

CHAPTER 39
STANDARDS FOR LICENSURE OF LONG-TERM CARE FACILITIES

Authority

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

Source and Effective Date

R.2001 d.297, effective August 20, 2001.
See: 32 N.J.R. 3003(a), 33 N.J.R. 2851(a).

Chapter Expiration Date

Chapter 39, Standards for Licensure of Long-Term Care Facilities, expires on August 20, 2006.

Chapter Historical Note

Chapter 39, Standards for Licensure of Long-Term Care Facilities, was adopted as R.1977 d.222, effective January 1, 1978. See: 9 N.J.R. 171(c), 9 N.J.R. 322(c).

Chapter 39, Standards for Licensure of Long-Term Care Facilities, was repealed and Chapter 39, Long-Term Care Facilities, was adopted as new rules by R.1983 d.236, effective June 20, 1983. See: 15 N.J.R. 279(a), 15 N.J.R. 1022(b).

Chapter 39, Long-Term Care Facilities, was repealed and Chapter 39, Manual of Standards for Long-Term Care, was adopted as new rules by R.1988 d.280, effective June 20, 1988. See: 20 N.J.R. 469(a), 20 N.J.R. 1432(a).

Pursuant to Executive Order No. 66(1978), Chapter 39, Manual of Standards for Long-Term Care, was readopted as R.1993 d.341, effective June 14, 1993. See: 25 N.J.R. 1474(a), 25 N.J.R. 2878(a).

Chapter 39, Manual of Standards for Long-Term Care, was repealed and Chapter 39, Standards for Licensure of Long-Term Care Facilities, was adopted as new rules by R.1994 d.582, effective November 21, 1994, operative January 1, 1995, except Subchapter 43, operative November 21, 1994. See: 26 N.J.R. 1772(c), 26 N.J.R. 4641(a). Pursuant to Executive Order No. 66(1978), Chapter 39 expired on November 21, 1999.

Chapter 39, Standards for Licensure of Long-Term Care Facilities, was adopted as new rules by R.2001 d.297, effective August 20, 2001. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

8:39-1.1 Scope and purpose

(a) This chapter contains rules and standards intended to assure the high quality of care delivered in long-term care facilities, commonly known as nursing homes, throughout New Jersey. Components of quality of care addressed by these rules and standards include access to care, continuity of care, comprehensiveness of care, coordination of services, humaneness of treatment, conservatism in intervention, safety of the environment, professionalism of caregivers, and participation in useful studies.

(b) These rules and standards apply to each licensed long-term care facility. They are intended for use in State surveys of the facilities and any ensuing enforcement ac-

tions. They are also designed to be useful to consumers and providers as a mechanism for privately assessing the quality of care provided in any long-term care facility.

8:39-1.2 Definitions

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

“Advance directive” means a written statement of a resident’s instructions and directions for health care in the event of future decision making incapacity, in accordance with the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., P.L. 1991, c.201. An advance directive may include a proxy directive, an instruction directive, or both.

“Advanced practice nurse” means a person certified by the New Jersey Board of Nursing in accordance with Section 8 or 9 of P.L. 1991, c.377; amended by P.L. 1999, c.85, § 6.

“Adverse drug reaction” means any unexpected, unintended, undesired or excessive response to a drug such that it:

1. Requires discontinuing the drug (therapeutic or diagnostic);
2. Requires changing the drug therapy;
3. Requires modifying the dose;
4. Negatively affects prognosis; or
5. Results in temporary or permanent harm or disability, or death.

“Available” means ready for immediate use (pertaining to equipment) or capable of being reached (pertaining to personnel), unless otherwise defined in these rules.

“Bed” or “licensed bed” means one of the total number of beds for which each licensed long-term care facility is approved for resident care by the Commissioner of the New Jersey State Department of Health and Senior Services.

“Cleaning” means the removal by scrubbing and washing, as with hot water, soap or detergent, or vacuuming, of infectious agents and of organic matter from surfaces on which and in which infectious agents may find conditions for surviving or multiplying.

