

**HEALTH**

**HEALTH SYSTEMS BRANCH**

**DIVISION OF CERTIFICATE OF NEED AND LICENSING**

**OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE**

**General Licensure Procedures and Standards Applicable to All Licensed  
Facilities**

**Human Trafficking Handling and Response Training**

**Civil Monetary Penalties**

**Adopted Amendment: N.J.A.C. 8:43E-3.4**

**Adopted New Rules: N.J.A.C. 8:43E-14**

Proposed: November 7, 2016, at 48 N.J.R. 2211(a).

Adopted: August 23, 2017, by Cathleen D. Bennett, Commissioner, Department of Health (with the approval of the Health Care Administration Board, and in consultation with the Commission on Human Trafficking).

Filed: August 23, 2017, as R.2017 d.173, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5; and the Human Trafficking Prevention, Protection, and Treatment Act, P.L. 2013, c. 51, particularly at § 19 (N.J.S.A. 2C:13-12).

Effective Date: September 18, 2017.

Expiration Date: May 16, 2020.

**Summary of Public Comments and Agency Responses:**

The Department received comments from the following:

1. Elizabeth A. Ryan, Esq., President and Chief Executive Officer, New Jersey Hospital Association, Princeton, NJ;

2. Pam Strickland, Founder and Chief Executive Officer, Eastern North Carolina Stop Human Trafficking NOW, Farmville, NC; and

3. Debra L. Wentz, Ph.D., President and Chief Executive Officer, New Jersey Association of Mental Health and Addiction Agencies, Inc., Mercerville, NJ.

Quoted, summarized, and/or paraphrased below, are the comments and the Department's responses. The numbers in parentheses following the comments below correspond to the commenter numbers above.

1. COMMENT: A commenter states, "The Human Trafficking Prevention, Protection, and Treatment Act ... that was signed into law by Governor Christie in May 2013 will significantly enhance the awareness in identifying victims of human trafficking. The healthcare industry plays a vital role in helping to increase this awareness among its employees in the hopes that more victims are identified and rescued from this violation of basic human rights. We applaud the Legislature, Governor Christie and the Department for their leadership on this issue." (1)

RESPONSE: The Department acknowledges the commenter's support for the Act.

2. COMMENT: A commenter states, "Research shows that many victims of human trafficking access health care while being victimized. This is a rare opportunity for identification of victims, but only if healthcare professionals have been trained in how to recognize victims. We wholeheartedly support this proposal." (2)

3. COMMENT: A commenter “supports the [Department’s] effort ... to require training on ‘the handling and response procedures of suspected human trafficking activities for employees of every licensed health care facility.’ It is essential for survivors of human trafficking who present in healthcare clinics, hospitals, and other DOH licensed facilities to have all personnel they come in contact with be trained in identifying the victims and providing appropriate assessment and referral for health services. This initiative is an encouraging step toward ensuring that victims of human trafficking activities are better identified and their health care needs addressed in a timely manner.” (3)

RESPONSE TO COMMENTS 2 AND 3: The Department acknowledges the commenters’ support for the proposed amendment and new rules.

4. COMMENT: With respect to proposed new N.J.A.C. 8:43E-14.2, a commenter states, “we must express significant concern with the scope of the healthcare workers required to be trained by the programs specified in the proposal. We believe the regulations as proposed go beyond the statutory authority with respect to volunteers, physicians and others who are not employed by the facility.... N.J.S.A. 2C:13-12c(1) clearly states that the training shall be provided to the employees of the healthcare facility....

[Healthcare] facilities are required to maintain the appropriate number of healthcare professionals to provide excellent 24/7 care to our patients. Some of our providers are direct employees of the hospital while others have privileges to perform services at our facilities. Identifying all of the necessary workers who need to receive the training, compelling these workers (many of whom are not direct employees of the hospital) to take the training and properly tracking the completion of the training is a

significant bureaucratic burden for the healthcare facility. To be clear, we support providing this training to our employees and employed physicians as regulated pursuant to Title 45 of the Revised Statutes. However, the training requirement for all providers performing services within the facility, regardless of their employment status should fall on the licensure of that provider and not the facility. We would be happy to offer the training to volunteers, physicians and others not directly employed by the facility, but we should not be subject to penalties should they fail to comply. Therefore, we respectfully request the rule proposal be amended to reflect the language of the statute to restrict the healthcare's obligation for providing the training to the "employees of the healthcare facility." (1)

RESPONSE: Proposed new N.J.A.C. 8:43E-14.5 would require facilities to establish policies and procedures by which they determine the facility positions that require training, based on the position holder's probable direct contact and/or interaction with facility patients and/or the visitors of facility patients.

