50 N.J.R. 1292(a)

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RULE ADOPTIONS

Reporter

50 N.J.R. 1292(a)

NJ - New Jersey Register > 2018 > MAY > MAY 21, 2018 > RULE ADOPTIONS > LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS

Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > OFFICE OF THE DIRECTOR

Administrative Code Citation

Adopted Amendments: N.J.A.C. 13:45B-13.2 and 13.5

Adopted New Rule: N.J.A.C. 13:45B-13.5A

Text

Definitions; Registration Renewal

Proposed: August 21, 2017, at 49 N.J.R. 2759(a).

Adopted: April 23, 2018, by the Division of Consumer Affairs, Kevin Jespersen, Acting Director.

Filed: April 25, 2018, as R.2018 d.116, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 34:8-54.

Effective Date: May 21, 2018.

Expiration Date: June 16, 2022.

Summary of Public Comments and Agency Responses:

The official comment period ended October 20, 2017. The Division received 297 comments from the following individuals:

- 1. John Buck, President, National Institute for Home Care Accreditation
- 2. William Miska, Managing Member, Health & Comfort Home Care Agency
- 3. Jackie Major, Certified Senior Advisor, Director of Operations, Right at Home
- 4. Linda Lowerre, Executive Director, On Call Health Professionals
- 5. Steven Feinman, Executive Director, Visiting Angels
- 6. Dennis Crippen, Proprietor, Synergy HomeCare of South Jersey
- 7. Nancy Von Behren
- 8. Ron Von Behren
- 9. Deborah Scott
- 10. Beverly Faner
- 11. Sandra Goldman

[page=1293] 12. Frank Impagliazzo

- 13. Davidetta Neewilly
- 14. Jessica Connolly
- 15. Georgjean Maxwell
- 16. Michele Zar
- 17. Cindy Darling
- 18. April Keller
- 19. Bonnie L. Schroter, Office Manager Synergy HomeCare
- 20. William Shea
- 21. D. Lynette Chandler-Roslansky
- 22. Kathy Cruz
- 23. Stephen Rymal, Director, Griswold Home Care of Burlington, Gloucester/Salem and Hunterdon Counties of NJ
- 24. Donna M. Riebel, Case Coordinator, Griswold Home Care
- 25. Tabitha Kern

- 26. Dave Kern
- 27. Nicole Bachich
- 28. Sue McNierney
- 29. Patrick Roslansky
- 30. Christopher Capobianco, President and Owner, Twin Folks Inc., dba Home Instead Senior Care
- 31. Andrea Sussman, MSW, Executive Director, SNS, LLC, dba Home Instead Senior Care
- 32. Julie Shea, Owner, Wes & J Company Inc., dba Home Instead Senior Care
- 33. Antonio Podia, Owner, SYNERGY HomeCare North West NJ
- 34. Paul Euell, Franchise Owner
- 35. Maria McArthur
- 36. Dennis Crippen, Proprietor, SYNERGY HomeCare
- 37. Joan Smeraski
- 38. Frances P. Sykes
- 39. Kathleen Connolly, Home Care Employee
- 40. Sharon Kolas, Home Care Employee
- 41. Joseph Bachich, Director, Griswold Home Care, Camden County, NJ
- 42. Natalie Bachich
- 43. Paul B. Freedman, ACSW, Executive Director, Jewish Family & Children's Service Monmouth County
- 44. Olivia Michalkiewicz
- 45. Ian S. Lagary
- 46. Tracy Lagary
- 47. Matthew P. Murphy, CEO, Griswold International, LLC
- 48. Lori Grifa
- 49. Joseph Mandala
- 50. Barbara Brand

- 51. Nadine Green
- 52. Doug Robertson, Licensure & Regulatory Affairs Specialist, Quality and Standards Department, Right at Home
- 53. Jeff Gertsner
- 54. Janel Tan
- 55. Joseph Maddaloni, Jr. Est., Chief Executive Officer, Home Health Association of New Jersey
- 56. Alexander Frattellone
- 57. Maria Bachich, Director, Griswold Home Care, Cape Atlantic Office
- 58. Jane Mandala
- 59. Jeremy Tan
- 60. Mark Rosenblum
- 61. Mindy Rosenblum, President, Health Force
- 62. Glenn Joseph Novak
- 63. Karly Rich, Case Manager, Griswold Home Care Middlesex & Mercer County
- 64. Astrid Bachich
- 65. Theresa La Rosa
- 66. Elisa VanBlerk
- 67. Shawnda Blanks
- 68. Joan Daisey, Caregiver
- 69. Gregg Villany
- 70. Jill Villany
- 71. Dennis A. Lelli
- 72. Karen Villany
- 73. Dorothy Bulko
- 74. Tangela Lane
- 75. Melissa Thompson
- 76. Virgile Rivet

