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August 4, 2025
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HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

Rehabilitation Hospital Licensing Standards

Adopted New Rules: N.J.A.C. 8:43H

Proposed: July 1, 2024, at 56 N.J.R. 1144(a).

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

Filed: June 19, 2025, as R.2025 d.088, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3) and **with proposed new N.J.A.C. 8:43H-17.3, 17.4, 17.5, 17.9, 17.11, 17.13, 17.16, and 17.17 not adopted**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: August 4, 2025.

Expiration Date: August 4, 2032.

Summary of Public Comments and Agency Responses:

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

1. Cathleen D. Bennett, Esq., President and CEO, New Jersey Hospital Association, Princeton, NJ;

2. Bethsabee Georges, West Orange, NJ;

3. Matthew B. McDonald III, M.D., President and CEO, Children’s Specialized Hospital, RWJ Barnabas Health, Mountainside, NJ;

4. Carey B. McRae, Vice President and Associate General Counsel, Encompass Health, Birmingham, AL;

5. Donna Sears, MA, CTRS®, ACC, Yardley, PA; and

6. Lacey Speert, New Jersey/Eastern Pennsylvania Therapeutic Recreation Association (NJ/EPA-TRA).

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

General Support

1. COMMENT: A commenter "supports the proposed standards and commends the Department for its diligence in aligning these standards as closely as possible with the Centers for Medicare and Medicaid Services' (CMS) conditions of participation for inpatient rehabilitation facilities and units." (1)

2. COMMENT: A commenter "[commends] the Department's efforts to align these standards as closely as possible with [CMS's] conditions of participation for inpatient rehabilitation facilities and units" and "[values] the Department's commitment to ensuring that residents of the State receive the highest quality rehabilitation care." (3)

3. COMMENT: A commenter states that the proposed new rules would "establish much[-]needed licensure standards for rehabilitation hospitals operating in New Jersey" and thanks the Department "for developing these standards for … rehabilitation providers in New Jersey." (4)

4. COMMENT: A commenter states, "thank you for listing [r]ecreational] therapy as a therapy that can be ordered by a physician and as a functional service area." (6)

RESPONSE TO COMMENTS 1, 2, 3, AND 4: The Department acknowledges the commenters' support of the proposed new rules.

Subchapter 1. General Provisions and Qualifications

N.J.A.C. 8:43H-1.2 Scope

5. COMMENT: A commenter recommends that "to achieve more clarity," the Department should modify proposed new N.J.A.C. 8:43H-1.2 to state: "This chapter applies to facilities that provide comprehensive rehabilitation hospital services, including, but not limited to, general acute care hospitals that provide these services as separate licensed rehabilitation hospital beds." (1)

RESPONSE: The Department considers the rules to be sufficiently clear. Therefore, the Department will make no change upon adoption in response to the comment.

N.J.A.C. 8:43H-1.3 Definitions

6. COMMENT: A commenter states that in "an effort to ensure continuity of care and [patient-centered] care for pediatric patients, as well as alignment with facility standards and policies," the Department should change the definition of the term "adult patient" at proposed new N.J.A.C. 8:43H-1.3 to mean "a patient who is 21 years of age or older, or as specified by facility policy," and the definition of the term "pediatric patient" to mean "a patient who is under 21 years of age, or as specified by facility policy." The commenter suggests companion changes at proposed new N.J.A.C. 8:43H-5.7, Policies and procedures for admission of an adult patient to a pediatric rehabilitation, at subsection (a) and paragraph (a)1, to delete references to "20 years of age or older,"

and add in their place references to “21 years of age or older.” The commenter states that these changes would align the rule “with the New Jersey Free Appropriate Public Education (FAPE) program and the New Jersey Department of Human Services, Division of Developmental Disability (DDD) eligibility criteria.” (3)

RESPONSE: The Department acknowledges the comment’s suggestions and believes more information gathering needs to be performed to determine if the changes are appropriate. For example, N.J.S.A. 9:17B-1 and 9:17B-3 provide that the age of majority in New Jersey is 18 years of age, while the comment’s referenced criteria provide an age of 21. The Department will consider the matter and introduce amendments to these definitions in the future, if necessary. No changes will be made regarding this comment.

7. COMMENT: A commenter states that, because “a facility campus can span more than one physical structure, the Department should define the term ‘hospital campus’ at proposed new N.J.A.C. 8:43H-1.3, to mean “the physical area immediately adjacent to the provider’s main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other area determined on an individual case basis, by the CMS regional office, to be part of the provider’s campus.’” The commenter states that the suggested definition “is aligned with the CMS definition” of the term. (3)

RESPONSE: The proposed new rules at N.J.A.C. 8:43H would not use the term “hospital campus.” Therefore, the Department declines to add a definition of a term that the chapter does not use.

8. COMMENT: A commenter notes, with respect to paragraph 3 of the definition of the term “nursing leader accountable for nursing services” at proposed new N.J.A.C. 8:43H-1.3, that the candidate’s guide to obtaining the Certified Rehabilitation Registered Nurse® (CRRN®) credential conditions a nurse’s eligibility to take the certification examination on the nurse having “two years of experience in a rehabilitation setting. While the [guide’s] definition of [the term ‘rehabilitation setting’] is broad[,] achieving the certification within two years of being appointed as the [nursing] leader accountable for nursing services may not provide enough lead time. Therefore, [the commenter] recommends that the Department consider increasing the timeframe to within three years of appointment.” (1)

RESPONSE: The Department agrees with the commenter’s suggestion and, for the reasons stated by the commenter, will make a change upon adoption at paragraph 3 of the definition of the term, “nursing leader accountable for nursing services,” to permit the appointee to obtain the CCRN® credential within three years of appointment instead of two years. This time period is consistent with the CCRN® credential requirements that applicants must meet within the previous five years and allows additional time for applicants to register for testing, which is offered twice annually.

9. COMMENT: A commenter recommends that the Department, within the definition of the term “nursing leader accountable for nursing services,” at proposed new N.J.A.C. 8:43H-1.3, include the “incorporation of commensurate work experience and allowance for years of direct work experience as assuring meeting minimum competencies.” The commenter suggests the addition of the following provision as new subparagraph 3iii

(suggested text modified to conform to the New Jersey Administrative Code style conventions):

iii. 10 years direct care and nurse management experience or seven years of direct care and nurse management experience in a rehabilitation setting will be deemed to meet this definition as an alternative to CRRN®. (3)

RESPONSE: Allowing basic experience in lieu of certification would dilute the standard of care for this position. Further, the acquisition of the certification is not overly burdensome. As such, the Department will make no change upon adoption in response to the comment.

10. COMMENT: Commenters state that the proposed new rules "would benefit from the addition of the CMS definition [at 42 CFR 412.622(c)] of [the term 'rehabilitation physician,'] which the chapter uses repeatedly." (1 and 3)

RESPONSE: As the Federal standards analysis indicates, to obtain CMS certification as an authorized provider of rehabilitation hospital services and thereby establish eligibility to receive Medicare and Medicaid reimbursement, a rehabilitation hospital must comply with 42 CFR Parts 412 and 482. 42 CFR 412.622, Basis of payment, at subsection (c), defines the term, "rehabilitation physician" to mean "a licensed physician who is determined by [an inpatient rehabilitation facility] to have specialized training and experience in inpatient rehabilitation." The Department expects that all rehabilitation hospitals in the State are CMS-certified providers or will obtain CMS certification to

secure Federal reimbursement and, therefore, assumes that the regulated community would comply with applicable CMS standards, including the definition of “rehabilitation physician,” as a minimum or baseline standard, making reiteration of the CMS standards unnecessary. However, to accommodate the commenters’ request, the Department will make a change on adoption in response to the comment and add a definition of the term, “rehabilitation physician,” at N.J.A.C. 8:43H-1.3 by cross-reference to 42 CFR 412.622.

11. COMMENT: A commenter recommends that, to “ensure clarity of a qualifying provider,” the Department define the terms “rehabilitation physician” or “physiatrist” at proposed new N.J.A.C. 8:43H-1.3, to mean “a licensed physician who is determined by the rehabilitation hospital to have specialized training and experience in inpatient rehabilitation. In a pediatric facility, a pediatrician can fulfill the function in place of a rehabilitation physician.” The commenter identifies the suggested terminology as a modified version of the definition of the term “rehabilitation physician” at 42 CFR 412.622(c). (3)

RESPONSE: 42 CFR 412.622, Basis of payment, at subsection (c), defines the term “rehabilitation physician” to mean “a licensed physician who is determined by the inpatient rehabilitation facility (IRF) to have specialized training and experience in inpatient rehabilitation.” As stated in Response to Comment 10, the Department will make a change upon adoption at proposed new N.J.A.C. 8:43H-1.3 to add a definition of the term “rehabilitation physician” by reference to the definition of that term at 42 CFR 412.622.

Proposed new N.J.A.C. 8:43H would not use the term “physiatrist.” The Department declines to add a definition of a term that the chapter does not use. The Department declines to incorporate by reference a modified version of the CMS definition to allow a pediatrician without rehabilitation training to meet the definition of a “rehabilitation physician” because this would dilute the minimum standard of care. The Department will make no change upon adoption with respect to this aspect of the comment.

