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(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.

**Law Review and Journal Commentaries**

Nursing Homes in the Garden State: A Legal Perspective. Janice Chapin, 141 N.J.Law. 38 (Mag.) (July/August 1991).

**Case Notes**

Nursing home was not exempt as "hospital" from local property tax. Intercare Health Systems, Inc. v. Cedar Grove Tp., 11 N.J.Tax 423 (1990), affirmed 12 N.J.Tax 273, certification denied 127 N.J. 558, 606 A.2d 369.

For nursing home to qualify as "hospital" exempt from property tax, home must be integral part of functioning hospital. *Intercare Health Systems, Inc. v. Cedar Grove Tp.*, 11 N.J.Tax 423 (1990), affirmed 12 N.J.Tax 273, certification denied 127 N.J. 558, 606 A.2d 369.

Former long-term care facility regulations at N.J.C.A. 8:30-14 are valid. In *Review of Health Care Administration Board v. Finley*, 168 N.J.Super. 152 (App.Div.1979), affirmed 83 N.J. 67 (1980), 449 U.S. 944, 402 A.2d 246 (1980).

Building owned by nonprofit corporation and used as long-term nursing care facility and residential unit was not entitled to "charitable purposes" exemption from property taxation. *Woodstown Borough v. Friends Home at Woodstown*, 12 N.J.Tax 197 (1992).

### 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.

"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, with reference to a resident, the item of furniture assigned to no more than one resident for sleeping, resting, relaxing, or otherwise used for the resident's personal comfort or convenience, and with reference to a facility, 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.

"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.

"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.

"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 removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container), verifying it with the prescriber's orders, giving the individual dose to the resident, seeing that the resident takes it (if oral), and 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.

"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 to provide health care under medical supervision and continuous nursing supervision for 24 or more consecutive hours to two or more residents who are not related to the members of the governing authority by marriage, blood, or adoption; who do not require the degree of care and treatment which a hospital provides; and who, because of their physical or mental condition, require continuous nursing care and services above the level of room and board.

“Federal Level A deficiency” means a failure to comply with one or more of the requirements indicated by those tag numbers in document 42 CFR Part 483 S483.5 which are followed by an “A” suffix.

“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 the administration of the wrong medication or dose of medication, drug, diagnostic agent, chemical or treatment requiring use of such agents to the wrong resident, or at the wrong time, or the failure to administer such agents at the specified time, or in the manner prescribed or normally considered as accepted practice. Errors may be classified as “commissions,” that is, medications incorrectly administered to the resident, such as unordered medication or medication in the wrong strength; and “omissions,” that is, medications not administered at prescribed times.

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

“Physician” means a person licensed to practice medicine by the New Jersey State Board of Medical Examiners.

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

“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 below.

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

Certificate of Need Review Services  
Division of Health Planning, Financing and  
Information Services  
New Jersey State Department of Health  
CN 360  
Trenton, NJ 08625-0367

(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:

Licensing, Certification and Standards  
Division of Health Facilities Evaluation  
New Jersey State Department of Health  
CN 367  
Trenton, NJ 08625-0367

(b) The Department shall charge a nonrefundable fee of \$1,000 plus \$4.00 per bed for the filing of an application for licensure and each annual renewal of a long-term care facility. These fees shall not exceed the maximum caps as set forth at N.J.S.A. 26:2H-12, as may be amended from time to time.

(c) The Department shall charge a nonrefundable fee of \$500.00 for the filing of an application to add bed or non-bed related services to an existing long-term care facility, except for those services provided for at N.J.A.C. 8:39-2.10 and 2.12.

(d) The Department shall charge a nonrefundable fee of \$250.00 for the filing of an application to reduce services at an existing long-term care facility.

(e) The Department shall charge a nonrefundable fee of \$250.00 for the filing of an application for the relocation of a long-term care facility.

(f) The Department shall charge a nonrefundable fee of \$1,000 for the filing of an application for the transfer of ownership of a long-term care facility.

(g) 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 Licensing, Certification and Standards Program.

