

“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 \$500.00 plus \$3.00 per bed for the filing of an application for licensure of a long-term care facility. The Department shall also charge a nonrefundable fee of \$500.00 plus \$3.00 per bed for the annual renewal of the license.

(c) If chronic dialysis services are provided in the long-term care facility, the Department shall charge an initial licensure application fee of \$500.00 and an additional \$150.00 annually for licensure of the service. (The initial application shall be accompanied by a \$650.00 fee; thereafter, \$150.00 will be added to the facility's annual licensure renewal fee.)

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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).

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
CN 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The Department shall charge a fee of \$150.00, which shall accompany the information required at (d)1 and 2 above. Thereafter, \$150.00 shall be added to the usual annual licensing fee and the license shall list chronic dialysis as a service provided under contract with a dialysis provider.

8:39-2.11 Peritoneal dialysis

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

1. A licensing application shall not be required;

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

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

(1) Staff qualifications and training;

(2) Admission criteria;

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

(4) Quality assurance mechanisms and criteria;

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

(6) Emergency situations;

(7) Dietary requirements; and

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

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

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

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

1. All requirements in (a) above shall be met;
2. The dialysis provider shall be licensed as specified at N.J.A.C. 8:39-2.10(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 application shall be filed, with an application fee of \$250.00, using application forms provided by the Licensing, Certification and Standards program, and shall include: name, address, ownership, and any other facilities owned, licensed capacity, any existing waivers, number of beds requested, proposed location of beds, any construction/renovation needed, a description of the project, number of single-bed rooms and square footage of dining/recreation area after increase, and additional staffing required.

(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).

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;