12. COMMENT: A commenter recommends that the Department add the following to the definition of the term “renovation” at proposed new N.J.A.C. 8:43H-1.3, to align with the Uniform Construction Code’s definition of that term at N.J.A.C. 5:23-1.4:
“Renovation shall include the replacement of equipment or fixtures.”
RESPONSE: The Department agrees with the comment and, for the reason stated therein, will make a change upon adoption to the definition of the term “renovation” at proposed new N.J.A.C. 8:43H-1.3 to add the suggested statement to conform the definition at N.J.A.C. 5:23-1.4.

Subchapter 2. Hospital Licensure

N.J.A.C. 8:43H-2.2, Functional Review Applicability, 2.3, Functional Review Approval, and 2.11, Waiver of Licensing Standards

13. COMMENT: With respect to proposed new N.J.A.C. 8:43H-2.2, a commenter states that in “some scenarios, functional review guidance may be sought for programmatic elements of licensure or space may be existing and not requiring construction or

renovation. Furthermore, in the licensure process, the applicant attests to standards and requirements. To support these points, [and] add clarity for title and review process completion timeframes," the commenter recommends revisions at N.J.A.C. 8:43H-2.2 as follows (commenter's suggested additions shown in italics *thus*; commenter's suggested deletions shown in brackets [thus]): change subsection (a) to provide, "applicable *licensure standards including* physical plant licensure standards, [including] *subject to* but not limited to" proposed new N.J.A.C. 8:43H; change subsection (d) to provide, "Functional [review is conducted prior to submission of plans to the Department of Community Affairs. Therefore, a functional review does not include the] survey; change paragraph (e)1 to provide "architect or engineer *when applicable*"; delete subparagraph (e)1iiv; add new subparagraph (e)1vi to provide *"Any requests for waivers to programmatic and physical plant requirements as permitted, including all arguments that would support approval of the request at N.J.A.C. 8:43H-2.11";* change subparagraph (e)2ii to provide "A licensed architect or engineer shall prepare the schematic floor plan *when applicable*"; change paragraph (e)3 to provide "*For existing facilities,* a site plan or key plan showing the location of the proposed building on the property *and* the areas designated for drop-off of patients [and] *shall be identified. For new free-standing facilities, the areas designated for* delivery of supplies, and the availability and location of disabled access and parking*, shall also be identified*"; change subsection (f) to provide [Following receipt of a completed request, the] *The* Department shall conduct a functional review within 60 days of the request"; change paragraph (f)1 to provide "the Department shall provide notice to the applicant of any deficiencies, in the application *within 30 days of receipt*"; change paragraph (f)3 to provide "The

Department may extend the functional review period, if necessary *and shall provide notice to the applicant*"; and change subparagraph (f)3i to provide "a waiver of otherwise applicable *licensure and/or* physical plant requirements." (3)

RESPONSE: The Department declines to revise proposed new N.J.A.C. 8:43H-2.2(a) to include licensure standards because the section addresses only functional review of physical plant licensure standards, and not all licensure standards.

The Department declines to revise proposed new N.J.A.C. 8:43H-2.2(d), as the commenter suggests, because the removal of the indicated language would seem to annul an applicant's obligation to submit plans to the Department of Community Affairs, which is part of the approval process of the construction of a new facility or an addition, or the performance of a renovation or reconstruction of an existing facility.

The Department declines to revise proposed new N.J.A.C. 8:43H-2.2(e) to add the phrase, "when applicable," because the Department is unaware of circumstances in which the preparation of schematics would not require preparation by an architect or engineer.

The commenter suggests that proposed new N.J.A.C. 8:43H-2.2(e) include information regarding waivers that the chapter would address elsewhere, such as at proposed new N.J.A.C. 8:43H-2.11. As the suggested change would be redundant and unnecessary, the Department will make no change upon adoption in response to the comment.

The Department declines to change proposed new N.J.A.C. 8:43H-2.2 to make the revisions the commenter suggests that would apply to "existing facilities" because the section would establish standards that apply only to applicants for licensure of new

facilities. Accordingly, the Department will make no change upon adoption in response to this aspect of the comment.

The Department declines to revise proposed new N.J.A.C. 8:43H-2.2(f) to require the Department to conduct a functional review within 60 days of its receipt of a request. This change would not allow the Department sufficient time to review submitted materials and gather required information. The Department routinely endeavors to administer its review and approval processes as expeditiously as resources permit. Accordingly, the Department will make no change upon adoption in response to this aspect of the comment.

The Department declines to revise proposed new N.J.A.C. 8:43H-2.2(f) upon adoption to require the Department to notify an applicant of deficiencies within 30 days because the suggested timeframe would provide the Department insufficient time to review a survey and process a notice of deficiencies.

The Department agrees with the commenter's suggestion that it would be appropriate to require the Department to notify an applicant if the Department grants a request for an extension of the functional review period. Therefore, the Department will make a change upon adoption at proposed new N.J.A.C. 8:43H-2.2(f)3 to require the Department to notify an applicant if the Department grants an applicant's request for an extension of the functional review period.

The Department declines to add the additional licensure standards at proposed new N.J.A.C. 8:43H-2.2(f)3i that the commenter suggests because the section establishes licensure standards regarding the functional review of a physical plant, and

does not establish all applicable licensure standards, which the chapter addresses elsewhere.

14. COMMENT: A commenter recommends that, at proposed new N.J.A.C. 8:43H-2.2(b) and (c), 2.3, and 2.11, the Department change references to the “Director” of the Certificate of Need and Healthcare Facility Licensure Program to “Executive Director” and at N.J.A.C. 8:43H-2.2(c), that the Department add a street address in addition to the provided United States Post Office box number. (3)

RESPONSE: The Department does not find the addition of “Executive” to the title of the Director to be necessary and will make no change upon adoption in response to this aspect of the comment. The Department agrees that the addition of a street address would be appropriate, for when it is needed for courier service or hand-delivery, as these are not deliverable to a post office box. Therefore, the Department will make a change upon adoption at proposed new N.J.A.C. 8:43H-1.3(b) to add a definition of the term “Office” that includes the street address, in addition to the post office box number, and to delete the address from proposed new N.J.A.C. 8:43H-2.2.

N.J.A.C. 8:43H-2.5 Application for Licensure

15. COMMENT: A commenter states that the Department should delete proposed new N.J.A.C. 8:43H-2.5(g)1vi, which would require an applicant for licensure to submit a “statement that the applicant understands and will comply with all operational licensing and physical plant requirements.” The commenter states that the change would

“minimize redundancies” because the license application form CN-7 “includes a certification that the applicant understands and will meet licensure standards.” (3)

RESPONSE: The Department acknowledges the commenter’s effort to reduce redundancies in the application process. However, the recently proposed rulemaking would affect N.J.A.C. 8:43A and establish new rules at N.J.A.C. 8:43K, including a new license application form applicable to all licensed facilities, the Department will make no change upon adoption in response to the comment. See 57 N.J.R. 743(a).

16. COMMENT: A commenter states that the Department should change proposed new N.J.A.C. 8:43H-2.5(d) to require the Division of Health Facility Survey and Field Operations (DHFSFO) to transmit deficiency findings “within 10 business days” after it conducts a survey of a facility applying for licensure, “in accordance with N.J.A.C. 8:43E-2.2.” (3)

RESPONSE: The General Licensure Procedures and Standards Applicable to All Licensed Facilities, at N.J.A.C. 8:43E-2.2, Deficiency findings, requires the Department to give a facility a written summary of any factual findings the Department uses to determine that a licensure violation has occurred, and a statement of each licensure rule to which the deficiency finding relates, “at the conclusion of a survey or within 10 business days thereafter.” Therefore, because the change the commenter suggests would be redundant of existing N.J.A.C. 8:43E-2.2, the Department will make no change upon adoption in response to the comment.

17. COMMENT: A commenter states that “N.J.A.C. 8:43H-2.5(h) and (i), requiring rehabilitation hospital units to have at least 30 beds and free-standing rehabilitation hospitals to have 60 beds, are arbitrary. Both rehabilitation hospital units and free-standing rehabilitation hospitals in New Jersey operate at bed capacities based on community need and operational capacity, as determined by the Department's Certificate of Need ("CON") … process. Meeting the bed minimums in the proposed rule … could unduly burden [existing] providers currently operating at capacities that are below the proposed minimum. At least four [existing] rehabilitation providers in New Jersey [would] not meet the bed capacity thresholds established by [the proposed new rules]. To prevent a disruption to patient care … the Department should either eliminate these arbitrary bed capacity thresholds or allow [existing] rehabilitation providers to be grandfathered in with their current bed capacities [and] should [the Department authorize] grandfathering … allow incremental bed increases that would not [have an] impact [on] an [inpatient rehabilitation facility’s] grandfathered status[, and authorize grandfathering of] any temporary bed waivers granted to rehabilitation providers under the … CON … process …, so that such providers can continue to operate based on community need and operational capacity. [If the Department adopts] the proposed bed count thresholds … then the Department should allow [existing] rehabilitation providers to seek incremental increases to their bed counts over many years, pursuant to the CON [process], to give such providers time to prepare and adapt to larger capacities as need arises including sufficient time to construct physical plant expansions.” (4)

