

Amended by R.1994 d.496, effective October 3, 1994.  
See: 26 N.J.R. 2187(a), 26 N.J.R. 4046(a).  
Amended by R.1997 d.42, effective January 21, 1997.  
See: 28 N.J.R. 4185(a), 29 N.J.R. 329(a).

#### 8:36-1.9 Qualifications of pharmacists

Each pharmacist shall be so registered by the New Jersey State Board of Pharmacy.

#### 8:36-1.10 Qualifications of physicians

Each physician shall be licensed or authorized by the New Jersey State Board of Medical Examiners to practice medicine in the State of New Jersey.

#### 8:36-1.11 Qualifications of registered professional nurses

Each registered professional nurse shall be so licensed by the New Jersey State Board of Nursing.

#### 8:36-1.12 Qualifications of social workers

Each social worker shall be licensed or certified by the New Jersey State Board of Social Work Examiners.

### SUBCHAPTER 2. LICENSURE PROCEDURES

#### 8:36-2.1 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) 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, New Jersey 08625-0360  
609-292-6552

(c) The facility or program 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.

Amended by R.1997 d.42, effective January 21, 1997.  
See: 28 N.J.R. 4185(a), 29 N.J.R. 329(a).  
Inserted reference to program.

#### 8:36-2.2 Application for licensure

(a) Following receipt of a Certificate of Need, any person, organization, or corporation desiring to operate an assisted living residence, comprehensive personal care home or assisted living program shall make application to the Commissioner for a license on forms prescribed by the Department. Such forms may be obtained from:

Director  
Long Term Care Licensing and Certification  
Division of Long Term Care Systems Development  
and Quality  
New Jersey State Department of Health and Senior Services  
CN 367  
Trenton, New Jersey 08625-0367  
(609) 588-7726

(b) Any long term care facility, residential health care facility, or Class "C" boarding home planning to provide assisted living services shall obtain licensing approval from the Department prior to initiating services.

(c) A copy of the assisted living residence or comprehensive personal care home admission agreement or other document stating the scope of a facility's services shall be forwarded to the Director, Long Term Care Licensing and Certification (see (a) above for address) for review when application for licensure is made. Review shall ensure that the admission agreement does not violate any requirements contained herein, any conditions placed on Certificate of Need approval, or any applicable State or Federal statutes. This subsection does not apply when a continuing care retirement community (CCRC), as defined at N.J.A.C. 8:36-1.3, contracts with its residents to provide assisted living pursuant to a continuing care agreement. This subsection does apply, however, when a CCRC provides assisted living to a person who is not a party to a continuing care agreement. The admission agreement shall include, but not be limited to, the following:

1. Proposed charges for room, board and all levels of service and care and for all additional services and care not included in the standard package of rates;
2. Specification of how and when the resident will be notified of any change in charges;
3. A statement that each resident has the right to appeal an involuntary discharge as specified at N.J.A.C. 8:36-4.13(b); and
4. Specification of the criteria identified at N.J.A.C. 8:36-4.1(d) which will be used to discharge residents and an explanation of how the discharge process will be implemented, including which facility staff will participate and the extent of resident participation.

(d) The Department shall charge a nonrefundable fee of \$500.00 plus \$10.00 per bed (for the number of licensed

beds) for the filing of an application for licensure and each annual renewal of an assisted living residence or comprehensive personal care home. The facility shall receive a license for the maximum number of beds available in its residential units. These fees shall not exceed the maximum caps set forth at N.J.S.A. 26:2H-12, as may be amended from time to time. The application shall include, but not be limited to, the following:

1. An evaluation of the previous licensing track record of the proposed licensed operator in New Jersey and other states, where applicable. This evaluation shall include assisted living and other licensed health care facilities owned, operated or managed by the prospective licensed operator and any such facilities owned, operated or managed by any entity affiliated with the proposed operator. The application shall not include a track record review if the prospective licensed operator had its track record reviewed and evaluated during the certificate of need process;
2. The proposed licensed operator's capacity to comply with licensing requirements;
3. A description of the physical plant, including the number and type of beds requested;
4. An evaluation of any requested waivers to licensing requirements that are sought in accordance with N.J.A.C. 8:36-2.7;
5. A description of the proposed physical plant, including the number of beds requested;
6. A description of how the architectural design will promote the essential values of assisted living, including privacy, choice, independence, dignity and a home-like environment;
7. A description of how the physical plant will facilitate the care of residents with common long term care problems, such as reduced mobility, incontinence and dementia; and
8. A statement of the proposed licensed operator's commitment to assuring access to assisted living for individuals with nursing home level of care needs, as defined in N.J.A.C. 8:36-1.3. This statement shall indicate that within 36 months after licensure, at least 20 percent of the facility's residents shall be individuals with nursing home-level of care needs. This percentage shall be computed based on the number of resident days per calendar year and may include direct admissions as well as maintained residents with nursing home-level of care needs.

(e) The Department shall charge a nonrefundable fee of \$500.00 for the filing of an application to add bed or non-bed related services to an existing assisted living residence or comprehensive personal care home.

(f) The Department shall charge a nonrefundable fee of \$250.00 for the filing of an application to reduce bed or non-bed related services at an existing assisted living residence or comprehensive personal care home.

(g) The Department shall charge a nonrefundable fee of \$250.00 for the filing of an application for the relocation of an assisted living residence or comprehensive personal care home.

(h) The Department shall charge a nonrefundable fee of \$1,000 for the filing of an application for the transfer of ownership of an assisted living residence or comprehensive personal care home.

(i) All applicants shall demonstrate that they have the capacity to operate an assisted living residence or program or a comprehensive personal care home in accordance with the rules in this chapter. An application for a license or change in service shall be denied if the applicant cannot demonstrate that the premises, equipment, personnel, including principals and management, finances, rules and bylaws, and standards of health care are fit and adequate and that there is reasonable assurance that the health care facility will be operated in accordance with the standards required by these rules. The Department shall consider an applicant's prior history in operating a health care facility either in New Jersey or in other states in making this determination. Any evidence of licensure violations representing serious risk of harm to patients may be considered by the Department, as well as any record of criminal convictions representing a risk of harm to the safety or welfare of patients.

(j) The Department shall charge a nonrefundable fee of \$750.00 for the filing of an application for licensure and each annual renewal of an assisted living program. The application shall include, but not be limited to the following:

1. A copy of the written contract between the program provider and the publicly subsidized housing unit in accordance with N.J.A.C. 8:36-18.2(c)1 through 6;
2. A copy of the written agreement or contract between the program provider and residents that will be used at each program site, including clearly addressing N.J.A.C. 8:36-18.3(d); and
3. An evaluation of the requirements specified in N.J.A.C. 8:36-2.2(d)1 and 2.

(k) Each licensed assisted living program office site may provide services in an area that covers no more than two contiguous counties, although the facility may apply to establish and license sufficient sites to provide services for multiple counties, up to and including a Statewide service area.

(l) Each applicant for a license to operate a facility or program may make an appointment for a preliminary conference at the Department with the Long Term Care Licensing and Certification Program.

Amended by R.1996 d.339, effective July 15, 1996.  
See: 28 N.J.R. 2365(a), 28 N.J.R. 3556(a).  
Amended by R.1997 d.42, effective January 21, 1997.  
See: 28 N.J.R. 4185(a), 29 N.J.R. 329(a).  
Substantially amended section.

### 8:36-2.3 Newly constructed or expanded facilities

(a) Any assisted living residence or comprehensive personal care home with a construction program, whether a Certificate of Need is required or not, shall submit plans to the Health Facilities Construction Services of the Department for review and approval prior to the initiation of construction.

(b) The licensure application for a newly constructed, renovated or expanded facility shall include written approval of final construction of the physical plant by:

Health Facilities Construction Services  
Division of Long Term Care Systems Development  
and Quality  
New Jersey State Department of Health and Senior Services  
PO Box 367  
Trenton, New Jersey 08625-0367  
609-588-7731

(c) An on-site inspection of the construction of the physical plant shall be made by representatives of Health Facilities Construction Services to verify that the building has been constructed in accordance with the architectural plans approved by the Department.

