

**CHAPTER 43E**  
**ENFORCEMENT OF LICENSURE REGULATIONS**

**Authority**

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

**Source and Effective Date**

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**Executive Order No. 66 (1978) Expiration Date**

Chapter 43E, Enforcement of Licensure Regulations, expires on April 3, 2000.

**Chapter Historical Note**

Chapter 43E, originally Policy Manual for Planning and Certificate of Need Reviews of Psychiatric Health Care Facilities and Services within the State of New Jersey, was recodified to N.J.A.C. 8:33R by R.1993 d.29, effective January 4, 1993. See: 24 N.J.R. 3598(a), 25 N.J.R. 111(a).

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**SUBCHAPTER 1. SCOPE AND GENERAL PROVISIONS**

**8:43E-1.1 Scope**

The rules in this chapter pertain and apply to all health care facilities licensed by the Department pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et

seq. The rules set forth the procedures for the conduct of surveys of health care facilities, the basis and procedures for imposition of penalties and other enforcement actions and remedies, and the rights and procedures available to facilities to request a hearing to contest survey findings and the imposition of penalties.

**8:43E-1.2 Purpose**

The rules in this chapter are intended to promote the health, safety, and welfare of patients or residents of health care facilities through establishing rules and regulations implementing the Department's legislative mandate to enforce violations of licensing regulations. The rules also are intended to afford health care facilities with appropriate and adequate due process rights and procedures upon the finding of a violation or assessment of a penalty or other enforcement action.

**8:43E-1.3 Definitions**

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

"Commissioner" means Commissioner of Health.

"Curtailment" means an order by the Department which requires a licensed health care facility to cease and desist all admissions and readmissions of patients or residents to the facility or affected service.

"Deficiency" means a determination by the Department of one or more instances in which a State licensing regulation or a Federal certification regulation has been violated.

"Department" means New Jersey Department of Health.

"Division" means Health Facilities Evaluation and Licensing, Department of Health.

"Facility" means the entity which has been issued a license to operate a health care facility pursuant to N.J.S.A. 26:2H-1 et seq. For the purposes of this chapter, "facility" includes ambulance and invalid coach services.

"Immediate and serious threat" means a deficiency or violation that has caused or will imminently cause at any time serious injury, harm, impairment, or even death to residents or patients of the facility and therefore requires immediate corrective action.

"Patient" means an individual under the medical and nursing care and supervision of a licensed health care facility. For purposes of this chapter, "patient" is synonymous with "resident."

"Plan of correction" means a plan developed by the facility and reviewed and approved by the Department

which describes the actions the facility will take to correct deficiencies and specifies the timeframe in which those deficiencies will be corrected.

"Resident" means an individual residing in a licensed health care facility and under the supervision of that facility for the purpose of receiving medical, nursing, and/or personal care services. For purposes of this chapter, "resident" is synonymous with "patient."

"Survey" means the evaluation of the quality of care and/or the fitness of the premises, staff, and services provided by a facility as conducted by the Department and/or its designees to determine compliance or non-compliance with applicable State licensing regulations, statutes, or Federal Medicare/Medicaid certification regulations or statutes.

## SUBCHAPTER 2. SURVEY PROCEDURES

### 8:43E-2.1 Scope and types of surveys

(a) The Department, or another State agency to which the Department has delegated the authority for conduct of surveys either partially or fully, may conduct periodic or special inspections of licensed health care facilities to evaluate the fitness and adequacy of the premises, equipment, personnel, policies and procedures, and finances, and to ascertain whether the facility complies with all applicable State and Federal licensure regulations and statutes.

(b) The Department or its designee may also conduct periodic surveys of facilities on behalf of the U.S. Department of Health and Human Services or other Federal agency for purposes of evaluating compliance with all applicable Federal regulations or Medicare and Medicaid certification regulations.

