person who is certified as an occupational therapist, and is registered by the National Board for Certification in Occupational Therapy and has at least one year of experience as an occupational therapist and complies with all New Jersey licensure requirements.] **an individual who is so licensed, by the New Jersey Occupational Therapy Advisory Council in the Division of Consumer Affairs of the Department of Law and Public Safety, in accordance with N.J.S.A. 45:9-37.51 et seq. and N.J.A.C. 13:44K.**

“Occupational therapy assistant” means an individual who is so licensed pursuant to the New Jersey Occupational Therapy Advisory Council in the

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Division of Consumer Affairs of the New Jersey Department of Law and Public Safety, in accordance with N.J.S.A. 45:9-37.51 et seq. and N.J.A.C. 13:44K.

“Physical therapist” means [a person] **an individual** who is so licensed by the New Jersey [State] Board of Physical Therapy **in the Division of Consumer Affairs of the New Jersey Department of Law and Public Safety, pursuant to N.J.S.A. 45:9-37.12, et seq., and N.J.A.C. 13:39A.**

“Physical therapy assistant” means an individual who is so licensed by the **New Jersey State Board of Physical Therapy in the Division of Consumer Affairs of the New Jersey Department of Law and Public Safety, pursuant to N.J.S.A. 45:9-37.12, et seq., and N.J.A.C. 13:39A.**

“Physician” means [a person who is licensed or authorized by] **an individual to whom** the New Jersey State Board of Medical Examiners **in the Division of Consumer Affairs of the Department of Law and Public Safety issues licensure to practice medicine or podiatry in the State of New Jersey pursuant to N.J.S.A. 45:9-1, et seq., and N.J.A.C. 13:35.**

“Physician assistant” means an individual who meets the qualifications under **N.J.S.A. 45:9-27.10 et seq., and to whom the New Jersey State Board of Medical Examiners in the Division of Consumer Affairs of the Department of Law and Public Safety issues licensure pursuant to N.J.S.A. 45:9-27.13.**

[“Physician] **Practitioner** Orders for Life-Sustaining Treatment form” or “POLST form” means as defined in the [Physician] **Practitioner** Orders for Life-Sustaining Treatment Act, **N.J.S.A. 26:2H-129 et seq., particularly at 26:2H-131.**

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...

“Registered professional nurse” means [a person] **an individual** who is [so] licensed by the New Jersey Board of Nursing **in the Division of Consumer Affairs of the Department of Law and Public Safety pursuant to N.J.S.A. 45:11-23 et seq. and N.J.A.C. 13:37.**

“Restraint” means [devices, materials, or] **a physical device, material, equipment or chemical (drug)** that [are attached or adjacent to a person and that prevent] **is used to limit, restrict, or control a patient’s** free bodily movement to a position of choice.

[“Self administration” means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a patient to himself or herself. The complete procedure of self-administration includes removing an individual dose from a previously dispensed (in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39), labeled container (including a unit dose container), verifying it with the directions on the label, and taking orally, injecting, inserting, or topically or otherwise administering the medication.]

“Signature” means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D.) of a person, legibly written [either] with his or her own hand, generated by computer with authorization safeguards, or communicated by a facsimile communications system (FAX). **A controlled electronic signature system may be used.**

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“Social worker” means a person who is licensed by the New Jersey State Board of Social Work Examiners and has a master’s degree in social work from a graduate school of social work accredited by the Council on Social Work Education, and at least one year of post-master’s social work experience in a health care setting as per N.J.S.A. 45:15BB-1 et seq. **and N.J.A.C. 13:44G.**

“Speech-language pathologist” means a person who is so licensed by the Audiology and Speech Language Pathology Advisory Committee [of] **in** the Division of Consumer Affairs of the New Jersey Department of Law and Public Safety **pursuant to N.J.A.C. 13:44C.**

...

“Telehealth” means the use of information and communications technologies, including telephones, remote patient monitoring devices, or other electronic means, to support clinical health care, provider consultation, patient and professional health-related education, public health, health administration, and other services in accordance with the provisions of N.J.S.A. 45:1-61 through 66.

“Telemedicine” means the delivery of a health care service using electronic communications, information technology, or other electronic or technological means to bridge the gap between a health care provider who is located at a distant site and a patient who is located at an originating site, either with or without the assistance of an intervening health care provider, and in accordance with the provisions of N.J.S.A. 45:1-61 through 66. “Telemedicine” does not

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include the use, in isolation, of electronic mail, instant messaging, phone text, or facsimile transmission.

