

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

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 39, Standards for Licensure of Long-Term Care Facilities, expires on February 16, 2007. See: 38 N.J.R. 4141(a).

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Chapter 39, Standards for Licensure of Long-Term Care Facilities, was repealed and Chapter 39, Long-Term Care Facilities, was adopted as new rules by R.1983 d.236, effective June 20, 1983.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Chapter 39, Long-Term Care Facilities, was repealed and Chapter 39, Manual of Standards for Long-Term Care, was adopted as new rules by R.1988 d.280, effective June 20, 1988.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Chapter 39, Manual of Standards for Long-Term Care, was repealed and Chapter 39, Standards for Licensure of Long-Term Care Facilities, was adopted as new rules by R.1994 d.582, effective November 21, 1994, operative January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 actions. 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.

“Defibrillator” means a medical device heart monitor and defibrillator that has received approval of its pre-market notification filed pursuant to 21 U.S.C. §360(k) from the United States Food and Drug Administration, is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia, is capable of determining, without intervention by an operator, whether defibrillation should be performed, and upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual’s heart.

“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.

Amended by R.2005 d.400, effective November 21, 2005.

See: 37 N.J.R. 1932(a), 37 N.J.R. 4437(a).

Added definition “Defibrillator”.

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:

1. The facility shall receive a request for renewal fee as provided in N.J.A.C. 8:39-2.2(b), 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department; and

2. The license shall not be renewed if local regulations, or any other requirements, which substantially affect the provision of services as required by this chapter, are not met.

(f) The license shall be conspicuously posted in the facility.

(g) The license shall not be assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

(h) Any facility which was closed or substantially ceased operation of any of its beds, facilities, services, or equipment for any consecutive two-year period shall be required to obtain a certificate of need in accordance with N.J.A.C. 8:33-3.2 before renewing its license to operate such beds, facilities, services, or equipment.

8:39-2.5 Surrender of license

The facility shall directly notify the Department, each resident, the resident's physician or advanced practice nurse, and any guarantors of payment concerned at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of licensure. In such cases, the license shall be returned to the Long-Term Care Licensing and Certification Program of the Department within seven calendar days from voluntary surrender, order of revocation, expiration, or suspension of license, whichever is applicable.

8:39-2.6 Waiver

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

(b) A facility seeking a waiver of the standards in this chapter shall apply in writing to the Director of the Long-Term Care Licensing and Certification Program of the Department.

(c) A written application for waiver shall include at least the following:

1. The nature of the waiver requested;
2. The specific standards for which a waiver is requested;

3. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility or any individual upon full compliance;

4. An alternative proposal which would ensure resident safety; and

5. Documentation to support the application for waiver.

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

(e) The Department shall issue to the facility written confirmation of either a grant or denial of any waiver request.

8:39-2.7 Action against licensee

Violations of this subchapter may result in action by the Department in accordance with N.J.A.C. 8:43E.

8:39-2.8 Special long-term care services

In accordance with N.J.A.C. 8:33H-1.6, the Department recognizes the following two special long-term care services, both of which require a certificate of need: behavioral management and ventilator care. Long-term care beds that are approved for these special services shall be designated separately on the facility's license.

8:39-2.9 Chronic hemodialysis services

(a) If a facility provides hemodialysis services to its own long-term care residents only, the following conditions shall be met:

1. The facility shall be authorized to provide the service by the Long-Term Care Licensing and Certification Program of the Department subsequent to the submission and review of the information contained in this subchapter. The application shall describe how the standards in (a)2 through 4 below will be met. The facility shall comply with ambulatory care requirements for a chronic dialysis provider, in accordance with N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved. Waivers from the nine station minimum requirement at N.J.A.C. 8:43A-24.2 shall be considered on an individual basis;

2. A consultant nephrologist who is Board Certified or Board eligible shall be designated and available to provide medical direction for the hemodialysis service;

3. The facility shall identify the space where hemodialysis services will be provided:

i. Identified space shall be in compliance with the requirements at N.J.A.C. 8:43A-24, Licensure Standards for Ambulatory Care;

ii. If bedside hemodialysis services are offered, they shall be provided only in private rooms; and

