

**TITLE 7           HEALTH**  
**CHAPTER 8       RESIDENTIAL HEALTH FACILITIES**  
**PART 2           REQUIREMENTS FOR ADULT RESIDENTIAL CARE FACILITIES**

**7.8.2.1           ISSUING AGENCY:** New Mexico Department of Health, Public Health Division, Health Facility Licensing and Certification Bureau.  
[4-7-97; 7.8.2.1 NMAC - Rn, 7 NMAC 8.2.1, 8-31-00]

**7.8.2.2           SCOPE:** Provisions for Part 2 of Chapter 8 apply to adult residential care facilities, any facility which is operated for the maintenance or care of two (2) or more adults who need or desire assistance with one (1) or more activities of daily living. These regulations do not apply to the residence of an individual who cares for or maintains one (1) or two (2) relatives.

**A.           EXCEPTION:** Residences with four (4) or fewer individuals providing needed habilitation and programmatic services accredited by an accrediting agency approved by the Developmental Disabilities Division, or a facility or agency which has applied for such accreditation, and which facility or agency has a contract with the Developmental Disabilities Division to provide such services.

**B.           NOTE:** Any program which does not meet the criteria above, or which is denied accreditation after application for accreditation, or which loses its accreditation, or which loses its contract with the Developmental Disabilities Division, will be subject to meeting the provisions of these regulations.  
[7-1-64, 9-15-70, 5-26-72, 7-19-74, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.2 NMAC - Rn, 7 NMAC 8.2.2, 8-31-00]

**7.8.2.3           STATUTORY AUTHORITY:** The regulations set forth herein have been promulgated by the Secretary of the New Mexico Department of Health, by authority of Section 9-7-6 (E) of the Department of Health Act, NMSA 1978, as amended; and Sections 24-1-2(A), 24-1-3(I) and 24-1-5 of the Public Health Act, NMSA 1978, as amended.  
[7-1-64, 9-15-70, 5-26-72, 7-19-74, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.3 NMAC - Rn, 7 NMAC 8.2.3, 8-31-00]

**7.8.2.4           DURATION:** Permanent.  
[4-7-97; 7.8.2.4 NMAC - Rn, 7 NMAC 8.2.4, 8-31-00]

**7.8.2.5           EFFECTIVE DATE:** April 7, 1997 unless a later date is cited at the end of a Section or Paragraph.  
[4-7-97; 7.8.2.5 NMAC - Rn, 7 NMAC 8.2.5, 8-31-00]

**7.8.2.6           OBJECTIVE:**

**A.** Establish standards to regulate adult residential care facilities in order to promote the highest practicable health, safety, and welfare of individuals residing in such facilities.

**B.** Encourage the establishment and maintenance of adult residential care facilities that provide a humane, safe, and homelike environment for adults who need personal care services and supervision, but who do not need acute care, continuous nursing care, or care in an ICF/MR (intermediate care facility for mentally retarded) facility.

**C.** Establish standards for adult residential care facilities in providing the appropriate level of care for residents, and utilizing available supportive services in the community to meet the needs of residents.

**D.** Monitor adult residential care facility compliance with these regulations through established protocols to identify circumstances which could be harmful or dangerous to the health, safety, or welfare of the resident.

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.6 NMAC - Rn, 7 NMAC 8.2.6, 8-31-00]

**7.8.2.7           DEFINITIONS:** For purposes of these regulations, the following shall apply:

**A.           "ABUSE"** means any act or failure to act performed intentionally, knowingly or recklessly that causes or is likely to cause harm to a resident, including but not limited to:

(1) Physical contact that harms or is likely to harm a resident of a care facility.

(2) Inappropriate use of a physical restraint, isolation, or medication that harms or is likely to harm a resident.

(3) Inappropriate use of a physical or chemical restraint, medication or isolation as Punishment or in conflict with a physician's order.

(4) Medically inappropriate conduct that causes or is likely to cause physical harm to a

resident.

(5) Medically inappropriate conduct that causes or is likely to cause great psychological harm to a resident.

(6) An unlawful act, a threat or menacing conduct directed toward a resident that results and might reasonably be expected to result in fear or emotional or mental distress to a resident.

**B. "ACTIVITIES OF DAILY LIVING"** means those personal functional activities required by an individual for continued well-being, which include: eating, dressing, oral hygiene, bathing, grooming, mobility, and toileting.

**C. "ADMINISTRATOR/DIRECTOR"** means the individual who is in charge of the day-to-day operation of the facility and who has the responsibility to ensure facility compliance with these regulations.

**D. "ADULT"** means a person who has a chronological age of eighteen (18) years or older.

**E. "ADVANCE DIRECTIVES"** means the written instructions given by the resident regarding personal wishes for the care to be given at the time of the resident's inability to personally make and communicate a decision.

**F. "AGENT"** means the resident's guardian, representative, surrogate, or other legally appointed decision maker as applicable to individual resident needs.

**G. "AMBULATORY"** means a person who is able to walk independently, without mechanical devices.

**H. "ASSISTANCE"** means prompting, encouragement, or hands-on help with the activities of daily living by another person.

**I. "BED HOLD"** means the facility's policy for retaining a bed or room for a resident during the time that the resident is temporarily absent from the facility. The policy must include time frames for the bed hold, acceptable conditions for the bed hold and associated charges, if any.

**J. "CAPACITY"** means the maximum number of persons that a facility has been licensed to accommodate.

**K. "INDIVIDUAL SERVICE PLAN"** means the statement of the individualized program or services to be provided for each resident. The individual service plan is known variously as an individual habilitation plan, treatment plan, or care plan, depending on the type of residents in the facility.

**L. "CONCERNED PERSON"** means an individual or entity identified by a resident to be notified in the event of an emergency or significant change in the residents condition.

**M. "CONTINUOUS NURSING CARE"** means services, which are provided to a resident whose condition requires continued monitoring of vital signs, physical and cognitive status on a daily basis, or to people with long-term illnesses by nurses or other health care professionals or by personnel under the direction and supervision of health care professionals, as ordered by a physician. Such services shall be medically complex enough to require ongoing assessment, planning, intervention by a nurse for safe and effective performance on a daily basis and consistent with the nature and the severity of the resident's condition.

**N. "DECISION-MAKING CAPACITY"** means the ability of the resident to understand and appreciate the nature and consequences of a proposed decision, including the benefits and risks of, and alternatives to, any such proposed decision, and to reach an informed decision.

**O. "DEPARTMENT"** means the New Mexico Department of Health.

**P. "DESIGNEE"** means an individual appointed to assume responsibility for specific duties assigned.

**Q. "DIRECT CARE STAFF"** means paid supervisors, assistants, aides, or other employees who work directly with the residents in their daily living activities at the facility. Volunteers are not considered direct care staff.

**R. "EXPLOITATION"** of a resident consists of the act or process, performed intentionally, knowingly, or recklessly, of using any patient/client/residents money or property, for another persons profit, advantage or benefit. Exploitation includes, but is not limited to:

(1) Manipulating the patient/client resident by whatever mechanism to give money or property to any agency staff or management member.

(2) Misappropriation or misuse of monies belonging to a patient/client/resident or the unauthorized sale, transfer or use of a patient/client/residents property.

(3) Loans of any kind from a patient/client/resident to facility staff, operator or families of staff or operator.

(4) Accepting monetary or other gifts from a patient/client/resident or their family with a value in excess of \$25 or gifts which exceed a total value of \$300 in one year. All gifts received by facility operators, their families or staff of the facility must be documented and acknowledged by the person giving the gift and the recipient. Exception: Testamentary gifts, such as wills, are not, per se, considered financial exploitation.

**S. "FACILITY"** means a Residential Care Facility.

**T. "GENERAL SUPERVISION"** means the availability of direct care staff, on a twenty-four (24) hour

basis, in the facility, to respond to the needs of the residents, and includes staff knowledge of the whereabouts of the residents, and periodic checks on the residents, as appropriate.

**U. "HEALTH CARE PROFESSIONAL"** means a New Mexico licensed health care professional such as Physician, Chiropractor, Pharmacist, Nurse Practitioner, Physician Assistant, Registered Nurse, Licensed Practical Nurse, Physical Therapist, Speech Therapist, Occupational Therapist, Psychologist, Social Worker, Dietitian, or Dentist.

**V. "INDEPENDENT"** means a resident who can perform activities of daily living without assistance.

**W. "LICENSE"** means the document issued by the Licensing Authority which authorizes the operation of a facility.

**X. "LICENSEE"** means the person who, or organization which, has an ownership, leasehold or similar interest in the facility and in whose name a license for a residential care facility has been issued and who is legally responsible for compliance with these regulations.

**Y. "LICENSING AUTHORITY"** means the New Mexico Department of Health.

**Z. "MATERNITY SHELTER"** means an adult residential care facility which provides on a continuing twenty-four (24) hour basis personal services exclusively for expectant mothers and/or normal post-partum mothers and their newborn infants.

**AA. "MOBILE NON-AMBULATORY"** means unable to ambulate without assistance, but able to move from place to place with the use of a mechanical device such as a walker, cane, crutches, or a wheelchair, must be capable of independent bed-to-chair transfer.

**BB. "NEGLECT"** means, subject to the resident's right to refuse treatment and subject to the caregiver's right to exercise sound medical discretion, the grossly negligent failure:

(1) To provide any treatment, service, care, medication or item that is necessary to maintain the health or safety of a resident; or

(2) To take any reasonable precaution that is necessary to prevent damage to the health or safety of a resident; or

(3) To carry out a duty to supervise properly or control the provision of any treatment, care, goods, service or medication necessary to maintain the health or safety of a resident.

**CC. "NEW FACILITY"** means any building (new or existing) not previously licensed as an adult residential care facility.

**DD. "NON-MOBILE"** means a person who is capable of achieving mobility only with the assistance of another person or persons.

**EE. "POLICY"** means a statement of principle that guides and determines present and future decisions and actions.

**FF. "PROCEDURE"** means the action(s) that must be taken in order to implement a policy.

**GG. "PROGRAMMATIC SERVICES"** means services provided to residents in order to meet behavioral and educational needs.

**HH. "PROGRAM NARRATIVE"** is a written statement identifying the primary population to be served and the services that will be provided to meet these needs.

**II. "RELATIVE"** means husband, wife, mother, father, son, daughter, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, grandfather, grandmother, half-brother or half-sister.

**JJ. "RESIDENT"** means any individual, excluding relatives of licensee, residing in a residential care facility receiving room, board, and personal care.

**KK. "RESIDENT ASSESSMENT FORM"** means a written form, reviewed and approved by the Licensing Authority, that documents a resident's functional capacities and limitations.

**LL. "RESIDENTIAL CARE FACILITY"** means any congregate residence, maternity shelter, or building for adults, which provides and whose primary purpose is to provide to the residents, within the facility, either directly or through contract services, programmatic services, room, board, assistance with the activities of daily living, in accordance with the program narrative, and/or general supervision to two (2) or more adults who have difficulty living independently or managing their own affairs.

**MM. "RESPITE"** means short term care (no more than thirty (30) consecutive days) for individuals in order that the caregiver is afforded an opportunity for rest.

**NN. "RESTRAINTS"** include both chemical and physical restraints:

**OO. "CHEMICAL RESTRAINT"** means any psychopharmacological drug administered for discipline or convenience and not required to treat the resident's medical symptoms.

**PP. "DISCIPLINE"** means any action taken by the facility for the purpose of punishing or penalizing

residents.

**QQ.** "CONVENIENCE" means any action taken by the facility to control resident behavior or maintain residents with a lesser amount of effort by the facility and not in the resident's best interest.

**RR.** "PHYSICAL RESTRAINT" means any manual method or physical or mechanical device, material or equipment attached to or adjacent to the resident's body that the resident cannot easily remove which restricts freedom of movement or normal access to his or her body.