SUBCHAPTER 2. LICENSURE PROCEDURE

8:42-2.2 Application for licensure

(a) Following the acquisition of a Certificate of Need, any person, organization, or corporation desiring to operate an agency shall make application to the Commissioner for a license on form CN-7, Application for New or Amended Acute Care Facility License, prescribed by the Department in accordance with the requirements of this chapter.

1. The application and instructions are available [through the following methods:

i. Electronically] electronically at the Department's "Forms" webpage at <http://nj.gov/health/forms>]; or

ii. Attached as chapter Appendix A, which is incorporated herein by reference].

(b)-(f) (No change.)

8:42-2.6 Waiver

(a) (No change.)

(b) An agency seeking a waiver of a rule in this chapter shall apply in writing to the Director of the Office of Certificate of Need and Healthcare Facility Licensure of the Department on Form CN-28, Application for Waiver, which is [incorporated herein by reference as chapter Appendix B and is also] available on the Department's website at

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[http://web.doh.state.nj.us/apps2/forms/subforms.aspx?pro=healthfacilities#need-care.](http://web.doh.state.nj.us/apps2/forms/subforms.aspx?pro=healthfacilities#need-care)

(c)-(d) (No change.)

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:42-3.1 Compliance with rules and laws

(a) No change.

(b) The agency shall routinely provide nursing services through its own staff. An agency may contract to retain personnel to provide nursing services subject to the following conditions:

[1. The agency needs to retain nursing services by contract:

i. Temporarily because all available full and part-time employees have achieved maximum caseloads; or

ii. To provide specialized care that is not within either the expertise or the scope of practice of existing staff;]

Recodify existing 2.-3. as new **1.-2.** (No change in text.)

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

(f) Each home health agency licensed pursuant to N.J.S.A. 26:2H-1 et seq. shall provide the following information to each patient receiving home-based services from that agency, or to a person designated by the patient:

1. The name and certification or licensure title, as applicable, of the [homemaker-home health aide] **CHHA** or other health care professional whose practice is regulated pursuant to Title 45 of the Revised Statutes.

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i. Agencies shall issue an identification tag that includes a photograph of the [homemaker-home health aide] **CHHA** or other health care professional to each [homemaker-home health aide] **CHHA** or other health care professional in their employ.

2. Agencies shall develop policies and procedures that require [homemaker-home health aides] **CHHAs** and other health care professionals in their employ to wear identification tags in an easily visible place upon their person at all times while examining, observing, or caring for the patient; and

3. (No change.)

(g) The consumer guide required pursuant to (f)3 above shall be provided:

1. (No change.)

2. Otherwise upon the [homemaker-home health aide's] **CHHA's** initial visit to the patient's home.

8:42-3.4 Personnel

(a)-(g) (No change.)

(h) Agency personnel, both directly employed and under contract, shall receive upon employment [tuberculin testing and any required retesting in accordance with the Centers for Disease Control (CDC) "Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Settings," 2005 Guidelines, MMWR, December 30, 2005; Vol. 54; RR-17, incorporated herein by reference, as amended and supplemented, which can be found on the CDC website at

http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5417a1.htm?s_cid=rr5417a1_e.] **either**

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an Interferon-Gamma Release Assay (IGRA) or a two-step Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions are individuals with documented negative Interferon-Gamma Release Assay (IGRA) or negative Mantoux skin test results (zero to nine millimeters of induration) within the last year, individuals with documented positive Interferon-Gamma Release Assay (IGRA) or positive Mantoux skin test results (10 or more millimeters of induration), individuals who received appropriate medical treatment for tuberculosis, or when medically contraindicated.

1. For those tested via the Mantoux skin test in accordance with (h) above, if the result is:

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

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

2. A tuberculin skin test shall be repeated on an annual basis for all individuals identified in (h) above.

(i)-(k) (No change.)

8:42-3.5 Policy and procedure manual

(a) A policy and procedure manual(s) for the organization and operation of the agency shall be established, implemented, and reviewed at least [annually] **every three years.**

(b) (No change.)

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(c) The policy and procedure manual(s) shall be available and accessible to all patients[,] and staff[, and the public].

8:42-3.8 Reportable events

(a) The agency shall notify the Department immediately by telephone at [(609) 292-5960] **(800) 792-9770**, followed within 72 hours by written confirmation of the termination of employment of the administrator and/or the director of nursing, and the name and qualifications of his or her replacement.

(b) The written notification, as required pursuant to (a) above, shall be forwarded by the agency to the Department.

(c) The agency shall provide statistical data as required by the Department

8:42-3.9 Notices

(a) The agency shall conspicuously post a notice that states that the following information is available in the agency to patients and the public:

1.-3. (No change.)

