

**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.2007 d.83, effective February 15, 2007.  
See: 38 N.J.R. 4141(a), 39 N.J.R. 924(a).

**Chapter Expiration Date**

Chapter 39, Standards for Licensure of Long-Term Care Facilities, expires on February 15, 2012.

**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Chapter 39, Standards for Licensure of Long-Term Care Facilities, was repealed and Chapter 39, Long-Term Care Facilities, was adopted as new rules by R.1983 d.236, effective June 20, 1983.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Chapter 39, Long-Term Care Facilities, was repealed and Chapter 39, Manual of Standards for Long-Term Care, was adopted as new rules by R.1988 d.280, effective June 20, 1988.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Chapter 39, Manual of Standards for Long-Term Care, was repealed and Chapter 39, Standards for Licensure of Long-Term Care Facilities, was adopted as new rules by R.1994 d.582, effective November 21, 1994, operative January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: 32 N.J.R. 3003(a), 33 N.J.R. 2851(a).

Chapter 39, Standards for Licensure of Long-Term Care Facilities, was readopted as R.2007 d.83, effective February 15, 2007. See: Source and Effective Date. See, also, section annotations.

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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 re-

quirements, physician’s or advanced practice nurse’s and nurse’s clinical notes, physician’s or advance 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”.

#### Case Notes

Although pharmacy was not a “facility” as defined in a long term care facility regulation, N.J.A.C. 8:39-1.2, because the pharmacy acted as a long term care facility’s mandatory pharmacy provider, N.J.A.C. 8:39-29.4(j) and 8:39-1.2 required the pharmacy to “observe, watch, or check” the long term care facility’s crediting system; however, the obligation to monitor did not require the pharmacy to credit Medicaid for returned medications. *United States ex rel. Quinn v. Omnicare Inc.*, 382 F.3d 432, 2004 U.S. App. LEXIS 18474 (3d Cir. N.J. 2004).

## 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:

Office of Certificate of Need and Healthcare  
 Facility Licensure  
 Division of Healthcare Facilities Evaluation and  
 Licensing  
 New Jersey State Department of Health and  
 Senior Services  
 PO Box 358  
 Trenton, NJ 08625-0358

(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.

Amended by R.2007 d.83, effective March 19, 2007.  
 See: 38 N.J.R. 4141(a), 39 N.J.R. 924(a).  
 In (b), updated address.

**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 Appendix E, incorporated herein by reference which includes information regarding facility ownership, corporate officers and stockholders, and approval forms from local building, fire, health and zoning departments. A license application may be obtained from:

Office of Certificate of Need and Healthcare  
 Facility Licensure  
 Division of Healthcare Facilities Evaluation and  
 Licensing  
 New Jersey State Department of Health and  
 Senior Services  
 PO Box 358  
 Trenton, NJ 08625-0358

(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
Reduction in services or beds	\$250.00

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.  
 Amended by R.2007 d.83, effective March 19, 2007.  
 See: 38 N.J.R. 4141(a), 39 N.J.R. 924(a).

In (a), substituted "Appendix E, incorporated herein by reference" for "forms prescribed by the Department", "includes" for "include" and "A license application" for "Such forms", and updated address; and in (b), inserted table entry for "Reduction in services or beds".

**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) If the facility provides physical therapy on-site, physical therapy equipment available to the residents shall include at least parallel bars, stairs, mats, and padded tables.

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## SUBCHAPTER 38. ADVISORY REHABILITATION

### 8:39-38.1 Advisory rehabilitation staff qualifications

Speech therapy and audiology services are provided by individuals who hold a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

### 8:39-38.2 Advisory rehabilitation space and environment

The facility has an examination and treatment room for rehabilitation therapy.

### 8:39-38.3 Advisory rehabilitation supplies and equipment

(a) In addition to parallel bars and stairs, physical therapy equipment available to residents includes a whirlpool for hydrotherapy and ultrasound.

(b) The occupational therapy program provides individually designed adaptive equipment as needed to enhance residents' independence.

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## SUBCHAPTER 39. MANDATORY SOCIAL WORK

### 8:39-39.1 Mandatory social work policies and procedures

A social worker shall develop and implement specific criteria to identify residents who are likely candidates for discharge into the community or a less intensive care setting and to coordinate discharge planning.

### 8:39-39.2 Mandatory social work staff qualifications

Social work services shall be provided by one or more social workers who are certified or licensed by the New Jersey State Board of Social Work Examiners, in accordance with the Social Worker's Licensing Act of 1991 (N.J.S.A. 45:15BB-1 et seq.) and all amendments thereto and with the rules of the New Jersey Board of Social Work Examiners, N.J.A.C. 13:44G.

### 8:39-39.3 Mandatory social work amounts and availability

(a) The facility shall provide an average of at least 20 minutes of social work services per week for each resident, which requires at least one full-time equivalent social worker for every 120 residents.

(b) A social worker shall assist staff in coping with the personal needs and demands of particular residents.

