

CHAPTER 42

STANDARDS FOR LICENSURE OF HOME HEALTH AGENCIES

Authority

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

Source and Effective Date

R.1992 d.322, effective August 17, 1992.
See: 24 N.J.R. 2031(a), 24 N.J.R. 2941(a).

Executive Order No. 66(1978) Expiration Date

Pursuant to the requirements and criteria of Executive Order No. 66(1978), Chapter 42 expires on August 17, 1997.

Historical Note

All provisions of this chapter "Home Health Agencies" became effective May 26, 1976 as R.1976 d.164. See: 8 N.J.R. 182(c), 8 N.J.R. 282(a).

1976 Revisions: Amendments to Subchapter 2 "Standards for Licensure of Residential and Inpatient Drug Treatment Facilities" became effective December 9, 1976 as R.1976 d.356. See: 8 N.J.R. 462(a), 8 N.J.R. 550(b).

1978 Revisions: Amendments to Subchapter 2 became effective November 9, 1978 as R.1978 d.373. See: 10 N.J.R. 330(c), 10 N.J.R. 484(b).

1979 Revisions: Subchapter 3 "Alcohol Abuse Treatment Facilities" was adopted effective July 5, 1979 as R.1979 d.240. See: 11 N.J.R. 233(c), 11 N.J.R. 331(c). An amendment that extended the expiration of this Subchapter 3 was filed on December 14, 1979 as R.1979 d.486 to become effective December 31, 1979. See: 11 N.J.R. 546(a), 12 N.J.R. 15(d). Further amendments to extend the expiration date of Subchapter 3 became effective June 19, 1980. See: 12 N.J.R. 407(b).

1980 Revisions: Amendments became effective February 1, 1980 as R.1979 d.485. See: 11 N.J.R. 545(d), 12 N.J.R. 15(c). Further amendments became effective October 9, 1980 as R.1980 d.399. See: 12 N.J.R. 463(b), 12 N.J.R. 578(c).

1981 Revisions: Amendments became effective June 4, 1981 as R.1981 d.157. See: 13 N.J.R. 12(a), 13 N.J.R. 342(b). Subchapter 3 expired pursuant to Executive Order 66(1978) on June 30, 1981. (For current rules concerning "Alcoholism Treatment Facilities," see Chapter 42A.)

1982 Revisions: Subchapter 2 was readopted and became effective on November 1, 1982 (operative November 9, 1982) as R.1982 d.391. See: 14 N.J.R. 812(a), 14 N.J.R. 1214(a).

1983 Revisions: Amendments became effective March 7, 1983 as R.1983 d.66. See: 14 N.J.R. 1273(a), 15 N.J.R. 336(a). Subchapter 2 was repealed effective August 1, 1983, by R.1983 d.309. See: 15 N.J.R. 397(a), 15 N.J.R. 1248(a). (For the current "Standards for Licensure of Drug Treatment Facilities," see Chapter 42B.)

1985 Revisions: Amendments became effective February 4, 1985 as R.1985 d.26. See: 16 N.J.R. 3125(a), 17 N.J.R. 285(a). This chapter was readopted pursuant to Executive Order 66(1978) effective March 18, 1985 as R.1985 d.117. See: 16 N.J.R. 3250(a), 17 N.J.R. 704(b).

1987 Revisions: There was an administrative recodification to N.J.A.C. 8:42-1.4(b) from N.J.A.C. 8:31-26.5(b). See: 19 N.J.R. 662(c). There was an administrative recodification repealing old subsection (p) of N.J.A.C. 8:42-1.8 and recodifying to N.J.A.C. 8:31-26.4(p)-(s). See: 19 N.J.R. 662(c).

1989 Revisions: Petition for rulemaking, effective February 21, 1989. See: 21 N.J.R. 578(a). Petition concerns the testing and certification of homemaker/home health aides.

Pursuant to Executive Order No. 66(1978), Chapter 42 was readopted as R.1987 d.333, effective August 17, 1987 (operative October 17, 1987). See: 19 N.J.R. 2287(a), 19 N.J.R. 1547(a).

Chapter 42 was repealed by R.1992 d.322, and was replaced by new rules, effective August 17, 1992. See: Source and Effective Date. Prior rulemaking activity in Chapter 42 follows:

- 8:42-1.1 Definitions
Amended by R.1992 d.130, effective March 16, 1992.
See: 23 N.J.R. 3254(a), 24 N.J.R. 938(b).
Definition of advance directive added.
- 8:42-6.1 Advisory group
Amended by R.1992 d.130, effective March 16, 1992.
See: 23 N.J.R. 3254(a), 24 N.J.R. 938(b).
Text added at (c)-(e) on advance directives and conflict resolution.
- 8:42-6.2 Policies and procedures
Amended by R.1992 d.130, effective March 16, 1992.
See: 23 N.J.R. 3254(a), 24 N.J.R. 938(b).
Text on advance directives added at (d); on patient transfer at (e)-(f); training at (g); and declaration of death at (h).

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SUBCHAPTER 1. DEFINITIONS**8:42-1.1 Scope: purpose**

(a) The rules in this chapter pertain to all home health agencies in the State of New Jersey.