[4. A list of the agency's committees, or their equivalents, and the membership and reports of each;]

[5.] **4.** (No change in text.)

[6. Any changes of membership of the governing authority, within 30 days after the change]

5. The names, and a means to formally contact, the owner(s) and/or members of the governing authority; and

[7.] **6.**(No change in text.)

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SUBCHAPTER 4. GOVERNING AUTHORITY

8:42-4.1 Responsibility

(a) The governing authority shall assume legal responsibility for the management, operation, and financial viability of the agency. The governing authority shall be responsible for, but not limited to, the following:

1. (No change.)

2. Adoption and documented review of written bylaws or their equivalent at least every [two] **three** years;

3.-8. (No change.)

SUBCHAPTER 5. ADMINISTRATION

8:42-5.1 Administrator

(a) (No change.)

(b) An alternate or alternates shall be [designed] **designated** in writing to act in the absence of the administrator.

8:42-5.2 Administrator's responsibilities

(a) The administrator shall be responsible for, but not limited to, the following:

1.-6. (No change.)

SUBCHAPTER 6. PATIENT CARE SERVICES

Repeal: 8:42-6.1

8:42-[6.2]**6.1** Policies and procedures

(a) The agency shall establish written policies and procedures governing patient care that are reviewed at least [annually] **every three years** by the [advisory group]

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agency's governing authority, revised as needed, and implemented. They shall include at least the following:

1. -10. (No change.)

8:42-[6.3]**6.2** Advance directives

(a) An agency shall comply with the requirements of the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 [et seq.] **through 78**.

(b)-(e) (No change.)

8:42-[6.4]**6.3** Pharmacy and supplies

(a) An agency shall establish written policies and procedures governing pharmacy and supplies that are reviewed annually, revised as needed, and implemented, which include at least the following:

1. Provision for [emergency] **routine** supplies, including the contents, locations, and frequency of checking (including checking of expiration dates) of emergency supplies;

2.-4. (No change.)

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

8:42-[6.5 Physician]**6.4 Practitioner** orders for life-sustaining treatment (POLST) (a) An agency shall comply with the requirements of the [Physician] **Practitioner** Orders for Life-Sustaining Treatment Act (**POLST Act**), N.J.S.A. 26:2H-129 et seq.

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

(d) An agency shall provide staff training regarding the [Physician Orders for Life-Sustaining Treatment Act] **POLST Act** that address at least the following:

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1.-2. (No change.)

Recodify existing N.J.A.C. 8:42-6.6 and 6.7 as new **6.5 and 6.6** (No change in text.)

8:42-6.7 Telemedicine

(a) All telehealth services shall be provided in accordance with N.J.S.A. 45:1-61 through 66 and N.J.A.C. 13:35-6B.

(b) All telehealth services shall be in addition to, and not in lieu of, direct patient care.

(c) Clinical notes of all telehealth services shall be incorporated into the patient's medical/health record according to the agency's policies and procedures.

SUBCHAPTER 7. NURSING SERVICES

8:42-7.2 Nursing organization, policies, and procedures

(a) (No change.)

(b) An agency shall have written policies and procedures for the provision of nursing services that:

1. (No change.)

2. The agency reviews [annually] **every three years**, revises as needed, and implements; and

3. (No change.)

8:42-7.3 Nursing staff qualifications and responsibilities.

(a) (No change.)

(b) A registered professional nurse shall be available [at] **for** each agency branch office during its hours of operation to provide clinical supervision.

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(c) An agency shall ensure that the registered professional nurses and licensed practical nurses it retains to provide nursing services to patients:

1.-10. (No change.)

(d) An agency shall ensure that a registered professional nurse[:

1. Is available 24 hours a day, seven days a week; and

2. Contacts] **contacts** a patient regarding clinical issues within one hour of the patient's call to the agency.

8:42-7.5 Homemaker-home health aide services

(a) An agency, in providing homemaker-home health aide services, shall ensure that:

1. The homemaker-home aide that the agency retains to provide these services [holds certification as a homemaker-home health aide issued by the New Jersey Board of Nursing] **is a CHHA** and provides verification of that certification[,] to the agency, which the agency maintains in the agency personnel record for that [homemaker-home health aide] **CHHA**;

2. A [homemaker-home health aide] **CHHA** provides personal care and/or homemaking services that are within the scope of practice of a [homemaker-home health aide] **CHHA**, in accordance with N.J.A.C. 13:37-14.3, and under the supervision of a registered professional nurse, in accordance with N.J.A.C. 13:37-6.2.

i. Prior to a [homemaker-home health aide] **CHHA** rendering services to a patient, a registered professional nurse shall orient the [homemaker-home health aide] **CHHA** to that patient and shall give written instructions to the [homemaker-home health aide] **CHHA** regarding the home health services to be provided.