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- 77. Chrissy Buteas, President & CEO, Home Care & Hospice Association of NJ, Inc.
- 78. Laurie Hunter
- 79. Nina Bachich
- 80. Lauren Prefer
- 81. Kyle Brooks
- 82. Patricia O'Malley, RN, MSN
- 83. Kelsey Fehlhaber
- 84. Heidi Snook
- 85. Debra Sherman
- 86. Brendan Sullivan
- 87. Susan Divadi
- 88. Sheila Sasnow
- 89. Leon Scher
- 90. Kimberly Murray
- 91. Althea T. Bormida
- 92. Russell Weiner
- 93. Brendan Watson
- 94. Annette Seborowski
- 95. Stephanie Aderente
- 96. John C. Riebel, Sr.
- 97. Robert Herman
- 98. Shane Martin
- 99. Donna M Riebel
- 100. Robert E. Maxwell
- 101. Brian Carnette
- 102. John C. Riebel, Jr.
- 103. Leslie Barnoff

- 104. Veronica Bertuicci
- 105. Teranice Adams
- 106. Kathy Cruz
- 107. Vincent Berutucci
- 108. Roxanne Lacy
- 109. Hannah Ingram
- 110. Carol Jean Lieber
- 111. Cindy Curnutte
- 112. Nicole Hitchner
- 113. Martin Rudnick
- 114. K.R. Harquail
- 115. Joan Fishbeir
- 116. Sydell Cohen
- 117. Jack Caporeia
- 118. Abby Rudnick
- 119. Avery Gardner
- 120. Madeline Murray
- 121. Maria Totoy
- 122. Helen Torrance
- 123. R.D. Bonniri
- 124. Christine Graziano-Zill
- 125. Carole Rogers
- 126. John Hackett
- 127. Lora Beaulieu
- 128. Mark Zill
- 129. Todd Zane Adams
- 130. Eugene Neuzil
- 131. Vito Puleio

- 132. Robert Forman
- 133. Anita Kudwitt
- 134. Muriel Jacobs
- 135. Paula R. Davis
- 136. Julia Harquail
- 137. Teresa Calabrese
- 138. Jill Ransome
- 139. Eleanor D. Maxwell
- 140. Donald Bundy

[page=1294] 141. John M. Riebel

- 142. Robert A. Bundy
- 143. Beth Phillips
- 144. Hazel Ransome
- 145. Rose Riebel
- 146. Kelly Burke
- 147. Michael Duncan
- 148. Sandra Duncan
- 149. George Duncan
- 150. Helen Schultz
- 151. Diane Duncan
- 152. Sheila Bandilla
- 153. Diane Bickford
- 154. Janet Cordon
- 155. Tess Schott
- 156. Carl Reich
- 157. Amanda Duncan
- 158. J. David Adunek
- 159. Sally Thurber

- 160. Alfred Thurber
- 161. Elizabeth Hardick
- 162. Joanne Burns
- 163. Joseph Schott
- 164. James Tupino
- 165. Susan Guerda
- 166. Reginald Benesch
- 167. Maryann Hatcher
- 168. Andrew Padilla
- 169. Joy Elmer
- 170. Julia Eckert, RN, BSN
- 171. Adam Eckert
- 172. Ken Potts
- 173. Jessica Kaznas
- 174. Jonathan Kaznas
- 175. Jordan Cootes
- 176. Jacque Zitarosa
- 177. Robert Zilinski
- 178. Patricia Zilinski
- 179. David M. Sykes
- 180. Milan Jakula
- 181. Randi Elman
- 182. Vincent Ryan
- 183. Dana Eisenberg
- 184. Letisha Mosley
- 185. Marie Galang
- 186. Michael Sanfilippo
- 187. Katie Mayerhoff

- 188. Marie Farrelly
- 189. Toni Goldman
- 190. Mary Ovitz
- 191. Robert Muller
- 192. Joan Lindenthal
- 193. Frances Katz
- 194. Bernie Scher
- 195. David Cohen
- 196. Furman H. Lacy
- 197. Nancy Eller
- 198. Charles Eckel
- 199. Pat Fanarian
- 200. Victoria Benesch
- 201. Noia Tupino
- 202. Chery Schott
- 203. Linda M. Riebel Weiner
- 204. Deb Exter
- 205. Louis E. Spyes, Jr.
- 206. Meryl Hallgreen
- 207. Felicia Wolf
- 208. Lorraine Baglio Wobern Smith
- 209. Domenick Bertucci
- 210. Robin Herman
- 211. Tiara Smith
- 212. Sheila Smith
- 213. Jatiya Corbin
- 214. Lisa Santiago
- 215. Asigmia Stephensa