(c) The Department may evaluate all aspects of patient care, and operations of a health care facility, including the inspection of medical records; observation of patient care where consented to by the patient; inspection of all areas of the physical plant under the control or ownership of the licensee; and interview of the patient or resident, his or her family or other individuals with knowledge of the patient or care rendered to him or her.

(d) All information pertaining to an individual patient shall be maintained as confidential by the Department and shall not be available to the public in a manner that identifies an individual patient, unless so consented to by the patient or pursuant to an order by a court of law.

(e) The Department may conduct a survey of a facility upon the receipt of complaint or allegation by any person or agency, including a patient, his or her family, or any person with knowledge of the services rendered to patients or operations of a facility.

(f) The Department may evaluate the quality of patient care rendered by a facility through analysis of statistical data reported by facilities to the Department or other agency, or by review of reportable event information or other notices filed with the Department pursuant to regulation. Upon receipt of information indicating a potential risk to patient safety or violations of licensing regulations, the Department may conduct a survey to investigate the causes of this finding, or request a written response from the facility to ascertain the validity of the data and to describe the facility's plan or current actions to address the identified findings.

(g) Following a reasonable opportunity for facilities to review and comment on the validity of the Department's statistical data related to the quality of patient care by facilities, the Department may make such information, as appropriately amended, available to the public.

### 8:43E-2.2 Deficiency findings

(a) A deficiency may be cited by the Department upon any single or multiple determination that the facility does not comply with a licensure regulation. Such findings may be made as the result of either an on-site survey or inspection or as the result of the evaluation of written reports or documentation submitted to the Department, or the omission or failure to act in a manner required by regulation.

(b) At the conclusion of a survey or within 10 business days thereafter, the Department shall provide a facility with a written summary of any factual findings used as a basis to determine that a licensure violation has occurred, and a statement of each licensure regulation to which the finding of a deficiency relates.

### 8:43E-2.3 Informal dispute resolution

(a) A facility may request an opportunity to discuss the accuracy of survey findings with representatives of the Department in the following circumstances during a survey:

1. During the course of a survey to the extent such discussion does not interfere with the surveyor's ability to obtain full and objective information and to complete required survey tasks; or
2. During the exit interview or other summation of survey findings prior to the conclusion of the survey.

(b) Following completion of the survey, a facility may contact the Health Facilities Inspection Services office to request an informal review of deficiencies cited. The request must be made in writing within 10 business days of the receipt of the written survey findings. The written request must include:

1. A specific listing of the deficiencies for which informal review is requested; and
2. Documentation supporting any contention that a survey finding was in error.

(c) The review will be conducted within 10 business days of the request by supervisory staff of Health Facilities Inspection Services who did not directly participate in the survey. The review can be conducted in person at the offices of the Department or, by mutual agreement, solely by review of the documentation as submitted.

(d) A decision will be issued by the Department within seven business days of the conference or the review, and if the determination is to agree with the facility's contentions, the deficiencies will be removed from the record. If the decision is to disagree with the request to remove deficiencies, a plan of correction is required within five business days of receipt of the decision. The facility retains all other rights to appeal deficiencies and enforcement actions taken pursuant to these rules.

#### 8:43E-2.4 Plan of correction

(a) The Department may require that the facility submit a written plan of correction specifying how each deficiency that has been cited will be corrected along with the time frames for completion of each corrective action. A single plan of correction may address all events associated with a given deficiency.

(b) The plan of correction shall be submitted within 10 business days of the facility's receipt of the notice of violations, unless the Department specifically authorizes an extension for cause. Where deficiencies are the subject of informal dispute resolution pursuant to N.J.A.C. 8:43E-2.3, the extension shall pertain only to the plans of correction for the deficiencies under review.

(c) The Department may require that the facility's representatives appear at an office conference to review findings of serious or repeated licensure deficiencies and to review the causes for such violations and the facility's plan of correction.