**SS.** "ROOM AND BOARD" means living space, meals, and snacks appropriate to meet the needs of the residents.

**TT.** "SANCTIONS" means a measure imposed on a licensee for a violation(s) of applicable licensing regulations other than license revocation, suspension, or denial of renewal of license as provided for by the Health Facility Sanctions and Civil Monetary Penalties, New Mexico Department of Health, 7 NMAC 1.8 (10-31-96).

**UU.** "SIGNIFICANT CHANGE" means a major change (improvement or decline) in the resident's status that is not self-limiting, that impacts on one or more areas of the resident's clinical status, and requires review and/or revision of the individual service plan.

**VV.** "STANDARD OF COMPLIANCE" means the degree of compliance required throughout these regulations, which is designated by the use of the words "shall" or "must" or "may" or "should". "Shall" or "must" means mandatory. "May" means permissive. "Should" means recommended, strongly advised, or desirable.

**WW.** "SURROGATE DECISION MAKER" means the resident's agent, guardian or surrogate as defined in the Uniform Health-Care Decisions Act, 24-7A-1 through 24-7A-18, NMSA 1978 or other legally appointed decision maker.

**XX.** "SURVEY" means a monitoring visit into a facility; an examination of the facility premises and records, and interview of residents and staff by the Licensing Authority.

**YY.** "THERAPEUTIC DIET" means a diet ordered by a physician to manage a health condition.

**ZZ.** "VOLUNTEERS" means unpaid individuals who provide care or services.

**AAA.** "VARIANCE" means an act on the part of the Licensing Authority to refrain for good cause from pressing or enforcing compliance with a portion or portions of these regulations for an unspecified period of time.

**BBB.** "WAIVE/WAIVER" means to refrain from pressing or enforcing compliance with a portion or portions of these regulations for a limited period of time provided the health, safety, or welfare of the residents and staff are not in danger.

[7-19-74, 7-1-64, 9-15-70, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.7 NMAC - Rn, 7 NMAC 8.2.7, 8-31-00]

#### **7.8.2.8 APPLICATION FOR LICENSURE:**

**A. INITIAL APPLICATION:** Prior to beginning operation, change of licensee, or change of location, the following must be submitted for each facility location to the Licensing Authority for approval:

(1) Health Facility License Application and Fee.

(2) Program Narrative must identify or expand upon the primary population and special needs and services as identified on the application form and must identify at a minimum:

(a) A description of the characteristics of the population to be served.

(b) A description of the services and care to be provided to residents.

(c) A description of anticipated professional service needs.

(3) Resident assessment form that will be utilized by the facility.

(4) Floor plans shall be of a professional quality, 1/4" to 1 foot scale, and accurately reflect the following information: **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to submit floor plans.**

(a) Label room use and occupancy of all rooms.

(b) Provide dimensions of rooms, windows and doors, type of window and doors, and indicate the swing of the door.

(c) Indicate location of toilets, sinks, tubs, showers.

(d) Any floor level changes within the building.

(e) A wall section with all exterior and interior finishes labeled.

(f) Site plan locating the building with dimensions to other structures and property lines.

(g) Indication of new, existing, addition or remodeled construction.

(5) Building and zoning approval. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to submit building or zoning approvals.**

(6) Fire authority approval. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to submit fire authority approvals or inspections.**

(7) A permit or letter of exemption from the Environmental Improvement Division for the kitchen facility. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to submit Environmental Improvement kitchen approvals or inspections.**

(8) Tuberculosis test results for facility staff and family living in the facility on first employment and after exposure to an active case of infectious tuberculosis.

(a) Tuberculosis test shall have been obtained not more than 90 days prior to date of first employment at the facility.

(b) TB tests will be required in accordance with the Public Health Act, 24-1-3 and 24-1-2NMSA 1978.

(9) The Licensing Authority shall not issue a new license if the applicant has had a health facility license revoked or denied renewal, or has surrendered a license under threat of revocation or denial of renewal, or has lost certification as a Medicaid provider as a result of violations of applicable Medicaid requirements. The Licensing Authority may refuse to issue a new license if the applicant has been cited repeatedly for violations of applicable regulations found to be Class A or Class B deficiencies as defined in *Health Facility Sanctions and Civil Monetary Penalties*, 7 NMAC 1.8, or has been non-compliant with plans of correction.

(10) In every application, the applicant shall provide the following information:

(a) The identities of all persons or business entities having authority, directly or indirectly, to direct or cause the direction of the management or policies of the facility;

(b) The identities of all persons or business entities having five percent (5%) ownership whatsoever in the facility, whether direct or indirect, and whether the interest is in profits, land or building, including owners of any business entity which owns any or part of the land or building;

(c) The identities of all creditors holding a security interest in the premises, whether land or building and

(d) In case of a change of ownership, disclosure of any relationship or connection, whether direct or indirect, between any person or entity disclosed pursuant to this section by the new licensee.

(11) The applicant shall provide to the Department, for each person or entity disclosed pursuant to Paragraph (10) of Subsection A of 7.8.2.8 NMAC, information regarding criminal convictions, civil actions alleging fraud, embezzlement or misappropriation of property, and any state or federal adverse action resulting in suspension or revocation of any permit or business or professional license.

(12) The new licensee shall submit evidence to establish that he or she has sufficient resources to permit operation of the facility for a period of six (6) months.

(13) The Department shall not issue a license until the applicant has supplied all information required by these regulations.

**B. APPLICATION FOR AMENDED LICENSE:** A licensee must submit an application for an amended license, with the required fee, to the Licensing Authority upon change of facility administrator/director, facility name, or capacity.

(1) Application for change of facility director or name must be submitted within ten (10) working days of the change.

(2) Application for increase in capacity must be accompanied by a floor plan of professional quality including the requirements stated in Subparagraph (a) of Paragraph (4) of Subsection A of 7.8.2.8 NMAC through Subparagraph (d) of Paragraph (4) of Subsection A of 7.8.2.8 NMAC of these regulations. A facility shall not increase its resident census until the Licensing Authority has approved the increase and issued a license for the increased capacity.

**C. APPLICATION FOR RENEWAL LICENSE:** Each facility must apply for a renewal of the annual license thirty (30) days prior to expiration by submitting the following:

(1) An Application for Renewal of License and Fee.

(2) Program Narrative, if the facility has changed its program or focus of services.

(3) Current Fire Inspection Report. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to submit a current fire inspection report.**

(4) The Licensing Authority may refuse to issue a new license if the applicant has been cited repeatedly for violations of applicable regulations found to be Class A or Class B deficiencies as defined in *Health Facility Sanctions and Civil Monetary Penalties*, 7 NMAC 1.8, or has been non-compliant with plans of correction.

**D. LICENSES** are valid only for the facility to which it is issued and to whom the license is issued. A license may not be sold, assigned, or transferred. A license is not valid for any premises other than those for which

originally issued. The license states the maximum number of residents who may be cared for in the facility.

(1) **TEMPORARY LICENSE.** A temporary license may be issued to a new facility before residents are admitted.

(a) A temporary license shall cover a period of time, not to exceed one-hundred twenty (120) days, during which the facility must correct all specified deficiencies.

(b) No more than two (2) consecutive temporary licenses shall be issued.

(2) **ANNUAL LICENSE.** An annual license may be issued for a period not to exceed one (1) year from the date of issuance when compliance with resident care has been determined.

**E. DISPLAY OF LICENSE.** The facility shall display the license in a conspicuous public place that is visible to residents, staff and visitors.

[7-1-64, 9-15-70, 5-26-72, 7-19-74, 9-24-76, 7-11-86, 1-11-90, 4-7-97, 5-28-99; 7.8.2.8 NMAC - Rn, 7 NMAC 8.2.8, 8-31-00]

**7.8.2.9 WAIVERS/VARIANCES:** The Licensing Authority may waive/vary certain licensure requirements for adult residential care facilities, provided lack of compliance would not adversely affect the health, safety, or welfare of the residents.

**A.** A variance shall apply to a facility's physical environment and will be granted at the sole discretion of the Licensing Authority.

**B.** A waiver shall be granted for a time period specified by and at the sole discretion of the Licensing Authority.

[4-7-97; 7.8.2.9 NMAC - Rn, 7 NMAC 8.2.9, 8-31-00]

**7.8.2.10 AUTOMATIC EXPIRATION OF LICENSE:**

**A.** A license shall automatically expire at midnight on the day indicated on the license as the expiration date, unless suspended or revoked.

**B.** When a facility discontinues operation.

**C.** When a facility is sold, leased, or otherwise changes licensee.

**D.** When a facility changes location.

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.10 NMAC - Rn, 7 NMAC 8.2.10, 8-31-00]

**7.8.2.11 SURVEY/MONITORING VISITS:**

**A.** The Licensing Authority shall perform on-site survey/monitoring visits at all adult residential care facilities to determine compliance with these regulations, to investigate complaints, or to investigate the appropriateness of licensure for any alleged unlicensed facility.

**B.** The facility must provide the Licensing Authority access to any material and information necessary for determining compliance with these requirements.

**C.** The most recent survey inspection reports and related correspondence shall be posted in a conspicuous public place in the facility.

**D.** Failure by the facility to provide the Licensing Authority access to premises or information, including resident records, may result in the imposition of sanctions, or license revocation. [9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.11 NMAC - Rn, 7 NMAC 8.2.11, 8-31-00]

**7.8.2.12 CORRECTIVE ACTION:**

**A.** If violations of these regulations are cited, the licensee or facility designee will be provided with an official written report of the findings at the completion of the survey/monitoring visit or within ten (10) working days following the survey/monitoring visit.

(1) **Informal Dispute Review:** The facility may request an informal review of survey deficiencies by providing a written request to Licensing Authority and any information that would be contrary to the deficiency, within ten days of receipt of the written survey findings.

(2) The Licensing Authority may utilize a committee comprised of interested parties including but not limited to advocacy, provider, consumer and state agency representation. The committee shall advise the state agency on facility's written requests.

**B.** The licensee or facility designee shall submit a plan of correction at the time of the survey/monitoring visit or within ten (10) working days of receipt of the official written report citing the violations.

**C.** The plan of correction must:

- (1) Address how all violations identified in the official written report will be corrected.
  - (2) How the facility will identify other residents having the potential to be affected by the same deficient practice.
  - (3) How the facility will monitor its corrective action.
  - (4) Specify a date upon which the corrective action will be completed. Cited violations must be corrected within thirty (30) days from the date the survey was completed, unless the Licensing Authority approves otherwise.
- D.** The Licensing Authority may accept, reject, or negotiate modifications to the plan of correction.
- [7-1-64, 9-15-70, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.12 NMAC – Rn & A 7 NMAC 8.2.12, 8-31-00]

**7.8.2.13 GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, DENIAL OF INITIAL OR RENEWAL APPLICATION FOR LICENSE, OR IMPOSITION OF INTERMEDIATE SANCTIONS OR CIVIL MONETARY PENALTIES:**

- A.** When the Licensing Authority determines that an application for renewal of a license is to be denied, or that a license is to be revoked, the Licensing Authority shall provide written notification to the adult residential care facility, the residents of the adult residential care facility and the surrogate decision maker for the resident.
- B.** A license may be revoked or suspended, an initial or renewal application for license may be denied, or intermediate sanctions or civil monetary penalties may be imposed after notice and opportunity for a hearing, for any of the following reasons:
- (1) Failure to comply with any provision of these regulations.
  - (2) Failure to allow a survey by authorized representatives of the Licensing Authority.
  - (3) Hiring or retaining any employee who has been convicted of a felony or misdemeanor related to abuse, neglect or exploitation, trafficking in controlled substances, criminal sexual penetration or related sexual offenses.
  - (4) Misrepresentation or falsification of any information on application forms or other documents provided to the Licensing Authority.
  - (5) Discovery of repeat violations of these regulations.
  - (6) Failure to provide the required care and services as outlined by these regulations for the residents receiving care from the facility.
  - (7) Exceeding licensed capacity.
  - (8) Failure to provide an acceptable plan of correction.
  - (9) Abuse, neglect or exploitation of any patient/client/resident by facility operator, staff or relatives of operator/staff.
- [7-1-64, 9-15-70, 5-26-72, 9-24-76, 7-11-86, 1-11-90, 4-7-97, 6-15-98; 7.8.2.13 NMAC – Rn, 7 NMAC –8.2.13, 8-31-00]

**7.8.2.14 HEARING PROCEDURES:**

- A.** Hearing procedures for adverse action taken by the Licensing Authority against an adult residential care facility’s license as outlined in Section 7.8.2.13 of these regulations, will be conducted in accordance with Adjudicatory Hearings, Department of Health, 7 NMAC 1.2, (2-1-96) or any successor.
- B.** An adult residential care facility will be provided with a copy of the above regulations by the Licensing Authority at the time an adverse licensure action is taken. An adult residential care facility may request a copy any time by contacting the Licensing Authority.
- C.** If immediate action is required to protect human health and safety, the Licensing Authority may suspend a license pending a hearing, in accordance with Section 24-1-5 H. of the Public Health Act. However, a hearing must be conducted within five (5) working days of the suspension, unless waived by the facility.
- [7-1-64, 9-15-70, 5-26-72, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.14 NMAC – Rn, 7 NMAC 8.2.14, 8-31-00]

**7.8.2.15 APPEALS:** Any party may appeal the decision to deny, revoke or suspend a license, or intermediate sanctions, or civil monetary penalties to the court of appeals on the record within thirty (30) days after the effective date of a final decision regarding adverse licensure action.

