

**HEALTH**

**HEALTH SYSTEMS BRANCH**

**DIVISION OF CERTIFICATE OF NEED AND LICENSING**

**Standards for Licensure of Long-Term Care Facilities**

**General Licensure Procedures and Enforcement of Licensure Regulations**

**Proposed Amendments: N.J.A.C. 8:39-1.2 and 43.1; and 8:43E-3.4**

**Proposed New Rule: N.J.A.C. 8:39-25.3**

Authorized By: Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Authority: N.J.S.A. 30:13-1 et seq., especially 30:13-18 and 19.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2023-058.

Submit written comments by August 19, 2023, electronically to [www.nj.gov/health/legal/ecomments.shtml](http://www.nj.gov/health/legal/ecomments.shtml) or by regular mail postmarked by August 19, 2023, to:

Joy L. Lindo, Director  
Office of Legal and Regulatory Compliance  
Office of the Commissioner  
New Jersey Department of Health  
PO Box 360  
Trenton, NJ 08625-0360

The agency proposal follows:

## Summary

P.L. 2020, c. 112 (approved October 23, 2020, and effective February 1, 2021) (the Act), at § 1, codified at N.J.S.A. 30:13-18, establishes minimum staffing requirements for nursing homes. The Act, at § 4, codified at N.J.S.A. 30:13-19, directs the Commissioner of the Department of Health “to adopt rules and regulations to effectuate [its] purposes.”

In compliance with this mandate, the Department of Health (Department) is proposing a new rule and amendments at N.J.A.C. 8:39, Standards for Licensure of Long-Term Care Facilities, and N.J.A.C. 8:43E, General Licensure Procedures and Standards Applicable to All Licensed Facilities, to implement the Act.

The Department proposes to amend existing N.J.A.C. 8:39-1.2, Definitions, to add a definition of the term “direct care staff member.”

Proposed new N.J.A.C. 8:39-25.3, Mandatory direct care staff-to-resident ratios, would implement the minimum staffing requirements of the Act. Proposed new N.J.A.C. 8:39-25.3(a) would establish minimum direct care staffing standards for nursing homes to follow on day, evening, and night shifts, and the minimum number of certified nurse aides (CNAs) on each such shift. Proposed new subsection (a) also would require staff members who are assigned CNA duties to perform CNA duties and would authorize a facility to assign a registered nurse or licensed practical nurse to perform CNA duties on each shift to meet the CNA staffing requirement. Proposed new subsection (b) would provide that a facility shall have nine consecutive shifts after a change in the census that requires one or more additional direct care staff members to be assigned to a shift to attain the required staffing level. Proposed new subsection (c) would provide the

standards for the computation of staffing levels for direct care staff members. Proposed new subsection (d) would establish that a nursing home may always staff above the minimum standards set by this section.

The Department proposes to amend existing N.J.A.C. 8:39-43.1, Nurse aide competency, to provide that a certified homemaker-home health aide who is also enrolled in a qualified certified nurse aide program and is working toward certification as a certified nurse aide would be able to work as a CNA in a licensed nursing home. Amendments are also proposed for usage and style.

The Department proposes to amend existing N.J.A.C. 8:43E-3.4, Civil monetary penalties, by adding new paragraphs (a)22, 23, and 24 that would establish penalties that may be assessed against a nursing home that fails to have the number of staff members working on a shift that N.J.A.C. 8:39-25.3 requires.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The proposed amendments and new rule would have a beneficial impact on residents of nursing homes by establishing minimum direct care staff member staffing requirements, which would result in an increase in direct care staff providing services to those residents.

### **Economic Impact**

The proposed amendments and new rule would have an economic impact on nursing homes that do not already meet the newly established minimum direct care staff

member staffing requirements, by requiring them to retain additional direct care staff. In addition, facilities would incur administrative expenses associated with calculating the minimum staffing requirements. Facilities that fail to comply with the minimum staffing requirements would incur penalties resulting from Department enforcement activity. Other than the amount of the penalty, the Act establishes the standards in the proposed amendments and new rule.

### **Federal Standards Statement**

The Department is not proposing the amendments and new rule pursuant to the authority of, or to implement, comply with, or participate in, a program established pursuant to Federal law or pursuant a State statute that incorporates or refers to Federal law, standards, or requirements. As the proposed amendments and new rule are not subject to any Federal standards or requirements, a Federal standards analysis is not applicable to this rulemaking.

### **Jobs Impact**

The proposed amendments and new rule may result in an increase in jobs for care staff in nursing homes because nursing homes may be required to add additional staff to shifts based on the staffing minimums that the proposed amendments and new rule would establish.

### **Agriculture Industry Impact**

The proposed amendments and new rule would not have an impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Analysis**

Some nursing homes may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Act establishes minimum staffing standards that the proposed new rule and amendments implement. Therefore, the Department is proposing no lesser or differing standards based on business size. Compliance with the proposed new rule and amendments is self-scaling based on business size because the number of residents in a facility determines the minimum number of staff members that a facility must retain to remain in compliance. Although the proposed new rule and amendments impose compliance requirements that may bring about monetary penalties (as discussed in the Summary and Economic Impact statements), it is the Act itself that imposes the proposed standards upon nursing homes.

### **Housing Affordability Impact Analysis**

The proposed amendments and new rule would neither have an impact on the affordability of housing in New Jersey, nor evoke a change in the average costs associated with housing, because the proposed amendments and new rule would establish licensure standards applicable to nursing homes and would have no bearing on housing.