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Copies of the written instructions shall be kept in the patient's home and documentation of services shall be kept in the patient's medical/health record;

ii. The delegation of tasks to a [homemaker-home health aide] **CHHA** by a registered professional nurse [shall be] **is** consistent with N.J.A.C. 13:37-6.2 and 14.3; and

iii. (No change.)

3. The [homemaker-home health aide shall document] **CHHA documents** the homemaker-home health services provided to a patient in the patient's medical record.

SUBCHAPTER 8. REHABILITATION SERVICES (PHYSICAL THERAPY, OCCUPATIONAL THERAPY, SPEECH-LANGUAGE PATHOLOGY, AND AUDIOLOGY)

8:42-8.2 Rehabilitation services

(a) (No change.)

(b) Physical therapy assistants and occupational therapy assistants may assist physical therapists and occupational therapists with regard to the services listed in subsection (a) above, provided that the assistants are supervised and work in accordance with their respective scopes of practice.

8:42-8.3 Rehabilitation entries in the medical/health record

(a) Each physical therapist, occupational therapist, or speech-language pathologist shall document in the patient's medical/health record:

1. (No change.)

2. Clinical notes [and progress notes].

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SUBCHAPTER 9. SOCIAL WORK SERVICES

8:42-9.3 Social work entries in the medical/health record

(a) The social worker shall document in the patient's medical/health record:

1. (No change.)
2. Clinical notes [and progress notes].

SUBCHAPTER 10. DIETARY COUNSELING SERVICES

8:42-10.3 Dietary entries in the medical/health record

(a) The dietitian shall document in the patient's medical/health record:

1. (No change.)
2. Clinical notes [and progress notes].

SUBCHAPTER 11. MEDICAL/HEALTH RECORDS

8:42-11.2 Medical/health records policies and procedures

(a) [The] **An** agency shall have written policies and procedures for medical/health records that are reviewed annually, revised as needed, and implemented[. They shall], **and which** include at least:

- 1.-4. (No change.)
5. Release and/or provision of copies of the patient's medical/health record to the patient and/or the patient's authorized representative, including, but not limited to, the following:
 - i. Establishment of a fee schedule for obtaining copies of the patient's medical/health record; **and**

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ii. Availability of the patient's medical/health record to the patient's authorized representative if it is medically contraindicated (as documented by a physician in the patient's medical/health record) for the patient to have access to or obtain copies of the record[; and

iii. Procedures to ensure that a copy of the patient's medical/health record is provided within 30 calendar days of a written request].

(b) (No change.)

(c) A medical/health record shall be initiated for each patient upon admission and shall include at least the following:

1.-5. (No change.)

6. All **verbal or** telephone orders, which must be countersigned by a physician **advanced practice nurse or physician assistant** within 30 days;

7. (No change.)

[8. Progress notes;]

Recodify existing 9. through 16. as new **8. through 15.** (No change in text.)

[17.] **16.** A comprehensive discharge **or transfer** summary with narrative information from each service [within 30 days of discharge unless the patient is readmitted during that 30 day period.] **as follows:**

i. A complete discharge summary that is sent to the primary care physician or other health care professional who will be responsible for providing care and services to the patient after

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discharge from the HHA (if any) within five business days of the patient's discharge;

ii. A completed transfer summary that is sent within two business days of a planned transfer, if the patient's care will be immediately continued in a health care facility; or

iii. A completed transfer summary that is sent within two business days of becoming aware of an unplanned transfer, if the patient is still receiving care in a health care facility at the time when the HHA becomes aware of the transfer.

(d) If the patient is transferred to another [non acute] health care facility, the agency shall maintain a transfer record reflecting the patient's immediate needs and send a copy of this record to the receiving facility at the time of transfer. [The transfer record shall contain at least the following information:

1. Diagnosis, including history of any serious conditions unrelated to the proposed treatment which might require special attention to keep the patient safe;
2. Physician orders in effect at the time of transfer and the last time each medication was administered;
3. The patient's plan of care;
4. Hazardous behavioral problems;
5. Drug and other allergies;
6. Reason for transfer;

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7. A notice of the existence of an advance directive, POLST Form, and/or Do Not Resuscitate (DNR) order; and

8.] The Universal Transfer Form [as], **which is** required by N.J.A.C. 8:43E-13, **and can be located on the Department’s website at**
<https://www.nj.gov/health/forms/hfel-7.pdf>.

(e)-(h) (No change.)