Proposed new N.J.A.C. 8:43E-14.2(c) would not require facilities to train workers who perform services onsite but receive their salaries from another facility. The rule would allocate the training responsibility for these workers to the facilities that pay their salaries.

Some facilities might retain the services of entities that are not themselves facilities subject to the Act, such as health care services staffing agencies, food service vendors, and daily custodial services contractors. A facility can condition these retentions on its contractors administering training, and recordkeeping thereof, to those of their workers who would fill positions that a facility designates as requiring training,

and making available training records on Department request. Verification of contracted workers' receipt of training, and ensuring that training records are available upon Department request, would remain the responsibility of facilities that contract with vendors for the performance of onsite services. This would be consistent with facilities' comparable obligation to ensure that health care professionals whom they hire, and/or to whom they grant privileges to practice in their facilities, hold credentials in good standing from their respective professional credentialing boards. If a professional performs licensed professional services in a facility but does not hold a valid license, the facility remains responsible for having allowed the professional to practice unlawfully thereat and having failed to verify licensure.

Proposed new N.J.A.C. 8:43E-14.2 does not indicate that facilities can verify workers' prior receipt of the required training as an alternative to the facility directly arranging workers' training. In response to the comment, the Department will add new N.J.A.C. 8:43E-14.2(d) to identify this as an alternative means of compliance, if the entity confirming the worker's completion of training is another health care facility under the jurisdiction of the Department, or is subject to a contractual obligation of good faith, honesty, and fair dealing, to the facility, that maintains training records consistent with N.J.A.C. 8:43E-14.4 and the facility can make those records available upon Department request. Rather than the Department prescribing a verification process, the Department anticipates that facilities would develop this process as part of the policies and procedures that N.J.A.C. 8:43E-14.5 would require.

The commenter also appears to refer to independent professionals and other workers who are not subject to a training mandate through another facility, such as

physicians in private practice to whom facilities might grant privileges, or volunteers. The proposed new rules would require facilities to administer training, and maintain records thereof, to persons who serve in positions that the facility designates as requiring training, if the worker did not receive verifiable and tracked training as an employee of another facility, or through a vendor with a contractual obligation to the facility to fulfill the training responsibility and maintain contemporaneous records thereof.

The proposed definition of the term “employee” is consistent with other rules that construe the term broadly to include volunteers, contract workers, and persons with facility privileges. This typically occurs when a standard must encompass the entire worker population of a licensed health care facility to accomplish a result intended to protect patient and/or worker health and safety. Some chapters appear to use interchangeably the terms, “employee,” “personnel,” and “staff.” Many of these other rules establish facility obligations to train workers, verify workers’ experience, education, and credentials through other entities, and maintain training records. See, for example:

1. N.J.A.C. 8:30-1.2(b), which defines “employee,” for the purposes of the Health Care Professional Responsibility and Reporting Enhancement Act, to mean “a health care professional who [is] employed by a health care entity; [has] an affiliation with a health care entity; [is] under contract to render professional services to a health care entity; [has] privileges granted by a health care entity; or [provides] health care professional services to a health care entity pursuant to an agreement with a health care services firm or staffing registry”;

2. N.J.A.C. 8:42-12.8, which requires home health agencies to provide orientation in infection control practices to employees and staff with whom they are under contract, if they are to provide direct patient care;

3. N.J.A.C. 8:39-13.4 (a)1, which requires long-term care facilities to provide orientation to “new employees,” which the section defines “to include all permanent and temporary resident care personnel, nurses retained through an outside agency, and persons providing services by contract”;

4. N.J.A.C. 8:42-12.8, which requires home health agencies to provide orientation and in-service education to “all new employees and staff under contract to provide direct patient care” in infection control practices “for the employee's specific discipline”;