4. Hemodialysis shall be listed as a "service" on the facility's license.

(b) If the facility or other separately licensed dialysis provider provides outpatient dialysis services on-site to persons who are not residents of the facility, the following conditions shall be met:

1. The facility shall file a licensing application in order to be authorized to provide the service. The facility shall comply with ambulatory care regulations for chronic dialysis services, in accordance with N.J.A.C. 8:43A, particularly N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved;

2. Outpatient records shall be kept separately from inpatient records; and

3. The hemodialysis program shall not utilize any space required by the long-term care program, such as passageways, corridors, or treatment room, and shall not require the commingling of hemodialysis patients with facility residents.

(c) Hemodialysis services may be provided to residents of the long-term care facility by separately licensed dialysis providers under the following circumstances:

1. The dialysis provider shall file a licensing application in order to be authorized to provide the service. The facility shall comply with ambulatory care requirements for chronic dialysis services, in accordance with N.J.A.C. 8:43A, particularly N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved;

2. The provider shall demonstrate the ability to serve nine patients Statewide within six months of licensing approval;

3. The provider shall have a New Jersey office or execute a jurisdictional agreement with the Department;

4. The provider shall describe all staffing, and how staffing will be provided at multiple sites, if applicable;

5. A copy of the contract between the dialysis provider and the long-term care facility shall be included with the licensing application. The contract shall clearly state the roles and responsibilities of both the dialysis provider and the long-term care facility. Any change in dialysis provider shall require prior authorization and submission of a separate licensure application by the dialysis provider;

6. The Department shall charge a fee for licensure of the dialysis service as an ambulatory care facility in accordance with N.J.A.C. 8:43A-2.2(b). Each site of service provision shall be considered a satellite. The Department shall charge a biennial inspection fee in accordance with N.J.A.C. 8:43A-2.2(m);

7. Hemodialysis shall be listed as a "service" on the facility's license; and

8. Both the provider and the long-term care facility shall inform the Department in writing 30 days prior to any planned service interruption and shall include a plan for the continuing care of any dialysis patients.

(d) Any long-term care facility which proposes to offer hemodialysis services through a separately licensed dialysis provider shall also comply with the following requirements:

1. The facility shall request written authorization from the Long-Term Care Licensing and Certification Program to contract with a licensed outside provider prior to implementing the service. A copy of the contract between the dialysis provider and the long-term care facility shall be included with the licensing application. The contract shall clearly state the roles and responsibilities of both the dialysis provider and the long-term care facility. Any change in dialysis provider shall require prior authorization and submission of a separate licensure application by the new dialysis provider; and

2. The facility shall identify the space in which the service will be provided, including documentation that the space meets the requirements of N.J.A.C. 8:43A-24. Any renovations or construction shall receive prior approval from the Department. Space required by the long-term care facility programs shall not be used.

8:39-2.10 Peritoneal dialysis

(a) If a long-term care facility offers peritoneal renal dialysis services to its own residents only, the following conditions shall be met:

1. A licensing application shall not be required;

2. The facility shall forward to the Department an attestation that the information listed below is available at the facility for review. Following receipt of this attestation, authorization to provide the service may be granted:

i. Policies and procedures for service provision, which shall include the following:

(1) Staff qualifications and training;

(2) Admission criteria;

(3) Transfer agreement with a certified ESRD hospital facility;

(4) Quality assurance mechanisms and criteria;

(5) Infection prevention and control, including bag disposal;

(6) Emergency situations;

(7) Dietary requirements; and

(8) How and where any necessary laboratory work will be completed;

3. A consultant nephrologist shall be designated and available to provide medical direction for the service; and

4. Peritoneal dialysis shall be listed as a "service" on the facility's license.

(b) Separately licensed dialysis providers may offer peritoneal dialysis services in a long-term care facility under the following circumstances:

1. All requirements in (a) above shall be met;
2. The dialysis provider shall be licensed as specified at N.J.A.C. 8:39-2.9(c);
3. A copy of the contract agreement for service provision between the dialysis provider and the long-term care facility shall be reviewed and approved by the Long-Term Care Licensing and Certification Program of the Department prior to the authorization of the long-term care facility to provide the service through a separately licensed agency. The agreement shall clearly state the roles and responsibilities of both parties; and
4. Both the long-term care facility and the dialysis agency shall notify the Department in writing 30 days prior to any planned service interruption and shall include a plan for the continuing care of any dialysis patients.