(b) The purpose of this chapter is to assure the provision of high quality home health care services to the residents of New Jersey in a coordinated and cost-effective manner.

8:42-1.2 Definitions

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

“Activities of daily living (ADL)” means the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include at least mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

“Administrator” means a person who is administratively responsible and available for all aspects of facility operations, and:

1. Has a master's degree in administration or a health related field, and at least two years of supervisory or administrative experience in home health care or in a health care setting; or

2. Has a baccalaureate degree in administration or a health related field and four years of supervisory or administrative experience in home health care or in a health care setting.

“Advance directive” means a written statement of the patient's instructions and directions for health care in the event of future decisionmaking incapacity in accordance with the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201. It may include a proxy directive, an instruction directive, or both.

“Audiologist” means a person who is so licensed by the Audiology and Speech-Language Pathology Advisory Committee of the Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

“Available” means ready for immediate use (pertaining to equipment); capable of being reached (pertaining to personnel).

“Branch office” means a facility site from which services are provided to patients in their homes or place of residence; which is physically separate from the home health agency but shares administrative oversight and services; which meets all requirements for licensure; and which has a nursing supervisor or alternate coverage by a registered professional nurse on the premises during its hours of operation.

“Bylaws” means a set of rules adopted by the facility for governing its operation. (A charter, articles of incorporation, and/or a statement of policies and objectives is an acceptable equivalent.)

"Speech-language pathologist" means a person who is so licensed by the Audiology and Speech-Language Pathology Advisory Committee of the Division of Consumer Affairs of the New Jersey State Department of Law and Public Safety.

"Staff education plan" means a written plan developed at least annually and implemented throughout the year which describes a coordinated program for staff education for each service, including in-service programs and on-the-job training.

"Staff orientation plan" means a written plan for the orientation of each new employee to the duties and responsibilities of the service to which he or she has been assigned, as well as to the personnel policies of the facility.

"Sterilization" means a process of destroying all microorganisms, including those bearing spores, in, on, and around an object.

"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.

SUBCHAPTER 2. LICENSURE PROCEDURE

8:42-2.1 Certificate of Need

(a) According to N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, licensed to operate, or closed except upon application for and receipt of a Certificate of Need issued by the Commissioner.

(b) Applications shall provide the information required by N.J.A.C. 8:33 and N.J.A.C. 8:33L. Application forms for a Certificate of Need and instructions for completion may be obtained from:

Certificate of Need Program
Division of Health Planning and Resources Development
New Jersey State Department of Health
CN 360
Trenton, NJ 08625

(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 N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:42-2.2 Application for licensure

(a) Following acquisition of a Certificate of Need, 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 in accordance with the requirements of this chapter. Such forms may be obtained from:

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

(b) The applicant shall submit to the Department a non-refundable fee of \$500.00 for the filing of an application for licensure of a home health agency and \$500.00 for the annual renewal of the license. An additional \$150.00 shall be submitted for the filing of an application for each branch office of the facility, and \$150.00 for its annual renewal.

(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 Licensing, Certification and Standards Program.

8:42-2.3 Surveys and temporary license

(a) When the written application for licensure 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 adheres to the rules in this Chapter.

1. The facility shall be notified 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 issue of license.

(b) A temporary license may be issued to 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 will be advised that the purpose of the temporary license is to allow the Department to determine the facility's compliance with 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. Survey(s) by representatives of the Department indicate that the facility adheres to these rules; and

4. Professional personnel are employed in accordance with the staffing requirements in these rules.

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

(d) Survey visits may be made to a facility at any time, or to a patient's home, by authorized staff of the Department. Such visits may include, but not be limited to, a review of all facility documents and patient records, and conferences with patients and/or their families.

(e) A temporary license may be issued to a facility for a period of six months and may be renewed as determined by the Department.

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

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

8:42-2.4 Full license

(a) A full license shall be issued on expiration of the temporary license, if surveys by the Department have determined that the health care facility is being operated as required by N.J.S.A. 26:2H-1 et seq., and amendments thereto, and by the rules in this chapter.

(b) A license shall be granted for a period of one year or less as determined by the Department. (See N.J.S.A. 26:2H-12.)

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

(d) The license is not assignable or transferable and it 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 original licensure date. The facility will receive a request for renewal fee 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.

(f) The license may not be renewed if local rules, regulations, and/or requirements are not met.

8:42-2.5 Surrender of license

The facility shall directly notify each patient, the patient'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 license. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven working days after the revocation, non-renewal, or suspension of license.

8:42-2.6 Waiver

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

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

(c) A written request for waiver shall include the following:

1. The specific rule(s) or part(s) of the rule(s) for which waiver is requested;

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

3. An alternative proposal which would ensure patient safety; and

4. Documentation to support the application for waiver.

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

8:42-2.7 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all new 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.

(b) The Commissioner may order the immediate cessation of services by a facility whenever he or she determines imminent danger to any person's health or safety.

(c) The provisions of (a) and (b) above shall apply to facilities with a temporary license and facilities with a full license.