- 216. Carla Relson
- 217. Weston Cutler
- 218. Ben Daubell
- 219. Asco Li
- 220. Mary Sheis
- 221. Marygard LaDian
- 222. Miriam Holme
- 223. Wayne Cummings
- 224. Catherin Riccolsene
- 225. Dorethea Macleroid
- 226. Tracey Dobosz
- 227. Joseph F. Dirimio Sr.
- 228. Carol Dirimio
- 229. Kristy Hoover
- 230. Max Dauler
- 231. Carl Riad
- 232. Jimbo Daulie
- 233. Robert M. Difrimio
- 234. William Cummings
- 235. John McGuaifo
- 236. Beth DiCola
- 237. Jackie Lireeleo
- 238. Mary K. Krattenmaker
- 239. Clestine Difrimio
- 240. Alix Ninoptor
- 241. Molly Vaulrie
- 242. Frances Difrimio
- 243. Kina E. Mears

- 244. Diriaume Holmes
- 245. Stella Rose
- 246. Galiut Gliny
- 247. Pauline Pagan Torres
- 248. Arlene T. Johnson
- 249. Edith Chestnut
- 250. Elsie Ailwyn
- 251. Sandra Bivin
- 252. Joan Fauner
- 253. Charles H. Green
- 254. Arlene Pollock
- 255. Jennifer Lee Angelus
- 256. Darlene Mashura
- 257. Frances Plumline
- 258. Catherine Love
- 259. Steven Walker
- 260. Penelope Tevis
- 261. Robert Hee
- 262. Regina Zuggi
- 263. Helen Mull
- 264. Dorinda A. Francis
- 265. Babe Reihl
- 266. Josephine Marella
- 267. Shanice Rose
- 268. Robert Ford
- 269. Donna H. Shultz
- 270. Dorothy A. Ryan
- 271. Cindy Jauell

- 272. Frank Fisher
- 273. Gerda Merog
- 274. Brenda Berry
- 275. Mary E. Gatto
- 276. Bernadine M. Weiss
- 277. Lenora R. Walters
- 278. Jean Wright
- 279. Vincent Nicolo
- 280. Lawrence Baruff

[page=1295] 281. Shirley Clark

- 282. Irene Green
- 283. Sherford Giels
- 284. Pat Chapman
- 285. Cherie Fisher
- 286. Joyce DeLancey
- 287. Pauline Welliers
- 288. June M. Christopher
- 289. Irene Wheldder
- 290. Ruth Karmenski
- 291. Kimberly Almuchy
- 292. Louise Terruso
- 293. Ann Barlet
- 294. Cheryl Horsey
- 295. Evelyn Santiago
- 296. Cheryl Murphine
- 297. Armazoine Nuskey
- 1. COMMENT: Four commenters support the amendments and new rule. The commenters recognize the importance and value of accreditation.

RESPONSE: The Division thanks the commenters for their support.

2. COMMENT: Nine commenters ask the Division to hold a public hearing on the amendments and new rule.

RESPONSE: N.J.S.A. 52:14B-4 requires an agency to hold a public hearing if, within 30 days of the publication of the proposed rule in the New Jersey Register, sufficient public interest is shown in having a public hearing. N.J.A.C. 13:1E-4.3 states public interest is "sufficient" if "[a]t least 50 persons submit written requests to hold a public hearing." The commenters' request for a public hearing were submitted past the 30-day deadline for public hearing requests imposed by N.J.S.A. 52:14B-4, and there were only nine requests for a public hearing. As the standard for sufficient public interest set forth in N.J.A.C. 13:1E-4.3 has not been met, the Division need not hold a public hearing. As the nature of issues with the amendments and new rule were adequately covered by the written comments, the Division does not believe it is necessary to hold a public hearing.

3. COMMENT: Many commenters contend that the amendments and new rule will increase costs for home health care. They are concerned that these increased costs will either force health care service firms to close or increase costs for those receiving services. Many contended that increasing costs would result in either patients reducing the amount of care they receive, patients turning to the "underground market" for unregulated services, or patients relying on Medicaid reimbursement to cover costs. Some of the commenters contend that forcing patients to rely on Medicaid would increase costs for New Jersey taxpayers. One commenter contends that increased costs would result in seniors leaving the State. Several commenters are concerned that increased costs would result in caregivers losing their jobs. Other commenters contend that the amendments and new rule would only benefit large health care service firms that can absorb the increased costs.

RESPONSE: The Division recognizes that the amendments and new rule will impose costs on health care service firms. In the notice of proposal for the amendments and new rule, the Division identified that there will be a significant economic impact on health care service firms. The increased costs for health care service firms may very well lead to increased costs for home health care. While costs may increase, the Division must implement the requirements of P.L. 2014, c. 29, and cannot revise these statutory requirements.

4. COMMENT: A commenter questions why a law was enacted without the input of the people who will be affected by that law.

RESPONSE: P.L. 2014, c. 29, was enacted after hearings in the Legislature, which provided an opportunity for interested parties to provide their input on the law.

5. COMMENT: Several commenters contend that the amendments and new rule provide little benefit for consumers and are focused solely on administrative functions.

RESPONSE: The Division believes that holding health care service firms to accreditation standards as required by P.L. 2014, c. 29, will ensure that all firms are meeting the same standards, which will protect the health, safety, and welfare of those who receive services from such firms.