(d) The plan of correction shall be reviewed by the Department and will be approved where the plan demonstrates that compliance will be achieved in a manner and time that assures the health and safety of patients or residents. If the plan is not approved, the Department may request that an amended plan of correction be submitted within five business days. In relation to violations of resident or patient rights, the Department may direct specific corrective measures that must be implemented by facilities.

### SUBCHAPTER 3. ENFORCEMENT REMEDIES

#### 8:43E-3.1 Enforcement remedies available

(a) Pursuant to N.J.S.A. 26:2H-13, 14, 15, 16 and 38, the Commissioner or his or her designee may impose the following enforcement remedies against a health care facility for

violations of licensure regulations or other statutory requirements:

1. Civil monetary penalty;
2. Curtailment of admissions;
3. Appointment of a receiver or temporary manager;
4. Provisional license;
5. Suspension of a license;
6. Revocation of a license;
7. Order to Cease and Desist operation of an unlicensed health care facility; and
8. Other remedies for violations of statutes as provided by State or Federal law, or as authorized by Federal survey, certification, and enforcement regulations and agreements.

#### 8:43E-3.2 Notice of violations and enforcement actions

The Commissioner shall serve notice to a facility of the proposed assessment of civil monetary penalties, suspension or revocation of a license, or placement on a provisional license, setting forth the specific violations, charges or reasons for the action. Such notice shall be served on a licensee or its registered agent in person or by certified mail.

#### 8:43E-3.3 Effective date of enforcement actions

The assessment of civil monetary penalties, or revocation of a license, or the placement of a license on provisional status shall become effective 30 days after the date of mailing or the date personally served on a licensee, unless the licensee shall file with the Department a written answer to the charges and give written notice to the Department of its desire for a hearing in which case the assessment, suspension, revocation, or placement on provisional license status shall be held in abeyance until the administrative hearing has been concluded and a final decision is rendered by the Commissioner. Hearings shall be conducted in accordance with N.J.A.C. 8:43E-4.1.

#### 8:43E-3.4 Civil monetary penalties

(a) Pursuant to N.J.S.A. 26:2H-13 and 14, the Commissioner may assess a penalty for violation of licensure regulations in accordance with the following standards:

1. For operation of a health care facility without a license, or continued operation of a facility after suspension or revocation of a license, \$250.00 per day from the date of initiation of services;
2. For violation of an order for curtailment of admissions, \$250.00 per patient, per day from the date of such admission to the date of discharge or lifting of the curtailment order;
3. For failure to obtain prior approval from the Licensing Program, Division of Health Facilities Evaluation

and Licensing, for occupancy of an area or initiation of a service following construction or application for licensure, \$250.00 a day;

4. For construction or renovation of a facility without the Department's approval of construction plans, \$1,000 per room or area renovated and immediate suspension of use of the room or area;

5. For the transfer of ownership of a health care facility without prior approval of the Department, \$250.00 per day from the date of the transfer of interest to the date of discovery by the Department. Such fine may be assessed against each of the parties at interest;

6. For maintaining or admitting more patients or residents to a facility than the maximum capacity permitted under the license, except in an emergency as documented by the facility in a contemporaneous notice to the Department, \$25.00 per patient per day plus an amount equal to the average daily charge collected from such patient or patients;

7. For violations of licensure regulations related to patient care or physical plant standards that represent a risk to the health, safety, or welfare of patients or residents of a facility or the general public, \$250.00 per violation where such deficiencies are isolated or occasional and do not represent a pattern or widespread practice throughout the facility;

8. Where there are multiple deficiencies related to patient care or physical plant standards throughout a facility, and/or such violations represent a direct risk that a patient's physical or mental health will be compromised, or where an actual violation of a resident's or patient's rights is found, a penalty of \$500.00 per violation may be assessed for each day non-compliance is found;