(h) The Department shall examine and evaluate the licensing track record of each applicant for the period beginning 12 months preceding submission of the application for licensure and extending to the date the Commissioner issues a final decision, for the purpose of determining the capacity of an applicant to operate a health care facility in a safe and effective manner in accordance with State and Federal requirements. A license may be denied where an applicant has not demonstrated such capacity, as evidenced by continuing or serious violations of State licensure standards or Federal certification standards or by existence of a criminal conviction or a plea of guilty to a charge of fraud, resident abuse or neglect, or crime of violence or moral turpitude. An applicant, for purposes of this rule, includes any person who was or is an owner or principal of a licensed health care facility, or who has managed, operated, or owned in whole or in part any health care facility, excluding individuals or entities who are limited partners with no managerial control or authority over the operation of the facility and who have an ownership interest of five percent or less in a corporation which is the applicant and who also do not serve as officers or directors of the applicant corporation.

(i) An application for licensure submitted by an applicant who was cited for state licensing or Federal certification deficiencies during the period identified in (e) above, which presented a serious risk to the life, safety, or quality of care of the facility's residents shall be denied. A serious risk to life, safety, or quality of care of residents includes, but is not limited to, deficiencies in state licensure or Federal certification requirements in the areas of nursing, resident rights, resident assessment or care plan, dietary services, infection control and sanitation, or pharmacy, resulting in:

1. An action by a state or Federal agency to curtail or temporarily suspend admissions to the facility;
2. Issuance of two or more Federal level A deficiencies in the areas identified above; or
3. Issuance of one or more Federal level A deficiencies in the same area on two or more consecutive visits.

(j) In evaluating track records in (e) or (f) above, the Department may consider any evidence of non-compliance with applicable licensure requirements provided by an official state licensing agency in any state other than New Jersey, or any official records from any agency of the State of New Jersey indicating the applicant's non-compliance with the agency's licensure or certification requirements in a facility the applicant owned, operated, or managed in whole or in part.

(k) An applicant who owns, operates, or manages in whole or in part five or more health care facilities licensed or certified to operate in any state, including New Jersey, may be exempt from mandatory CN denial provisions of N.J.A.C. 8:33H-1.14(d), or (e) and (f) above under the following conditions:

1. No more than one out-of-State facility has the violations enumerated in (f)1, 2, and 3 above. In no case shall the applicant's New Jersey facility have such violations;
2. The applicant establishes a trust account or an irrevocable letter of credit in the favor of the Department in the amount of two percent of project costs or \$200,000, whichever is greater, except that applicants whose project costs are less than \$400,000 shall be permitted to post a bond or trust account equal to 50 percent of total project costs or \$100,000, whichever is greater;
3. The trust account or irrevocable letter of credit shall be established through an entity approved by the Department and be written in a form that is approved by the Department;
4. The trust fund or irrevocable letter of credit shall have named as beneficiary The Health Care Facilities Improvement Fund, as administered by the Department;
5. The funds shall remain in the irrevocable letter of credit, or trust fund pursuant to the following schedule:

i. For a period of 15 months from the date the Department approves initial occupancy and operation of the facility in the event the certificate of need is approved;

ii. If the applicant does not obtain certificate of need approval for the project, the irrevocable letter of credit or trust fund shall expire after all avenues of relief pursuant to certificate of need denial appeal rights are exhausted or waived.

6. If none of the conditions enumerated in (f)1, 2 or 3 above are found during any survey occurring during the initial one year period, the funds and any accrued interest shall be returned to the applicant;

7. If during the one year period from initial approved occupancy, a violation of the type enumerated in (f)1, 2 or 3 above is found in the subject facility, then all funds in the line of credit or trust fund shall accrue to the benefit of The Health Care Facilities Improvement Fund;

8. The one year period in (a)7 above may be extended by the Department for an additional three months if a single level A violation is found in the areas identified in (d) during the initial 12 months of operation.

(l) Any applicant denied a license to operate a facility shall have the right to a fair hearing in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Amended by R.1995 d.127, effective March 6, 1995.  
See: 26 N.J.R. 1772(c), 27 N.J.R. 937(b).  
Amended by R.1996 d.339, effective July 15, 1996.  
See: 28 N.J.R. 2365(a), 28 N.J.R. 3556(a).