“Commissioner” means the New Jersey State Commissioner of Health and Senior Services.

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

“Conspicuously posted” means placed at a location within the facility accessible to and seen by residents and the public.

“Contamination” means the presence of an infectious or toxic agent in the air, on a body surface, or on or in clothes, bedding, instruments, dressings, or other inanimate articles or substances, including water, milk, and food.

“Controlled Dangerous Substances Acts” means the Controlled Substances Act of 1970 (Title II, Public Law 91-513) and the New Jersey Controlled Dangerous Substances Act of 1971, N.J.S.A. 24:21-1 et seq.

“Current” means up-to-date, extending to the present time.

“Department” means the New Jersey State Department of Health and Senior Services.

“Dietitian” means a person who possesses a bachelor’s degree from an accredited college or university with a major area of concentration in a nutrition-related field of study, and one year of full-time professional experience or graduate-level training in nutrition.

“Disinfection” means the killing of infectious agents outside the body, or organisms transmitting such agents, by chemical and/or physical means, directly applied.

“Documented” means written, signed, and dated. If an identifier such as a master sign-in sheet is used, initials may be used for signing documentation, in accordance with applicable professional standards of practice.

“Drug administration” means a procedure in which a prescribed drug or biological is given to a resident by an authorized person in accordance with all laws and regulations governing such procedures. The complete procedure of administration includes:

1. Removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container);
2. Verifying it with the prescriber’s orders;
3. Giving the individual dose to the resident;
4. Seeing that the resident takes it (if oral); and
5. Recording the required information, including the method of administration.

“Drug dispensing” means a procedure entailing the interpretation of the original or direct copy of the prescriber’s order for a drug or a biological and, pursuant to that order, the proper selection, measuring, labeling, packaging, and issuance of the drug or biological to a resident or a service unit of the facility, in conformance with all applicable Federal, State, and local rules and regulations.

“Drug regimen review” means an individual resident record review conducted by the consultant pharmacist, including, but not limited to, laboratory tests, dietary requirements, physician’s or advanced practice nurse’s and nurse’s clinical notes, physician’s or advanced practice nurse’s orders and progress notes, in order to monitor for potentially significant adverse drug reactions, drug-to-drug and drug-food interactions, allergies, contraindications, rationality of therapy, drug use evaluation, and laboratory test results.

“Epidemic” means the occurrence or outbreak in a facility of one or more cases of an illness in excess of normal expectancy for that illness, derived from a common or propagated source.

“Facility” means a facility or distinct part of a facility licensed by the New Jersey State Department of Health and Senior Services as a long-term care facility.

“Full-time” means relating to a time period established by the facility as a full working week, as defined and specified in the facility’s policies and procedures.

“Guardian” means a person appointed by a court of competent jurisdiction to handle the affairs and protect the rights of any resident of the facility.

“Health care facility” means a facility so defined in N.J.S.A. 26:2H-1 et seq., and amendments thereto.

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

“Medication error” means a discrepancy between what the prescriber ordered and what the resident receives. The error may or may not be seen by the (pharmacist) surveyor during an observation of a resident receiving medication. If a medication error is seen by the surveyor during a medication observation pass, it shall be included in determining the medication error rate.

“Medication error rate” is calculated by the following equation: (number of errors observed divided by the opportunities for errors) x 100.

“Monitor” means to observe, watch, or check.

“Pharmacist” means an individual so licensed by the New Jersey State Board of Pharmacy, pursuant to N.J.A.C. 13:39-3.

“Physician” means a person licensed to practice medicine by the New Jersey State Board of Medical Examiners, pursuant to N.J.S.A. 45:9-1 et seq.

“Reasonable hour” means any time between the hours of 8:00 A.M. and 8:00 P.M. daily.

“Resident” means a person who resides in the facility and is in need of 24-hour continuous nursing supervision.