18. COMMENT: A commenter states that to “[shift] from a specified bed number to a focus on the appropriate facilities and staff to assure comprehensive [rehabilitation]

services can be effectively and efficiently provided," the Department should delete proposed new N.J.A.C. 8:43H-2.5(h)1, and add in its place the following: "1. The beds shall be in a designated area forming a distinct organizational unit … staffed and equipped for the specific purpose of providing a comprehensive physical medicine and rehabilitation program, and … used exclusively for such purposes"; and delete proposed new N.J.A.C. 8:43H-2.5(h)3, which would require that "[during] every 24 hours, at least 50 percent of all other licensed and unlicensed nursing personnel are individuals assigned solely to the rehabilitation service and who do not float from non-rehabilitation units or agencies." (3)

RESPONSE TO COMMENTS 17 AND 18: The Department disagrees with the statement that the minimum bed requirements are arbitrary. Proposed new N.J.A.C. 8:43H-2.5(h) and (i) correspond to expired N.J.A.C. 8:33M, Certificate of Need: Rehabilitation Hospitals and Comprehensive Rehabilitation Services, which was in effect from 1989 through 2006 (with periodic intervening lapses due to chapter expiration and reestablishment as new rules). 21 N.J.R. 1062(a), 2102(a); 32 N.J.R. 4072(a), 33 N.J.R. 1102(a), and see discussion of regulatory history at 30 N.J.R. 1529(a). N.J.A.C. 8:33M-2.3, promulgated in 1998, provided, at subsection (a): "To promote the efficient use of resources, the minimum size for a new, freestanding rehabilitation hospital shall be 60 beds"; at subsection (b): "The minimum size for a non-freestanding rehabilitation hospital that is located within another type of licensed health care facility shall be 30 beds"; and at subsection (c): "Rehabilitation hospitals proposing to treat both pediatric and adult patients shall include a minimum of 30 beds for pediatric patients and 30 beds for adult patients" and "Pediatric and adult rehabilitation beds shall

not be combined to achieve the minimum bed complement"; while paragraph (b)1 established the considerations the Department was to evaluate in determining whether to grant an "exception" or waiver of these bed minimums. 30 N.J.R. 1529(a), 3082(a) (adoption as new rule); 32 N.J.R. 4072(a), 33 N.J.R. 1102(a) (readoption without change). Thus, as stated at N.J.A.C. 8:33M-2.3(a), the minimum facility sizes have a basis in the historical regulation of comprehensive rehabilitation hospitals and were to "promote the efficient use of resources."

It is costly to develop and maintain an extensive array of rehabilitation services. Facilities and the public would benefit from the minimum bed requirements. The minimum bed requirement would ensure that facilities have the requisite capacity and resources to meet the needs of the patients they serve. Existing and newly proposed facilities that would not be able to meet the minimum bed requirement, as well as new facilities, would be able to apply for a waiver of the rule in accordance with N.J.A.C. 8:43H-2.11. While deletion of a minimum bed requirement might help, as a commenter states, to ensure that comprehensive rehabilitation services "can be effectively and efficiently provided," the Department has no basis to understand that the alternative text the commenter suggests would more effectively and efficiently enhance services than the minimum bed requirement.

The Department declines to delete proposed new N.J.A.C. 8:43H-2.2(h)3 to remove required minimum staffing requirements. The standards for adequate staffing would promote the effective and efficient provision of comprehensive rehabilitation services. As such, the Department will make no change upon adoption in response to this aspect of the comments.

N.J.A.C. 8:43H-2.9 Newly Constructed or Expanded Facilities

19. COMMENT: A commenter states that the Department should add the following text to the list of standards with which a newly constructed, reconstructed, or expanded comprehensive rehabilitation hospital is to conform, at proposed new N.J.A.C. 8:43H-2.9(c): “standards imposed by the [United States] Department of Health and Human Services, the Americans with Disabilities Act, and … the FGI Guidelines for Design and Construction of Hospitals published by the Facility Guidelines Institute and referred to as the ‘FGI Guidelines.’” (3)

20. COMMENT: A commenter states that the Department should change proposed new N.J.A.C. 8:43H-2.9(c)1 as follows (commenter’s suggested additions shown in italics, *thus*; commenter’s suggested deletions shown in brackets, [thus]):

> (c) A newly constructed, reconstructed, or expanded comprehensive rehabilitation hospital shall conform with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-3, Use Group 1-2 of the subcode[,] *standards imposed by the [United States] Department of Health and Human Services, the Americans with Disabilities Act, and with the FGI Guidelines for Design and Construction of Hospitals published by the Facility Guidelines Institute and referred to as the "FGI Guidelines."*
>
> 1. The licensure application for a newly constructed, reconstructed, and expanded rehabilitation hospital shall include [written approval of final construction of] *acceptable release of the construction plan for* the physical plant by the Health Care Plan Review Unit, Division of Codes and

Standards, New Jersey Department of Community Affairs, in accordance with this chapter.

The commenter states that the Department should change proposed new N.J.A.C. 8:43H-2.9(d) to delete the requirement that a copy of the certificate of occupancy be submitted to the Health Care Plan Review Unit. The commenter states that these changes would "provide clarification for the New Jersey Department of Community Affairs … requirements and processes." (3)

21. COMMENT: A commenter states that to "assure [cost-efficient] care and orderly development of health systems," the Department should add "expected timeframes for operational approval of projects that compliantly submitted required documentation. This would help to enable health systems to most expeditiously provide facility and services to the residents of New Jersey following completion of a project." The commenter states that the Department should add the following as new N.J.A.C. 8:43H-2.8(e): "(e) The Department will provide licensure approval or written notice of deficiencies of the project within 30 days post receipt of the certificate of occupancy." (3)

RESPONSE TO COMMENTS 19, 20, AND 21: Proposed new N.J.A.C. 8:43H-16.1 incorporates by reference the standards of the United States Department of Health and Human Services, the ADA, and the FGI Guidelines. Therefore, the revisions the commenters suggest would be redundant of that section. Accordingly, the Department will make no change upon adoption in response to this aspect of comments.

Proposed new N.J.A.C. 8:43H-2.9(c)1, which would require an applicant to submit written approval from the Health Care Plan Review Unit, would be inconsistent

with standard practices of that unit. Therefore, and for the reasons the commenter provides, the Department will make a change upon adoption at proposed new N.J.A.C. 8:43H-2.9 to delete this requirement.

The Department declines to delete the requirement at proposed new N.J.A.C. 8:43H-2.9(d) that an applicant submit a copy of the certificate of occupancy of the facility premises to the Health Care Plan Review Unit, because this requirement is related to that unit's approval of the building plans. The Department declines to revise proposed new N.J.A.C. 8:43H-2.8(e) to establish a deadline by which it must issue a determination, because the time the Department needs to review and process an application varies depending on a variety of circumstances, some of which are beyond the Department's control. As such, the Department will make no change upon adoption in response to this aspect of the comment.

N.J.A.C. 8:43H-2.15 Rehabilitation Hospital Satellite Facilities and Off-Site Ambulatory Care Service Facilities

22. COMMENT: A commenter states that proposed new N.J.A.C. 8:43H-2.15 "is a new section that addresses satellite and off-site ambulatory care facilities. Under existing Department … requirements, when an off-site location has been established that only offers rehabilitation services (physical therapy, occupational therapy, speech-language pathology) and *does not* offer diagnostic and/or primary care services (medical), there has been no requirement that these satellite and off-site ambulatory care facilities be licensed [(emphasis in original). The commenter] requests that the Department clarify that this provision is not a change to existing Department requirements for licensure and

that for further clarity a statement of current requirements, as noted above, is inserted." (1)

23. COMMENT: With respect to proposed new N.J.A.C. 8:43H-2.15(c), which requires a rehabilitation hospital to obtain licensure of "off-site ambulatory care service facilities, including mobile units," a commenter recommends that the Department not require a rehabilitation hospital to obtain site licensure because "it is recognized that the authority to operate these services comes from the entity's main license." The commenter states that, "for clarity that the proposed provision does not change existing Department requirements for licensure [and because] sites operated under the hospital as 'hospital-based' should not impose undue duplication and costs of administration and policies," the Department should add the following sentence at proposed new N.J.A.C. 8:43H-2.15(c): "Off-site facility services that do not require a separate site license as determined by the Department will be presumed to fall under the authority and responsibility of the main hospital license." The commenter states that to "enhance clarity and align with existing regulations," the Department should add, as new N.J.A.C. 8:43H-2.15(d)1, the following:

1. Licensure as "hospital-based" will permit the following allowances from N.J.A.C. 8:43A[:]

i. Services provided to the offsite by the hospital do not need a separate written agreement as specified at [N.J.A.C. 8:43A-3.1].

ii. The off-site facility may use [hospital] policies and procedures to address the requirements of N.J.A.C. 8:43A-3.6 for a policy and procedure

manual except for specific facility policies to address the requirements as specified at [N.J.A.C. 8:43A-3.6(a)4, 9, 17, and 18].

iii. Hospital policies may be used for personnel and employee health as found at N.J.A.C. 8:43A-3.5 and 3.7.

iv. Hospital policies may be used to address specific N.J.A.C. 8:43A requirements for patient care policies found at N.J.A.C. 8:43A-6.1 through 6.8.

v. Hospital nursing leadership may address nursing service policies and leadership as found at N.J.A.C. 8:43A-8.2 and 8.3.

vi. Hospital policies as relate to pharmaceutical services may address N.J.A.C. 8:43A-9.3.

vii. Hospital policies as relate to counseling and social services may address N.J.A.C. 8:43A-10.1 and 10.2.

viii. Hospital policies as relate to anesthesia services may address N.J.A.C. 8:43A-12.6.

ix. Hospital policies as relate to medical record services may address N.J.A.C. 8:43A-13.

x. Hospital policies as relate to infection control services may address N.J.A.C. 8:43A-14.

xi. Hospital policies as relate to emergency services and disaster plans may address N.J.A.C. 8:43A-15 if evidencing an addendum or specific policy to demonstrate specific site procedures for evacuating patients and facility specific needs.

x. Hospital policies as relate to quality assurance program may address N.J.A.C. 8:43A-18.