6. COMMENT: A commenter contends that the amendments and new rule violate the Administrative Procedure Act as they do not utilize approaches that accomplish the objectives of the statute while minimizing adverse consequences to small businesses. The commenter contends that the amendments and new rule will drive up costs.

RESPONSE: The provisions in the amendments and new rule reiterate the requirements of P.L. 2014, c. 29, for accreditation and auditing. As such, they accomplish the objectives of the statute and meet the requirements of the Administrative Procedure Act.

7. COMMENT: Several commenters request that it be made clear that any entity that places or facilitates the placement of a caregiver in a home must obtain a license as a health care service firm.

RESPONSE: N.J.S.A. 34:8-45.1 dictates that any entities, except for home health care agencies, which place or arrange for the placement of personnel to provide companion services, health care, or personal care services in the home of a person with a disability or a senior citizen age 60 or older, be registered as a health care service firms.

8. COMMENT: A commenter contends that health care service firms are already regulated by the Department of Health and the Board of Nursing and that health care service firms cannot afford the additional administrative fee audits will impose while keeping their services affordable.

RESPONSE: Health care service firms are regulated by the Division of Consumer Affairs and not the Department of Health or the Board of Nursing. While both the Department of Health and the Board of Nurses may have rules that address care or the licensure of those who provide care, the rules of health care service firms is solely within the purview of the Division. Health care service firms are required to undergo audits pursuant to P.L. 2014, c. 29. As stated above, the

Division recognizes that the amendments and new rule will impose costs on health care service firms, but these costs are imposed due to the requirements of P.L. 2014, c. 29, and the Division cannot revise these statutory requirements.

9. COMMENT: Two commenters contend that the home care industry is heavily regulated and see no value in the amendments and new rule.

RESPONSE: The amendments and new rule were adopted pursuant to the dictates of P.L. 2014, c. 29, which requires health care service firms to hold accreditation and undergo audits.

10. COMMENT: Many commenters contend that the notice of proposal failed to identify the economic impact of the amendments and new rule. The commenters provided estimates for the costs of audits that ranged from \$ 15,000 to \$ 30,000. Several commenters contend that accreditation would cost \$ 7,740 a year while many others contend that this cost would be \$ 175,000. The commenters contend that the failure of the Economic Impact statement to identify these costs means that the notice of proposal does not comply with the Administrative Procedure Act and cannot be adopted.

RESPONSE: The Economic Impact statement recognized that the amendments and new rule will have a significant economic impact. The Division does not dispute the costs identified by the commenters, but points out that the wide disparity between those costs indicates that there is no consensus as to what they will be. The recognition in the notice of proposal that such costs would be significant satisfies the requirement that the Division identify possible costs as required under the Administrative Procedure Act.

11. COMMENT: A commenter points out that the regulatory flexibility analysis stated the amendments and new rules impose no recordkeeping requirements. The commenter contends that this is incorrect as health care service firms will need to maintain records to comply with accreditation and auditing requirements.

RESPONSE: The regulatory flexibility analysis accurately stated that the amendments and new rule do not impose recordkeeping requirements. Health care service firms may be required to keep records by accrediting entities or to meet auditing requirements, but these recordkeeping requirements are not directly imposed by the amendments and new rule.

[page=1296] 12. COMMENT: A commenter supports the new definition for "companion services" in N.J.A.C. 13:45B-13.2.

RESPONSE: The Division thanks the commenter for her support.

COMMENT: Three commenters recommend that the definition "companion services" in N.J.A.C. 13:45B-13.2 be amended to read: "Companion services basic supervision, household are socialization services, which do not include companionship, and assistance with Activities of Daily Living (ADL). These tasks and incidental touching would include helping with homemaking, shopping, food and meal preparation, housekeeping, laundry, transportation, and companionship/socialization in the individual's home. This 'incidental touching' would include normal physical contact or 'polite touching' such as holding the client's hand while getting in and out of the car, assisting with buttoning or fastening clothing, queuing touch, helping the client grasp a phone or other device, or touching that is needed to engage in games or other social activities. These tasks and physical contact are not intended for treatment, therapeutic, restorative or curative reasons, help with personal care and ADLs, do not require nursing judgment, and is solely in support of homemaking, companionship or IADL activities."

RESPONSE: The definition of "companion services" is taken from P.L. 2014, c. 29 and the Division declines to change the definition upon adoption, as it is in keeping with the statute.

14. COMENT: A commenter opposes regulating companion services differently than personal care services. The commenter is concerned that businesses misclassified as registries, placement agencies, or Internet providers will be able to offer companion services by sending untrained individuals to provide care in the home.

RESPONSE: Pursuant to P.L. 2014, c. 29, any and all entities that provide companion services must register as health care service firms.

15. COMMENT: A commenter points out that the definition of "companion services" in N.J.A.C. 13:45B-13.2 references "household chores." The commenter contends that Medicaid does not cover household chores and that, therefore, firms providing companion services should not be required to comply with Medicaid requirements.