9. For repeated violation of any licensing regulation within a 12-month period or on successive annual inspections, or failure to implement an approved plan of correction, where such violation was not the subject of a previous penalty assessment, \$250.00 per violation, which may be assessed for each day non-compliance is found. If the initial violation resulted in the assessment of a penalty, within a 12-month period or on successive annual inspections, the second violation shall result in a doubling of the original fine, and the third and successive violations shall result in a tripling of the original fine;

10. For violations resulting in either actual harm to a patient or resident, or in an immediate and serious risk of harm, \$1,000 per violation, which may be assessed for each day non-compliance is found;

11. For failure to report information to the Department as required by statute or licensing regulation, after reasonable notice and an opportunity to cure the violation, \$250.00 per day; or

12. For failure to implement a Certificate of Need condition of approval, \$1,000 per day, which shall be assessed either from the date specified in the Certificate of Need for implementation of the specific condition of approval, if identified, or from the date on which the Certificate of Need was considered to be implemented.

(b) Except for violations deemed to be immediate and serious threats, the Department may decrease the penalty assessed in accordance with (a) above, based on the compliance history of the facility; the number, frequency and/or severity of violations by the facility; the measures taken by the facility to mitigate the effects of the current violation, or to prevent future violations; the deterrent effect of the penalty; and/or other specific circumstances of the facility or the violation.

(c) The Department may increase the penalties in (a) above up to the statutory maximum per violation per day in consideration of the economic benefit realized by the facility for non-compliance.

#### 8:43E-3.5 Failure to pay a penalty; remedies

(a) Upon the receipt of a Notice of the Proposed Assessment of a Penalty, a facility has 30 days in which to notify the Department of its intent to request a hearing pursuant to the Administrative Procedures Act.

(b) The penalty becomes due and owing upon the 30th day from receipt of the Notice of Proposed Assessment of Penalties, if a notice requesting a hearing has not been received by the Department. If a hearing has been requested, the penalty is due 45 days after the issuance of a Final Agency Decision by the Commissioner, if the Department's assessment has not been withdrawn, rescinded, or reversed, and an appeal has not been timely filed with the Appellate Division pursuant to Rule 2:2-3 of the New Jersey Court Rules.

(c) Failure to pay a penalty within 30 days of the date it is due and owing pursuant to (b) above may result in one or more of the following actions:

1. Institution of a summary civil proceeding by the State pursuant to the Penalty Enforcement Law (N.J.S.A. 2A:58-1 et seq.); or
2. Placing the facility on a provisional license status.

#### 8:43E-3.6 Curtailment of admissions

(a) The Department may issue an order curtailing all new admissions and readmissions to a health care facility in the following circumstances:

1. Where violations of licensing regulations are found that have been determined to pose an immediate and serious threat of harm to patients or residents of a health care facility;

2. Where the Department has issued a Notice of Proposed Revocation or Suspension of a health care facility license, for the purpose of limiting the census of a facility if patients or residents must be relocated upon closure;

3. Where the admission or readmission of new patients or residents to a health care facility would impair the facility's ability to correct serious or widespread violations of licensing regulations related to direct patient care and cause a diminution in the quality of care; or

4. For exceeding the licensed or authorized bed or service capacity of a health care facility, except in those instances where exceeding the licensed or authorized capacity was necessitated by emergency conditions and where immediate and satisfactory notice was provided to the Department.

(b) The order for curtailment may be withdrawn upon a survey finding that the facility has achieved substantial compliance with the applicable licensing regulations or Federal certification requirements and that there is no immediate and serious threat to patient safety, or in the case of providers exceeding licensed capacity, has achieved a census equivalent to licensed and approved levels. Such order to lift a curtailment may reasonably limit the number and priority of patients to be admitted by the facility in order to protect patient safety.

#### 8:43E-3.7 Appointment of a receiver

(a) Pursuant to N.J.S.A. 26:2H-37 et seq., the Department may seek an order or judgment in a court of competent jurisdiction, directing the appointment of a receiver for the purpose of remedying a condition or conditions in a residential health care facility, assisted living facility, or long-term care facility, that represent a substantial or habitual violation of the standards of health, safety, or resident care adopted by the Department or pursuant to Federal law or regulation.