5. N.J.A.C. 8:42C-3.4, which requires hospices to administer tuberculosis testing to “all agency personnel, both directly employed and under contract, and thereafter to all new personnel at the time of employment, as well as volunteers” and to “maintain records of the results,” and see similar requirements in that section for rubella and rubeola screening of all personnel, “both directly employed and under contract to provide direct care to patients, as well as volunteers”;

6. N.J.A.C. 8:42C-10.7, which requires hospices to provide orientation in infection control practices to “all new personnel and staff, as well as volunteers, under contract to provide direct patient care”;

7. N.J.A.C. 8:43A-1.3, which defines “employee” for the purposes of the rules governing licensure of ambulatory care facilities to mean “[full] and part-time employees[, persons] a facility engages who are in direct contact with patients or who

provide patient care[, volunteer] staff[,] and [physicians] and other clinical practitioners who are either salaried by the facility or have clinical privileges to provide medical care at the facility”; and

8. N.J.A.C. 8:43G-24.13, which requires hospitals to train “[all] employees, including part-time employees, temporary agency personnel, and private duty nurses,” in fire and other emergency response procedures, the use of fire-fighting equipment, and “patient evacuation of hospital buildings as part of their initial orientation and at least annually thereafter.”

As the notice of proposal Summary notes, researchers have found that “[outside] of law enforcement, healthcare settings are among the few places where the lives of human trafficking victims may intersect with the rest of society’s, if only for brief periods,” but “studies have demonstrated that medical care providers are woefully unprepared to identify trafficking victims,” and in the United States, “nurses and other clinicians who encounter a person who’s being trafficked probably won’t realize it.” 48 N.J.R. at 2214. It would thwart the Act’s purpose of turning those rare healthcare encounters into lifesaving opportunities for victim identification, rescue, and response, if the professionals who are most likely to be present during those encounters were exempt from receiving human trafficking awareness and response training based on their compensation arrangements with the facilities at which those interactions occur.

For the foregoing reasons, and except as described above, the Department will make no change on adoption in response to the comment and declines to relieve facilities of the obligation to train, or to confirm the prior training of, those serving in



positions that facilities designate as requiring training, based on a position holder's likely interactions with patients and/or their visitors.

**Summary** of Agency-Initiated Changes:

1. The Department is making a non-substantial change on adoption at N.J.A.C. 8:43E-14.3 to insert dates that depend on the effective date of notice of adoption.

2. The Department is making a non-substantial change on adoption at N.J.A.C. 8:43E-14.4 to correct the section heading to reflect the content of the section.

**Federal Standards Statement**

The Department adopts the new rules at N.J.A.C. 8:43E-14 and the amendment at 8:43E-3.4(a)21 pursuant to the Human Trafficking Prevention, Protection, and Treatment Act. There are no Federal standards applicable to the adopted new rules and amendment. Therefore, no Federal standards analysis is required.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

8:43E-14.2 Facility personnel to receive training

(a) – (c) (No change from proposal.)

**\*(d) As an alternative to a facility requiring workers to receive training in accordance with N.J.A.C. 8:43E-14.3 from the facility, a facility can confirm that a worker already received that training from another entity, if the other entity is either:**

**1. A facility; or**

**2. A contractor or vendor that:**

i. Is under a contractual duty of honesty, good faith, and fair dealing to the facility; and

ii. Maintains contemporaneous training records consistent with N.J.A.C. 8:43E-14.4 that are available upon request to the Department.\*

8:43E-14.3 Required training

(a) A facility shall ensure that workers to whom N.J.A.C. 8:43E-14.2 requires the facility to provide training pursuant to (b) below receive that training:

1. By \*[(six months from the effective date of this subchapter)]\* **March 18, 2018\***, with respect to existing facility workers; and

2. Within six months of the first day of employment at the facility\*,\* with respect to persons who become workers at the facility after \*[(the effective date of this subchapter)]\* **September 18, 2017\***.

(b) (No change from proposal.)

8:43E-14.4 Recordkeeping\*[, training confirmation statement]\*

(a) – (b) (No change from proposal.)