

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

General Licensure Procedures and Standards Applicable to All Licensed Facilities

Lactation Rooms in Healthcare Facilities

Adopted New Rules: N.J.A.C. 8:43E-15

Proposed: August 5, 2024, at 56 N.J.R. 1546(a).

Adopted: June 19, 2025, by Jeffrey A. Brown, Acting Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Filed: June 19, 2025, as R.2025 d.089, **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-5 and 26:4C-2.

Effective Date: July 21, 2025.

Expiration Date: April 13, 2027.

Summary of Public Comments and Agency Responses:

The Department of Health (Department) received comments from the following:

1. Elizabeth Cerceo, MD, FACP, FHM, FEFIM, Camden, NJ;
2. Jeremye Cohen, FACHE, Vice President for Planning and Business Development, Capital Health, Trenton, NJ;
3. Christine Stearns, Chief, Government Relations and Policy, New Jersey Hospital Association, Princeton, NJ; and
4. David E. Swee, MD, President, Medical Society of New Jersey, Trenton, NJ.

Quoted, summarized, and/or paraphrased below are the comments and the Department's responses. The numbers in parentheses following each comment corresponds to the numbers representing the commenters above.

1. COMMENT: A commenter supports "the rule's goal of providing lactation rooms in healthcare facilities, which allow[s] safe, private, and hygienic spaces for breastfeeding or expressing milk, promoting the health and well-being of both mothers and infants."

(4)

2. COMMENT: A commenter "appreciates the attention the ... Department ... is giving to individuals in need of accommodations for breastfeeding and expressing milk and ... commend[s] the effort to design policies to create inclusive and supportive environments for patients and their families." (3)

3. COMMENT: A commenter stated, "Developing family-friendly policies in NJ may support increased birthrates and healthy families." (1)

RESPONSE TO COMMENTS 1, 2, AND 3: The Department acknowledges the commenters' support for the proposed new rule.

4. COMMENT: A commenter "has concerns about the potential impact [the proposed new] rule may have on smaller healthcare facilities, such as one-room surgicenters[,which] have limited space and resources. This can make it challenging to provide a dedicated lactation room without disrupting operations. Given their size and operational constraints, compliance with the rule may impose an undue burden on these facilities." Therefore, [the commenter] request[s] that one-room surgicenters be exempted in the Department's final rulemaking from the requirements of the rule. (4)

5. COMMENT: A commenter “is concerned that certain healthcare facilities may not have current ability to dedicate an on-site private room [including] specialty, surgical, and small-scale facilities” and “would be unable to comply with the proposed new rule and could be required to cease operations pursuant to this regulation until a room could be re-designated, retrofitted, and/or constructed.” The commenter requests “that the Department change the proposed new rule upon adoption “to align with [the Act] by adding ‘where practicable’” at proposed new N.J.A.C. 8:43E-15.1(a), (b), and (c), which “will allow healthcare providers flexibility to continue providing vital services.” (3)

6. COMMENT: A commenter states that in “a physical building footprint that includes both licensed and unlicensed space, placing lactation rooms within the licensed space may restrict access from those individuals that are not utilizing the licensed space while also potentially restricting the facility from placing the lactation rooms in the most conducive and convenient location for the mother. Cost and space restrictions may prevent a facility from offering duplicative lactation rooms in both licensed and unlicensed spaces.” The commenter requests “that the Department add language that would allow the required lactation rooms to be provided in unlicensed space if it is within the same building as the licensed space.” (2)

RESPONSE TO COMMENTS 4, 5, AND 6: The phrase "where practicable" would not provide a sufficiently measurable standard by which to evaluate a request for a facility's deviation from compliance with the act. To create such a standard would require the Department to speculate as to the broad range of circumstances that might make strict compliance impracticable. The Department suggests that facilities experiencing difficulty in complying apply to the Department for a waiver pursuant to the procedure at existing

N.J.A.C. 8:43E-5.6, which would enable the Department to consider such requests on a case-by-case basis in accordance with the standards provided therein. Therefore, the Department will make no change upon adoption in response to the comments.

7. COMMENT: A commenter states that proposed new N.J.A.C. 8:43E-15.1(c) “refers specifically to ‘pregnant persons’” and recommends “modifying the rule to be more inclusive, referring instead to individuals who are ‘pregnant, postpartum and/or nursing.’ This change better reflects the broader population that may benefit from lactation accommodations, not just those who are currently pregnant.” (4)

RESPONSE: The Department appreciates that the commenter noticed this discrepancy in the rulemaking. The Department has reviewed the rule and determined that inclusion of, and reference to, “pregnant persons” at N.J.A.C. 8:43E-15.1(c) is unnecessary. Therefore, upon adoption, the Department will remove the term “pregnant persons” from N.J.A.C. 8:43E-15.1(c).

8. COMMENT: A commenter seeks clarification on whether the Department intends for the language “persons utilizing on-site services” to include health profession trainees, such as medical residents, nursing students, and other interns. (4)

RESPONSE: N.J.S.A. 10:5-12(s), the New Jersey Law Against Discrimination (LAD), requires an employer to provide a breastfeeding employee “a suitable room or other location with privacy, other than a toilet stall, in close proximity to the work area, ... to express breast milk.” N.J.S.A. 26:4C-2(a), requires a healthcare facility to “make at least one lactation room available, upon request, to any [breastfeeding person] who is

utilizing on-site services.” The Department takes no position as to whether the lactation room that N.J.S.A. 26:4C-2(a) requires a healthcare facility to make available can also serve as the “suitable room or other location with privacy ... in close proximity to the work area” that the LAD requires an employer to provide. Each facility should consult with its respective legal counsel to determine whether its health profession trainees, including medical residents, nursing students, and other interns, are deemed employees pursuant to the LAD and, pursuant to that authority, may seek a reasonable accommodation for breastfeeding -- which may be the lactation room required pursuant to the adopted new rule or may be a separate accommodation, depending on the accommodation sought. Based on the foregoing, the Department will make no change upon adoption in response to the comment.

Federal Standards Statement

The adopted new rule is not being adopted pursuant to the authority of, or to implement, comply with, or participate in, any program established pursuant to Federal law or any State statute that incorporates or refers to any Federal law, standard, or requirements. Therefore, a Federal standards analysis is not 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]*):

SUBCHAPTER 15. LACTATION ROOM RULES

8:43E-15.1 Availability of lactation room

(a) A facility shall provide at least one lactation room, as that term is defined pursuant to N.J.S.A. 26:4C-1, that is available, upon request, ***where practicable,*** for the purpose of breastfeeding or expressing milk to persons utilizing on-site services.

(b) ***[A] *In a facility where a lactation room is available, the*** facility shall post signage provided by the Department pursuant to N.J.S.A. 26:4C-2 in the facility's public waiting room and in each lactation room, available on the Department's forms page at <https://www.nj.gov/health/forms>.

(c) ***[A] *In a facility where a lactation room is available, the*** facility shall train appropriate staff ***[that a pregnant person may encounter]*** on the following:

1.-4. (No change from proposal.)