[7-1-64, 9-15-70, 5-26-72, 9-24-76, 7-11-86, 4-7-97; 7.8.2.15 NMAC - Rn, 7 NMAC 8.2.15, 8-31-00]

**7.8.2.16 STAFF QUALIFICATIONS:** A facility must employ staff that meet the following qualifications:

- A. ADMINISTRATOR/DIRECTOR/ OPERATOR:**
- (1) Be at least twenty-one (21) years of age.

- (2) Demonstrate basic respect for the dignity of residents.
- (3) Be financially solvent and have a good credit history (credit reports must be provided to verify this requirement).
- (4) Be of good moral character. Applicants must comply with the requirements of the New Mexico Caregivers Criminal History Screening Act.
- (5) Be able to communicate with the residents and other staff members in the language spoken by the majority of the residents and other employees.
- (6) Have a high school diploma or its equivalent.
- (7) Be of sound mind, and not currently dependent upon alcohol or illegal drugs.
- (8) Have a proven ability to administer, direct and operate an adult residential health facility as demonstrated by education and/or work experience and provide three notarized letters of reference from persons unrelated to the applicant sent with the application as a packet to the Licensing Authority. The evidence of education and experience must be detailed in either the Application or a separate resume or curriculum vitae.

**B. DIRECT CARE STAFF**

- (1) Be of at least eighteen (18) years of age.
- (2) Have adequate education, training, or experience to provide for the needs of the residents.
- (3) Be physically, mentally, and emotionally equipped to carry out responsibilities of resident care, including not being currently dependent upon alcohol or illegal drugs.

[5-26-72, 9-24-76, 7-11-86, 1-11-90, 4-7-97, 5-28-99; 7.8.2.16 NMAC - Rn, 7 NMAC 8.2.16, 8-31-00]

**7.8.2.17 PERSONNEL:** The adult residential care facility must have and implement written personnel policies. The personnel policies must address the following:

- A.** Qualifications for all professional and non-professional disciplines.
- B.** Staff conduct which must foster resident safety and well-being and must not be detrimental to resident care.
- C.** Staff training, appropriate to staff responsibilities, including, at a minimum, an orientation and an on-going, but at least annual, program which includes: Fire Safety, First Aid, Safe Food Handling practices, Confidentiality of Records and Resident information, Infection Control, Resident Rights, Reporting Requirements for Abuse, Neglect, and Exploitation, Transportation Safety for Assisting residents and operating vehicles to transport residents and Providing Quality Resident Care based on current resident needs.

**D.** Employee personnel records, including an application for employment, TB tests and certificates, training records, and personnel actions.

[4-7-97; 7.8.2.17 NMAC – Rn & A, 7 NMAC 8.2.17, 8-31-00]

**7.8.2.18 STAFFING:** The following staffing levels are **minimums only**. The facility shall employ staff capable and trained to provide the basic care and resident assistance and supervision required, based on the assessment of the residents needs.

- A.** When residents are awake, all facilities shall have at least one (1) direct care staff person on duty and awake for each fifteen (15) residents.
  - (1) During resident sleeping hours, facilities with fifteen (15) or fewer residents shall have at least one (1) direct care staff person on duty and responsible for the care and supervision when residents are in the facility.
  - (2) During resident sleeping hours, facilities with sixteen (16) to sixty (60) residents shall have at least one (1) direct care staff person awake at all times and at least one (1) additional staff person available on the premises.
  - (3) During resident sleeping hours, facilities with sixty-one (61) to one-hundred twenty (120) residents shall have at least two (2) direct care staff persons awake at all times and at least one (1) additional staff person immediately available on the premises when residents are sleeping.
  - (4) During resident sleeping hours, facilities with more than one-hundred twenty (120) residents shall have at least three (3) direct care staff persons awake at all times and one additional staff person immediately available on the premises for each additional forty (40) residents or fraction thereof in the facility.

**B.** The facility, upon request, shall provide the public and visitors the number and the names of all staff on duty.

**C.** Maternity Shelters shall have available at all times a registered nurse or a licensed mid wife.

[9-24-76, 7-11-86, 1-11-90, 4-7-97; 7 8.2.18 NMAC - Rn, 7 NMAC 8.2.18, 8-31-00]

**7.8.2.19 ADMISSIONS:** No resident shall be admitted or retained who is below the age of eighteen (18) or for whom the facility is unable to provide appropriate care. **EXCEPTION: Maternity Shelters may accept residents below the age of eighteen (18).**

**A. ADMISSION INTERVIEW.** The Director of the facility or a designee responsible for admission and retention decisions, shall meet with the resident or the resident's agent or guardian, if the resident lacks decision-making capacity, and shall provide the resident with:

- (1) The facility's program narrative.
- (2) The facility's rules.
- (3) The facility's admission agreement, including costs and charges, refund provision, and contract termination policies.
- (4) The facility's bed hold policy.
- (5) Information about the resident's right under New Mexico Law to make decisions regarding health care, including the right to make advance directives.
- (6) A written description of the legal rights of the residents translated into another language, if necessary.
- (7) The facility's staffing pattern.

**B. RESTRICTIONS ON ADMISSIONS:** Adult residential care facilities shall not admit or retain individuals requiring continuous nursing care. Conditions or circumstances that usually require continuous nursing care, may include, but not limited to the following:

- (1) Ventilator dependency.
- (2) Pressure sores where skin loss penetrates beyond the skin, and into deeper tissue or bone, which are classified as Stage III or IV.
- (3) Intravenous therapy or injections directly into the vein.
- (4) Airborne infectious disease, in a communicable state, including tuberculosis, but excluding infections such as the common cold.
- (5) Any condition requiring either physical or chemical restraints.
- (6) Nasogastric tubes / gastric tubes.
- (7) Tracheostomy care.
- (8) Individuals presenting an imminent physical threat or danger to self or others.
- (9) Individuals whose physician certifies that placement is no longer appropriate

**C. ADMISSION/RETENTION EXCEPTIONS:** If a resident requires a greater degree of care than the facility would normally provide, or is permitted to provide, and the resident wishes to be re-admitted or to remain in the facility, and the facility wishes to re-admit or retain the resident, the facility must:

- (1) Convene a team, comprised of:
  - (a) The facility director.
  - (b) The resident.
  - (c) The resident's agent, guardian or surrogate decision maker.
  - (d) The resident's advocate, such as the resident's case manager, Ombudsman, or social worker.
  - (e) If the treating physician is unable to meet with the team, then consultation and recommendations via phone is acceptable.
  - (f) Other appropriate health care professionals.
- (2) The team shall jointly determine if the resident should be admitted or allowed to remain in the facility. The team must approve a individual service plan that meets the specific needs of the resident. Such team approval must be in writing, signed and dated by all team members, must be maintained in the resident's record, and must:
  - (a) Be based upon a individual service plan which identifies the resident's specific needs and addresses the manner that such needs will be met.
  - (b) Ensure that the facility has and will maintain an evacuation rating of prompt or slow as determined by the Fire Safety Equivalency System (FSSES).
  - (c) Be based upon an assessment of the health, safety and well-being of the other facility residents.
  - (d) Assess the impact that meeting the specific needs of the resident as set out in the individual service plan will have on the staff and on the other residents.
- (3) Notify the Licensing Authority within five (5) days of the completion of team approval. Such notification of team approval must be submitted in writing and include evidence of the team's consideration of items 7.8.2.19C2(a) through 7.8.2.19C2(d) above.

[9-24-76, 7-11-86, 1-11-90, 4-7-97; 7 8.2.19 NMAC - Rn, 7 NMAC 8.2.19, 8-31-00]

**7.8.2.20**            **ADMISSION/DISCHARGE AGREEMENT:** The facility must establish an admission agreement for each resident.

**A.**            The admission agreement must include the following information:

- (1) The parties to the agreement.
- (2) The scope of services to be provided.
- (3) The cost of services and method of payment.
- (4) The circumstances under which the Agreement may be terminated.
  - (a) Termination of admission agreements shall be upon at least fifteen (15) days written notice, to the resident and his or her agent or guardian, where applicable, unless the resident requests termination.
  - (b) The facilities bed hold policy.
  - (c) An admission/discharge agreement may provide for termination by the facility when the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
  - (d) Termination of an admission agreement by the facility is permitted in emergency situations for the following reasons: the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility; the safety or health of individuals in the facility is endangered; the resident has failed to pay for a stay at the facility, as defined in the admission agreement; the facility ceases to operate or is no longer able to provide services to the resident; and due to sanctions or remedies imposed by the Department.

**B.**            A new or amended admission agreement must be executed whenever services, costs or other material terms are changed.

[7-11-86, 1-11-90, 4-7-97; 7 8.2.20 NMAC - Rn, 7 NMAC 8.2.20, 8-31-00]

**7.8.2.21**            **ADMISSION RECORDS:**

**A.**            In addition to the resident record requirements, the facility must maintain for each resident, the following:

**B.**            The resident's written acknowledgement that the facility, **prior to or at the time of admission**, provided the resident with, and answered any resident questions regarding:

- (1) The facility's program narrative.
- (2) The facility's rules.
- (3) The facility's admission agreement, including costs and charges, refund provision, and termination policies.
- (4) The facility's bed hold policy.
- (5) Information about the resident's right under New Mexico Law to make decisions regarding health care, including the right to make advance directives. Such law includes: **Uniform Health Care Decisions Act, Section 24-7A-1 et. seq., NMSA 1978, as amended; New Mexico Durable Power of Attorney for Health Care Decisions, Section 45-5-501, et. seq., NMSA 1978, as amended; New Mexico Living Will and Declaration under the Right to Die Act Section 24-7-1 et seq., NMSA 1978, as amended.**

[4-7-97; 7 8.2.21 NMAC - Rn, 7 NMAC 8.2.21, 8-31-00]

**7.8.2.22**            **RESIDENT RECORDS:**

**A.            RESIDENT RECORDS, CONTENTS:** A record for each resident shall be maintained with specific information required. Entries in each resident's record shall be legible, dated, and authenticated by the signature of the person making the entry. Resident records must include:

- (1) Admission records as set out in Section 7.8.2.21 NMAC:
- (2) Within five (5) days of admission:
  - (a) An executed admission agreement.
  - (b) A completed resident assessment form.
  - (c) Any available, admission physical examination report by a licensed health care professional, which may include all discharge information from another facility. When admission follows within thirty (30) days discharge from an acute care hospital, the hospital history and physical report, and the hospital discharge summary may serve as an admission physical.
  - (d) Names, addresses, relationship, and phone numbers of family members, and where appropriate, guardians, agents, and any surrogate decision makers.