(b) The Department shall review and approve the receiver's qualifications prior to submission for court approval. The receiver shall have experience and training in long-term care, assisted living, or residential health care, as appropriate, and, if the facility is a licensed long-term care provider, the receiver shall possess a current New Jersey license as a nursing home administrator and be in good standing. The Department shall maintain a list of interested and approved receivers.

(c) No receiver may be a current owner, licensee, or administrator of the subject facility or a spouse or immediate family member thereof.

#### 8:43E-3.8 Suspension of a license

(a) Pursuant to N.J.S.A. 26:2H-14, the Commissioner may order the summary suspension of a license of a health care facility or a component or distinct part of a facility

upon a finding that violations pertaining to the care of patients or to the hazardous or unsafe conditions of the physical structure pose an immediate threat to the health, safety, and welfare of the public or the residents of the facility.

(b) Upon a finding described in (a) above, the Commissioner shall serve notice in person or by certified mail to the facility or its registered agent of the nature of the findings and violations and the proposed order of suspension. Except in the case of a life-threatening emergency, the notice shall provide the facility with a 72-hour period from receipt to correct the violations and provide proof to the Department of such correction.

(c) If the Department determines the violations have not been corrected, and the facility has not filed notice requesting a hearing to contest the notice of suspension within 48 hours of receipt of the Commissioner's notice pursuant to (e) below, then the license shall be deemed suspended. Upon the effective date of the suspension, the facility shall cease and desist the provision of health care services and effect an orderly transfer of patients.

(d) The Department shall approve and coordinate the process to be followed during an evacuation of the facility or cessation of services pursuant to an order for suspension or revocation.

(e) If the facility requests a hearing within 48 hours of receipt of the Notice of Proposed Suspension of License in accordance with N.J.S.A. 26:2H-14, the Department shall arrange for an immediate hearing to be conducted by the Commissioner and a final agency decision shall be issued within 48 hours by the Commissioner. If the Commissioner shall affirm the proposed suspension of the license, the order shall become final. The licensee may file for injunctive relief against the Commissioner's order in Superior Court.

(f) Notwithstanding the issuance of an order for proposed suspension of a license, the Department may concurrently or subsequently impose other enforcement actions pursuant to these rules.

(g) The Department may rescind the order for suspension upon a finding that the facility has corrected the conditions which were the basis for the action.

#### 8:43E-3.9 Revocation of a license

(a) A Notice of the Proposed Revocation of a health care facility license may be issued in the following circumstances:

1. The facility has failed to comply with licensing requirements, posing an immediate and serious risk of harm or actual harm to the health, safety, and welfare of patients or residents, and the facility has not corrected such violations in accordance with an approved plan of

correction or subsequent to imposition of other enforcement remedies issued pursuant to these rules;

2. The facility has exhibited a pattern and practice of violating licensing requirements, posing a serious risk of harm to the health, safety and welfare of residents or patients. A pattern and practice may be demonstrated by the repeated violation of identical or substantially-related licensing regulations during three consecutive surveys, or the issuance of civil monetary penalties pursuant to N.J.A.C. 8:43E-3.4 or other enforcement actions for unrelated violations on three or more consecutive surveys;

3. Failure of a licensee to correct identified violations which had led to the issuance of an order for suspension of a license, pursuant to N.J.A.C. 8:43E-3.6 or 3.8; or

4. Continuance of a facility on provisional licensure status for a period of 12 months or more.

(b) The notice shall be served in accordance with N.J.A.C. 8:43E-3.2, and the facility has a right to request a hearing pursuant to N.J.A.C. 8:43E-4.1.