“Self administration” means a procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a resident to himself or herself. The complete procedure of self-administration includes:

1. Removing an individual dose from a previously dispensed (in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39), labeled container (including a unit dose container);
2. Verifying it with the directions on the label; and
3. Taking orally, injecting, inserting, or topically or otherwise administering the medication.

“Shift” means a time period defined as a full working day by the facility in its policy manual.

“Signature” means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D., D.O.) of a person, legibly written with his or her own hand. A controlled electronic signature system may be used.

“Supervision” means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his or her sphere of competence, with initial direction and periodic on-site inspection of the actual act of accomplishing the function or activity. “Direct supervision” means supervision on the premises within view of the supervisor.

“Unit-of-use” means a system in which drugs are delivered to the resident areas either in single unit packaging, bingo or punch cards, blister or strip packs, or other system where each drug is physically separate.

SUBCHAPTER 2. LICENSURE PROCEDURE

8:39-2.1 Certificate of need

(a) According to the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a certificate of need issued by the Commissioner, in accordance with N.J.A.C. 8:33. Facilities exempt from certificate of need pursuant to law shall follow licensing procedures identified in N.J.A.C. 8:39-2.2.

(b) Application forms for a certificate of need and instructions for completion may be obtained from:

Certificate of Need Review Services
 Division of Health Care Systems Analysis
 New Jersey State Department of Health and Senior Services
 PO Box 360
 Trenton, NJ 08625-0360

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the certificate of need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:39-2.2 Application for licensure

(a) Following acquisition of a certificate of need, or a determination that a certificate of need is not required, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department which include information regarding facility ownership, corporate officers and stockholders, and approval forms from local building, fire, health and zoning departments. Such forms may be obtained from:

Long-Term Care Licensing and Certification
 Division of Long-Term Care Systems
 New Jersey State Department of Health and Senior Services
 PO Box 367
 Trenton, NJ 08625-0367

(b) The Department shall charge the following nonrefundable fees:

Annual licensure fee (new and renewal)	\$1,500 plus \$15.00 per bed
Add-a-bed	\$1,500 plus \$15.00 per additional bed
Hemodialysis provided by the LTC facility	\$1,125
Hemodialysis provided by a separate provider	\$750.00
Relocation of a facility (within the same county)	\$375.00
Transfer of ownership (includes initial licensure fee)	\$2,500 plus \$15.00 per bed

Neither the maximum annual licensure fee nor the fee for transfer of ownership for any single facility shall exceed \$4,000.

(c) Any person, organization, or corporation considering application for license to operate a facility shall make an appointment for a preliminary conference at the Department with the Long-Term Care Licensing and Certification Program.

(d) For all projects that are exempt from the certificate of need requirement, the Department shall evaluate the track record of the applicant in accordance with N.J.A.C. 8:33-4.10(e).

(e) Any applicant denied a license to operate a facility shall have the right to a hearing in accordance with N.J.A.C. 8:33-4.10(e)4.

Amended by R.2004 d.160, effective April 19, 2004.
 See: 35 N.J.R. 4838(a), 36 N.J.R. 1962(a).
 In (b), increased fees throughout the table.

8:39-2.3 Newly constructed, expanded, or renovated facilities

Any construction, expansion, or renovation of a facility shall be completed in accordance with N.J.A.C. 8:39-31, Mandatory Physical Environment.

8:39-2.4 Surveys and license

(a) A license shall be issued to the operator of a facility when all of the following conditions are met:

1. A completed licensure application and the appropriate fee have been submitted;
2. An office conference for review of the conditions for licensure and operation has taken place between the Long-Term Care Licensing and Certification Program and representatives of the facility;
3. The applicant has submitted the following documents to the Long-Term Care Licensing and Certification Program: a copy of the certificate of occupancy, and written approvals from the Health Care Plan Review Unit of the New Jersey Department of Community Affairs and the local health authority;
4. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system; and
5. Survey(s) by representatives of the Department indicate that the facility meets the mandatory standards set forth in this chapter.