- (3) Within thirty (30) days of admission:
- (a) A admission physical examination report by a licensed health care professional if an examination report was not available within five (5) days of admission.
  - (b) Resident's name, age, recent photograph, social security number, marital status, date of birth, sex, address prior to admission, religion (optional), personal physician, dentist, social history and designated representative or other emergency contact person, language spoken and understood, legal documentation relevant to commitment and/or guardianship status, present medications, and diet required.
  - (c) Any amendments to the admission agreement.
  - (d) The current completed resident assessment form.
  - (e) A completed and current individual service plan.
  - (f) Entries by direct care staff, appropriate health care professionals, or others authorized to care for the resident. Entries shall be dated and signed by the person making the entry and shall include significant information related to the individual service plan.
  - (g) Entries providing a written account of all accidents, injuries, illnesses, medical and dental appointments, any problems or improvements observed in the resident, any condition that would indicate a need for alternative placement or medical attention, and entries reflecting appropriate follow-up. The maintenance of such written record in the resident record may be by copy of an incident/accident report, if the original incident/accident report is maintained elsewhere by the facility.
  - (h) A medication record: Medications administered by licensed personnel and/or staff assisting with medications to include: listing all currently ordered medications by name, dosage, administration times; documenting by medication name, dosage, date, and time, each medication administered, with the initials of the individual who administered or assisted with the medication; documentation of errors, omissions, and side-effects of medications; and Written consent by resident or guardian for staff to assisting with medications.
  - (i) Date, time and progress note of health services provided by any contract agency.
  - (j) Unless included in the admission agreement, a separate written agreement between the facility and the resident relating to the resident's funds, in accordance with the facility's policy and procedures.
  - (k) Transfer forms completed, signed, and provided to accepting facility when resident is transferring to a hospital or another health care facility.
  - (l) Documentation of disposition of the resident's personal effects and money or valuables deposited with the adult residential care facility, upon death or transfer.

**B. RESIDENT RECORDS, MAINTENANCE:**

- (1) Resident records shall be maintained and stored in an organized, accessible and permanent manner.
- (2) The facility shall establish a policy for maintaining, and confidentiality of resident records, including the authorized release of resident records.
- (3) Resident records must be maintained by the facility against loss, destruction, and unauthorized use for a period of not less than three (3) years from the date of discharge.
- (4) There must be a policy and procedure in place for record retention in the event of facility closure.

[7-1-64, 9-15-70, 5-26-72, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.22 NMAC - Rn, 7 NMAC 8.2.22, 8-31-00]

**7.8.2.23 FACILITY REPORTS/RECORDS/POLICIES AND PROCEDURES/ AND RULES:**

**A. REPORTS AND RECORDS:** Each facility must keep the following reports, records, and policy and procedures on file at the facility and make them available for review upon request of the Licensing Authority:

- (1) Fire Inspection Report. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to have fire inspection reports.**
- (2) Copy of the last survey conducted by the Licensing Authority, adverse actions or appeals thereto, and complaints.
- (3) Copy of the latest survey from Environmental Health Authority (if applicable) regarding kitchen and food management and, if private sewage disposal, and private waste disposal. **EXCEPTIONS: Adult residential care facilities with three (3) or fewer residents are not required to be inspected by Environmental Health Authority. Facilities exempted by the Environmental Health Authority having jurisdiction, are not required to have a survey on file provided the exemption letter is on file.**
- (4) TB test results of staff or any of their family members living in the facility.
- (5) One (1) month of menus planned and as served.

(6) Record of fire drills: A record of all fire drills conducted at the facility. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to hold or record fire drills.**

(7) Written emergency plans and policies and procedures for medical emergencies, power failure, fire or natural disaster. Such plans shall include evacuation, persons to be notified, emergency equipment, evacuation routes and refuge areas, responsibilities of personnel.

(8) Licensing regulations: A copy of these regulations (Requirements for Adult Residential Care Facilities, 7.8.2 NMAC).

(9) Custodial Drug Permit: A valid Custodial Drug Permit issued by the State Board of Pharmacy for those facilities licensed pursuant to these regulations, which supervise administration, self-administration of medications or safeguards medications for the residents. **EXCEPTION: Adult residential care facilities with only one (1) resident are not required to have a custodial drug permit.**

(10) Vaccination of pets in the facility.

(11) Staff training.

(a) At orientation and on-going.

(b) Appropriate to staff responsibilities. (Assistance with medications, dietary, environmental...)

(c) Fire safety.

(d) First aid.

(e) Safe food handling practices.

(f) Confidentiality of records and resident information.

(g) Infection control (including universal precautions and linen handling).

(h) Resident rights.

(i) Providing Quality Resident care based on current resident need.

(j) Reporting requirements for Abuse, Neglect or Exploitation.

(12) A copy of License.

(13) Employee personnel records, including an application for employment, TB certificates, training records, and personnel actions.

(14) A copy of all WAIVERS/VARIANCES granted by the Licensing Authority.

A copy of the floor plans as approved for licensure.

(15) A copy of the floor plans as approved for licensure.

**B. RULES:** Prior to placement in or admission to a facility, a prospective resident or his/her representative shall be given a copy of the facility rules. Each facility shall have written rules pertaining to but not limited to the following:

(1) The use of tobacco and alcohol.

(2) The use of the telephone.

(3) Operation of television, radio, and stereo.

(4) Use and safekeeping of personal property.

(5) Meals.

(6) Use of common areas.

(7) Pets.

(8) Electric blankets or appliances used by residents.

**C. POLICIES AND PROCEDURES:** All facilities shall have written policies and procedures covering the following areas:

(1) Actions to be taken in case of accidents or emergencies, (e.g., gas leaks, injuries, transportation, medications, . . .).

(2) Method of keeping informed when residents go outside of the facility (e.g., sign-out sheets).

(3) The handling of resident's funds, if the facility provides such services.

(4) Reporting of incidents, including abuse, neglect, and exploitation.

(5) Handling of complaints.

(6) Staff and resident fire and safety training.

(7) Smoking.

(8) The facility's bed hold policy.

(9) Admission agreement.

(10) Admission records.

(11) Resident records - maintenance and record retention if facility closes.

- (12) Program Narrative.
- (13) Information about the resident's right under New Mexico Law to make decision regarding health care, including the right to make advance directives.
- (14) Personnel policies.
- (15) Identifying and safeguarding resident possessions.
- (16) Securing medical assistance if a resident's own physician is not available.
- (17) **NOTE FOR MATERNITY SHELTERS ONLY:** In addition to the required policy and procedure topics listed above, Maternity Shelters shall have written policies and procedures regarding infant formula, feeding and equipment, and laundering of infant linen and diapers.
- (18) Staff training for employees who provide assistance to residents with boarding or alighting from motor vehicles.
- (19) Staff training for employees who operate motor vehicles to transport residents.

[7-1-64, 9-15-70, 5-26-72, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7 8.2.23 NMAC – Rn & A 7 NMAC 8.2.23, 8-31-00]

**7.8.2.24 PETS:** Pets are permitted in a licensed facility, in accordance with the facility's rules.

- A. Pets are not permitted in the kitchen or food preparation areas.
- B. Pets shall be vaccinated in accordance with all state and local requirements and records of such vaccination shall be kept on file in the facility.

[7-11-86, 4-7-97; 7.8.2.24 NMAC - Rn, 7 NMAC.8.2.24, 8-31-00]

**7.8.2.25 ASSISTANCE WITH DAILY LIVING:** The facility must supervise and assist the resident, as necessary, with health, hygiene, and grooming needs, to include but not limited to the following:

- A. Eating.
- B. Dressing.
- C. Oral hygiene.
- D. Bathing.
- E. Grooming.
- F. Mobility.
- G. Toileting

[7-11-86, 4-7-97; 7.8.2.25 NMAC - Rn, 7 NMAC 8.2.25, 8-31-00]

**7.8.2.26 RESIDENT ASSESSMENT:**

A. A resident assessment to determine level of function and if the clients needs can be met by the facility. The initial assessment must be completed within five (5) days of admission and reviewed every six (6) months as part of the individual service plan.

B. The resident assessment must establish a baseline in the resident's functional status and thereafter, identify resident changes through periodic reassessments.

C. The resident assessment must be documented on a state approved resident assessment form and at a minimum include the following:

- (1) Cognitive patterns.
- (2) Communication/hearing patterns.
- (3) Vision patterns.
- (4) Physical functioning and structural problems.
- (5) Continence.
- (6) Psychosocial well-being.
- (7) Mood and behavior patterns.
- (8) Activity pursuit patterns.
- (9) Disease diagnoses.
- (10) Health Conditions.
- (11) Oral/nutritional status.
- (12) Oral/dental status.
- (13) Skin conditions.
- (14) Medication use.
- (15) Special treatment and procedures.

**D.** The resident admission assessment, the physical exam report, and the observation and evaluation of staff with regards to the needs will be used to develop the individual service plan, if needed. If the resident assessment does not indicate a need for a individual service plan, then a individual service plan is not required. However, an individual service plan must be prepared for residents requiring nursing services.  
[4-7-97; 7.8.2.26 NMAC - Rn, 7 NMAC 8.2.26, 8-31-00]

**7.8.2.27 INDIVIDUAL SERVICE PLAN:**

**A.** A individual service plan, if prompted by the resident assessment, shall be developed and implemented within fourteen (14) days of admission, and must address those areas of need as identified in the resident assessment. The individual service plan must be reviewed by a licensed nurse at least every six (6) months, and revised as needed at the time of each assessment and consistently implemented in response to the resident's needs.

**B.** The Individual service plan must include the following:

- (1) Description of identified need as noted in the resident assessment.
- (2) Written description of what services will be provided.
- (3) Who will provide the services.
- (4) When or how often the services will be provided.
- (5) How the services will be provided.
- (6) Where the services will be provided.
- (7) Goal and outcome of the service.
- (8) Documentation of the facilities determination that it is able to meet the needs of the resident.

[7-11-86, 1-11-90, 4-7-97; 7.8.2.27 NMAC - Rn, 7 NMAC.8.2.27, 8-31-00]

**7.8.2.28 RESIDENT ACTIVITIES:** Each adult residential care facility shall provide or make available, and post, recreational and/or social activities. Each facility must encourage residents to participate in recreational and/or social activities to promote physical, mental, and psychosocial well-being.

[6-10-75, 7-11-86, 4-7-97; 7.8.2.28 NMAC - Rn, 7 NMAC.8.2.28, 8-31-00]

**7.8.2.29 PERSONAL POSSESSIONS:**

**A.** Each resident, in order to maintain individuality and personal dignity, shall be permitted to keep personal property in his/her possession at the facility, if it is not detrimental to the health and safety of anyone in the facility. These possessions may include, but are not limited to:

(1) Clothing. A facility shall ensure that each resident has his/her own clothing. Residents will be allowed and encouraged to select their daily clothing and change their clothing to suit their activities, and appropriate to weather conditions.

(2) Personal Care Items. Each resident must have his/her own personal care items such as but not limited to: comb, razor, hairbrush, toothbrush, toothpaste, and like items.

**B.** The facility shall have policies and procedures for identifying and safe-guarding resident possessions.

[9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.29 NMAC - Rn, 7 NMAC 8.2.29, 8-31-00]

**7.8.2.30 TRANSPORTATION:** Each facility licensed pursuant to these regulations must either provide safe transportation or assist the resident in using public transportation.

**A.** The motor vehicle transportation assistance program shall be comprised of but not limited to the following elements:

(1) client assessment, emergency procedures, supervised practice in the safe operation of motor vehicles, familiarity with state regulations governing the transportation of persons with disabilities, maintenance and safety record keeping, training on hazardous driving conditions and a method for determining and documenting successful completion of the course.

