



State of New Jersey
DEPARTMENT OF HEALTH

PO BOX 360
TRENTON, N.J. 08625-0360

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

www.nj.gov/health

JEFFREY A. BROWN
Acting Commissioner

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

From: Michael J. Kennedy, J.D. ^{MSK}
Executive Director, Certificate of Need and Licensing Program

Date: August 19, 2025

Re: Utilization Requirements for Medicaid Certified Long-term Care Facilities and Continuing Care Retirement Communities

This memorandum provides guidance to Medicaid-certified long-term care facilities on the Medicaid bed ratio utilization requirements set forth in the New Jersey Administrative Code.

Mandatory Requirements for Medicaid Certified Long-term Care Facilities

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

All long-term care 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.

Pursuant to N.J.A.C. 8:39-2.1(a), "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." To participate in Medicaid, health care facilities shall be certified and approved for participation in both the Federal and State Medicaid programs, in accordance with N.J.A.C. 10:166, which is titled Long-term Care Services.

Title XIX of the Social Security Act, which established the Medicaid program, is a state-federal partnership that provides health coverage to low-income individuals and families, while Title XVIII of the Social Security Act, or Medicare, is a federal health insurance program for people aged 65 and older and certain younger people with disabilities. Both programs prohibit discharging residents solely due to a change in payer source.

N.J.A.C. 8:39 establishes the licensing standards for long-term care facilities, including mandatory minimum requirements for access to care. Pursuant to N.J.A.C. 8:39-5.2(a)2, "[a]ny Medicaid participating facility whose Medicaid occupancy level is less than the Statewide occupancy level shall not deny admission to a Medicaid eligible individual who has been authorized for nursing facility services by the New Jersey Department of Human Services, Division of Aging Services, when a bed becomes available in accordance with the waiting list." Therefore, the facility is required to have an admissions waiting list that meets the requirements of N.J.A.C. 8:39-5.2(a). N.J.A.C. 8:33H-1.15 contains the Statewide occupancy levels and are described in more detail below.

Further, N.J.A.C. 8:39-5.1(e) requires facilities to make available at least 5% of their beds or, if the facility is licensed for 100 or more beds, at least 10% of its beds to indigent individuals. An individual is "indigent" if they are an applicant for admission or a current resident of the facility, and if they would otherwise meet the eligibility requirements of Medicaid reimbursement or county or municipal financial assistance for nursing home care.

N.J.A.C. 8:33H sets forth CN and related planning requirements for long-term care services, including the Statewide occupancy levels referenced in N.J.A.C. 8:39-5.2(a)2. Pursuant to N.J.A.C. 8:33H-1.15, a minimum of 36% of the facility's general and specialized long-term care beds must be occupied by direct admission Medicaid-eligible residents, and a minimum of 45% of the general and specialized long-term care beds must be occupied by Medicaid-eligible residents who either have spent down to the level of Medicaid eligibility during their nursing home stay or who are directly admitted to the facility as Medicaid-eligible residents.

Given these requirements, all facilities licensed in New Jersey with beds certified under both Title XVIII and XIX are required to accept Medicaid and Medicaid-eligible residents and cannot discharge residents solely due to a change in payer source to Medicaid.

In assessing compliance with these provisions, the Department may evaluate the number of available Medicaid beds, whether occupied or not, current and historical Medicaid and Medicaid-eligible census, policies and procedures for admission, discharge and change in payer source for existing residents/patients, and any other factors the Department deems relevant to the regulatory requirements.

Continuing Care Retirement Communities

In accordance with the provisions of the Health Care Reform Act, P.L. 1992, c. 160 and the Certificate of Need Reform Act, P.L. 1998, c. 43 and N.J.S.A. 26:2H-7.2, continuing care retirement communities (CCRCs), authorized pursuant to N.J.S.A. 52:27D-330 et seq., are exempt from the CN requirement. Accordingly, CCRCs are not subject to the provisions of N.J.A.C. 8:33H and thus not required to maintain the 36% to 45% overall occupancy by Medicaid-eligible patients.

Enforcement Remedies

Please keep in mind, pursuant to N.J.A.C. 8:43E-3.4(a)12, the Department may impose a civil monetary penalty (CMP) of \$1,000 per day for failure to implement a CN condition of approval. Additionally, N.J.A.C. 8:43E-3.4(a)11 provides a \$250 CMP for the failure to report information to the Department as required by statute or licensing regulation, after reasonable notice and an opportunity to cure the violation, which may be assessed for each day

noncompliance is found. The Department reserves the right to pursue all other remedies available by law.

The Department may grant time-limited waivers of the regulations establishing Medicaid bed ratio utilization requirements pursuant to the provisions of N.J.A.C. 8:33H-1.15(c) and N.J.A.C. 8:39-2.6.

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