8:39-2.11 Add-a-bed

(a) Pursuant to N.J.S.A. 26:2H-7.2, a facility may request approval from the Department to increase total licensed beds by no more than 10 beds or 10 percent of its licensed bed capacity, whichever is less, without certificate of need approval. No more than one such request for approval shall be submitted every five years.

(b) The Department shall charge a nonrefundable fee of \$1,500 plus \$15.00 per additional bed for the filing of an application to add beds to increase a facility's total licensed capacity. Applicants shall contact the Long Term Care Licensing and Certification Program at (609) 633-9042 to obtain Add-a-bed application forms. The completed forms, along with scaled floor plans and the appropriate fee, must be forwarded to the Department at the following address:

Director
Long Term Care Licensing and Certification Program
New Jersey Department of Health and Senior Services
PO Box 367
Trenton, New Jersey 08625-0367

(c) The Department shall deny an add-a-bed application if any of the following conditions exist:

1. The facility's track record is unsatisfactory, in accordance with N.J.A.C. 8:33-4.10 and 8:43E-5.1;
2. The applicant fails to demonstrate that the facility has sufficient space to implement the new licensed bed capacity in a manner meeting Federal construction standards contained in the 1996-97 edition of "Guidelines For

Design and Construction of Hospital and Health Care Facilities" (American Institute of Architects Academy of Architecture for Health, with assistance from the U.S. Department of Health and Human Services. The American Institute of Architects Press: Washington, DC), incorporated herein by reference as amended and supplemented;

3. The applicant fails to demonstrate that the facility has provided sufficient nurse staffing hours, in accordance with this chapter, to meet the needs of the current resident census;
4. The addition of beds will result in a unit size in excess of 64 beds;
5. The addition of beds will result in a violation of State licensure or Federal certification requirements; or
6. The proposed additional beds will result in a room occupancy that exceeds two residents per room.

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), substituted "\$ 1,500" for "\$ 1,000" and "\$ 15.00" for "\$ 10.00".

8:39-2.12 Transfer of ownership

(a) In accordance with N.J.A.C. 8:33-3.3(a)4, the transfer of ownership of a long-term care facility shall not require a certificate of need except when the proposed owner does not satisfy the Department's track record review.

(b) Prior to transferring ownership of a facility, the prospective new owner shall submit an application to the Long Term Care Licensing and Certification Program. The application shall include the following items:

1. The transfer of ownership fee of \$2,500 plus \$15.00 per bed, in accordance with N.J.A.C. 8:39-2.2(b);
2. A cover letter stating the applicant's intent to purchase the facility, and identification of the facility by name, address, county, and number and type of licensed beds;
3. A description of the proposed transaction, including:
 - i. Identification of the current owners of the facility;
 - ii. Identification of 100 percent of the proposed new owners, including the names and addresses of all principals (that is, individuals and/or entities with a 10 percent or more interest); and
 - iii. If applicable, a copy of an organizational chart, including parent corporations and wholly owned subsidiaries;
4. A copy of the agreement of sale and, if applicable, a copy of any lease and/or management agreements; and
5. Disclosure of any licensed health care facilities owned, operated, or managed by the proposed owner or

any of the principals, in New Jersey or any other state. If facilities are owned, operated, or managed in other states, letters from the regulatory agencies in each respective state, verifying that the facilities have operated in substantial compliance during the last 12 month period and have had no enforcement actions imposed during that period of time, shall be included in the application.

(c) Approval of a transfer of ownership is contingent upon a review of the applicant's track record, in accordance with N.J.A.C. 8:33-4.10 and 8:43E-5.1.

(d) Approval of a transfer of ownership is contingent upon payment of all outstanding Medicaid audit claims and State penalties issued by the Department against the current owner, or written verification by the applicant that the applicant will assume responsibility for payment of such audit findings and State penalties.