(2) The course requirements above are examples and may be modified as needed.

**B.** To assist residents in using transportation, the facility must be able to provide information on bus schedules, location of bus stops, and telephone numbers of taxi cab companies.

[7-11-86, 1-11-90, 4-7-97; 7.8.2.30 NMAC – Rn & A 7 NMAC 8.2.30, 8-31-00]

**7.8.2.31 HANDLING OF RESIDENT FUNDS:**

**A.** Each resident shall have the right to manage his/her personal funds unless the resident's rights have otherwise been restricted by state or federal law, e.g., by a conservatorship.

**B.** If the facility agrees, the resident may entrust his/her personal funds to the facility for safekeeping and management. If this is done, the facility shall:

(1) Have written authorization from the resident or his/her legal representative.

(2) Maintain a written record of all financial transactions and arrangements involving the resident's funds, and make this written record available to the resident, his/her legal representative and Licensing Authority upon request.

(3) Safeguard any and all funds received from the resident in an account separate from all other funds of, or held by, the facility.

(4) Upon written or verbal request by the resident or his/her legal representative, return to the resident all or any part of the resident's funds given to the facility for safekeeping and management, including all interest accrued on the resident's deposits.

(5) Upon the resident's death, provide the personal representative of the resident's estate or if no personal representative is appointed, the resident's next-of-kin with a complete accounting of all the resident's funds and personal property held by the facility, and transfer these funds and property to the personal representative, in accordance with Section 45-3-709 NMSA 1978, or if there is no personal representative, to the next-of-kin.

**C.** No facility to whom a patient/client/resident's money or valuables have been entrusted shall mingle the resident's monies, valuables, or property, with that of the licensee, staff and/or management. Resident's and or patient's monies valuables or property shall be maintained separate, intact, and free from any liability of the licensee, staff and/or management.

[9-24-76, 7-11-86, 4-7-97, 6-15-98; 7.8.2.31 NMAC - Rn, 7 NMAC 8.2.31, 8-31-00]

#### **7.8.2.32 HANDLING OF EMERGENCIES:**

**A.** Each resident or resident representative shall designate upon admission, a physician to be called in case of medical necessity. Each resident or representative may also designate a concerned person to be called in case of an emergency. The facility shall establish a policy to secure medical assistance if the resident's own physician is not available. In the event of an illness or an injury to the resident, an appropriately licensed health professional must be notified by the facility.

**B.** The facility must have available, a first aid kit containing gauze, tape, adhesive, antiseptic, and bandages for emergencies. The first aid kit must be kept in a designated, easily accessible place within the facility.

**C.** An easily accessible and functional telephone for summoning help in case of an emergency must be available in each facility. A pay telephone will not fulfill this requirement.

**D.** A list of emergency numbers, including, but not limited to, Fire Department, Police Department, Ambulance Services, Poison Control, Licensing and Certification, Adult Protective Services, and Ombudsman must be posted near each public telephone in the facility.

[7-1-64, 9-15-70, 5-26-72, 7-19-74, 9-24-76, 7-11-86, 1-1-90, 4-7-97; 8.2.32 NMAC - Rn, 7 NMAC 8.2.32, 8-31-00]

#### **7.8.2.33 REPORTING OF INCIDENTS:**

**A.** The facility must insure that all suspected cases or known incidents of resident abuse, neglect, exploitation, and mistreatment are reported. A facility must also report any incident or unusual occurrence which has or could threaten the health, safety, or welfare of the residents and staff to the Licensing Authority and Adult Protective Services (APS) by the next business day. In no instance may a facility delay a report to Adult Protective Services or to the Licensing Authority, while an internal investigation is being conducted.

**B.** The facility is responsible for documenting all incidents, within five (5) days of the incident, and having on file, the following:

(1) A narrative description of the incident.

(2) Results of the facility's investigation.

(3) The facility action, if any.

[7-1-64, 9-15-70, 5-26-72, 7-11-86, 4-7-97; 7.8.2.33 NMAC - Rn, 7 NMAC 8.2.33, 8-31-00]

**7.8.2.34 RESIDENT RIGHTS:** All licensed facilities shall be aware of, protect, and enhance the rights of all residents.

**A.** Prior to admission to a facility, a resident and/or legal representative shall be given a written description

of the legal rights of the residents translated into another language, if necessary, to meet the residents understanding.

**B.** If the resident is incapable of understanding his/her legal rights, and if he/she has no legal representative, then the licensee shall also give a written copy of the resident's legal rights to one of the following persons, in this order of priority:

- (1) the resident's spouse;
- (2) any of the resident's adult children;
- (3) either of the resident's parents;
- (4) any relative the resident has lived with for six or more months before admission;
- (5) a person who has been caring for, or paying benefits on behalf of the resident;
- (6) a placing agency; or
- (7) any other person, e.g. Ombudsman.

**C.** These resident rights and the telephone number for the Ombudsman Program shall be posted in a conspicuous public place in the facility:

**D.** The facility, to protect resident rights must:

- (1) Treat all residents with courtesy, respect, dignity and compassion.
- (2) To the extent that resident required services fall within the scope of the facilities program, avoid discrimination in admission or services because of a resident's age, race, religion, physical or mental disability, or nationality.
- (3) Furnish residents written information about all services provided by the facility and their costs, and advance written notice of any changes.
- (4) Assure that residents have a safe and sanitary living environment.
- (5) Provide humane care.
- (6) Assure the resident's rights to privacy in medical care, including privacy during medical examinations, consultations and treatment; and protect the confidentiality of the resident medical records.
- (7) Protect and assure the resident's right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse, family member or other visitor; and privacy in the resident's own room.
- (8) Assure the resident's right to communicate privately and freely with any person, including private telephone conversations and private correspondence; and assure the resident's right's to receive visits from family, friends, lawyers, ombudsmen and community organizations.
- (9) Prohibit the use of any and all physical and chemical restraints.
- (10) Assure the residents are free from physical and emotional abuse and neglect.
- (11) Assure that all residents are free from financial abuse and exploitation by facility staff and/or management.
- (12) Consistent with the resident's health, abilities and security, assure the right of the resident to freely participate in religious, social, community and other activities; and freely associate with persons in and out of the facility.
- (13) Permit the residents to leave the facility freely and return without unreasonable restriction.
- (14) Prevent unjustified room transfers or discharge from this facility.
- (15) Use care and management practices that foster social interaction and avoid practices that unnecessarily result in social isolation.
- (16) Provide services consistent with informed consent.
- (17) Assure that all residents may voice grievances to the facility staff, public officials, the ombudsmen or any other person, without fear of reprisal or retaliation.
- (18) Promptly address and resolve resident complaints.
- (19) Foster resident participation and understanding in the development, review and modification of the resident's plan for care and treatment.
- (20) Respect a resident's choice of doctor, pharmacist and other health care provider.
- (21) Respect a resident's medical treatment decisions and advance directives, such as living wills and durable powers of attorney for health care.
- (22) Respect a resident's right to keep and use personal possessions without loss or damage.
- (23) Allow each resident to manage and control the resident's personal finances to the extent that the resident is able, and provide to every resident a written record of all financial arrangements and transactions involving that resident's funds.
- (24) Allow residents to freely organize and participate in a resident association that may recommend changes in the facility's policies, services and management.

- (25) Require no resident to work for the facility.
- (26) Consult with the incapacitated resident regarding his/her care, regardless of the involvement of a guardian or surrogate decision maker.
- (27) Assure the involvement in, and consent of, an incapacitated resident's guardian or surrogate decision maker in the resident's care.

**E.** The resident's rights shall not be restricted unless the resident agrees to such a restriction, and unless this restriction is described in detail in his/her individual service plan.  
[9-24-76, 7-11-86, 1-1190, 4-7-97; 7.8.2.34 NMAC - Rn, 7 NMAC 8.2.34, 8-31-00]

**7.8.2.35 CUSTODIAL DRUG PERMIT:** Any facility licensed pursuant to these regulations who supervises the administration, self-administration, or safeguards medications for residents, must have a current custodial drug permit issued by the State Board of Pharmacy. **EXCEPTION: Adult residential care facilities with one (1) resident are not required to have a custodial drug permit.**

**A. PROCUREMENT, LABELING, AND STORAGE:** The facility shall provide assistance to the resident in obtaining the necessary medications, treatment and medical supplies as required by the individual or specified by the individual's health care plan. The facility shall procure, label, and store medications for residents in a manner which shall be in compliance with state and federal laws.

(1) All medications, including non-prescription drugs, will be stored in a locked compartment or in a locked room, as approved by the Board of Pharmacy, and the key will be in the care of the director or designee.

(2) Internal medication must be kept separate from external medications. Drugs to be taken by mouth will be separated from all other dosage forms.

(3) A separate locked compartment will be available in the refrigerator for those items labeled "keep in refrigerator." The refrigerator temperature will be kept between thirty-five (35) and forty-five (45) degrees Fahrenheit. A thermometer is required to be kept in the refrigerator.

(4) All medications, including non-prescription medications, must be stored in separate compartments for each resident and all medications will be labeled with the resident's names.

(5) A resident may be permitted to keep his/her own medication in a secure place in his/her room for self-administration if the physician's report has deemed it appropriate that the resident do so.

(6) The facility may not require the residents to purchase prescriptions from any particular pharmacy.

(7) Medical gases (oxygen) and equipment used for the administration of inhalation therapy and for resuscitative purposes must comply with National Fire Protection Association (NFPA) 99.

**B. CONSULTING PHARMACIST:** The facility shall maintain records demonstrating the consulting pharmacist provides the following:

(1) Reviews the medication regimen as needed, but at least quarterly (every three (3) months), to determine that all medications and records are accurate and current. All irregularities must be reported to the Director of the facility and these irregularities must be acted upon.

(2) A system of records of receipt and disposition of all drugs in sufficient detail to enable an accurate reconciliation.

(3) Consultation is provided on all aspects of pharmacy services in the facility, including reference information regarding side effects and, when needed, physician consultation in cases involving the use of psychotropic medications.

[7-1-64, 9-15-70, 7-19-74, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.35 NMAC - Rn, 7 NMAC 8.2.35, 8-31-00]

**7.8.2.36 MEDICATIONS:** Medications will be administered or staff assistance with medications provided and documented in accordance with state and federal laws.

**A.** Licensed health care professionals are responsible for the administration of medications.

**B.** Facility staff may assist a resident with medications if written consent by the resident is given to the director of the facility or their designee. If the resident is incapable of giving consent, the resident's guardian, treatment guardian or surrogate decision maker named in accordance with New Mexico law may give written consent for the assistance with medications. All staff assisting with medications shall have successfully completed an approved assistance with medication training program or be licensed by the State of New Mexico to administer medications.

**C.** No medications, including over the counter medications, PRN (when needed) medications, or treatment shall be started, changed or discontinued by the facility without an order by the physician and entry into the resident's record.

**D.** The facility must have on the premises, medication reference material that contains information relating to drug interactions and side-effects.

**E.** Medications prescribed for one resident shall not be used for another resident.

**F.** The facility shall have a Medication Administration Record (MAR) documenting medications administered to residents, including over-the-counter medications. This documentation shall include:

- (1) Name of resident.
- (2) Date started.
- (3) Drug product name.
- (4) Dosage and form.
- (5) Strength of drug.
- (6) Route of administration (e.g. "by mouth").
- (7) How often medication is to be taken.
- (8) Time taken and staff initials.
- (9) Dates when the medication is discontinued or changed.
- (10) The name and initials of all staff administering medications.

**G.** Any medications removed from the pharmacy container or blister pack must be given immediately and documented by the person assisting.