RESPONSE: The definition of "companion services" in P.L. 2014, c. 29, includes the reference to "household chores," stating that such chores may be companion services. The definition in N.J.A.C. 13:45B-13.2 does not require firms to comply with Medicaid reimbursement requirements; entities that provide companion services are required by P.L. 2014, c. 29, to register as health care service firms.

16. COMMENT: A commenter contends that Division employees have told him that companions will now be required to become certified homemaker-home health aides.

RESPONSE: The commenter was misinformed. Individuals who provide companion services will not be required to become certified homemaker-home health aides.

17. COMMENT: A commenter contends that there are Internet-based entities that permit consumers to directly connect with companions to provide services. The commenter contends that this defies New Jersey law. The commenter points out that all entities providing companion services must register as health care service firms. The commenter asks how the Division will ensure that such entities are complying with New Jersey law.

RESPONSE: The Division will investigate any allegations of entities that are violating the provisions of P.L. 2014, c. 29.

18. COMMENT: A commenter opposes regulations that impose overtime pay after a companion works more than 40 hours in a week.

RESPONSE: There are no Division rules that impose overtime pay for companions.

19. COMMENT: A commenter contends that companions should be able to work independently. Another contends that the regulations should not require companions and babysitters to work for licensed agencies.

RESPONSE: P.L. 2014, c. 29 dictates that any entity that provides companion services register as a health care service firm. The law does not prohibit companions from working independently or require companions or babysitters to work for a health care service firm.

20. COMMENT: A commenter contends that Medicaid does not cover companion services and that health care service firms that provide companion services should not have to meet Federal Medicaid Program requirements.

RESPONSE: P.L. 2014, c. 29 requires all health care service firms to obtain accreditation, regardless of whether those firms limit the services they offer to companion services.

21. COMMENT: A commenter requests that the Division post the name, address, registration number, phone number, and accreditation status of every health care service firm on its website.

RESPONSE: The Division website lists the name, address, phone number, and registration expiration date of every health care service firm. The Division believes that this provides adequate information for consumers to identify the entities registered as health care service firms in New Jersey and that it is not necessary to list the additional information suggested by the commenter.

22. COMMENT: A commenter opposes requiring health care service firms to obtain accreditation as it will impose costs on firms. The commenter estimates that the annual cost of accreditation is \$ 35,000. These costs will make homecare services unaffordable.

RESPONSE: P.L. 2014, c. 29 dictates that all health care service firms obtain accreditation.

23. COMMENT: A commenter contends that accrediting entities require mandatory in-service training that would cost health care service firms \$ 50,000 per year for instructors, facilities, training materials, and certified homemaker-home health aide salaries.

RESPONSE: Regardless of the costs imposed by accrediting entities, P.L. 2014, c. 29 requires every health care service firm to obtain accreditation.

24. COMMENT: A commenter contends that requiring health care service firms to obtain accreditation is a financial hardship. The commenter recommends that the Division audit health care service firms and increase licensing fees, so that the Division and the Board of Nursing can generate more income. The commenter recommends that the Division not adopt the accreditation requirement or, if the regulation is adopted, that it not apply until 2019.

RESPONSE: P.L. 2014, c. 29 requires health care service firms to obtain accreditation. The Division cannot ignore this statutory requirement as the commenter recommends. The Division points out that registration fees are imposed to cover the cost of regulating health care service firms, not to generate income for the Division or the Board of Nursing. Pursuant to N.J.A.C. 13:45B-13.5, accreditation requirements will not be effective until one year from the adoption of the amendments and new rule.

25. COMMENT: A commenter is concerned that health care service firms with little experience could become accredited and begin to accept Medicaid or other State or Federal funds. The commenter recommends that the Division institute a conditional accreditation requirement that would allow newly licensed health care service firms to operate for a period of time, so that firms could accumulate an operating history. This would provide accrediting bodies with the information they need to assess whether full accreditation for these firms is appropriate.

RESPONSE: The Division has no authority over accrediting entities or their decisions as to which health care service firms should be accredited. P.L. 2014, c. 29 does not permit the Division to institute the conditional accreditation recommended by the commenter.

26. COMMENT: A commenter contends that many health care service firms are private pay firms and do not receive Medicaid funding. The commenter contends that such firms should not be held to the standards of the Federal Medicaid Program.

RESPONSE: P.L. 2014, c. 29 requires all health care service firms to obtain accreditation. The law does not make a distinction between health care service firms that receive Medicaid funding and those that do not.

27. COMMENT: A commenter contends that most health care service firms do not provide skilled nursing services and are not providers for Medicaid or other State-funded programs that reimburse agencies. The commenter also contends that accreditation standards are related to skilled care and State-funded programs. This means that accreditation requirements often have nothing to do with the practices of health care service firms.

[page=1297] RESPONSE: P.L. 2014, c. 29 requires all health care service firms to obtain accreditation regardless of the services they provide or the sources of reimbursement.