(e) When a transfer of ownership application has been reviewed and deemed acceptable, an approval letter from the Long-Term Care Licensing and Certification Program shall be sent to the applicant along with licensure application forms.

(f) Within five days after the transaction has been completed, the applicant shall submit the following documents to the Long-Term Care Licensing and Certification Program:

1. Completed licensure application forms;
2. A notarized letter stating the date on which the transaction occurred; and
3. A copy of a certificate of continuing occupancy from the local township, or a letter from the township verifying a policy of not issuing any such document for changes of ownership.

(g) For Medicaid certification, the new owner shall contact the Long-Term Care Licensing and Certification Program at (609) 633-9042.

(h) For Medicare certification, the new owner shall contact the Assistant Director of Long-Term Care Assessment and Survey at (609) 633-8981.

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), substituted "\$ 2,500" for "\$ 2,000" and "\$ 15.00" for "\$ 10.00" in 1.

(b) Failure to comply with any mandatory rules contained in this chapter shall constitute a deficiency for which the Department may take any or all of the enforcement actions set forth in N.J.A.C. 8:43E.

8:39-3.2 Advisory standards

(a) Advisory standards contain benchmarks of excellence or superior attainment in providing care of high quality.

(b) Facilities are strongly encouraged to use advisory standards in striving to provide the highest quality of care possible.

(c) Failure to comply with any or all advisory standards shall not constitute a deficiency or result directly or indirectly in any enforcement action by the Department.

(d) Compliance with advisory standards shall not be used as an indication of whether the facility is in compliance with mandatory rules or whether a facility should be made subject to a penalty or other action to protect residents.

8:39-3.3 Reporting compliance with advisory standards

(a) Compliance with advisory standards shall be calculated in accordance with the following:

1. The Department shall verify that at least 90 percent of no more than 30 advisory standards randomly selected from the total number of advisory standards which the facility claims to have met are in fact met; and
2. If the compliance rate determined at (a)1 above is 90 percent or greater, then, for any advisory subchapter in which the facility has claimed to meet 65 percent or more of the standards in the subchapter, recognition for meeting the entire subchapter shall be given.

(b) If a facility applies for a certificate of need, compliance with six or more of the following advisory subchapters at the time of the most recent survey of the facility shall be taken into consideration: access to care (N.J.A.C. 8:39-6), resident assessment and care plans (N.J.A.C. 8:39-12), pharmacy (N.J.A.C. 8:39-30), infection control and sanitation (N.J.A.C. 8:39-20), resident activities (N.J.A.C. 8:39-8), dietary services (N.J.A.C. 8:39-18), medical services (N.J.A.C. 8:39-24), nurse staffing (N.J.A.C. 8:39-26), physical environment (N.J.A.C. 8:39-32), and quality assessment and/or quality improvement (N.J.A.C. 8:39-34).

(c) If a facility can demonstrate that it has a system in place to meet the requirement, even though it is not applicable at the time of the survey, the surveyors may deem that, in their judgment, the standard is met.

SUBCHAPTER 3. COMPLIANCE WITH MANDATORY RULES AND ADVISORY STANDARDS

8:39-3.1 Mandatory rules

(a) Mandatory rules contain minimum and essential requirements of care provided by a facility.

SUBCHAPTER 4. MANDATORY RESIDENT RIGHTS

8:39-4.1 Resident rights

(a) Each resident shall be entitled to the following rights:

(b) Each service shall provide education or training for all employees in the service at least four times per year and in response to resident care problems, implementation of new procedures, technological developments, changes in regulatory standards, and staff member suggestions. All staff members shall receive training at least two times per year about the facility's infection control procedures, including handwashing and personal hygiene requirements.