### 8:39-39.4 Mandatory resident social work services

(a) A social worker shall interview the resident and family within 14 days before or after admission to the facility to

identify any social work needs or problems, and to take a social history that includes family, education, and occupational background, adjustment and level of functioning, interests, support systems, and observations.

(b) A social worker shall provide counseling for residents and families.

(c) A social worker shall facilitate communication between staff and non-English speaking residents.

(d) A social worker shall offer information and help to each resident and family on obtaining financial assistance and on the meaning of administrative forms and releases to be signed by the resident or family.

(e) A social worker shall coordinate the facility's outreach services to the families of residents.

(f) A social worker shall coordinate discharge services for residents, which shall include linking the resident to necessary community services.

(g) A social worker shall perform advocacy services on behalf of the residents to ensure that concrete needs are met, such as clothing, laundry, and the resident's personal needs allowance if one is maintained.

(h) A social worker shall help residents and families identify and gain access to community services, using resource materials and a knowledge of the residents' needs and abilities.

(i) The facility shall provide clinical social work services to residents as needed and to families if related to issues that directly affect the resident.

### 8:39-39.5 Mandatory space and environment for social work

The facility shall provide visual and auditory privacy for resident or family social service interviews, and for confidential telephone calls by social workers.

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## SUBCHAPTER 40. ADVISORY SOCIAL WORK

### 8:39-40.1 Advisory staff qualifications for social work

A social worker has a master's degree in social work from an accredited university or education program. He or she should provide consultant services at least eight hours per month, or be on the facility's staff.

### 8:39-40.2 Advisory staff amounts and availability for social work

(a) A social worker is available to the facility on evenings and weekends at scheduled times or by previously arranged appointments for interaction with residents and families, and is available seven days a week in cases of emergency or serious need.

(b) A social worker assists staff with problems and issues related to aging and illness.

(c) A social worker orients nurse aides to the social needs of new residents before the resident's arrival in the facility.

#### 8:39-40.3 Advisory resident social work services

(a) A social worker meets with the resident on the day of admission.

(b) A social worker conducts support groups for families.

(c) A social worker conducts group counseling sessions for residents and families.

(d) A social worker participates in pre-admission planning with residents and families prior to their admission to the nursing home.

(e) The social worker encourages and monitors a regular visiting pattern by families and provides outreach services to families where the visiting pattern has changed.

#### 8:39-40.4 Advisory space and environment for social work

Social workers are to be provided with a private office equipped with a telephone or, in facilities with 60 or fewer licensed beds, with access to a private office equipped with a telephone.

#### 8:39-40.5 Advisory social work staff education and training

The facility encourages the social worker to participate in community agency associations and other professional organizations.

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SUBCHAPTER 41. (RESERVED)

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SUBCHAPTER 42. (RESERVED)

### SUBCHAPTER 43. CERTIFICATION OF NURSE AIDES IN LONG-TERM CARE FACILITIES

#### 8:39-43.1 Nurse aide competency

(a) An individual who meets any of the following criteria shall be considered by the Department to be competent to work as a nurse aide in a licensed long-term care facility in New Jersey:

1. Has a currently valid nurse aide in long-term care facilities certificate and is registered in good standing on the New Jersey Nurse Aide Registry;

2. Has been employed for less than 120 days and is currently enrolled in an approved nurse aide in long term care facilities training course and scheduled to complete the competency evaluation program (skills and written/oral examination) within 120 days of employment; or

3. Has been employed for no more than 120 days, has completed the required training specified in (a)2 above, and has been granted a conditional certificate by the Department while awaiting clearance from the criminal background investigation conducted in accordance with N.J.A.C. 8:43I.

#### 8:39-43.2 Requirements for nurse aide certification

(a) An applicant for certification as a nurse aide in long-term care facilities shall:

1. Successfully complete a nurse aide in long-term care facilities training program that has been approved by the Department;

2. Provide evidence that he or she is of good moral character, including, but not limited to, compliance with the requirements of the Criminal Background Investigation Program in accordance with N.J.A.C. 8:43I; and

3. Pass both the Department's clinical skills competency exam and written/oral exam.

(b) An applicant shall fulfill the requirements in (a) above in order to be listed on the New Jersey Nurse Aide Registry.

#### 8:39-43.3 Exceptions

(a) The following persons may take the Department's written/oral examination without first completing a nurse aide training course and clinical skills evaluation approved in accordance with N.J.A.C. 8:39-43.10:

1. Students, graduate nurses, or foreign licensed nurses, pending licensure, who submit evidence of successful completion of a course in the fundamentals of nursing;

2. Persons who submit evidence of the successful completion of a course in the fundamentals of nursing within the 12 months immediately preceding application to take the written/oral competency examination, including:

i. Persons certified as a nurse aide in long-term care facilities in another state by a state governmental agency and listed on that state's nurse aide registry, who do not meet the requirements for equivalency specified at (a)1 above; and

ii. Persons who have had training and experience as a nurse aide in a military service, equivalent to that of a nurse aide;

New Rule, R.2007 d.83, effective March 19, 2007.  
See: 38 N.J.R. 4141(a), 39 N.J.R. 924(a).