28. COMMENT: A large number of commenters contend that requiring health care service firms that provide non-medical and non-skilled home care to meet Medicare accreditation standards serves no useful business purpose and increases costs for consumers.

RESPONSE: P.L 2014, c. 29 requires all health care service firms to obtain accreditation, regardless of the services they provide.

29. COMMENT: A number of commenters contend that Federal and Medicare standards make a distinction between skilled care and non-skilled care, and between medical care and non-medical care. The commenters contend that New Jersey laws and regulations must do the same. The commenters are concerned that the public will be confused if health care service firms that provide non-medical and non-skilled home care are required to comply with Medicare accreditation standards. The commenters believe that the public will be led to believe that non-medical care and non-skilled care will be covered by Medicare or health insurance.

RESPONSE: P.L. 2014, c. 29 does not make a distinction between skilled care and non-skilled care or between medical care and non-medical care. The law requires that every health care service firm that places or arranges for the placement of personnel to provide companion, healthcare, or personal care services must obtain accreditation.

30. COMMENT: A commenter contends that requiring agencies that provide non-medical care to obtain accreditation is an intrusion into the

private life of senior citizens. The amendments and new rule will eliminate the ability of elderly citizens to make their own decisions.

RESPONSE: P.L. 2014, c. 29 requires all health care service firms to obtain accreditation.

31. COMMENT: A commenter asks how often health care service firms will be required to renew accreditation.

RESPONSE: Accreditation renewal periods are established by the accrediting entities recognized by the Department of Human Services. Health care service firms will be required to hold accreditation in order to renew annual registration with the Division.

32. COMMENT: A commenter asks how the Division will deal with health care service firms that are unable to obtain accreditation. The commenter recommends that such firms be prohibited from providing services to consumers.

RESPONSE: Pursuant to P.L. 2014, c. 29, a health care service firm cannot renew registration if it is not accredited. Such a health care service firm would need to cease providing services until it again obtains accreditation.

33. COMMENT: A commenter recommends that, if a health care service firm is not permitted to renew registration, the Division prevent the owner of the firm, and his or her relatives, from opening a new health care service firm under a new firm name.

RESPONSE: The Division does not have the authority to prohibit an owner or his or her relatives from opening a new health care service firm as the commenter recommends once it meets requisite accreditation standards.

34. COMMENT: A commenter points out that health care service firm registration is renewed annually and that accreditation is renewed on a rolling basis depending on a firm's initial accreditation date. The commenter points out that accreditation could lapse between registration renewals. The commenter also points out that audits will be due on the same date for all health care service firms. The commenter asks how the Division will track accreditation and submission of audits to ensure that all firms comply with these requirements. The commenter recommends that health care service firms be required to submit proof of accreditation renewal within 10 days of renewing accreditation.

RESPONSE: P.L. 2014, c. 29 requires health care service firms to obtain accreditation as a condition of being registered within 12 months of registration. In order to renew registration, health care service firms

will be required to submit evidence of accreditation. Health care service firms are required to notify the Division within 10 days if they lose accreditation. The Division believes that these requirements are sufficient to address accreditation status for health care service firms.

35. COMMENT: A commenter contends that the term "homemaker agency" used in N.J.A.C. 13:45B-13.5(b) is outdated and that the term should be "home health agency, hospice agency, and health care service firm." The commenter contends that N.J.A.C. 10:60 is being amended to remove the term "homemaker."

RESPONSE: The term "homemaker agency" is the term used in P.L. 2014, c. 29, and it would be inappropriate to change that term as the commenter recommends.

36. COMMENT: A commenter contends that the National Institute for Home Care Accreditation has entered into a Memorandum of Agreement with the Division of Consumers Affairs and the Division of Medical Assistance and Health Services to accredit health care service firms in New Jersey. The commenter also contends the Department of Human Services has amended N.J.A.C. 10:60-1.2, so that it no longer refers to specific accrediting bodies. The commenter believes that referencing N.J.A.C. 10:60-1.2 in N.J.A.C. 13:45B-13.5A could be misleading. The commenter recommends that the Division remove reference to N.J.A.C. 10:60-1.2 from N.J.A.C. 13:45B-13.5A, so that the regulation would require that accrediting bodies be recognized by the Commissioner of Human Services and enter into memorandums of understanding with the Division of Consumer Affairs.

RESPONSE: N.J.A.C. 10:60-1.2 lists accrediting bodies and the Division is not aware of any rulemakings that would change this rule. The Division recognizes that the Department of Human Services recognizes the National Institute for Home Care Accreditation as an accrediting body without mention in N.J.A.C. 10:60-1.2, which is why the Division has entered into a memorandum with the National Institute for Home Care Accreditation and recognizes that health care service firms that hold this accreditation will satisfy the requirements of N.J.A.C. 13:45B-13.5. P.L. 2014, c. 29 cites to N.J.A.C. 10:60-1.2 and it would be inappropriate for the Division to remove reference to this rule in N.J.A.C. 13:45B-13.5.