The commenter further recommends that the Department revise proposed new N.J.A.C. 8:43H-2.15(e) to state that all off-site ambulatory care service facilities are presumed to be free-standing, "unless [an] applicant seeks 'hospital-based' licensure [pursuant to subsection (f)]." (3)

RESPONSE TO COMMENTS 22 AND 23: The obligation of a satellite or off-site facility to obtain licensure depends on whether the facility is to provide services that are subject to Department licensure. A facility that only will offer a service that is not subject to Department licensure, such as physical therapy, need not seek Department licensure of that service.

The commenter is incorrect in stating that a hospital-based off-site facility operates based on the parent entity's license. The license of a hospital-based off-site ambulatory care service facility refers to the facility's association with the hospital, just as a hospital's license reflects the total number of associated off-site facilities it maintains. However, the reference to this association on a facility's license does not obviate an off-site facility's obligation to obtain licensure as an ambulatory care facility pursuant to N.J.A.C. 8:43A if it provides a service that is subject to Department licensure. Additionally, proposed new N.J.A.C. 8:43H-2.15(d) would be consistent with N.J.A.C. 8:43G-2.11 of the Hospital Licensing Standards rules, which applies to hospital satellite facilities and off-site ambulatory care facilities.

The Department declines to revise proposed new N.J.A.C. 8:43H-2.15 to add the "allowances" the commenter suggests as new subsection (d) because an off-site

hospital-based ambulatory care facility must establish policies and procedures that are specific to that facility.

The commenter's suggestion that the Department revise proposed new N.J.A.C. 8:43H-2.15 to add new subsection (e) appears to indicate a misunderstanding of the meaning of the terms, "freestanding" and "hospital-based." A "freestanding" facility is separately licensed; that is, the license will not include a reference to the hospital license, as described above. A "hospital-based off-site" facility is associated with a hospital as described above but does not operate in or near the hospital and, thus, requires licensure pursuant to N.J.A.C. 8:43A. Therefore, the Department will make no change upon adoption in response to this aspect of the comment.

Subchapter 3. Services, Personnel, Policy, and Procedure Manual Reporting

N.J.A.C. 8:43H-3.1 Rehabilitation Hospital Services

24. COMMENT: A commenter recommends that the Department modify proposed new N.J.A.C. 8:43H-3.1(f) to "align with updated CMS's requirements that took effect on [November] 8, 2021." The commenter states that, instead of using the phrase, "upon admission," which the updated CMS language uses, the section should use the phrase, "during the first week following admission." The commenter recommends that the Department add the following as new N.J.A.C. 8:43H-3.1(g):

> "(g) In accordance with CMS regulations …, beginning with the second week of admission to the rehabilitation hospital, a non-physician practitioner who is determined by the rehabilitation hospital to have specialized training and experience in inpatient rehabilitation may conduct

[one] of the [three] required face-to-face visits with the patient per week, provided that such duties are within the non-physician practitioner's scope of practice under applicable state law." (1)

RESPONSE: The Department agrees with the commenter and will make a change upon adoption to conform the rule to applicable CMS requirements by requiring patient visits to occur "during the first week of admission" that a patient enters a rehabilitation hospital rather than "upon admission." However, the Department declines to revise the rule as the commenter suggests to allow a non-physician practitioner to conduct one of the three weekly face-to-face visits with a patient that proposed new N.J.A.C. 8:43H-3.1(f) would require. Three visits per week with a rehabilitation physician would provide a higher standard of care for the patient than the CMS guidance, which allows non-physician practitioners to independently conduct one of the three minimum required rehabilitation physician visits per week.

N.J.A.C. 8:43H-3.4 Policies and Procedures Manual

25. COMMENT: A commenter states that "to align with N.J.A.C. 8:43G-3.4," the Department should change proposed new N.J.A.C. 8:43H-3.4(b) to require a facility to review its policies and procedures "at least every three years" instead of "every year." (3)

RESPONSE: The Department reviewed the rules applicable to other types of Department-licensed health care facilities that require policy and procedure review and found that to require a facility to conduct its review every three years would be consistent with the rules established for the other types of facility. See, for example,

N.J.A.C. 8:43G-5.2 and 8:42-3.5. Therefore, and for the reasons the commenter states, the Department will make a change upon adoption at proposed new N.J.A.C. 8:43H-3.4(d) to require a facility to review its policies and procedures at a minimum of every three years and more frequently, as needed. This will ensure that the review requirement is not overly burdensome on the facilities while still requiring timely review of patient care standards and the organization and operation of the rehabilitation hospital.

Subchapter 5. Administration

N.J.A.C. 8:43H-5.3 Advance Directive Dispute Resolution; A Forum for Discussion; Community Education

26. COMMENT: With respect to proposed new N.J.A.C. 8:43H-5.3(c), which would require a rehabilitation hospital to offer "periodic community education programs, individually, or in coordination with other area facilities or organizations, that provide information to consumers regarding advance directives and their rights pursuant to New Jersey law to execute advance directives," a commenter states that at an existing rehabilitation hospital "community education programs and/or resources that contain this information may already exist." The commenter recommends that the Department "clarify" that an existing rehabilitation hospital is to "provide information and make available those programs and resources" but need not "establish a new program." The commenter suggests that the Department revise proposed new N.J.A.C. 8:43H-5.3(c) to state that "A rehabilitation hospital shall provide information regarding advance

directives and their rights pursuant to New Jersey law to execute advance directives through consumer information links and upon request." (3)

RESPONSE: Proposed new N.J.A.C. 8:43H-5.3(c) would require a rehabilitation hospital to provide community education programs and/or resources on the indicated topics. It would not require a facility to create new programs and resources if existing programs and resources that include accurate information and otherwise comply with the rule are available and the facility provides these to the community and consumers. The Department does not find the rule to be unclear. However, the commenter's suggested change to the rule would allow a rehabilitation facility to satisfy the requirement of affirmatively providing community education programs "individually, or in coordination with other area facilities or organizations," by posting links to a website or awaiting requests from the community for information. The Department disagrees with the assertion that posting web links online is enough to satisfy the intent and purpose of the proposed new rule and, therefore, declines to make a change upon adoption in response to the comment.

N.J.A.C. 8:43H-5.6 Policies and Procedures for Admission of a Pediatric Patient of at least 16 Years of Age to an Adult Rehabilitation Hospital

27. COMMENT: A commenter states that the phrase "under 18 years of age," at proposed new N.J.A.C. 8:43H-5.6(a) includes a typographical error, and should be changed to "under 20 years of age" because "the policy permits adult rehabilitation hospitals to admit pediatric patients between 16 and 20 years of age." (1)

RESPONSE: The Department agrees with the commenter, and for the reasons the commenter states, the Department will make a change upon adoption at proposed new N.J.A.C. 8:43H-5.6 to revise the age provision to apply to persons of up to 20 years of age, to allow each adult rehabilitation hospital to establish a policy to determine whether the hospital will admit a pediatric patient who is between the ages of 16 and 20.

28. COMMENT: A commenter recommends that the Department change proposed new N.J.A.C. 8:43H-5.6(a)5 to delete the phrase “the parent or guardian, or patient, as applicable, consents to the patient's admission to the adult facility” and to add in its place the phrase “the patient consents to the patient’s admission to the adult facility, or if the patient lacks decision-making capacity or agrees, the hospital notifies the parent or guardian of the availability of a pediatric rehabilitation hospital that can admit the patient and the parent or guardian consents to the patient’s admission to the adult facility, as applicable.” The commenter further recommends that the Department revise N.J.A.C. 8:43H-5.6(a)5i to state: “The hospital shall document its issuance of the notice for patients age 16 or 17 to the parent or guardian, or to the patient if the patient is age 18 or 19 years of age, and whether the patient, parent or guardian consents.” The commenter states that the suggested revisions would “not change the policy underlying the steps but [would] recognize the differences between younger (16- and 17-year-old patients) and those who are 18 and 19 years old, in terms of their decision-making rights in society, such as voting and enlisting in the armed services.” (1)

RESPONSE: The Department agrees that N.J.A.C. 8:43H-5.6(a)5 and (a)5i do not reflect the possibility that an adult (that is, a person 18 years of age or older) might have

a health care representative who must consent to an adult facility admission, and improperly suggest that a parent or guardian must consent to the admission of an adult who retains the capacity to consent to admission. Therefore, the Department will revise these provisions upon adoption to reflect that notice must be provided to, and consent must be obtained from, the health care representative of an adult patient, if applicable, but not if the adult patient retains the capacity to receive notice and consent to admission.