SUBCHAPTER 12. INFECTION PREVENTION AND CONTROL

8:42-12.2 Infection control policies and procedures

(a) (No change.)

(b) The designated committee, along with the person designated by the administrator pursuant to N.J.A.C. 8:42-12.1(b), shall develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control, including, but not limited to, policies and procedures regarding the following:

1. Infection control and isolation, including Universal Precautions, in accordance with the Centers for Disease Control and Occupational Safety and Health Administration publication, “Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens,” OSHA Instruction CPL 02-02-069, November 27, [2011] **2001**, incorporated herein by reference, as amended and supplemented, which can be found on the OSHA website at

[https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=2570] <https://www.osha.gov/enforcement/directives/cpl-02-02-069-0>;

2.-7. (No change.)

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8:42-12.3 Infection control measures

(a) The agency shall follow all Category I recommendations in the current editions of the following CDC publications, which are incorporated herein by reference, as amended and supplemented:

1. (No change.)

2. Guidelines for **the** Prevention of Intravascular [Catheter Related] **Catheter-Related** Infections, 2011, which can be found on the CDC website at

[<http://www.cdc.gov/hicpac/pdf/guidelines/bsi-guidelines-2011.pdf>]

<https://www.cdc.gov/infectioncontrol/guidelines/bsi/index.html>;

3. Guideline for Prevention of Surgical Site Infection, [1999] **2017**, which can be found on the CDC website at [http://www.cdc.gov/hicpac/pdf/guidelines/SSI_1999.pdf]

<https://www.cdc.gov/infectioncontrol/guidelines/ssi/index.html>; and

4. (No change.)

8:42-12.4 Use, **care**, and sterilization of **sterilizers and** patient care items

[(a) The agency shall develop protocols for decontamination and sterile activities, including receiving, decontamination, storage, cleaning, packaging, labeling, disinfection, sterilization, transporting, and distribution of reusable items. These protocols shall ensure that:

1. Single use patient care items shall not be reused;

2. Other patient care items that are reused shall be reprocessed and reused in accordance with manufacturers' recommendations;

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3. Sterilized materials shall be marked with a manufacturer's expiration date and shall not be used subsequent to the expiration date;

4. Sterilized materials shall be packaged and labeled so as to maintain sterility and so as to permit identification of expiration dates; and

5. Expiration dates shall be assigned to sterilized materials in accordance with the following:

i. Double-wrapped muslin/paper wrappers shall be marked with an expiration date not to exceed one month following sterilization;

ii. Heat-sealed paper/plastic wrappers shall be marked with an expiration date not to exceed one year following sterilization; and

iii. Self-sealed packaging shall be marked with an expiration date not to exceed the manufacturer's recommendation.]

Equipment and supplies used for sterilization, disinfection, and decontamination purposes shall be maintained according to the policy and procedure manual, which is referenced in N.J.A.C. 8:42-3.5, and according to the manufacturers' directions for use.

Repeal: 8:42-12.5 Care and use of sterilizers

8:42-[12.6]**12.5** Regulated medical waste

(No change in text.)

8:42-[12.7]**12.6** Communicable disease alert

(a) An agency shall [develop protocols for identifying and handling dead bodies infected with a contagious, infectious, or communicable disease, in accordance] **comply** with

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CDC guidelines and [in compliance with] N.J.S.A. 26:6-8.2 **when identifying and handling dead bodies.**

(b) (No change.)

8:42-[12.8]**12.7** Orientation and in-service education

(No change in text.)

SUBCHAPTER 13. PATIENT RIGHTS

8:42-13.1 Policies and procedures

(a) The agency shall establish and implement written policies and procedures regarding the rights of patients and the implementation of these rights.

1. (No change.)

2. [These patient rights shall be made available in any language that is spoken as the primary language by more than 10 percent of the population in the agency's service area.] **An agency shall make a reasonable response to a patient's request for services, including the services of an interpreter in a language other than English, if 10 percent or more of the population in the agency's service area speaks that language.**

SUBCHAPTER 14. QUALITY ASSURANCE

8:42-14.2 Quality assurance policies and procedures

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

[(e) Reports of the activities of all agency committees or their equivalents shall be made available to the advisory group specified in N.J.A.C. 8:42-6.1(a).]

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[(f)](e) The results of the quality assurance program shall be submitted to the governing authority at least annually, and shall include at least deficiencies found and recommendations for corrections or improvements.

1. The administrator [shall], with the approval of the governing authority, **shall** implement measures to ensure that corrections or improvements are made.

Repeal: [Appendix A; Form CN-7, Application for New or Amended Acute Care Facility License]

Repeal: [Appendix B; Form CN-28, Application for Waiver.]

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