37. COMMENT: A commenter recommends that N.J.A.C. 13:45B-13.5(d) be amended to require that notification to the Division be in writing.

RESPONSE: The Division agrees that notification of change in accreditation status should be in writing and has changed N.J.A.C. 13:45B-13.5(d) upon adoption to require that health care service firms

notify the Division in writing. This requirement does not impose a burdensome requirement on health care service firms and helps to ensure that the Division and health care service firms have documentary proof that notice was provided.

38. COMMENT: A commenter contends that requiring accreditation and an audit is redundant. Health care service firms should be required to obtain accreditation or submit an audit, but not both.

RESPONSE: P.L. 2014, c. 29 requires both accreditation and an audit. The Division must comply with the requirements of the statute.

39. COMMENT: A commenter contends that there is conflict between Division standards, accrediting standards, and the standards an audit would address. The commenter identified conflict with required calls by nurses, with standards requiring either that a nurse make these calls or allowing a nurse designee to make them, whether the required 60-day visit to a home replace a nurse phone call if they are made in the same month, and whether unlicensed individuals will still be permitted to provide home-base services. The commenter asks how these conflicts will be resolved.

RESPONSE: The Division does not believe that the commenter has identified conflicts that necessitate changes to its rules. It may be true that some accrediting bodies do not require that nurses make telephone calls or allow home visits to replace phone calls. The fact that accrediting bodies do not require the same standards as the Division is not a conflict. Health care service firms are required to meet the standards imposed by the Division for registration and the Division does not believe that accrediting bodies will deny accreditation because a health care service firm is meeting a more stringent standard than the ones identified by the accrediting bodies.

40. COMMENT: A commenter contends that no other industry regulated by the Division of Consumer Affairs has to be accredited or undergo audits. The commenter contends that most health care service [page=1298] firms are part of a franchise and that franchisors provide sufficient oversight of health care service firms.

RESPONSE: P.L. 2014, c. 29 requires health care service firms to obtain accreditation and to undergo audits regardless of oversight imposed by franchisors.

41. COMMENT: A commenter recommends that the Director hire more inspectors and increase inspections as opposed to requiring accreditation and audits.

RESPONSE: P.L. 2014, c. 29 requires accreditation and audits and the Division must comply with these statutory requirements.

42. COMMENT: A commenter contends that many health care service firms that have committed fraud were accredited and asks how accreditation will protect consumers.

RESPONSE: Accreditation is imposed by P.L. 2014, c. 29. Allegations of fraud will be investigated by the Division and could result in revocation of registration.

43. COMMENT: A commenter points out that the financial auditing requirements in the new rules do not provide for civil or criminal penalties and do not provide guidance for the purpose of the audit. The commenter contrasts this with Federal Medicaid Program audits that have a clear purpose and impose civil and criminal penalties for noncompliance.

RESPONSE: Auditing requirements are imposed by P.L. 2014, c. 29. Failure to comply with this statutory requirement would affect a health care service firm's registration.

44. COMMENT: A commenter contends that the amendments and new rule require health care service firms to undergo three audits, a biannual audit by the Division of Consumer Affairs, a survey from an accrediting body, and an audit every three years. All of these audits address compliance with laws and regulations. The commenter contends that this is over regulation and a waste of time and money.

RESPONSE: The commenter is incorrect that there is an existing biannual audit by the Division. Accreditation and auditing requirements are imposed by P.L. 2014, c. 29.

45. COMMENT: A commenter asks how the Division will evaluate audit results and address compliance irregularities.

RESPONSE: The Division will review audits to determine if they identify fiscal irregularities or failure to comply with statutory and regulatory requirements.

46. COMMENT: A commenter asks why an audit performed by a certified public accountant is required when a certified public accountant would be unfamiliar with regulations on health care service firms. The commenter contends that accreditation is required to ensure that health care service firms are complying with regulations.

RESPONSE: P.L. 2014, c. 29 requires an audit performed by a certified public accountant.

47. COMMENT: Two commenters ask if the audit submitted every three years will have to address the previous three years of operation by a health care service firm or only the last year. One of the commenters recommends that the audit requirement and registration renewal requirement be scheduled to coincide.

RESPONSE: Audits will need to cover the previous three years. N.J.A.C. 13:45B-13.5A(a) requires an audit to be submitted with the renewal of registration.

48. COMMENT: A commenter contends that an accounting firm needs an audit guide, compliance guidelines, or a prescribed form in order to perform an audit. The commenter asks if the Division will develop these documents.

RESPONSE: P.L. 2014, c. 29 requires an audit to comply with the Statement on Auditing Standards issued by the American Institute of Certified Public Accountants.

49. COMMENT: Several commenters contend that, for private pay health care service firms, accreditation provides a standard for financial oversight and an audit is not necessary. The commenters contend that no other industries require private companies to have financial records audited unless public money is involved. One commenter contends that requiring health care service firms that do not receive Medicaid funding to comply with auditing requirements would violate the privacy rights of such agencies. The commenters recommend that audits only be required when a health care service firm accepts Medicaid or other State funding.