### 8:39-2.3 Newly constructed or expanded facilities

(a) The application for a license pursuant to N.J.A.C. 8:39-2.2 for the operation of a new facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction Service  
Division of Health Facilities Evaluation  
New Jersey State Department of Health  
PO Box 367  
Trenton, NJ 08625-0367

(b) A final on-site inspection of the construction of the physical plant shall be made by representatives of the Health Care Facilities Construction Service and the Health Facilities Inspection Program, to verify that the building has been constructed in accordance with the final architectural plans approved by the Department, in accordance with N.J.A.C. 8:39-41.

(c) Any health care facility with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Service of

the Department for review and approval prior to the initiation of any work.

### 8:39-2.4 Surveys and temporary license

(a) When the written application for licensure pursuant to N.J.A.C. 8:39-2.2 is approved and the building is ready for occupancy, a survey of the facility by representatives of the Health Facilities Inspection Program of the Department shall be conducted to determine if the facility meets the standards set forth in this chapter.

1. The Health Facilities Inspection Program of the Department shall notify the facility in writing of the findings of the survey, including any deficiencies found.

2. The facility shall notify the Health Facilities Inspection Program of the Department when the deficiencies, if any, have been corrected, and the Health Facilities Inspection Program will schedule one or more resurveys of the facility prior to occupancy.

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

1. An office conference for review of the conditions for licensure and operation has taken place between the Licensing, Certification and Standards Program and representatives of the facility, who have been advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance 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, and the rules pursuant thereto;

2. Written approvals are on file with the Department from the local zoning, fire, health, and building authorities;

3. 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

4. Survey(s) by representatives of the Department indicate that the facility meets the mandatory standards set forth in this chapter.

(c) No health care facility shall accept residents until the facility has written approval and/or a license issued by the Licensing, Certification and Standards Program of the Department.

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

(e) 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.

(f) Upon compliance with N.J.A.C. 8:39-2.2(e), a temporary license shall be issued to the operator of a facility for a period of six months and shall be renewed as determined by the Department, based upon the achievement of a substantial degree of compliance with this chapter.

1. The temporary license shall be conspicuously posted in the facility.

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

Public Notice: Waiver of Temporary Licensing of Facilities.  
See: 29 N.J.R. 5107(b).

#### 8:39-2.5 Full license

(a) A full license shall be issued to the operator on expiration of the temporary license, if the surveys by the Department have determined that the health care facility is operated as required by 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 by the rules pursuant thereto.

(b) A license shall be granted for a period of one year or less as determined by the Department in accordance with (a) above.

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

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

(e) The license, unless sooner suspended or revoked, shall be renewed annually on the original licensure date, or within 30 days thereafter but dated as of the licensure date, 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 are not met which substantially affect the provision of services as required by this chapter.

#### 8:39-2.6 Surrender of license

The facility shall obtain any required Certificate of Need and shall directly notify each resident, the resident's physician, 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 Licensing, Certification and Standards Program of the Department within seven calendar days from voluntary surrender, order of revocation, expiration, or suspension of license, whichever is applicable.

#### 8:39-2.7 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 resident or public.

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

(c) A written application for waiver shall include 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 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.

#### 8:39-2.8 Action against licensee

(a) Violations of this subchapter may result in action by the New Jersey State Department of Health to impose a fine, cease admissions to a facility, remove residents from a facility, revoke a license, and/or impose other lawful remedies.

(b) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the facility cease. This may be done simultaneously with, or in lieu of, action to revoke licensure and/or impose a fine. The Commissioner or his or her designee shall notify the facility in writing of such determination.

(c) The Commissioner may order the immediate removal of residents from a facility whenever he or she determines imminent danger to any person's health or safety.

(d) This section shall apply to all facilities.

(e) Any licensee made subject to action by the Department under terms of this section shall have the right to a fair hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(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. 8:39-2.10(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 Licensing 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.

#### 8:39-2.12 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 \$750.00 for the filing of an application to add beds to increase its total licensed capacity.