(c) At least one education training program each year shall be held for all employees on each of the following topics:

1. Procedures to follow in case of emergency;
2. Abuse, neglect, or misappropriation of resident property;
 - i. Abuse prevention strategies including, but not limited to, identifying, correcting, and intervening in situations where abuse, neglect, or misappropriation of resident property is likely to occur;
 - ii. Identifying events, such as suspicious bruising of residents or patterns and trends that may constitute abuse, neglect, or misappropriation of resident property;
 - iii. Protecting residents from harm during an investigation of abuse, neglect, or misappropriation of resident property;
 - iv. Identification of staff responsible for investigating and reporting results to the proper authorities;
 - v. Reporting substantiated incidents to the appropriate local/State/ Federal agencies and taking all necessary corrective actions depending on the results of the investigation; and
 - vi. Reporting to the State nurse aide registry or licensing authorities any knowledge of any actions of any court of law which would indicate that an employee is unfit for service;
3. Resident rights;
4. Training in the specialized care of residents who are diagnosed by a physician as having Alzheimer's disease. The required training program shall be in conformance with the curriculum developed by the Department in accordance with N.J.S.A. 26:2M-7.2 (for certified nurse aides, licensed practical nurses, registered professional nurses and other health care professionals who provide direct care to residents within the facility);
 - i. Copies of the mandatory training program may be obtained from the Department by submitting a written request to:

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; and

5. Pharmacy (for all direct care staff).

Amended by R.2005 d.164, effective June 6, 2005.
 See: 36 N.J.R. 3616(a), 37 N.J.R. 2019(a).
 In (c), added a new 4 and recodified former 4 as 5.

SUBCHAPTER 14. ADVISORY COMMUNICATION

8:39-14.1 Advisory resident services

(a) The facility has one or more wellness programs open to the public, such as programs to reduce or prevent smoking, alcohol and drug abuse, elder abuse, obesity, or hypertension.

(b) Periodic meetings are open to all staff, residents, and families to discuss any problems, encourage the resident to reach his or her potential, examine the goals and expectations of different individuals, describe how questions and complaints can be presented, and review the concept of interdisciplinary care.

(c) Provision is made for residents to retain membership, join, and/or participate in community activities. These should include organizations, community projects, holiday observances, or charitable events.

(d) A facility newsletter is provided to residents and families at least quarterly.

(e) Each staff member wears an easily readable name tag.

8:39-14.2 Advisory staff education and training for communication

(a) Periodic meetings are held with each service to discuss ways to improve care of all residents.

(b) Education and training of staff includes an accredited program in cardiopulmonary resuscitation (CPR) which offers staff an opportunity to be recertified on an annual basis.

(c) Each service establishes and implements education or training programs for members of other services on diverse topics.

(d) Education or training sessions are offered which address new concepts and directions in cultural and interpersonal concepts.

SUBCHAPTER 15. MANDATORY DENTAL SERVICES

8:39-15.1 Mandatory resident dental services

(a) The facility shall provide or arrange emergency dental care to relieve pain and infection.

(b) The facility shall assist interested residents in making arrangements to receive dental examinations, routine prophylaxis, and care.

(c) The facility shall ensure that arrangements are made to transport residents for routine and emergency dental care.

(d) All resident dentures shall be labeled.

SUBCHAPTER 16. ADVISORY DENTAL SERVICES

8:39-16.1 Advisory resident dental services

(a) The facility provides in-house dental services, including treatment and prophylactic care.

(b) The facility follows established protocols for providing all residents with regularly scheduled routine prophylactic dental services and treatments when indicated, delivered by a dentist or a dental hygienist, except for residents whose medical records contain an explanation of why such services would not benefit the resident.

SUBCHAPTER 17. MANDATORY DIETARY SERVICES

8:39-17.1 Mandatory structural organization for dietary services

(a) The facility shall designate a full-time food service director who, if not a dietitian, functions with scheduled consultation from a dietitian. The food service director shall be responsible for the direction, provision, and quality of dietary services.

(b) Menus shall be planned and scheduled by the food service director or the dietitian, and shall be approved by the dietitian at least 14 days in advance.

(c) The dietitian shall perform the dietary assessment and reassessment, which shall include examination of and communication with the resident if the resident's condition permits.

(d) Services that are provided by a food service company shall be covered by a written contract.

8:39-17.2 Mandatory policies and procedures for dietary services

(a) The facility shall make available a current dietary manual, which shall have been approved by the dietitian and the medical director. The facility shall serve diets that are consistent with the dietary manual.

(b) The facility shall post current menus with portion sizes in the food preparation area. The facility shall keep menus for 30 days with any changes accurately recorded.