RESPONSE: P.L. 2014, c. 29 requires all health care service firms, regardless of how they are reimbursed for services, to submit an audit.

50. COMMENT: A commenter contends that audits could cost firms \$ 10,000 to \$ 40,000. The commenter is concerned that these costs could force some health care service firms out of business and raise costs for home care. The commenter recommends that the audit requirement only apply to health care service firms that receive more than \$ 500,000 in public funds.

RESPONSE: The Division recognizes that auditing will impose significant costs on health care service firms. P.L. 2014, c. 29 requires all health care service firms to submit audits, regardless of whether they are reimbursed with public funds.

51. COMMENT: A commenter points to American Institute of Certified Public Accountants statements that say that audits address "an entity's financial position, results of operations, and cash flow." The

commenter asks what purpose is served requiring such information from health care service firms which do not receive Medicaid funding.

RESPONSE: P.L. 2014, c. 29 requires all health care service firms to submit audits.

52. COMMENT: Many commenters contend that requiring health care service firms that provide non-medical and non-skilled home care to undergo audits serves no useful business purpose. The commenters point out that audits are expensive and will not insure compliance with statutory or regulatory requirements.

RESPONSE: P.L. 2014, c. 29 requires all health care service firms to submit audits.

53. COMMENT: Three commenters contend that submitting the audit required by N.J.A.C. 13:45B-13.5A will be very costly and is unreasonable. One of the commenter recommends that the Division amend N.J.A.C. 13:45B-13.5A to require the submission of financial statements and tax returns as opposed to an audit.

RESPONSE: P.L. 2014, c. 29 requires all health care service firms to submit audits. The Division could not allow firms to substitute financial statements and tax returns for the statutorily mandated audits.

54. COMMENT: A commenter recommends that N.J.A.C. 13:45B-13.5A(b) be amended to define the information that must be included in an audit of compliance with laws and rules governing health care service firms. The commenter recommends that the Division accept an accreditation entity's report on compliance to satisfy this auditing requirement.

RESPONSE: P.L. 2014, c. 29 requires an audit to comply with the Statements on Auditing Standards issued by the American Institute of Certified Public Accountants. The Division could not accept accreditation reports as a substitute for the statutorily mandated audit.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted amendments or new rule.

Regulations

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 13. HEALTH CARE SERVICE FIRMS

13:45B-13.2 Definitions

As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Companion services" means non-medical, basic supervision and socialization services that do not include assistance with activities of daily living and that are provided in an individual's home. "Companion services" may include the performance of household chores.

"Health care service firm" means any person who operates a firm that employs individuals directly or indirectly for the purpose of assigning the employed individuals to provide health care, personal care, or companion services either directly in the home or at a care-giving facility, and who, in addition to paying wages or salaries to the employed individuals while on assignment, pays or is required to pay Federal social security taxes and State and Federal unemployment insurance; carries or is required to carry worker's compensation [page=1299] insurance; and sustains responsibility for the action of the employed individuals while they render health care services.

. . .

13:45B-13.5 Registration renewal

- (a) (No change.)
- (b) Commencing with the first registration renewal after *[(12 months after the effective date of this amendment)]* *May 21, 2019*, and for every succeeding renewal, a health care service firm shall submit evidence that it is accredited by an accrediting body recognized by the Department of Human Services as an accrediting body for homemaker agencies participating in the Medicaid program, as set forth in N.J.A.C. 10:60-1.2.
- (c) Notwithstanding (b) above, a health care service firm that obtained its initial registration less than 12 months prior to renewal of registration shall not be required to submit evidence of accreditation when renewing registration for the first time.
- (d) If a health care service firm is no longer accredited as required under (b) above, either because of failure to renew accreditation or through actions taken by the accrediting body, the health care service

firm shall notify the Division *in writing* within 10 days of losing accreditation.

13:45B-13.5A Audits

- (a) Commencing *[(three years from the effective date of this rule)]*
 May 21, 2021, and every third year from that date, a health care service firm shall submit an audit to the Division that complies with the requirements of (b) below as part of the renewal of registration required under N.J.A.C. 13:45B-13.5.
- (b) The audit required by (a) above shall:
- 1. Be conducted by a certified public accountant licensed in New Jersey and shall encompass an examination of the health care service firm's financial records, financial statements, the general management of its operations, and its internal control systems;
- 2. Include an audit report with an unqualified opinion and shall be accompanied by any management letters prepared by the auditor in connection with the audit commenting on the internal controls or management practices of the health care service firm; and
- 3. Be divided into two components of which:
- i. One is a compliance component that evaluates the health care service firm's compliance with laws and rules governing health care service firms; and
- ii. One is a financial component that includes an audit of the financial statements and accompanying notes, as specified in the Statements on Auditing Standards issued by the American Institute of Certified Public Accountants.

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