**H. PRN Medications:** The use of PRN medications must be closely monitored and supervised by the facility and is based on one or more of the following conditions:

(1) The resident is capable of determining when the medication is needed.  
(2) The resident's physician has provided detailed instructions to the pharmacy regarding the administering of the medication. The physician's instructions for a PRN medications shall include:

- (a) Symptoms that might indicate the use of the medication.
- (b) Exact dosage to be used.
- (c) The exact amount of medication to be used in a 24 hour period.
- (d) Directions as to what to do if the symptoms persist.
- (e) Possible interactions or side-effects that might occur.
- (f) Manufacturer's label information for directions if deemed adequate by the physician.

**I.** The facility must report all medication errors to the physician.

**J.** The facility shall develop and follow a written policy for unused, outdated, or recalled medications being kept in the facility.

[7-1-64, 9-15-70, 7-19-74, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.36 NMAC - Rn, 7 NMAC 8.2.36, 8-31-00]

**7.8.2.37 NUTRITION:** Each facility shall provide planned and nutritionally balanced meals in accordance with the recommended daily dietary allowance from the basic food groups to meet the nutritional needs of the age group.

**A.** At least three (3) meals shall be served daily at regular times, or in accordance with the program narrative.

(1) No more than a sixteen (16) hour span may exist between a substantial evening meal and breakfast. Snacks must be made available between meals and in the evening and must be listed on the daily menu. Vending machines shall not be considered a source of snacks.

(2) A sufficient amount of time shall be allowed for meals to enable residents to eat at a leisurely pace and to socialize.

**B.** A copy of the current week's menu, including snacks and therapeutic diets, shall be posted where residents and families can see it. Posted menus shall be followed and any substitution must be of equivalent nutritional value and recorded on the posted menu. Menus as served must be kept for thirty (30) days and be available to the public. Identical menus shall not be used on a one (1) week cycle basis.

**C.** Therapeutic diets and prescribed vitamin and mineral supplements shall be given and served only on the written orders of a physician. The physician's order shall become part of the resident's record and shall be updated as necessary.

**D.** The facility shall make every reasonable attempt to accommodate the resident's food preferences, and requests by the resident or the resident's representative to observe religious or cultural dietary practices.

**E.** Personnel handling food must be in good health, practice hygienic food-handling techniques, have good personal grooming, and be free from communicable disease transmissible via food.

**F.** Ensure that food is prepared by methods that will conserve nutritive value, enhance flavor, appearance, and is served at the proper temperature and in a form to meet individual needs.

**G.** All residents must be served in a dining room except for residents with a temporary illness, or documented specific personal preference.

**H.** If a resident consistently refuses to eat after encouragement, the resident shall be evaluated by an appropriate health professional. The resident shall be offered fluids more often during the time he/she is refusing to eat.

[7-1-64, 9-15-70, 5-26-72, 7-19-74, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.37 NMAC - Rn, 7 NMAC 8.2.37, 8-31-00]

**7.8.2.38 FOOD MANAGEMENT:** Each facility must store, prepare, distribute and serve food under sanitary conditions and in accordance with the New Mexico Environment Department Food Service and Processor Regulations, if applicable.

**A.** Each facility shall ensure a minimum of a three (3) day supply of perishable and a five (5) day supply of non-perishable or canned food is provided for the residents.

**B.** All milk, to include dry milk products, shall be Grade A pasteurized.

**C.** Potentially hazardous food such as meat, milk, and custard shall be kept at 45°F or below or at 140° F or above.

**D.** Each refrigerator and freezer shall be provided with an indicating thermometer accurate to plus or minus 3 degrees F., located in the warmest section of the refrigeration facility and must be of such type and so situated that the thermometer can be easily read. Thermostats shall not be relied upon to maintain temperatures at correct levels in the absence of thermometers. The temperature of the refrigerator shall be 35°F- 45°F. Freezer temperatures shall be maintained at 00F or below.

**E.** Refrigerators, freezers, kitchen area and food preparation areas shall be kept clean and sanitary at all times. Food stored in refrigerators/freezers shall be covered, dated, and labeled. Unused leftover food shall be discarded after three days.

**F.** Medication, biological, poisons, detergents, and cleaning supplies shall not be kept in the same storage areas used for storage of foods. Medications may be stored in the refrigerator with food, if they are labeled and locked in a container marked specifically for medication.

**G.** Dishes, utensils, and preparation equipment shall be properly washed and stored to maintain sanitary conditions.

**H.** All garbage and rubbish shall be stored in containers which are waterproof, easily cleaned and have tight fitting lids. Food waste containers shall be kept in good repair, and shall be kept covered except during use.

[7-1-64, 9-15-70, 5-26-72, 9-24-76, 7-11-86, 4-7-97; 7.8.2.38 NMAC - Rn, 7 NMAC 8.2.38, 8-31-00]

**7.8.2.39 HOUSEKEEPING/LAUNDRY SERVICES:** The adult residential care facility shall maintain the interior and exterior of the facility in a safe, clean, orderly, and attractive manner. The facility must be free from offensive odors, safety hazards, insects and rodents, and accumulations of dirt, rubbish, dust.

**A.** Bathrooms and all common living areas must be cleaned as often as necessary to maintain a clean and sanitary environment.

**B.** Combustibles such as cleaning rags and compounds shall be stored in closed metal containers in approved areas providing adequate ventilation. Combustibles shall be stored away from the food preparation area and away from resident rooms.

**C.** Poisonous or flammable substances must not be stored in residential areas, food preparation areas, or food storage areas.

**D.** The adult residential care facility shall make available laundry services to the residents either on the premises or by use of a commercial laundry or linen service. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(1) All linens shall be changed as needed and at least weekly.

(2) The mattress pad, blankets, and bedspread shall be laundered as needed and at least once a month.

(3) Bath linens consisting of face towel, bath towel and wash cloth shall be changed as needed and at least three (3) times per week.

(4) Residents shall have clean clothing as needed to maintain dignity and be free of odors.

**E.** Laundry services provided on the premises shall have a designated laundry area equipped with a washer and dryer.

**F.** Under no circumstances shall collection, sorting, storage or washing of soiled clothing or linen be done in a food preparation, food storage, or food service area.

**G.** Residents may do their own laundry if they are capable and WISH to do so, or if it is part of a training or rehabilitation program specifically documented in the resident's individual service plan.

**H.** A separate, dry, well ventilated storage area for clean linen shall be provided.  
[7-1-64, 9-15-70, 5-26-72, 7-19-74, 9-24-76, 7-11-86, 4-7-97; 7.8.2.39 NMAC - Rn, 7 NMAC 8.2.39, 8-31-00]

**7.8.2.40 CAPACITY OF BUILDING(S):**

**A.** A facility is not limited to the maximum number of residents if the building is built in accordance with the New Mexico Building Code, Uniform Building Code and National Fire Protection Associations NFPA 101( Life Safety Code). Appropriate building and fire code requirements for large facilities will be outlined during the plan review phase of the initial licensure process. **Facilities with three (3) or fewer residents are exempt from certain building requirements; exemptions are identified within these regulations.**

**B.** All buildings on the premises housing residents will be considered part of the facility and must meet all requirements of these regulations. Buildings on the grounds of the licensed facility that are used by the residents of the facility will also be subject for inspection for health and safety standards. Each individual dwelling unit on the premises will be separately licensed. All rooms within licensed buildings are subject to inspection for health and safety standards.  
[7-1-64, 9-15-70, 5-26-72, 7-19-74, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.40 NMAC - Rn, 7 NMAC 8.2.40, 8-31-00]

**7.8.2.41 BUILDING CONSTRUCTION:** When construction of buildings, additions, or alterations to existing buildings are contemplated, plans, code analysis and specifications covering all portions of the work shall be submitted to the Licensing Authority for plan review and approval prior to beginning actual construction. When an addition or alteration is contemplated, plans for the entire facility must also be submitted. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to submit floor plans.**

**A.** Building construction and the fire resistance required shall be based upon the capacity of the facility and the residents ability to evacuate the building, in accordance with the Uniform Building Code and NFPA 101 (Life Safety Code).

**(1)** Larger buildings, which are more difficult to evacuate, require more built-in fire protection than smaller buildings. Occupants who are more difficult to evacuate require more built in fire protection than occupants who are easy to evacuate.

**(2)** Evacuation capability, in accordance with NFPA 101, Fire Safety Equivalency System (FSSES), must be determined before proceeding to identify applicable building requirements. Evacuation capability is not determined on the basis of that resident who is least capable to evacuate, but rather for the entire facility.

**(3)** Facilities not capable of **prompt** evacuation may not house residents unless the building is constructed to provide protection to these residents. All facilities that are rated as **impractical to evacuate** shall be protected throughout by an automatic fire protection (sprinkler) system. Facilities that are rated **impractical to evacuate** and that do not comply with the more restrictive building standards may not continue to care for residents.

**(4) NEWLY LICENSED AND/OR CONSTRUCTED ADULT RESIDENTIAL CARE FACILITIES:** Shall be protected throughout by an approved, automatic fire protection (sprinkler) system. **EXCEPTION 1: Sprinklers shall not be required in facilities serving eight (8) or fewer residents maintaining prompt evacuation capability.**

**(5) CURRENTLY LICENSED FACILITIES:** Any facility currently licensed on the date these regulations are promulgated and which provides the services prescribed under these regulations, but fails to meet all building requirements, may be granted a variance to continue to be licensed provided:

- (a)** The facility was in compliance with codes and standards at the time of initial licensure.
- (b)** Variances granted will not create a hazard to the health, safety, or welfare of residents and staff
- (c)** The facility maintains prompt evacuation capabilities.

**B.** Minimum construction requirements shall be a twenty (20) minute fire resistance rating for all bearing walls and partitions, floor construction, roofs, columns, beams, girders and trusses.

**C. NUMBER OF STORIES:** Facilities may be of any number of stories if they comply with Uniform Building Code and NFPA 101 (Life Safety Code), with respect to construction and ability of the residents to evacuate in a timely manner.

**(1)** One story buildings may be of Type V-(000) construction if all residents are capable of prompt evacuation.

**(2)** Two story buildings must be of at least one hour construction. Residents who are not capable of prompt

evacuation may not be housed above the street-level unless the facility is protected by an approved automatic fire protection (sprinkler) system.

(3) Three stories or more require the building to be protected by an approved automatic fire protection (sprinkler) system.

**D. ACCESS TO PERSONS WITH DISABILITIES:** Consultation may be given to new facilities on access requirements upon submission of floor plans during the initial licensing process. With the exception of Adult Residential Care Facilities **with three or fewer residents**, accessibility to persons with disabilities must be provided in all facilities in accordance with New Mexico Building Code and the American Disabilities Act and shall, as a minimum, include the following:

(1) Main entry into the facility must provide wheelchair access.  
(2) Building must allow access to main living area and dining area.  
(3) At least one bedroom shall be provided a door clearance of thirty-four (34) inches (thirty six (36) inches is recommended) for wheelchair access.

(4) One toilet and bathing facility is required a minimum door clearance of thirty-four (34) inches (thirty six (36) inches is recommended) for wheelchair access. This toilet and bathing area must provide a sixty (60) inch diameter clear space (turning radius for a wheelchair).

(5) If ramps are provided to the building, a minimum slope of twelve (12) inches horizontal run for each one (1) inch of vertical rise is required. Ramps exceeding a six (6) inch rise shall be provided with handrails.

(6) Landings at doorways must have a minimum five (5) foot by five (5) foot level area at the doorway to provide clear space for wheelchair maneuvering.