(c) The facility shall designate responsibility for observation and documentation of meals refused or missed by a resident and of any resident who requires assistance with meals.

(d) A dietitian shall adhere to an established system of nutritional assessment, which shall include examination of and communication with the resident if the resident's condition permits.

(e) The facility shall routinely provide nondisposable dishes and cutlery at all meals except for special meal activities or individual resident needs.

(f) Meals shall be scheduled in such a way that no more than 14 hours elapse between a substantial evening meal and breakfast the next morning. The first meal shall not be served before 7:00 A.M. unless requested by the resident.

1. Up to 16 hours may elapse between a substantial evening meal and breakfast the following day if the following conditions are met:

- i. A resident group agrees to this meal span; and
- ii. A nourishing bedtime snack is served.

(g) All food service facilities shall operate with safe food handling practices in accordance with Chapter XII of the New Jersey Sanitary Code, N.J.A.C. 8:24.

8:39-17.3 Mandatory staffing amounts and availability for dietary services

(a) The dietitian shall spend an average of 15 minutes per resident each month providing dietary services in the facility, which requires one full-time equivalent dietitian for every 693 residents.

(b) Dietary service personnel shall be present for a period of at least 12 hours each day.

(c) For each meal, the facility shall assign staff to help residents who require assistance with eating.

8:39-17.4 Mandatory resident dietary services

(a) Each resident shall receive a diet which:

4. The hours of instruction;
5. Methods of presentation and teacher strategies; and
6. Methods for evaluation of students with respect to their classroom and clinical performance in the facility.

(m) Each nurse aide training program instructor/evaluator shall:

1. Be currently licensed in New Jersey as a registered professional nurse;
2. Possess at least three years of full-time or full-time equivalent experience in a licensed health care facility;
3. Possess at least one year of full-time or full-time equivalent experience as a registered professional nurse in a licensed long term care facility, within the five years immediately preceding submission of the instructor/evaluator resume to the Certification Program of the Department for approval; and
4. Have successfully completed a training workshop offered by the Department for instructors/evaluators.

(n) The student-to-instructor ratio for classroom instruction shall not exceed a ratio of 20 students to one instructor.

(o) The student-to-instructor ratio for clinical instruction shall not exceed a ratio of 10 students to one instructor.

(p) Each student shall be under the supervision of the registered professional nurse instructor at all times when providing resident care as part of the student's clinical experience in the facility. The registered professional nurse instructor shall be responsible for evaluating the student's classroom and clinical performance.

(q) The resume of each nurse instructor/evaluator currently teaching the training program shall be available in the facility or educational institution.

8:39-43.11 Evaluation of training programs

(a) The facility or educational institution conducting a training program shall develop, implement, and document a process for evaluating the effectiveness of the training program. The evaluation process shall include, at a minimum, the following:

1. Assignment of responsibility for the evaluation process;
2. An annual written evaluation report, including findings, conclusions, and recommendations;
3. A written evaluation by the facility or educational institution of the performance of instructors/evaluators;
4. Written evaluations, by students, of the training program; and
5. Statistical data that shall be maintained on file in the facility or educational institution. The statistical data

shall include, at a minimum, the following for each course:

- i. The beginning and ending dates;
- ii. The number of students enrolled;
- iii. The number and percentage of students who satisfactorily completed the course;
- iv. The number and percentage of students who failed the course;
- v. The number and percentage of students who passed the New Jersey Nurse Aide Competency Evaluation Program, including written/oral examination and skills; and
- vi. The number and percentage of students who failed the New Jersey Nurse Aide Competency Evaluation Program, including written/oral examination and skills.

(b) The facility or training program shall retain all evaluation reports for at least three years and shall submit a report to the Department upon request.

8:39-43.12 Student records

(a) Each facility or educational institution that conducts a training program shall establish a student record for each student. The student record shall include, at a minimum, the following:

1. The beginning and ending dates of the training program;
2. An attendance record;
3. A signed skills competency task form; and
4. An evaluation of the student's classroom and clinical performance, completed by the student's instructor.

(b) The facility shall retain the records specified at (a) above for at least four years.