(c) The Department shall deny an application for add-a-beds based on the facility track record, if any of the following criteria:

1. Within the last 12 months preceding the date of application, the applicant was cited for a violation of the licensing rules in this chapter or of Federal certification requirements for Medicaid or Medicare participation which presented a serious risk to the life, safety, or quality

of care of the facility's residents. A serious risk to life, safety, or quality of care of residents includes, but is not limited to, deficiencies in State licensure or Federal certification requirements in the areas of nursing, resident rights, resident assessment and care plans, dietary services, infection control and sanitation, or pharmacy, resulting in:

i. An action by a State or Federal agency to curtail or temporarily suspend admissions to a facility; or

ii. Issuance of two or more Federal Level A deficiencies in the areas identified above; or

iii. Issuance of one or more Federal Level A deficiencies in the same area on two or more consecutive visits; or

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 Guidelines for Construction and Equipment of Hospital and Medical Facilities (1992-1993), as published by the American Institute of Architects and approved by the U.S. Department of Health and Human Services. (Available from the American Institute of Architects Press, 1735 New York Ave., NW, Washington, D.C. 20006); or

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; or

4. The addition of beds will result in a unit size in excess of 64 beds; or

5. The addition of beds will result in a violation of State licensure or Federal certification requirements.

Amended by R.1995 d.127, effective March 6, 1995.

See: 26 N.J.R. 1772(c), 27 N.J.R. 937(b).

Amended by R.1996 d.339, effective July 15, 1996.

See: 28 N.J.R. 2365(a), 28 N.J.R. 3556(a).

### 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.

(b) Failure to comply with any mandatory rules contained in this chapter shall constitute a deficiency for which the New Jersey State Department of Health may take any or all of the following measures or any other lawful remedy:

1. Action to impose a fine;

2. Cessation of all admissions;
3. Removal of residents from the facility when there is an imminent danger to any person's health or safety; and
4. Revocation of the license held by the facility's operator.

### 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 fine, cessation of admissions, removal of residents, or revocation of a license, imposed pursuant to action by the New Jersey State Department of Health.

(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) Reports of individual facilities' compliance with advisory standards shall be available at the New Jersey State Department of Health, Office of Licensing and Inspection, for the inspection of the public, during normal business hours.

(c) 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 will 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 assurance (N.J.A.C. 8:39-34).

(d) 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 4. MANDATORY RESIDENT RIGHTS

### 8:39-4.1 Resident rights

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

1. To retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan;

2. To have a physician explain to the resident, in language that the resident understands, his or her complete medical condition, the recommended treatment, and the expected results of the treatment, except when the physician deems it medically inadvisable to give such information to the resident and records the reason for such decision in the resident's medical record; and provides an explanation to his or her next of kin or guardian;

3. To participate, to the fullest extent that the resident is able, in planning his or her own medical treatment and care;

4. To refuse medication and treatment after the resident has been informed, in language that the resident understands, of the possible consequences of this decision. The resident may also refuse to participate in experimental research, including the investigations of new drugs and medical devices. The resident shall be included in experimental research only when he or she gives informed, written consent to such participation;

5. To be free from physical and mental abuse;

6. To be free from chemical and physical restraints, unless they are authorized by a physician for a limited period of time to protect the resident or others from injury. Under no circumstances shall the resident be confined in a locked room or restrained for punishment, for the convenience of the nursing home staff, or with the use of excessive drug dosages;

7. To manage his or her own finances or to have that responsibility delegated to a family member, an assigned guardian, the nursing home administrator, or some other individual with power of attorney. The resident's authorization must be in writing, and must be witnessed in writing;

8. To receive a written statement or admission agreement describing the services provided by the nursing home and the related charges. Such statement or admission agreement must be in compliance with all applicable State and Federal laws. This statement or agreement must also include the nursing home's policies for payment of fees, deposits, and refunds. The resident shall receive this statement or agreement prior to or at the time of admission, and afterward whenever there are any changes;

9. To receive a quarterly written account of all resident's funds and itemized property that are deposited with the facility for the resident's use and safekeeping and of all financial transactions with the resident, next of kin, or guardian. This record must also show the amount of

property in the account at the beginning and end of the accounting period, as well as a list of all deposits and withdrawals, substantiated by receipts given to the resident or his or her guardian;