**E. PROHIBITION ON MOBILE HOMES:** Trailers and mobile homes shall not be used for any part of any adult residential care facility caring for more than three (3) residents.  
[7-1-64, 9-15-70, 5-26-72, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.41 NMAC - Rn, 7 NMAC 8.2.41, 8-31-00]

**7.8.2.42 SITE REQUIREMENTS:** The facility must be located and maintained free from environmental and objectionable factors detrimental to the residents and staff's health, safety, or welfare. The facility site shall designed and maintained to encourage outdoor activities by the residents.  
[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.42 NMAC - Rn, 7 NMAC 8.2.42, 8-31-00]

**7.8.2.43 MAINTENANCE OF BUILDING AND GROUNDS:** The building(s) must be maintained in good repair at all times. Such maintenance shall include, but is not limited to, the following:

**A.** All electrical, fire protection signaling, mechanical, telephone, water supply, heating, fire protection, and sewage disposal systems maintained in a safe and functioning condition, including regular inspections of these systems, (as applicable).

**B.** The building, furniture and furnishings, storage areas, and grounds of the facility must be maintained in a safe, sanitary, and presentable condition at all times.

**C.** Storage areas must be kept free from accumulation of refuse, discarded furniture, old newspapers, that create a fire hazard.

**D.** Floors shall be maintained stable, firm, slip-resistant and free of tripping hazards.  
[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.43 NMAC – Rn, 7 NMAC 8.2.43, 8-31-00]

**7.8.2.44 HAZARDOUS AREAS:**

**A.** Hazardous areas, as defined per NFPA 101 (Life Safety Code), on the same floor as, and in or abutting a primary means of escape or a sleeping room shall be protected by either;

(1) Enclosure of at least one hour fire rating with self closing or smoke operated automatic closing fire doors having a 3/4 hour rating or;

(2) Automatic fire protection (sprinkler) and separation of hazardous area with any doors self-closing or automatic-closing on smoke detection.

(3) Other hazardous areas shall be enclosed with walls having at least a twenty (20) minute fire rating and doors equivalent to 1 3/4 inch solid bonded wood core, operated by self-closures or automatic closing on smoke detection.

**B.** All boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one-hour. Doors to these rooms shall be 1-3/4" solid core. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to**

**have a fire resistance rating of not less than one-hour or the 1-3/4" solid core door.**

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.44 NMAC - Rn, 7 NMAC 8.2.44, 8-31-00]

**7.8.2.45 HEATING, VENTILATION AND AIR-CONDITIONING:**

**A.** Heating, air-conditioning, piping, boilers, and ventilation equipment must be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical and construction codes. All facilities must have documentation that fuel -fire heating systems have been checked, tested and maintained annually by qualified personnel.

**B.** The heating method used by the facility must provide a minimum temperature of seventy (70) degrees Fahrenheit in all rooms used by the residents.

**C.** No open-face gas or electric heater nor unprotected single shell gas or electric heating device may be used for heating the facility. Portable heating units shall not be used for heating the facility. All heating appliances must be permanently anchored and kept away from flammables such as curtains, bedcovering, trash containers, or clothing. No heating appliance shall be located where the unit or wiring is a tripping hazard or danger from electrical shock.

**D.** Fireplaces and open flame heating are not permitted to be utilized in sleeping rooms.

**E.** Gas fired water heaters must not be located in sleeping rooms, bathrooms, or rooms opening into sleeping rooms.

**F.** A facility must be adequately ventilated at all times to provide fresh air and the control of unpleasant odors by either mechanical or natural means.

**G.** All openings to the outside air used for ventilation must be screened for the control of insects and rodents. Screen doors must be equipped with self-closing devices.

**H.** A facility must be provided with a system for maintaining residents comfort during periods of hot weather. Fans shall not be located where the unit or wiring is a tripping hazard or danger from electrical shock. Fans shall be provided with protective shields when there is a potential for contact by any individual.

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.45 NMAC - Rn, 7 NMAC 8.2.45, 8-31-00]

**7.8.2.46 WATER:**

**A.** A facility must be provided with an adequate supply of water which is of a safe and sanitary quality suitable for domestic use. Hot and cold running water under pressure must be distributed to all food preparation areas, lavatories, washrooms, and laundries.

**B.** If the water supply is not obtained from an approved public system, the private water system must be inspected, tested, and approved by the Environmental Health Authority prior to licensure. It is the facility's responsibility to insure that subsequent periodic testing or inspection of such private water systems be made at intervals as prescribed by the Environmental Authority.

**C.** The hot water temperature accessible to residents must be maintained at a minimum of 95 degrees Fahrenheit and a maximum of 110 degrees Fahrenheit. Hot water in excess of 110 degrees Fahrenheit is permitted in kitchen and laundry areas, provided residents are supervised to prevent injury.

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.46 NMAC - Rn, 7 NMAC 8.2.46, 8-31-00]

**7.8.2.47 SEWAGE AND WASTE DISPOSAL:**

**A.** All sewage and liquid wastes must be disposed of into a municipal sewage system where such facilities are available.

**B.** Where a municipal sewage system is not available, the system used must be inspected and approved by the Environmental Health Authority.

**C.** Where municipal or community garbage collection and disposal service are not available, the method of collection, storage and disposal of garbage used by the facility must be environmentally safe and sound and not create an objectionable environment.

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.47 NMAC - Rn, 7 NMAC 8.2.47, 8-31-00]

**7.8.2.48 LIGHTING AND LIGHTING FIXTURES:**

**A.** All areas of the facility, including storerooms, stairways, hallways, and interior and exterior entrances must be lighted to make the area clearly visible.

**B.** Exits, exit-access ways, and other areas used at night by residents and staff must be illuminated by night lights or other continuous lighting.

**C.** Lighting fixtures must be selected and located to accommodate the needs and activities of the residents with the comfort and convenience of the residents in mind.

**D.** Lamps and lighting fixtures must be shaded to prevent glare to the eyes of residents and staff, and protected from accidental breakage or shattering.

**E.** A facility must be provided with emergency lighting to light exit passageways which will activate automatically upon disruption of electrical service. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents may have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.**

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.48 NMAC - Rn, 7 NMAC 8.2.48, 8-31-00]

#### **7.8.2.49 ELEMENTS OF FACILITY ELECTRICAL SYSTEM:**

**A.** All fuse and breaker boxes must be labeled to indicate the area of the facility to which each fuse or circuit breaker provides service.

**B.** All staff personnel of the facility must know the location of the electrical disconnect switch and how to operate it in case of emergency.

**C.** Electrical cords and appliances must be U/L approved.

(1) Electrical cords shall be replaced as soon as they show wear.

(2) Extension cords are prohibited. **EXCEPTION: The use of a multi-socket United Laboratories approved (U/L APPROVED) surge protector with integrated circuit breaker no greater than six (6) foot in length is permitted.**

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.49 NMAC - Rn, 7 NMAC 8.2.49, 8-31-00]

#### **7.8.2.50 DOORS:**

**A.** No door in any means of egress shall be locked against egress when the building is occupied.

(1) Exit doors may be provided with a night latch, dead bolt, or security chain, provided such devices are operable from the inside without the use of a key, tool, or any special knowledge and are mounted at a height not to exceed forty-eight (48) inches above the finished floor.

(2) If locks are not readily operable by all occupants within the building, then the locks must: (1) unlock upon activation of the fire detection or sprinkler system, (2) unlock upon loss of power in the facility. The facility must have written approval from the building and fire authorities having jurisdiction prior to installing such locking devices.

(3) Locks on doors to toilets shall be capable of being released from the outside. All doors shall readily be opened from the inside.

**B.** All exit doors must have a minimum width of thirty-six (36) inches.

(1) Exit doors leading to the outside of the facility with a capacity of ten (10) or more residents must open outward.

(2) Facilities with a capacity of fifty (50) or more must provide panic hardware at exits.

**C.** All resident sleeping room doors must be at least 1 3/4" solid core. No door or path of travel to a means of egress shall be less than twenty (28) inches wide. (See additional requirements for handicap access; at least one bedroom door must be thirty-four (34) inches wide for wheelchair access) **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to have 1 3/4" solid core doors.**

**D.** Bathroom doors may be twenty-four (24) inches. (See additional requirements for handicap access; at least one bathroom door must be thirty-four (34) inches wide for wheelchair access). **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to have thirty-four (34) inch doors for wheelchair access.**

[9-24-76, 7-11-86, 4-7-97; 7.8.2.50 NMAC - Rn, 7 NMAC 8.2.50, 8-31-00]

#### **7.8.2.51 EXITS:**

**A.** Each facility must have at least two (2) approved exits, that do not involve windows and which are remote from each other. At least one path of travel shall be provided that does not traverse any space exposed to unprotected vertical openings or common living spaces.

**B.** Facilities with ten (10) or more residents shall have each exit clearly marked with signs having letters at least six inches (6 ") high whose principal strokes are at least 3/4 of an inch wide. Exit signs shall be visible at all times.

**C.** Exits must be clear of obstructions at all times.

**D.** Exits, exit paths, or means of egress shall not pass through hazardous areas, storerooms, closets, bedrooms, or spaces subject to locking.

**E.** Sliding doors are not acceptable as a required exit. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents may have sliding doors as required exits.**

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 4-7-97; 7.8.2.51 NMAC - Rn, 7 NMAC 8.2.51, 8-31-00]

**7.8.2.52 SEPARATION OF SLEEPING ROOMS:**

**A.** All sleeping rooms shall be separated from escape route corridors by walls and doors that are smoke resistant. There shall be no passages, louvers, or transfer grills penetrating the wall to other spaces in the building.

**B.** All sleeping rooms shall be provided latches or other mechanisms suitable for keeping the doors closed

**C.** Every sleeping room shall have access to a primary means of escape located to provide a path to the exterior, without exposure to unprotected vertical openings. Where sleeping rooms are above or below the level of exit discharge, the primary means of escape shall be;

- (1) Enclosed interior stair; or
- (2) Exterior stair; or
- (3) Horizontal exit; or
- (4) Existing approved fire escape stair.

**D.** Every sleeping room shall provide a secondary means of escape which may be any one of the following:

(1) A door leading directly to the outside, at or to grade level; or

(2) Door, stairway, passage or hall remote from the primary escape and to the exterior; or

(3) An outside window or door, operable without tools from the inside with a minimum clear opening of twenty (20) inches wide by twenty-four (24) inches high. The bottom of the opening from the floor is a maximum of forty-four (44) inches. The means of escape is acceptable if the bottom of the window is no more than twenty (20) feet above grade or is accessible to fire department rescue apparatus approved by the authority having jurisdiction, or it opens onto an exterior balcony; or

(4) Bars, grills, grates or similar devices may be installed on emergency escape or rescue windows or doors only if equipped with release mechanisms which are operable from the inside without the use of a key or special knowledge or effort.

**E.** Stairways and other vertical openings between floors are enclosed with construction providing a smoke and fire resistance rating of not less than twenty (20) minutes. Open stairways between floors are not permitted.

[9-4-6, 7-1-86, 1-11-90, 4-7-97; 7.8.2.52 NMAC – Rn & A 7 NMAC.8.2.52, 8-31-00]

**7.8.2.53 CORRIDORS:**

**A.** Corridors in an existing building may have a minimum width of thirty-six (36) inches. Corridors in newly constructed facilities shall have a minimum width of forty-four (44) inches.

**B.** Corridors shall have a clear ceiling height of not less than seven (7) feet measured to the lowest projection from the ceiling.

**C.** Corridors shall be maintained clear and free of obstructions at all times.

[9-24-76, 7-11-86, 4-7-97; 7.8.2.53 NMAC - Rn, 7 NMAC 8.2.53, 8-31-00]

**7.8.2.54 MINIMUM ROOM DIMENSIONS:**

**A.** All habitable rooms in a facility shall have a ceiling height of not less than seven feet six inches (7'6"). Kitchens, halls, bathrooms and toilet compartments shall have a ceiling height of not less than seven (7) feet.

**B.** All habitable rooms other than a kitchen shall be not less than seven (7) feet in any dimension.

**C.** Any room with sloped ceiling where any portion of the room is less than seven (7) feet in height is subject to review and approval or disapproval by the Licensing Authority, based upon Uniform Building Code computation of minimum area.

