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To: All Long-term Care Facilities Licensed Pursuant to N.J.A.C. 8:33H
and N.J.A.C. 8:39

From: Michael J. Kennedy, Esq. *MSK*
Executive Director
Certificate of Need and Licensing Program

Date: August 10, 2026

Re: Long-term Care Facilities Providing Subacute Care

This memorandum is to remind facilities licensed as long-term care (LTC) facilities providing subacute care of the responsibility to maintain compliance with applicable LTC facility licensure rules.

The Department of Health (Department) has noticed, through conducting the periodic inspections required by the Health Care Facilities Planning Act, codified at N.J.S.A. 26:2H-1 et. seq., a pattern of disregard by some LTC facilities providing subacute care for the rules promulgated for these facilities. The Department is therefore providing this information to assist all facilities in complying with the rules and maintaining compliance in the future.

Mandatory Requirements for Facilities Providing Subacute Care

All LTC facilities awarded a certificate of need (CN) pursuant to N.J.A.C. 8:33H must follow the conditions set forth in their CN award letters and maintain compliance with the regulations set forth in N.J.A.C. 8:33H and 8:39. N.J.A.C. 8:33H is titled Certificate of Need: Policy Manual for Long-term Care Services, and N.J.A.C. 8:39 is titled Standards of Licensure for Long-term Care Facilities.

The Department has seen a noticeable increase in the number of facilities licensed as LTC facilities that are describing their facilities as "subacute only" facilities and therefore disregarding their obligations under N.J.A.C. 8:39. The Department seeks to clarify the scope and purpose of any facility licensed as a LTC facility, especially for those facilities purporting to provide primarily subacute care services, under N.J.A.C. 8:39-1.1, et seq., by specifically addressing whether LTC facilities providing subacute care are subject to the requirements of this rule.

N.J.A.C. 8:33H-1.2 provides the following applicable definitions:

"General long-term care bed" a long-term care bed for which there is no restriction imposed by statute (for example, subacute long-term care), certificate of need approval requirements (for example, pediatric long-term care, specialized long-term ventilator care, specialized long-term care of residents with severe behavior management problems) or stipulations and/or licensure standards that would limit the type of nursing home resident who may occupy the bed or the type of nursing home care which may be provided to the occupant of the bed.

"Long-term care" means a wide range of personal care, psycho-social, nursing, and other supportive services for people with functional limitations due to chronic - and frequently degenerative - physical or cognitive disorders. Long-term care services range from in-home assistance provided by family members or a home care agency to nursing home care.

"Nursing home" or "nursing facility" means a facility that is licensed by the Department to provide health care under medical supervision and continuous nursing care for 24 or more consecutive hours to two or more patients who do not require the degree of care and treatment which a hospital provides and who, because of their physical or mental condition, require continuous nursing care and services above the level of room and board.

N.J.A.C. 8:39-1.1(b) provides that the "rules and standards apply to each licensed long-term care facility."

N.J.A.C. 8:33H-1.1(g)1 states "applicants shall not advertise their facilities' services in such a way that consumers might reasonably construe that the level of care provided is something other than general nursing home care or, if so designated in the letter of approval, specialized long-term care."

The Department explicitly notes that there is no separate license type for a "subacute care facility." All facilities that provide subacute care, except for hospitals that maintain a subacute care unit as defined in N.J.S.A. 26:2H-7.5, are licensed as LTC facilities and thus are subject to the rules at N.J.A.C. 8:39. Hospital subacute care units must comply with N.J.A.C. 8:39-47.1 through 47.5 which require hospitals that maintain a subacute care unit to comply with particular rules contained throughout N.J.A.C. 8:39. Because all facilities that provide subacute care are licensed as LTC facilities, they must comply with the LTC licensure rules and are subject to enforcement action by the Department for failing to adhere to them.

Resident Rights

Violations of resident rights are a violation of licensing rules which the Department has a statutory mandate to enforce. N.J.A.C. 8:39-4.1, Resident rights, provides specifically that LTC facility residents are entitled to the following:

31. To be transferred or discharged only for one or more of the following reasons, with the reason for the transfer or discharge recorded in the resident's medical record:

- i. In an emergency, with notification of the resident's physician or advanced practice nurse and next of kin or guardian;
- ii. For medical reasons or to protect the resident's welfare or the welfare of others;
- iii. To comply with clearly expressed and documented resident choice, or in conformance with the New Jersey Advance Directives for Health Care Act, as specified in N.J.A.C. 8:39-9.6(d); or
- iv. For nonpayment of fees, in situations not prohibited by law;

32. To receive written notice at least 30 days in advance when the nursing home requests the resident's transfer or discharge, except in an emergency. Written notice shall include the name, address, and telephone number of the State Long-Term Care Ombudsman, and shall also be provided to the resident's next of kin or guardian 30 days in advance.

Nothing in N.J.A.C. 8:39 permits LTC facility residents to be discharged simply to fit a LTC facility's self-proclaimed "subacute only" business model. As mentioned above, N.J.A.C. 8:33H-1.1(g)¹ prohibits LTC facilities from advertising their facilities as anything other than general long term nursing care. Violations of these rules may result in enforcement action as described below.

Resident Status

In addition to the provisions of N.J.A.C. 8:33H and 8:39, LTC facilities are also subject to the statutory requirements of the Nursing Home Responsibilities and Rights of Residents' Act (NHA), codified at N.J.S.A. 30:13-1, et seq. N.J.S.A. 30:13-3.2 specifically states that the provisions of the NHA apply to any applicant, as well as any resident, of a nursing home, whether the payment source is Medicare, Medicaid, or private pay, which includes private insurance. Every facility licensed as an LTC facility by the Department is a nursing home subject to the NHA, regardless of length of stay or status of resident as subacute, long-term, or respite. To clarify resident status, the Department previously issued a guidance memorandum on April 18, 2024, available at <https://www.nj.gov/health/healthfacilities/certificate-need/guidance/nursing-home-residents-memo-04182024.pdf>.

Medicaid Requirements

All LTC facilities must comply with the Medicaid bed ratio utilization requirements contained in the rules, specifically at N.J.A.C. 8:39-5.1(e) and N.J.A.C. 8:33H-1.15(a)(3). To remind facilities of their obligations, the Department previously issued a guidance memorandum on August 19, 2025, available at <https://www.nj.gov/health/healthfacilities/certificate-need/guidance/utilization-requirements-for-medicaid-certified-ltc-facilities-ccrc-memo.pdf>.

Enforcement Remedies

Please keep in mind, N.J.A.C. 8:43E-3, Enforcement remedies, details the enforcement remedies that the Department may seek against a health care facility for violations of licensure regulations or other statutory requirements pursuant to N.J.S.A. 26:2H-13, 14, 15, 16 and 38.

Additionally, the Department may maintain an action in the name of the State to enforce the provisions of N.J.S.A. 30:13-1, et seq., and any rules promulgated pursuant to the NHA. The cause of action of such a resident and the Department exists whether the action involves a resident in a subacute section of a facility licensed as a LTC facility, a resident receiving respite care, or a resident in the long-term section of the nursing home.

Any questions regarding this memo may be directed to Jacqueline Chadwick at Jacqueline.Chadwick@doh.nj.gov.