(b) No facility shall begin to operate without prior approval from the Long-Term Care Licensing and Certification Program of the Department.

(c) The facility shall accept no more than that number of residents for which it is approved and/or licensed.

(d) Survey visits shall be made to a facility at any time by authorized staff of the Department. Such visits shall include, but shall not be limited to, the review of all facility documents and resident records and conferences with residents.

(e) The license shall be granted for a period of one year, unless suspended or revoked, and shall be renewable annually on the original licensure date, or within 30 days thereafter, in accordance with the following:

8:39-21.3 Mandatory supplies and equipment for laundry

(a) The facility shall have a supply of linen appropriate to the resident's needs that is clean, in good repair, and is at least three times the number of residents.

(b) The facility shall have a supply of blankets that is at least two times the number of residents.

8:39-21.4 Mandatory quality assurance for laundry

All facilities, including those that contract with a commercial laundry service, shall evaluate the service as part of the quality assurance program.

SUBCHAPTER 22. ADVISORY LAUNDRY SERVICES (RESERVED)

SUBCHAPTER 23. MANDATORY MEDICAL SERVICES

8:39-23.1 Mandatory structural organization for medical services

(a) Each facility shall have a medical director who is currently licensed to practice medicine by the New Jersey State Board of Medical Examiners.

1. The medical director shall coordinate medical care and direct the administrative aspects of medical care in the facility.

2. The medical director shall approve all medical care policies and procedures. These policies and procedures shall be followed.

3. The medical director shall participate in the facility's quality assurance program through attendance at meetings, or interviews, and/or preparation or review of reports.

4. The medical director shall be an active participant on the facility's infection control committee, pharmacy and therapeutics committee, and a committee that is responsible for developing policies and procedures for resident care.

5. The medical director shall ensure that for each resident there is a designated primary and an alternate physician who can be contacted when necessary.

6. The medical director shall review all reports of incidents that have been documented in accordance with N.J.A.C. 8:39-9.4(e)4.

7. The medical director, or physicians designated by the medical director, shall respond quickly and effectively

to medical emergencies that are not handled by another attending physician, including inpatient admissions.

(b) In facilities providing pediatric care services, the medical director/ attending physician shall be board-certified, or eligible to be board-certified, by the American Board of Pediatrics or American Board of Family Practice.

(c) Facilities with fewer than 60 beds may develop an alternate system of medical direction, if the facility can document that medical staff perform the requirements at (a)1 through 4 above.

8:39-23.2 Mandatory medical services

(a) Each physician or advanced practice nurse order shall be properly entered into the resident's medical record.

(b) Each resident's attending physician or advanced practice nurse shall review the resident's medical record on a scheduled basis to ensure that care plans and medical orders are properly followed.

(c) The facility shall maintain a list of consultant physicians who are available for referrals made by the attending physician and shall make arrangements for referrals to psychological services.

(d) A physician or advanced practice nurse shall visit each resident at least every 30 days unless the medical record contains an explicit justification for not doing so. Following the initial visit, alternate 30-day visits may be delegated by a physician to a New Jersey licensed physician assistant, in accordance with facility policies.

SUBCHAPTER 24. ADVISORY MEDICAL SERVICES

8:39-24.1 Advisory medical staff qualifications

The medical director is board-certified in a primary care specialty, such as family medicine, gerontology, or general internal medicine.

8:39-24.2 Advisory resident medical services

(a) The facility arranges for physician or advanced practice nurse visits in the facility on a scheduled appointment basis in an office provided for that purpose.

(b) The facility has a staff or consultant psychiatrist with admitting privileges to the inpatient psychiatric unit at a hospital.

SUBCHAPTER 25. MANDATORY NURSE
STAFFING

8:39-25.1 Mandatory policies and procedures for nurse staffing

(a) There shall be a full-time director of nursing or nursing administrator who is a registered professional nurse licensed in the State of New Jersey, who has at least two years of supervisory experience in providing care to long-term care residents, and who supervises all nursing personnel.