[9-15-70, 7-19-74, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.54 NMAC - Rn, 7 NMAC 8.2.54, 8-31-00]

**7.8.2.55 RESIDENT ROOMS:**

**A.** Each resident room must be an outside room with an window. The area of the outdoor window shall be

at least 1/10th the floor area of the room.

**B.** There must be no through traffic in resident rooms.

**C.** Resident rooms must communicate directly with other areas of the facility. Toilet and bathing facilities must be located to meet the needs of the residents.

**D.** Resident rooms may be private or semi-private. Semi-private rooms may not house more than two (2) residents. **EXCEPTION: Facilities that provide programmatic services for alcohol or drug dependency on a short term (30-60 days) may have dormitories with no limitation on number of residents as long as minimum square footage requirements are met.**

(1) Private Rooms: must have a minimum of one hundred (100) square feet of floor area. Closet and locker area shall not be counted as part of the available floor space.

(2) Semi-Private Rooms: must have a minimum of eighty (80) square feet of floor area for each bed and be furnished in such a manner that the room is not crowded or passage out of the room is obstructed. Closet and locker area shall not be counted as part of the available floor space.

(3) Dormitories/Wards: must have a minimum of sixty (60) square feet of floor area for each bed. Closet and locker area shall not be counted as part of the available floor space.

**E.** If a resident chooses not to bring in his/her own furnishings, each resident room shall be provided with, as a minimum, the following per resident:

**F.** Furnishings:

(1) Resident beds shall be at least thirty-six (36) inches wide, of sturdy construction, and in good repair.

(2) Each bed shall be provided with a clean, comfortable mattress of at least four (4) inches in thickness, which is waterproof, or protected with a waterproof covering, and a mattress pad.

(3) Each bed shall be provided with a clean, comfortable pillow.

(4) Each bed shall be provided with a pillow case, two (2) clean sheets, blankets, and a bedspread appropriate for the weather and climate.

(5) Beds shall be spaced at least three (3) feet apart.

(6) An individual closet or closet area with a clothes rack for hanging clothes and shelves or drawers that are accessible to the resident.

(7) A bedside table or desk.

(8) A chair.

(9) A reading lamp.

(10) A mirror in the resident room.

(11) Window shades, drapes, curtains, or blinds, in good repair and of flame-retardant materials.

[7-1-64, 9-15-70, 5-26-72, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.55 NMAC - Rn, 7 NMAC 8.2.55, 8-31-00]

#### **7.8.2.56 TOILET AND BATHING FACILITIES**

**A.** A minimum of one (1) toilet, one (1) sink and one (1) bathing unit must be provided for every eight (8) residents or fraction thereof. Each facility shall provide at least one tub and one shower or combination unit to allow for residents bathing preference.

**B.** The combination type tub and shower is permitted.

**C.** Toilets, tubs, and showers must be provided with grab bars.

**D.** If a facility has live in staff, a separate toilet, sink, and bathing facility must be provided. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to have a separate toilet, sink, and bathing facility for live in staff.**

**E.** Tubs and showers must have a slip resistant surface.

**F.** Toilet, sink, and bathing facilities must be readily available to the residents. No passage through a resident room by another resident to reach a toilet, bath, or sink facility is permitted.

**G.** All facilities must have a minimum of one (1) toilet and bathing facility which meets requirements for the disabled. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to have a toilet and bathing facility which meets requirements for the disabled.**

**H.** Toilet paper and soap must be provided in each toilet room.

**I.** The use of a common towel is prohibited.

**J.** Bathrooms and lavatories must be cleaned as often as necessary to maintain a clean and sanitary condition.

[7-1-64, 9-15-70, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.56 NMAC - Rn, 7 NMAC 8.2.56, 8-31-00]

**7.8.2.57 LIVING AND/OR MULTI-PURPOSE ROOM:** Each facility shall provide a minimum of fifteen (15) square feet per resident for common living, dining and social spaces.

**A.** Each facility shall have a living and/or multi-purpose room for the use of residents. Such rooms shall be provided with reading lamps, tables, chairs, and couches. These furnishings shall be well constructed, comfortable, and in good repair.

**B.** The living room and/or multi-purpose rooms shall be provided with supplies to meet the varied interests and needs of the residents.

**C.** Each activity room shall have window area of at least 1/10 the floor area with a minimum of at least ten (10) square feet.

[9-15-70, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.57 NMAC - Rn, 7 NMAC 8.2.57, 8-31-00]

**7.8.2.58 DINING AREA:**

**A.** A dining area shall be provided for meals. Each dining area shall be designed and have furnishings to meet the individual needs of residents.

**(1)** Facilities with fewer than sixty (60) residents shall have tables and chairs for the dining area to accommodate the total number of residents in one sitting for which a facility is licensed.

**(2)** Facilities with more than sixty (60) residents must provide seating for at least 60 residents but may serve meals in shifts to accommodate the total capacity.

**(a)** No more than three (3) shifts are permitted for each meal.

**(b)** Facilities with more than 60 residents serving meals in shifts must have other social areas for residents to congregate during meal service.

**B.** Dining areas shall promote a pleasant and homelike environment that is attractively furnished and decorated.

**C.** The living and/or multi-purpose room may be used as a dining area if the dining area portion does not exceed fifty (50) percent of the available floor space and still allows comfortable arrangement of necessary furnishings for a living area.

[7-1-64, 9-24-76, 7-11-86, 4-7-97; 7.8.2.58 NMAC - Rn, 7 NMAC 8.2.58, 8-31-00]

**7.8.2.59 FIRE CLEARANCE AND INSPECTIONS:**

**A.** Written documentation from the State Fire Marshall's office or Fire Prevention Authority having jurisdiction indicating a facility's compliance with applicable fire prevention codes shall be submitted to the Licensing Authority prior to issuance of a initial license.

**B.** Each facility shall request from the local fire prevention authorities an annual fire inspection. If the policy of the local fire department does not provide for annual inspection of the facility, the facility will document the date the request was made and to whom and then contact licensing authorities. If the local fire prevention authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility.

[7-1-64, 9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.59 NMAC - Rn, 7 NMAC 8.2.59, 8-31-00]

**7.8.2.60 FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT:**

**A. FIRE ALARM SYSTEM:** A manual fire alarm system shall be provided. The manual fire alarm must be inspected and approved in writing by the fire authority having jurisdiction. **EXCEPTION: Adult residential care facilities with three (3) or fewer residents are not required to have a fire alarm system.**

**B. SMOKE AND HEAT DETECTION:** Approved smoke detectors shall be installed on each floor to provide when activated an alarm which is audible in all sleeping areas. Areas of assembly such as the dining and living room must also be provided with smoke detectors.

**(1)** Detectors shall be powered by the house electrical service and have battery back up.

**(2)** Construction of new facilities or facilities remodeling or replacing existing smoke detectors shall provide detectors in common living areas and in each sleeping room.

**(3)** Smoke detectors must be installed in corridors at no more than thirty (30) foot spacing.

**(4)** Heat detectors shall be installed in all enclosed kitchens and also powered by the house electrical service.

[9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.60 NMAC - Rn, 7 NMAC 8.2.60, 8-31-00]

**7.8.2.61 AUTOMATIC FIRE PROTECTION (SPRINKLER) SYSTEM:** Where an automatic fire protection

(sprinkler) system is installed for total or partial coverage, the system shall be in accordance with NFPA 13 or NFPA 13D as applicable.

[4-7-97; 7.8.2.61 NMAC - Rn, 7 NMAC 8.2.61, 8-31-00]

**7.8.2.62 FIRE EXTINGUISHERS:**

**A.** As approved by the State Fire Marshall or Fire Prevention authority having jurisdiction must be located in the facility. Facilities must as a minimum have two (2) 2A10BC fire extinguishers, one (1) located in the kitchen or food preparation area, and one (1) centrally located in the facility. All fire extinguishers shall be inspected yearly and recharged as needed. All fire extinguishers must be tagged noting the date of inspection.

**B.** Fire extinguishers, alarm systems, automatic detection equipment, and other fire fighting equipment must be properly maintained and inspected as recommended by the manufacturer, State Fire Marshall, or Fire Authority having jurisdiction.

[7-1-64, 9-24-76, 7-11-86, 4-7-97; 7.8.2.62 NMAC - Rn, 7 NMAC 8.2.62, 8-31-00]

**7.8.2.63 STAFF AND RESIDENT FIRE AND SAFETY TRAINING:**

**A.** All staff personnel of the facility must know the location of and be instructed in proper use of fire extinguishers and other procedures to be observed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instructions in the use of fire prevention and techniques of evacuation.

**B.** Facility staff must be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, blocked exits or exit-ways, and any other condition which could cause burns, falls, or other personal injury to the residents or staff.

**C.** Each new resident must upon being accepted into the facility be given an orientation tour of the facility to include, but not be limited to, the location of the exits, fire extinguishers, and telephones, and shall be instructed in action to be taken in case of fire or other emergency.

**D.** Fire Drills: The facility must conduct at least one (1) fire drill each month:

(1) Fire drills must be held at different times of the day.

(2) The fire alarm system or detector system in the facility shall be used in the conduct of fire drills.

(3) In the conduct of fire drills, emphasis must be placed upon orderly evacuation under proper discipline rather than upon speed.

(4) A record of fire drills held must be maintained on file in the facility. Such record must show date and time of the drill, number of personnel participating in the drill, any problem noted during the drill and the evacuation time in total minutes.

(5) The local fire department should be requested to supervise and participate in fire drills.

[9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.63 NMAC - Rn, 7 NMAC 8.2.63, 8-31-00]

**7.8.2.64 SMOKING:**

**A.** Smoking by residents and staff must only be done in supervised areas designated by the facility and approved by the State Fire Marshall or local fire prevention authorities. Smoking must not be allowed in a kitchen or food preparation areas.

**B.** All designated smoking areas must be provided with suitable ashtrays.

**C.** Residents must not be permitted to smoke in their sleeping rooms.

**D.** Smoking must not be permitted where oxygen is in use or stored.

[9-24-76, 7-11-86, 4-7-97; 7.8.2.64 NMAC - Rn, 7 NMAC 8.2.64, 8-31-00]

**7.8.2.65 SANITATION:** All garbage and refuse areas must be kept clean and maintained in order to inhibit insect and rodent infestation.

9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.65 NMAC - Rn, 7 NMAC 8.2.65, 8-31-00]

**7.8.2.66 RELATED REGULATIONS AND CODES:** Adult residential care facilities subject to these regulations are also subject to other regulations, codes and standards as the same may, from time to time, be amended as follows:

**A.** Health Facility Licensure Fees and Procedures, New Mexico Department of Health, 7 NMAC 1.7 (10-31-96).

**B.** Health Facility Sanctions and Civil Monetary Penalties, New Mexico Department of Health, 7 NMAC 1.8 (10-31-96).

C. Adjudicatory Hearings, New Mexico Department of Health, 7 NMAC 1.2 (2-1-96).  
[9-24-76, 7-11-86, 1-11-90, 4-7-97; 7.8.2.66 NMAC - Rn, 7 NMAC 8.2.66, 8-31-00]

**History of 7.8.2 NMAC:**

**Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records state records center and archives:

HSSD 72-1, New Mexico Licensing Regulations and Standards for Boarding Homes, filed 05-26-72

HSSD 76-6, Adult Residential Shelter Care Homes, Regulations and Standards, filed 09-24-76

HED 80-2A (HSD), Regulations For Community Residential Facilities For Developmentally Disabled Individuals, filed 09-26-80

HED 86-3 (HSD), Regulations Governing Residential Shelter Care And Boarding Home Facilities For Adults, filed 07-11-86

HED 90-1 (PHD), Regulations Governing Residential Shelter Care And Boarding Home Facilities For Adults

**Other History:**

7 NMAC 8.2, Requirements for Adult Residential Care Facilities, filed 02-14-97, reformatted and renumbered to 7.8.2 NMAC, effective 8-31-00.

**History of Repealed Material:** Reserved.