Subchapter 8. Medical Services

N.J.A.C. 8:43H-8.5 Availability of Pediatrician

29. COMMENT: A commenter notes (presumably in reference to the rules at N.J.A.C. 8:43H, Manual of Standards for Licensure of Rehabilitation Hospitals, which expired on April 22, 2010) that the expired rule at N.J.A.C. 8:43H-8.5, Availability of pediatrician, stated: “If the facility provides care for pediatric patients, a pediatrician shall be available.” The commenter notes that, in comparison, proposed new N.J.A.C. 8:43H-8.5 would state: “If the rehabilitation hospital provides care for pediatric patients, a pediatrician shall be available *to provide treatment to the pediatric patient* [(emphasis added by commenter)].” The commenter states that this “modification changes the nature of the engagement of the pediatrician in the care of pediatric patients, particularly when an adult rehabilitation hospital admits a patient between the ages of 16 and 20.” The commenter notes that proposed new N.J.A.C. 8:43H-5.6(a)2 would state: “Within 24 hours of the pediatric rehabilitation hospital receiving a referral of the patient, the pediatric rehabilitation hospital shall conduct a review of clinical and psychosocial

information related to the patient and notify the adult rehabilitation hospital whether it recommends admission of the patient to the adult rehabilitation hospital[.]" The commenter states that when a "pediatric rehabilitation hospital recommends the admission of [a] pediatric patient [who is 16 to 20] years of age … to an adult rehabilitation hospital, it signals that the patient's needs can be met by the adult rehabilitation hospital's physicians and other clinical staff. Adult rehabilitation hospitals have had to have a pediatrician available for consultation and support. However, the addition of the words 'to provide treatment to the pediatric patient' [at proposed new N.J.A.C. 8:43H-8.5] suggests that [an] adult rehabilitation hospital is to have a pediatrician as part of [its] regular medical staff. [As] the admission of [a 16- to 20-year-old patient] to [an] adult rehabilitation [hospital] is an occasional occurrence, this appears to be a significant new requirement that will come at significant cost and will be hard to meet given the existing shortage of pediatricians. It is well-documented that New Jersey faces significant challenges for the immediate and near future with respect to the availability of pediatricians.

Instead of mandating that a pediatrician be available to treat [a] pediatric [patient] who [is] admitted to an adult rehabilitation hospital, [the commenter] recommends that the Department permit [an] adult rehabilitation [hospital] to establish age-related competencies for its medical staff so [medical staff members] can document the appropriateness of their capabilities and skills in caring for [an admitted] pediatric [patient who is 16 to 20 years old]. This … would help alleviate … pressures related to the shortage of pediatricians and physicians overall in New Jersey." (1)

RESPONSE: For the reasons the commenter provides, the Department will make a change upon adoption at proposed new N.J.A.C. 8:43H-8.5(a) and (b) to establish the pediatrician requirement in a pediatric facility and allow pediatric consultative services in adult facilities.

Subchapter 17. Functional Requirement

N.J.A.C. 8:43H-17.3 Medical Evaluation Services and N.J.A.C. 8:43H-17.4 Patient Dining, Recreation Therapy, and Community Spaces

30. COMMENT: A commenter states that the Department should change the minimum square footage of an examination room, at proposed new N.J.A.C. 8:43H-17.3(a)1, from 140 square feet to 120 square feet "to align with FGI guidelines." (3)

31. COMMENT: A commenter states that the Department should change proposed new N.J.A.C. 8:43H-17.4 as follows (commenter's suggested additions indicated in italics *thus*; commenter's suggested deletions indicated in brackets [thus]):

(a) (No change.)

(b) For inpatients and residents, a rehabilitation hospital shall provide a total of [30] *55* square feet per bed of community space [for the first 100 beds and 27 square feet per bed of community space for all beds in excess of 100].

(c)-(d) (No change.)

(e) For outpatients and/or day hospitalization, a rehabilitation hospital shall provide a total of [20] *55* square feet of community space per person if dining is part of the day care program. If dining is not part of the program, at least [10] *35*

square feet per person for recreation and community space spaces shall be provided."

The commenter states that the suggested changes would be "to align with FGI guidelines." (3)

RESPONSE TO COMMENTS 30 AND 31: The Department agrees with the commenter's statement that the rules should remain uniform and consistent with the physical plant requirements of the FGI Guidelines and the New Jersey Uniform Construction Code. N.J.A.C. 8:43H-16.1, Standards for construction, alteration, or renovation of rehabilitation facilities, incorporates by reference and requires compliance with the FGI Guidelines and other relevant codes. Therefore, to ensure consistency with those codes, the Department will not adopt proposed new N.J.A.C. 8:43H-17.3 and 17.4, to prevent redundancy or conflict.

N.J.A.C. 8:43H-17.6 Administration Services

32. COMMENT: A commenter states that to "accommodate various modes of water dispensers," the Department should delete proposed new N.J.A.C. 8:43H-17.6(b)5, which would require a rehabilitation hospital's lobby to have "drinking fountains(s)" and add in its place the phrase "public drinking water accommodations." (3)

RESPONSE: Proposed new N.J.A.C. 8:43H-16.1 would require consistency with the FGI Guidelines and other codes to ensure uniformity of physical plant requirements. Therefore, to ensure consistency with those codes, the Department will not adopt proposed new N.J.A.C. 8:43H-17.6(b)5, to prevent redundancy or conflict with the codes.

N.J.A.C. 8:43H-17.7 Patient Rooms; Nursing Units

33. COMMENT: With respect to proposed new N.J.A.C. 8:43H-17.7(a) and (b), a commenter "requests that the Department clarify that existing licensed patient rooms that undergo renovations that do not change the footprint of the patient rooms are not subject to the requirement to be single-bedded." (1)

RESPONSE: The commenter's understanding is correct; proposed new N.J.A.C. 8:43H-17.7(a) and (b) would not require a rehabilitation hospital that renovates a licensed patient room, without changing the room's footprint, to convert the room to a single-bedded room. The Department does not find the text to be unclear and, therefore, the Department will make no change upon adoption in response to the comment.

34. COMMENT: A commenter states that single-patient rooms "are considered best practice from infection control, privacy and some other aspects. However … studies … have suggested some patients benefit from having roommates, this can be seen for pediatric and elderly patients. A study … found that participants associated shared patient rooms with higher levels of social interactions and feelings of security in pediatric wards. [(Citation omitted)] An additional review demonstrated shared accommodation [was] preferred for social interaction to avoid loneliness and isolation. This preference was seen to be more likely for men, older adults, children and adolescents. [(Citation omitted)] Furthermore, [single-patient] rooms can be associated with higher costs to build and staff than semi-private rooms, potentially impacting overall healthcare costs. [(Citation omitted)] To effectively balance costs and patient preferences, [the proposed

new rules should] allow some flexibility for patient rooms in [longer-stay] care environments that support [patient-centered] care and rooming arrangement to meet individual patient needs."

The commenter suggests the following changes to proposed new N.J.A.C. 8:43H-17.7 (commenter's additions shown in italics *thus*; commenter's suggested deletions indicated in brackets [thus]) (suggested text modified to conform to New Jersey Administrative Code style conventions):

(a) Each newly licensed rehabilitation hospital patient room shall be single-bedded *if the facility's existing patient rooms comprise 20 percent or greater double-occupancy rooms.*

(b) For any existing licensed adult rehabilitation hospital that changes the footprint of the patient room(s), the patient rooms for which the footprint is changed shall be single-bedded *if the facility's existing patient rooms comprise 20 percent or greater double-occupancy rooms.*

[(c) In existing licensed facilities, at least two single bedrooms with a private toilet room shall be provided in each nursing unit. Each patient area, at a minimum, shall have:]

(c) Any newly established rehabilitation hospital or comprehensive acute-care rehabilitation unit shall have 80 percent or greater single-occupancy patient rooms.

1.-2. (No change.)

3. Each one-bedroom shall have a minimum clear floor space of [36] *48* inches from each side of the bed and 36 inches between the foot of the bed and the wall;

4. Each two-bedroom shall have a minimum clear floor space of 48 inches between the foot of the bed and the wall, [36] *48* inches between the side of the bed and the wall, and [36] *48* inches between beds;

5.-8. (No change.)

9. Each patient shall have a wardrobe, closet, or locker with minimum [clear dimensions of one foot, 10 inches by one foot, eight inches] *storage volume of 25 cubic feet*, suitable for hanging full-length garments.

10. (No change.)

(d)-(f) (No change.)

The commenter states that the suggested changes would "support this rationale and align with FGI guidelines." (3)

RESPONSE: The suggested change at proposed new N.J.A.C. 8:43H-17.7(a) would imply that a facility applying for licensure would have existing licensed patient rooms. It is unclear how the Department could implement such a provision. Therefore, the Department will make no change upon adoption in response to this aspect of the comment.

The suggested changes at N.J.A.C. 8:43H-17.7(b) and (c), regarding single and double occupancy rates, would conflict with the FGI Guidelines, which emphasize the importance of single-occupancy rooms for infection control, patient privacy, and overall

quality of care. While the FGI Guidelines do not specify an exact percentage, they recommend that new hospital construction prioritize single-occupancy rooms to the extent possible. Therefore, the Department will make no change upon adoption in response to this aspect of the comment.