Amended by R.1997 d.42, effective January 21, 1997.  
See: 28 N.J.R. 4185(a), 29 N.J.R. 329(a).

### 8:36-2.4 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 manual.

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 occupancy.

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

1. A preliminary conference (see N.J.A.C. 8:36-2.2(d)) for review of the conditions for licensure and operation has taken place between the Licensing and Certification 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. The initial survey required by N.J.A.C. 8:36-2.4(a) results in a finding of substantial compliance with the requirements of this chapter.

3. The completed licensure application is on file with the Department;

4. The fee for filing of the application has been received by the Department;

5. A copy of the admission agreement is on file with the Department;

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

7. 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;

8. Survey(s) by representatives of the Department indicate the facility adheres to the rules in this chapter; and

9. Personnel are employed in accordance with the staffing requirements in this chapter.

(c) No facility shall admit residents to the facility until the facility has the written approval and/or license issued by the Licensing and Certification Program of the Department. Violators of this requirement will be subject to penalties for operating a facility without a license, pursuant to N.J.S.A. 26:2H-14.

(d) Survey visits may be made to a facility at any time by authorized staff of the Department. Such visits may include, but not be limited to, the review of all facility documents and resident records and conferences with residents.

(e) A temporary license may be issued to a facility for a period of up to six months, subject to renewal as determined by the Department.

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

(g) The temporary license shall not be assignable or transferable and shall be immediately void if the facility ceases to operate, if the facility's ownership changes, or if the facility is relocated to a different site.

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

See: 28 N.J.R. 2365(a), 28 N.J.R. 3556(a).  
Public Notice: Waiver of Temporary Licensing of Facilities.  
See: 29 N.J.R. 5107(b).

#### 8:36-2.5 Full license

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

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

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

(d) The license shall not be assignable or transferable, and it shall be immediately void if the facility ceases to operate, if the facility's ownership changes, or if the facility is relocated to a different site.

(e) The license, unless 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, or if the facility is more than 60 days delinquent in payment of a penalty issued pursuant to N.J.S.A. 26:2H-14.

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

Amended by R.1996 d.339, effective July 15, 1996.  
See: 28 N.J.R. 2365(a), 28 N.J.R. 3556(a).

#### 8:36-2.6 Surrender of license

The facility shall notify each resident, the resident's physician, and any guarantors of payment 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 Long Term Care Licensing and Certification Program of the Department within seven working days after the voluntary surrender, renovation, non-renewal, or suspension of license.

Amended by R.1997 d.42, effective January 21, 1997.  
See: 28 N.J.R. 4185(a), 29 N.J.R. 329(a).

#### 8:36-2.7 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the rules in this chapter, waive sections of these rules if, in his or her opinion, such waiver would not endanger the life, safety, or health of residents or the public.

(b) A facility seeking a waiver of these rules shall apply in writing to the Director of the Long Term Care Licensing and Certification 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 adherence;
3. An alternative proposal which would ensure resident safety; and
4. Documentation to support the request for waiver.

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

(e) All requests for waivers to the physical plant requirements in subchapters 3 and 17 shall be fully explained, justified, and approved as part of the certificate of need application submitted in accordance with N.J.S.A. 26:2H-1 et seq. and N.J.A.C. 8:36-2.1(a).

Amended by R.1997 d.42, effective January 21, 1997.  
See: 28 N.J.R. 4185(a), 29 N.J.R. 329(a).

#### 8:36-2.8 Action against a license

(a) If the Department determines that operational or safety deficiencies exist, it may require that all admissions to the facility or program 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 or program in writing of such determination.

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

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

Amended by R.1997 d.42, effective January 21, 1997.  
See: 28 N.J.R. 4185(a), 29 N.J.R. 329(a).  
Inserted references to program.

#### 8:36-2.9 Hearings

(a) If the Department proposes to suspend, revoke, deny, assess a monetary penalty, or refuse to renew a license, the licensee or applicant may request a hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.