### **Smart Growth Development Impact Analysis**

The proposed amendments and new rule would neither have an impact on the achievement of smart growth, nor evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the proposed amendments and new rule

would a establish licensure standards applicable to nursing homes and would have no bearing on smart growth or housing production.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 39

STANDARDS FOR LICENSURE OF LONG-TERM CARE FACILITIES

SUBCHAPTER 1. GENERAL PROVISIONS

8:39-1.2 Definitions

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

...

**“Direct care staff member” means any registered professional nurse, licensed practical nurse, or certified nurse aide who is acting in accordance with that individual’s authorized scope of practice and pursuant to documented employee time schedules.**

...

**SUBCHAPTER 25. MANDATORY NURSE STAFFING**

**8:39-25.3 Mandatory direct care staff-to-resident ratios**

**(a) In addition to the staffing requirements at N.J.A.C. 8:39-25.2, the following direct care staff-to-resident ratios are mandatory for nursing homes providing services primarily to adult patients pursuant to P.L. 2020, c. 112:**

- 1. One certified nurse aide to every eight residents for the day shift;**
- 2. One direct care staff member to every 10 residents for the evening shift.**

**i. No fewer than half of all staff members shall be certified nurse aides, and each direct care staff member counting as a certified nurse aide shall be signed in to work as a certified nurse aide and shall perform certified nurse aide duties; and**

- 3. One direct care staff member to every 14 residents for the night shift.**

**i. Each direct care staff member shall sign in to work as a certified nurse aide and shall perform certified nurse aide duties.**

**(b) A nursing home is exempt from any increase in direct care staffing ratios upon an increase in the resident census for a period of nine consecutive shifts from the date of the increase in the resident census.**

**(c) The following standards apply to the computation of the direct care staff-to-resident ratios:**

- 1. The computation of minimum direct care staffing ratios shall be carried to the hundredth place (that is, 0.00);**

- 2. If the application of the required direct care staff-to-resident ratios yields a result other than a whole number of direct care staff, including certified nurse**

aides, for a shift, the number of required direct care staff members shall be rounded to the next higher whole number when the resulting ratio, carried to the hundredth place, is fifty-one hundredths (.051) or higher.

i. If the resulting ratio, carried to the hundredth place, is fifty hundredths (.050) or lower, the number of required direct care staff members shall be rounded to the next lower whole number; and

3. All computations shall be based on the midnight census for the day in which the shift begins.

(d) The requirements at (a) above do not restrict the ability of a nursing home to increase staffing levels, at any time, beyond the established minimums set forth in this section.

## SUBCHAPTER 43. CERTIFICATION OF NURSE AIDES IN LONG-TERM CARE FACILITIES

### 8:39-43.1 Nurse aide competency

(a) An individual who meets any of the following criteria shall be considered by the Department to be competent to work as a nurse aide in a licensed long-term care facility in New Jersey:

1. (No change.)

2. Has been employed for [less] **fewer** than 120 days and is currently enrolled in an approved nurse aide in [long term] **long-term** care facilities training course and scheduled to complete the competency evaluation program (skills and written/oral examination) within 120 days of employment; [or]



3. Has been employed for [no more than] 120 days **or fewer**, has completed the required training specified [in] **at** (a)2 above, and has been granted a conditional certificate by the Department while awaiting clearance from the criminal background investigation conducted in accordance with N.J.A.C. 8:43I[.]; **or**

**4. Is a certified homemaker-home health aide who is also:**

**i. Enrolled in a qualified certified nurse aide program; and**

**ii. Working toward certification as a certified nurse aide.**

## CHAPTER 43E

### GENERAL LICENSURE PROCEDURES AND STANDARDS APPLICABLE TO ALL LICENSED FACILITIES

#### SUBCHAPTER 3. ENFORCEMENT REMEDIES

##### 8:43E-3.4 Civil monetary penalties

(a) Pursuant to N.J.S.A. 26:2H-13 and 14, the Commissioner may assess a penalty for violation of licensure rules in accordance with the following standards:

1.–19. (No change.)

20. For other violations of N.J.A.C. 8:43E-12 not resulting in harm as set forth [in] **at** (a)19 above, \$1,000 per violation, which may be assessed for each day noncompliance is found; [and]

21. For violations of N.J.A.C. 8:43E-14, governing human trafficking handling and response training, \$1,000 per violation, which may be assessed for each day noncompliance is found[.];

**22. For a first violation of the staffing requirements at N.J.A.C. 8:39-25.3, a plan of correction;**

**23. Subject to (a)24 below, for a second or subsequent violation of the staffing requirements at N.J.A.C. 8:39-25.3, a directed plan of correction; and**

**24. A directed plan of correction and a monetary penalty of up to \$500.00 per violation for a second or subsequent violation of the staffing requirements at N.J.A.C. 8:39-25.3 that also represents a risk to the health, safety, or welfare of a facility's residents; multiple deficiencies related to patient care; and/or a direct risk to a resident's physical or mental health.**

**i. The total number of separate violations pursuant to this paragraph shall be calculated as follows: one violation for each shift for which non-compliance has been determined, plus one violation for each whole staff member by which such shift does not meet the staffing requirements set forth at N.J.A.C. 8:39-25.3.**

**(b)–(c) (No change.)**