The suggested changes at N.J.A.C. 8:43H-17.7(c)9 would include a specific cubic foot space requirement. The Department agrees with the commenter's suggestion that the physical plant requirements should be consistent with the FGI Guidelines and the New Jersey Uniform Construction Code, to which N.J.A.C. 8:43H-16.1 requires a facility to adhere. Therefore, the Department will not adopt proposed new N.J.A.C. 8:43H-17.7(c)9.

N.J.A.C. 8:43H-17.16 Facility Details

35. COMMENT: A commenter states that to "align with FGI guidelines," the Department should change: (1) proposed new N.J.A.C. 8:43H-17.16(a)5 to establish the minimum width required of all "doors to rooms needing access for beds" from 45.5 inches to 48.5 inches; (2) proposed new N.J.A.C. 8:43H-17.16(a)20iii to establish the minimum ceiling height required in "corridors, storage rooms, toilet rooms, and other minor rooms," from seven feet, eight inches to seven feet, six inches; and (3) proposed new N.J.A.C. 8:43H-17.16(a)20iv to establish the minimum distance required between "suspended tracks, rails, and pipes located in the path of normal traffic" and the floor from "six feet, eight inches" to "seven feet, six inches." (3)

RESPONSE: Proposed new N.J.A.C. 8:43H-16.1 would require consistency with the FGI Guidelines and other codes to ensure uniformity of physical plant requirements.

Therefore, to ensure consistency with those codes, the Department will not adopt proposed new N.J.A.C. 8:43H-17.16(a)5, and 17.16(a)20iii and iv, to prevent redundancy or conflict with the codes.

36. COMMENT: A commenter expressed concern that the Department had omitted recreational therapy “as a recognized treatment service on the interdisciplinary rehabilitation team.” The commenter states that recreation therapy services help patients “to return to a full and active life after discharge from comprehensive licensed physical rehabilitation hospitals.” The commenter describes the omission as “an obvious oversight considering [recreational therapy] is, and always has been, a valuable treatment service in … New Jersey [comprehensive rehabilitation hospitals] since they were established in 1993 and in effect since 1989. The clarification on whether recreational therapy, music therapy, respiratory therapy, neuropsychology, or cognitive therapy can be used to satisfy the requirement for patients admitted and receiving intensive rehabilitation services in inpatient rehabilitation facilities as they are not considered primary therapies. Recreational therapy services are a covered service in inpatient rehabilitation facilities when the medical necessity is well-documented by the rehabilitation physician, and they are ordered by a rehabilitation physician as part of the patient’s overall plan of care. (5)

37. COMMENT: A commenter requests that the Department define the term “recreational therapy” to mean “a systematic process utilizing recreation, leisure, and play interventions for the treatment and maintenance of functional abilities and the promotion of health and wellness for individuals with disabilities or those affected by an

illness in order to accomplish any of the following: (1) restoring or remediating an individual's participation levels in recreation and leisure activities that may be limited due to an impairment in physical, social, cognitive, or emotional abilities; (2) reducing or eliminating limitations or restrictions to participation in recreation, leisure, and play activities; or (3) using recreational modalities in designed intervention strategies to maximize physical, social, cognitive, or emotional abilities to promote participation in recreation and leisure activities." The commenter further requests that the rules state that a Certified Therapeutic Recreation Specialist® (CTRS®) is the only professional whom the Department authorizes as qualified to provide recreational therapy services in a rehabilitation hospital. (6)

38. COMMENT: A commenter provides anecdotal information as to the commenter's experience working with patients "focusing on increasing leisure awareness and psychosocial adaptation." The commenter describes a patient who, "after a significant injury, struggled to find meaning and joy in everyday activities." The commenter used recreational therapy with the patient "to identify and engage in activities that aligned with [the patient's] interests and capabilities. This approach not only improved [the patient's] physical abilities but also significantly boosted [the patient's] morale and social interactions." The commenter states, "Being a part of the interdisciplinary team in these settings is crucial. Each team member, from physical therapists to psychologists, brings a unique perspective and expertise, allowing [the team] to address [clients'] multifaceted needs … comprehensively." [The] role [of a] recreational therapist [on the team is] instrumental in integrating enjoyable activities into the rehabilitation process, which often [leads] to enhanced motivation and quicker recovery. The positive impact of

recreational therapy services is evident in the improved quality of life [of] clients. By focusing on leisure and recreational activities, [recreational therapists] help individuals rediscover their passions, foster social connections, and adapt to new life circumstances. This holistic approach not only aids in physical recovery but also supports emotional and social well-being." The commenter states that a Certified Therapeutic Recreation Specialist® (CTRS®) is "the only qualified" recreational therapy services provider, to ensure "that clients receive care from professionals trained to deliver these specialized interventions effectively." The commenter provides a definition of the term "recreational therapy" that tracks the definition included in Comment 37. (2) RESPONSE TO COMMENTS 36, 37, AND 38: The exclusion of recreational therapy requirements was not an oversight. The Department recognizes the potential beneficial effects that recreational therapy might have for some patients, but does not believe that it is appropriate to mandate that all inpatient rehabilitation facilities provide recreational therapy, music therapy, or respiratory therapy services to all inpatient rehabilitation facility patients and, thus, declines to require facilities provide these services. These services may be beneficial to some, but not all, patients, as an adjunct to other primary types of therapy that an inpatient rehabilitation facility provides, such as physical therapy, occupational therapy, speech-language pathology, and prosthetics/orthotics. The rule would allow each individual inpatient rehabilitation facility to determine whether offering recreational therapy, music therapy, or respiratory therapy would be consistent with its mission and the best way to achieve desired patient care outcomes. The Department will add a definition of the term "recreational therapy" as defined by the National Council for Therapeutic Recreation Certification as N.J.A.C. 8:43H-3.1(c) uses

the term. The Department declines to require a facility that provides recreational therapy to use a CTRS® and to declare a CTRS® to be “the only qualified” recreational therapy services provider because the proposed new rules would not require an inpatient rehabilitation facility to provide recreational therapy.

Summary of Agency-Initiated Changes:

1. As stated above in response to several comments, N.J.A.C. 8:43H-16.1 requires facilities to adhere to the FGI Guidelines, as amended and supplemented. The Department received numerous comments from the regulated community noting inconsistencies in the proposed new rules and requesting corrections to conform the rules to the FGI Guidelines. For these reasons, the Department will not adopt the following physical plant specifications at proposed new N.J.A.C. 8:43H-17.1(b), 17.6(b) and (c)2 and 3, 17.7(c)1 through 5 and 7, 8, and 9 and (d), (e), and (f), and proposed new rules at N.J.A.C. 8:43H-17.3, 17.4, 17.5, 17.9, 17.11, 17.13, 17.16, and 17.17 because they either conflict with, or are redundant of, the FGI Guidelines, and because the specifications therein might become obsolete or incorrect upon the FGI’s issuance of revised or updated FGI Guidelines.

2. The Department is adding a definition of the term “Health Care Plan Review Unit” with contact information, and deleting redundant defining and contact information for that entity where it appears throughout the chapter.

3. The Department is deleting proposed new N.J.A.C. 8:43H-2.3(a) because it is redundant of proposed new N.J.A.C. 8:43H-2.2.

4. The Department is making various technical changes throughout the proposed new rules to correct grammar, improve readability, and delete binary gender terminology.

Federal Standards Analysis

The adopted new rules are similar to the Medicare standards, established pursuant to 42 CFR Parts 412 and 482, with which rehabilitation hospitals must comply to be Medicare-certified. The adopted new rules would exceed the Federal Medicare certification standards in the following areas: employee health requirements, especially for direct patient care; policies and procedures regarding patient rights; and the establishment of an infection prevention and control program. The adopted new rules would be consistent with licensure rules for comparable New Jersey health care facilities. The Department believes it appropriate to exceed the Federal standards because the health and welfare of rehabilitation hospital patients are no less important than the health and welfare of patients in other State-licensed health care facilities or services.

The costs of compliance are not significant, in that they require health screening tests, such as TB tests, and implementation of patient rights requirements within the context of the general provision of services. The adopted infection prevention and control program requirements are necessary, due to the increase in treatment-resistant diseases because a rehabilitation hospital patient is susceptible to communicable diseases. The cost of prevention is minimal and is far less than the cost of treatment.

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

SUBCHAPTER 1. GENERAL PROVISIONS AND QUALIFICATIONS

8:43H-1.3 Definitions

(a) (No change from proposal.)

(b) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

…

"Health Care Plan Review Unit" means the Health Care Plan Review Unit of the Division of Codes and Standards, New Jersey Department of Community Affairs, for which the mailing address is PO Box 817, Trenton, NJ 08625-0815, telephone: (609) 633-8151, website: http://www.nj.gov/dca/codes/offices/ePlans.shtml.

…

"Nursing leader accountable for nursing services" means a registered professional nurse who*[:

1. Has]* ***has a bachelor's degree and*** at least two years of full-time, or full-time equivalent, experience in nursing supervision and/or nursing administration in a health care facility.