#### 8:43E-3.10 Provisional license

(a) The Department may place a health care facility on provisional license status in the following circumstances:

1. Upon issuance of a Notice for Revocation or Suspension of a License, pursuant to N.J.A.C. 8:43E-3.8 or 3.9, for a period extending through final adjudication of the action;

2. Upon issuance of an order for curtailment of admissions pursuant to N.J.A.C. 8:43E-3.6, for a minimum period of three months and for a maximum period extending through 90 days following the date the Department finds the facility has achieved substantial compliance with all applicable licensing regulations;

3. For failure to satisfy a civil penalty due and owing pursuant to N.J.A.C. 8:43E-3.4; or

4. Upon a recommendation to the Federal government or the New Jersey Division of Medical Assistance and Health Services for termination of a provider agreement for failure to meet the Federal certification regulations.

(b) A facility placed on provisional license status shall receive a notice of the action pursuant to N.J.A.C. 8:43E-3.10. The action is effective upon receipt, although the facility may request a hearing to contest the action in accordance with procedures identified at N.J.A.C. 8:43E-4.1.

(c) While a facility is on provisional license status, the following will occur:

1. Withholding of authorization or review of any application filed with the Department for approval of additional beds or services;

2. Notification of the action to the Certificate of Need Program, for consideration during any pending application. It may result in withholding of Certificate of Need approval or denial of the Certificate of Need, in accordance with Certificate of Need rules at N.J.A.C. 8:33, or applicable licensing regulations; and

3. Notification of the action to any public agency that provides funding or third party reimbursement to the facility or that has statutory responsibility for monitoring the quality of care rendered to patients or residents. Conspicuous posting of the provisional license in the health care facility must occur.

#### 8:43E-3.11 Cease and desist order

(a) Pursuant to N.J.S.A. 26:2H-14 and 15, the Commissioner or his or her designee may issue an order requiring the operation of an unlicensed or unauthorized care facility or service to cease and desist.

(b) The Commissioner may also impose other enforcement actions pursuant to these rules for operation of an unlicensed health care facility.

(c) The Department may maintain an action in Superior Court to enjoin any entity from operation of a health care facility without a license or after the suspension or revocation of a license pursuant to these rules.

### SUBCHAPTER 4. HEARINGS

#### 8:43E-4.1 Hearings

(a) Notice of a proposed enforcement action shall be afforded to a facility pursuant to N.J.A.C. 8:43E-3.2.

(b) A facility shall notify the Department of its intent to request a hearing in a manner specified in the Notice within 30 days of its receipt.

(c) The Department shall transmit the hearing request to the Office of Administrative Law.

(d) Hearings shall be conducted pursuant to 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.

#### 8:43E-4.2 Settlement of enforcement actions

(a) The facility may request that the matter be settled in lieu of conducting an administrative hearing concerning an enforcement action.

(b) If the Department and the facility agree on the terms of a settlement, a written agreement specifying these terms shall be executed.

(c) Pursuant to N.J.S.A. 26:2H-16, civil penalties may be settled by the Department in cash or in-kind services to patients where circumstances warrant such agreement and the settlement does not compromise the health, safety, or welfare of patients. In no case shall such settlement reduce a penalty below \$250.00, or \$500.00 for second and subsequent offenses.

(d) The Department may agree to accept payment of penalties over a schedule not exceeding 18 months where a facility demonstrates financial hardship.

(e) All funds received in payment of penalties shall be deposited in the Health Care Facilities Improvement Fund. Such fund shall be designated for use by the Commissioner to make corrections in a health care facility which is in

violation of a licensure standard and in which the owner or operator is unable or unwilling to make the necessary corrections. The owner of the facility shall repay the fund any monies plus interest at the prevailing rate that were expended by the State to correct the violation at the facility. If the owner fails to promptly reimburse the fund, the Commissioner shall have a lien in the name of the State against the facility for the cost of the corrections plus interest and for any administrative cost incurred in filing the lien.

(f) If a facility fails to meet the conditions of the settlement, the Department may immediately impose the original enforcement action without any further right to an administrative hearing.