

(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
CN 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).

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.

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.

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

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

8:39-2.5 Full license

(a) A full license shall be issued to the operator on expiration of the temporary license, if the surveys by the Department have determined that the health care facility is operated as required by 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 by the rules pursuant thereto.

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

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

(d) The license shall not be assignable or transferable and 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 licensure date, in accordance with the following:

1. The facility shall receive a request for renewal fee as provided in N.J.A.C. 8:39-2.2(b) 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; and
2. The license shall not be renewed if local regulations or any other requirements are not met which substantially affect the provision of services as required by this chapter.

8:39-2.6 Surrender of license

The facility shall obtain any required Certificate of Need and shall directly notify each resident, the resident'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 licensure. In such cases, the license shall be returned to the Licensing, Certification and Standards Program of the Department within seven calendar days from voluntary surrender, order of revocation, expiration, or suspension of license, whichever is applicable.

8:39-2.7 Waiver

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

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

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

1. The nature of the waiver requested;
2. The specific standards for which a waiver is requested;
3. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility upon full compliance;
4. An alternative proposal which would ensure resident safety; and
5. Documentation to support the application for waiver.

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

8:39-2.8 Action against licensee

(a) Violations of this subchapter may result in action by the New Jersey State Department of Health to impose a fine, cease admissions to a facility, remove residents from a facility, revoke a license, and/or impose other lawful remedies.

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

(c) 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.

(d) This section shall apply to all facilities.

(e) Any licensee made subject to action by the Department under terms of this section shall have the right to a fair hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.