[2. Has a bachelor's degree; and]

[3.]* *1. Within *[two]* ***three*** years of appointment ***as a nursing leader accountable for nursing services at a rehabilitation facility obtains***:

i. *[Has been]* ***The Certified Rehabilitation Registered Nurse (CRRN®) credential*** issued by the *[Association of]* Rehabilitation *[Nurses a certification as a Certified Rehabilitation Registered Nurse (CRRN), in accordance with the certification standards at http://www.rehabnurse.org/certification/content/Index.html]* ***Nursing Certification Board***; or

ii. [Has a]* ***A*** certification comparable to *[certificate as a]* ***the*** CRRN.***®***

…

***"Office" means the Office of Certificate of Need and Healthcare Facility Licensure, Division of Certificate of Need and Licensing, New Jersey Department of Health.**

1. The contact information for the Office is:

i. By regular mail: PO Box 358, Trenton, NJ 08625-0358.

ii. By courier or hand-delivery: 120 South Stockton Street, 3rd Floor, Trenton, NJ 08608-1832.

iii. Electronic mail: CNandLicensingRequests@doh.nj.gov.

2. Application forms for licensing activities of the Office are available at https://www.nj.gov/health/forms.*

…

***"Recreational therapy," also known as therapeutic recreation, is a systematic process that uses recreation and other activity-based interventions to address the assessed needs of individuals with illnesses and/or disabling**

conditions, as a means to psychological and physical health, recovery, and well-being.*

…

***"Rehabilitation Nursing Certification Board" means the entity that administers the Certified Rehabilitation Registered Nurse (CRRN®) credentialing program of the Association of Rehabilitation Nurses, for which the contact information is Rehabilitation Nursing Certification Board, 1061 American Lane, Suite 310, Schaumburg, IL 60173-4973, telephone (800) 229-7530 or (847) 375-4710, email cert@rehabnurse.org.**

1. The CRRN® Examination Candidate Handbook is available at https://rehabnurse.org/crrn-certification/earn-your-crrn.

"Rehabilitation physician" means "rehabilitation physician" as 42 CFR 412.622 defines that term.*

…

"Renovation" means the removal and replacement or covering of existing interior or exterior finish, trim, doors, windows, or other materials with new materials that serve the same purpose and do not change the configuration of space.

1. The term "renovation" includes the replacement of equipment or fixtures.

SUBCHAPTER 2. HOSPITAL LICENSURE

8:43H-2.1 Certificate of need

(a) (No change from proposal.)

(b) *[Application forms]* ***Form CN-3 is the form of Application—Certificate of Need*** for a *[certificate of need, CN-3, are available at]* ***Hospital-Related Project pursuant to*** N.J.A.C. 8:33 *[and on the Department's website at www.nj.gov/health/forms]*.

(c) A rehabilitation hospital shall submit the ***CN-3*** application ***form*** and fee required pursuant to N.J.A.C. 8:33-4.3 and implement all conditions imposed by the Commissioner, as specified in the certificate of need approval letters.

8:43H-2.2 Functional review applicability

(a) (No change from proposal.)

(b) *[Requests for]* ***An applicant seeking*** a functional review shall *[be]* ***submit a request***, in writing, specifying the type of facility and/or service proposed, *[and shall be forwarded]* to the Director, *[Certificate of Need and Healthcare Facility Licensure Program]* ***in care of the Office***.

*[(c) Requests for a functional review shall be submitted by mail to:

Director, Office of Certificate of Need and Healthcare Facility Licensure

Division of Certificate of Need and Licensing

New Jersey Department of Health

PO Box 358

Trenton, NJ 08625-0358]*

(**Agency Note:** The notice of proposal included two subsection (c) codifications in error, so no recodification is necessary based on the above deletion.)

(c)-(e) (No change from proposal.)

(f) Following receipt of a completed request, the Department shall conduct a functional review within 60 days of ***its receipt of*** the request.

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

3. The Department may extend the functional review period, if necessary***, and shall notify the applicant of its determination to grant an extension***.

i. (No change from proposal.)

8:43H-2.3 Functional review approval

[(a) Requests for a functional review shall be, in writing, specifying the type of facility and/or service proposed, and shall be forwarded to the Director, Certificate of Need and Healthcare Facility Licensure Program.]

Recodify proposed (b)-(c) as **(a)-(b)** (No change in text from proposal.)

8:43H-2.5 Application for licensure

(a) Any person, organization, or corporation desiring a license to operate a rehabilitation hospital in the State shall apply to the Commissioner by submitting a completed Application for New or Amended Acute Care Facility License, CN-7*[, which is available on the Department's website at www.nj.gov/health/forms]* ***to the Office***.

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

(b)-(f) (No change from proposal.)

(g) Subject to the payment of applicable fees pursuant to N.J.A.C. 8:43H-2.4, the Department may issue a rehabilitation hospital license valid for one year upon an applicant's satisfaction of the following conditions:

1. The applicant has submitted to the *[Certificate of Need and Healthcare Facility Licensure Program, Division of Certificate of Need and Licensing, Department of Health, PO Box 358, Trenton, New Jersey 08625-0358, telephone 609-292-6552, email CNandLicensingRequests@doh.nj.gov; application forms available at https://www.nj.gov/health/healthfacilities/certificate-need/#1]* ***Office***:

i.-ix. (No change from proposal.)

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

(h) With respect to a rehabilitation hospital unit within a licensed hospital, in addition to meeting the requirements at (g) above, the unit shall satisfy the following conditions:

1. The ***beds shall be in a designated area forming a distinct organizational** unit *[has the capacity to serve a minimum census of 30 beds]* ***that is staffed and equipped for the specific purpose of providing a comprehensive physical medicine and rehabilitation program, and used exclusively for such purposes***;

2. The unit *[has]* ***shall have*** a registered professional nurse assigned solely to the unit at all times; and

3. During every 24 hours, ***a facility shall assign*** at least 50 percent of all other licensed and unlicensed nursing personnel *[are individuals assigned solely]* ***exclusively*** to the rehabilitation service *[and]* who *[do]* ***shall*** not float from non-rehabilitation units or agencies.

(i)-(k) (No change from proposal.)

8:43H-2.6 Renewal of a license

(a)-(e) (No change from proposal.)

(f) The Department may renew, annually, a license on the original licensure date or within 30 days thereafter**,*** but dated as of the original licensure date; provided:

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

3. The Department receives the following from the applicant for renewal of licensure:

i. (No change from proposal.)

ii. The licensee's regulatory compliance statement in accordance with N.J.S.A. 26:2H-1 et seq.

(1) (No change from proposal.)

(2) A copy of documentation of a facility’s certification *[by]* or accreditation *[from]* ***by*** an accrediting body recognized by the Centers for Medicare & Medicaid Services of the *[U.S.]* ***United States*** Department of Health and Human Services; and

(3) Upon request of the *[Licensing]* Office, a copy of the accrediting body’s most recent report of its survey of the facility and recommendations for corrective actions, and a progress report of all corrective actions the facility has taken in response to the accreditation body's report; and

iii. (No change from proposal.)

(g)-(h) (No change from proposal.)

8:43H-2.9 Newly constructed or expanded facilities

(a) Any comprehensive rehabilitation hospital with a reconstruction, expansion, or construction program for review and approval, prior to the initiation of the reconstruction, expansion, or construction project shall submit final construction documents plans to*[:]* **the** Health Care Plan Review Unit**.***

*[Division of Codes and Standards

New Jersey Department of Community Affairs

PO Box 817

Trenton, New Jersey 08625-0815

Telephone: 609-633-8151

http://www.nj.gov/dca/codes/offices/ePlans.shtml]*

(b) Prior to submitting final construction documents in accordance with (a) above, an applicant for a license to operate a comprehensive rehabilitation hospital may request that the *[Certificate of Need and Healthcare Facility Licensure Program (Program)]* ***Office*** schedule an appointment to conduct a functional review of the proposed project to review the conditions for licensure and operation, which request the *[Program]* ***Office*** shall grant.

(c) A newly constructed, reconstructed, or expanded comprehensive rehabilitation hospital shall conform with the New Jersey Uniform Construction Code, N.J.A.C. 5:23-3, Use Group I-2 of the subcode.

1. *[The] ***An applicant for*** licensure *[application for]* ***of*** a newly constructed, reconstructed, and expanded rehabilitation hospital shall include *[written approval of final construction]* ***with its application, the Health Care Plan Review Unit's release***

as "acceptable"* of the physical plant *[by the Health Care Plan Review Unit, Division of Codes and Standards, New Jersey Department of Community Affairs]* ***construction plan***, in accordance with this chapter.

(d) *[A]* ***An applicant shall submit a*** copy of the certificate of occupancy issued by the local municipality *[shall be submitted]* to the Health Care Plan Review Unit and to the *[Certificate of Need and Healthcare Facility Licensure Program]* ***Office*** prior to licensure or approval of newly constructed, reconstructed, or expanded comprehensive rehabilitation hospital.

1. (No change from proposal.)

8:43H-2.11 Waiver of licensing standards

(a) The Commissioner, or *[his or her]* ***the Commissioner's*** designee, in accordance with N.J.S.A. 26:2H-1 et seq., and this chapter, may waive provisions of this chapter if, in *[their]* ***the*** opinion ***** **of the Commissioner, or the Commissioner's designee***, *[such]* ***a*** waiver would not endanger the life, safety, or health of ***a*** patient*[s]*, and would not render the premises, equipment, personnel, finances, rules, bylaws, and standards of health care at a rehabilitation hospital unfit or inadequate.

1. A rehabilitation hospital seeking an "application for a waiver" of any rule in this chapter shall apply, in writing, to the Director of the Office *[of Certificate of Need and Healthcare Facility Licensure of the Department]*.

i. Application for Waiver, form number CN-28, is available on the Department's website at www.nj.gov/health/forms.