(c) The facility or educational institution conducting a training program shall ensure that a student who is absent receives a reasonable and timely opportunity to obtain the classroom and/or clinical instruction missed, as documented in the student's record.

8:39-43.13 Denial or termination of a nurse aide in long-term care facilities training program

(a) The Department shall conduct unannounced site visits of a nurse aide in long-term care facilities training program.

(b) The Department may deny, suspend, or withdraw approval if it determines that a nurse aide training program fails to follow the application as submitted to, and approved by, the Department.

(c) Approval of a nurse aide training program offered by or in a facility that participates in the Medicare or Medicaid Programs shall be denied in accordance with 42 CFR 483.151(b).

(d) Suspension or withdrawal of training program approval shall not affect currently enrolled students, who shall be permitted to complete the training program unless the Department determines that continuation of the program would jeopardize the health or safety of residents in any long-term care facility.

(e) If a nurse aide training program is discontinued for any reason, but the facility or educational institution continues to operate, the facility or educational institution shall be responsible for maintaining the records of students and graduates.

(f) If a nurse aide training program is discontinued for any reason and the facility or educational institution ceases to operate, the records of students and graduates shall be transferred to an agency acceptable to the Department. The Department shall be advised, in writing, of the arrangements made to safeguard the records.

(g) If a nurse aide training program is discontinued for any reason, the facility or educational institution shall:

1. Assist in the transfer of students to other approved nurse aide training programs;
2. Provide the Department with a list of the students who have transferred to another training program, and the dates on which the students were transferred; and
3. Notify the Department that the requirements for closing have been fulfilled and provide notice of final closing.

(h) If a facility or educational institution plans to voluntarily discontinue a nurse aide training program, the facility or educational institution shall:

1. Provide the Department with a written statement of the rationale and plan for the intended closing;
2. Continue the program until the class established for currently enrolled students has been completed; and
3. Notify the Department, in writing, of the closing date of the program at least 90 days prior to that date.

8:39-43.14 Responsibilities of administrator

(a) The licensed nursing home administrator or administrator of the educational institution conducting the training program shall be responsible for implementation of the training program in accordance with the rules in this subchapter. This responsibility shall include, but not be limited to, ensuring that:

1. The curriculum is implemented in accordance with the application as submitted and approved by the Certification Program of the Department;

2. Resident care provided by the student does not exceed the tasks and procedures that the student has satisfactorily demonstrated, as documented by the registered professional nurse on a skills competency task form; and

3. Job descriptions are established indicating the responsibilities of each nurse instructor/evaluator.

8:39-43.15 Employment of a nurse aide

(a) No licensed long-term care facility shall employ a person as a nurse aide without making inquiry to the New Jersey nurse aide registry at 1-800-274-8970, and to any other state where the facility believes the nurse aide is registered.

(b) The facility shall have a system in place to document compliance with (a) above.

(c) The facility shall maintain records sufficient to verify the previous employment of nurse aides who are not currently working but whose employment at the facility makes him or her eligible for recertification in accordance with N.J.A.C. 8:39-43.6(c).

8:39-43.16 Nurse aide functions

The nurse aide shall function under the supervision and direction of a registered professional nurse and shall perform tasks that are delegated in accordance with the provisions of N.J.A.C. 13:37-6.2.

8:39-43.17 Mandatory nurse aide education and training

(a) A program of individualized orientation of each nurse aide shall be conducted by a registered professional nurse. The orientation program shall include resident care training and demonstrations in basic nursing skills, followed by an internship of two to five days, depending on experience.

(b) Each nurse aide shall receive, at a minimum, 12 hours of regular in-service education per year, the content of which shall be based on the outcome of performance reviews of every nurse aide, which are completed at least once every 12 months. (The 12 hours may include topics that are covered under OBRA requirements, Pub. L. 100-239 (1989) which overlap or are duplicative of those required at N.J.A.C. 8:39-13.4(b), up to a maximum of six hours of in-service training per year.)

8:39-43.18 Fees

(a) In accordance with 42 CFR 483.154, as amended and supplemented, fees may be charged by the testing agency for the following:

1. Clinical skills and written examination;