(b) During a temporary absence of the director of nursing, there shall be a registered professional nurse on duty who shall be designated in writing as an alternate to the director of nursing. The alternate shall be temporarily responsible for supervising all nursing personnel.

8:39-25.2 Mandatory nurse staffing amounts and availability

(a) The facility shall provide nursing services and licensed nursing and ancillary personnel at all times. In accordance with N.J.A.C. 13:37-6.2, the registered professional nurse may delegate selected nursing tasks in the implementation of the nursing regimen to licensed practical nurses and ancillary nursing personnel.

(b) The facility shall provide nursing services by registered professional nurses, licensed practical nurses, and nurse aides (the hours of the director of nursing are not included in this computation, except for the direct care hours of the director of nursing in facilities where the director of nursing provides more than the minimum hours required at N.J.A.C. 8:39-25.1(a)) on the basis of:

1. Total number of residents multiplied by 2.5 hours/day; plus
2. Total number of residents receiving each service listed below, multiplied by the corresponding number of hours per day:

Wound care	0.75 hour/day
Nasogastric tube feedings and/or gastrostomy	1.00 hour/day
Oxygen therapy	0.75 hour/day
Tracheostomy	1.25 hours/day
Intravenous therapy	1.50 hours/day
Use of respirator	1.25 hours/day
Head trauma stimulation/advanced neuromuscular/orthopedic care	1.50 hours/day

(c) The following definitions shall be used for nursing services set forth in (b)2 above:

1. Wound care includes, but is not limited to, ulcers, burns, pressure sores, open surgical sites, fistulas, tube sites and tumor erosion sites. In this category are Stage II pressure sores encompassing two or more distinct lesions on separate anatomical sites, and State III and Stage IV pressure sores.

i. Tube site and surrounding skin related to ostomy feeding is not to be counted as wound care unless there are complicating factors, such as: exudative, suppurative or ulcerative inflammation which require specific physician or advanced practice nurse prescribed intervention provided by the licensed nurse beyond routine cleansing and dressing.

ii. Stage III and Stage IV are defined as follows:

(1) Stage III: The wound extends through the epidermis and dermis into the subcutaneous fat and is a full thickness wound. There may be inflammation, necrotic tissue, infection and drainage and undermining sinus tract formation. The drainage can be serosanguinous or purulent. The area is painful.

(2) Stage IV: The pressure wound extends through the epidermis, dermis, and subcutaneous fat into fascia, muscle and/or bone. Eschar, undermining odor and profuse drainage may exist.

(3) Other wounds which may be categorized under wound care as defined in (c)1 above include:

(A) Open wounds which are draining purulent or colored exudate or which have a foul odor present and/or for which the individual is receiving antibiotic therapy;

(B) Wounds with a drain or T-tube;

(C) Wounds which require irrigation or instillation of a sterile cleansing or medicated solution and/or packing with sterile gauze;

(D) Recently debrided ulcers;

(E) Wounds with exposed internal vessels or a mass that may have a proclivity for hemorrhage when dressing is changed (for example, post radical neck surgery, cancer of the vulva); and

(F) Open wounds, widespread skin disease or complications following radiation therapy, or which result from immune deficiencies or vascular insufficiencies;

(G) Complicated post-operative wounds that exhibit signs of infection, allergic reactions or an underlying medical condition that affects healing.

2. Tube feedings, which include nasogastric tube and percutaneous feedings, provide the individual with more than 26 percent of his or her calories and at least 501 milliliters of hydration daily and are required to treat the individual's condition after all non-invasive avenues to improve the nutritional status have been exhausted with no improvement. The clinical record shall document the non-invasive measures provided and the individual's poor response. The record shall also indicate the medical condition for which the feedings are ordered. Included in this service is the routine care of the tube site and surrounding skin of the surgical gastrostomy.