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

8:43H-2.14 Duty to update information

Whenever any information included in a license or renewal application changes, the ***applicant or*** licensee shall provide that information to the Office *[of Certificate of Need and Healthcare Facility Licensure]*, in writing, within 10 calendar days of the change.

SUBCHAPTER 3. SERVICES, PERSONNEL, POLICY, AND PROCEDURE MANUAL REPORTING

8:43H-3.1 Rehabilitation hospital services

(a)-(e) (No change from proposal.)

(f) *[Upon]* ***Within seven days of a patient's*** admission, ***and every week thereafter,*** a rehabilitation physician shall conduct ***a*** face-to-face visit*[s]* with the patient at least three days per week throughout the patient's stay in the rehabilitation hospital to:

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

8:43H-3.4 Policies and procedures manual

(a)-(c) (No change from proposal.)

(d) *[The]* ***A facility shall:***

1. Establish and implement its policies and procedures *[shall be reviewed annually, revised, and implemented.]*** ; and**

2. Review and, as needed, revise its policies and procedures at least every three years, and more frequently as needed.*

SUBCHAPTER 5. ADMINISTRATION

8:43H-5.6 Policies and procedures for admission of a pediatric patient of at least 16 years of age to an adult rehabilitation hospital

(a) An adult rehabilitation hospital shall adhere to the following process to admit a pediatric patient who is at least 16 years of age and under *[18]* ***20*** years of age, to the adult rehabilitation hospital:

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

5. An adult rehabilitation hospital may admit a pediatric patient who is at least 16 years of age and under 20 years of age, provided that*[, for patients ages 16 or 17,] the hospital notifies ***the following of the availability of a pediatric rehabilitation hospital that can admit the patient, obtains the consent of the notified person to the patient's admission, and documents the issuance of the notice and the obtaining of consent:**

i. If the patient is a minor,* the patient's parent or legal guardian*[, and for patients ages 18 and 19, the hospital notifies]****; or**

ii. If* the patient *[, of the availability of a pediatric rehabilitation hospital that can admit the patient and the parent or guardian, or patient, as applicable, consents to the patient's admission to the adult facility]* ***is 18 years of age or older, the patient or, if applicable, the patient's health care representative***.

[i. The hospital shall document its issuance of the notice to the parent or guardian, or patient if 18 or 19 years of age, and whether the parent or guardian consents.]

SUBCHAPTER 8. MEDICAL SERVICES

8:43H-8.5 Availability of pediatrician

(a) *[*If the rehabilitation hospital provides care for]* ***A*** pediatric *[patients,] ***rehabilitation hospital shall have available,*** a pediatrician *[shall be available]* to provide treatment to *[the]* ***a*** pediatric patient.

(b) An adult rehabilitation hospital providing care to a pediatric patient shall have available, a pediatrician for consultation and support.*

SUBCHAPTER 17. FUNCTIONAL REQUIREMENT

8:43H-17.2 Functional service areas

(a) (No change from proposal.)

[(b) A rehabilitation hospital shall comply with the requirements for details and finishes set forth at N.J.A.C. 8:43H-17.16 and 17.17.]

8:43H-*[17.6]* ***17.3*** Administration services

(a) (No change from proposal.)

*[(b) A rehabilitation hospital shall provide a lobby, which shall include:

1. Wheelchair storage space(s);

2. A reception and information counter or desk;

3. Waiting space(s);

4. Public toilet facilities;

5. Drinking fountain(s); and

6. Private space with telephone access.]*

[(c)] ***(b)*** *[A]* ***In addition to providing administration services consistent with the FGI Guidelines, a*** rehabilitation hospital shall provide:

1. General or individual office(s) for business transactions, record, and administrative and professional staff; ***and***

*[2. Multipurpose room(s) for conferences, meetings, health education, and library services;

3. Storage for employees' personal effects; and]*

[4.] ***2.*** (No change in text from proposal.)

8:43H-*[17.7]****17.4*** Patient rooms; nursing units

(a)-(b) (No change from proposal.)

(c) In ***an*** existing licensed *[facilities]* ***facility***, at least two single bedrooms with a private toilet room shall be provided in each nursing unit. Each patient area, at a minimum, shall have:

*[1. An area exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules of 140 square feet in single-bed rooms and 125 square feet per bed in rooms with more than one bed;

2. Each bedroom shall have a space for a wheelchair to make a 180-degree turn, which is a clear space of 60 inches in diameter;

3. Each one-bedroom shall have a minimum clear floor space of 36 inches from each side of the bed and 36 inches between the foot of the bed and the wall;

4. Each two-bedroom shall have a minimum clear floor space of 48 inches between the foot of the bed and the wall, 36 inches between the side of the bed and the wall, and 36 inches between beds;

5. Each patient room shall have a window;]*

[6.] ***1.*** A nurses' calling system *[shall be provided, as follows]* ***that conforms to the following****:

i.-iv. (No change from proposal.)

v. A nurse’s call emergency system shall be provided at each inpatient toilet, bath, and shower room; ***and****

*[7. In new construction, handwashing stations shall be provided in each patient room. In renovations and modernizations, the lavatory may be omitted from the bedroom when a lavatory is provided and designed to serve one single-bedded room, or one two-bedded room and an alcohol-based hand sanitizer shall be installed in the room;

8. Each patient shall have access to a toilet room without having to enter the general corridor area. One toilet room shall serve no more than four beds and no more than two patient rooms;

9. Each patient shall have a wardrobe, closet, or locker with minimum clear dimensions of one foot, 10 inches by one foot, eight inches, suitable for hanging full-length garments.

i. An adjustable clothes rod and adjustable shelf shall be provided; and]*

[10.] ***2.*** (No change in text from proposal.)

*[(d) Nursing unit service areas shall be as follows:

1. The following service areas shall be in or readily available to each nursing unit:

i. An administrative nurse station center or nurses' station;

ii. A nurses' workstation;

iii. Storage for administrative supplies;

iv. Handwashing facilities located near the nurses' station and the drug distribution station. One lavatory may serve both areas;

v. Charting facilities for staff;

vi. A lounge and toilet room(s) for staff;

vii. Individual closets or compartments for safekeeping the personal effects of nursing personnel, located convenient to the duty station or in a central location;

viii. A clean workroom or clean holding room;

ix. A soiled workroom or soiled holding room;

x. A drug distribution station shall be provided for the convenient and prompt 24-hour distribution of medicine to patients.

(1) Distribution may be from a medicine preparation room, a self-contained medicine dispensing unit, or through another Department-approved system.

(2) If used, a medicine preparation room shall be under the nursing staff's visual control and contain a work counter, refrigerator, and locked storage for biological products and drugs.

(3) A medicine dispensing unit may be located at a nurses' station, in the clean workroom, or in an alcove or other space under the visual observation of nursing or pharmacy staff;

xi. Clean linen storage with a separate closet or an area within the clean workroom provided for this purpose. If a closed-cart system is used, storage may be in an alcove;

xii. A nourishment station, which shall contain a sink for handwashing, equipment for serving nourishment between scheduled meals, a refrigerator, storage cabinets, and icemaker dispenser units;

xiii. An equipment storage room for equipment such as IV stands, inhalators, air mattresses, and walkers; and

xiv. Parking for stretchers and wheelchairs which shall be located out of the path of normal traffic.

2. Although identifiable spaces are required for each indicated function, consideration will be given to alternative designs that accommodate some functions without designating specific areas or rooms.

3. Each service area may be arranged and located to serve more than one nursing unit, but at least one such service area shall be provided on each nursing floor.

(e) A rehabilitation hospital shall provide bathtubs or showers at a ratio of one bathing facility for every eight beds not otherwise served by bathing facilities within patient rooms. Each tub or shower shall be in an individual room or privacy enclosure that provides space for the private use of bathing fixtures, for drying and dressing, and a wheelchair and an assistant. Showers in central bathing facilities shall be at least four feet square, curb-free, and designed for use by a wheelchair patient.

(f) A rehabilitation hospital shall provide patient toilet facilities, as follows:

1. The minimum dimensions of a room containing only a toilet shall be three feet by six feet of clear space; additional space shall be provided if a lavatory is located within the same room. Toilets shall be usable by wheelchair patients;

2. At least one room, other than a patient room, shall be provided for toilet transfer training. A minimum clearance of three feet shall be provided at the front and on each side of the toilet. This room shall also contain a lavatory;

3. A toilet room that does not require travel through the general corridor shall be accessible to each central bathing area;

4. Doors to toilet rooms shall have a minimum width of two feet, 10 inches to admit a wheelchair. The doors shall permit access from the outside in case of an emergency and swing outward; and

5. A handwashing facility shall be provided for each water closet in each multi-fixture toilet room.]*

8:43H-*[17.8]***17.5*** (No change in text from proposal.)

8:43H-*[17.10]***17.6*** Sterilization of medical equipment

A rehabilitation hospital shall provide a system for sterilizing equipment and supplies, when necessary, for the services it provides**, consistent with applicable sterile processing standards within the FGI Guidelines***.

8:43H-*[17.12]***17.7*** (No change in text from proposal.)

Recodify proposed 8:43H-17.14 and 17.15 as **17.8 and 17.9** (No change in text from proposal.)