



State of New Jersey
DEPARTMENT OF HEALTH
 PO BOX 358
 TRENTON, N.J. 08625-0358
www.nj.gov/health

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

IN RE: LICENSURE VIOLATION	:	REVISED NOTICE OF
EXCEL CARE at EGG HARBOR	:	ASSESSMENT OF
NJ LICENSE# NJ01001	:	PENALTIES
	:	

TO:

Eliyahu Frankel, Administrator
 Excel Care at Egg Harbor
 6818 Delilah Road
 Egg Harbor Township, New Jersey 08234
 Fax: (908) 276-2424

The Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.) (the Act) provides a statutory scheme designed to ensure that all health care facilities are of the highest quality. Long-term care facilities are licensed in accordance with N.J.S.A. 26:2H-1 and N.J.A.C. 8:39. Pursuant to the Act and 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, the Commissioner of the Department of Health (the "Department") is authorized to enforce N.J.A.C. 8:39. Your facility has not complied with N.J.S.A. 26:2H-12.87, which requires all long-term care facilities to have an Outbreak Response Plan and to submit the plan to the Department for verification. As explained below, the Department is assessing a civil monetary penalty (CMP) of \$250 per day upon Excel Care at Egg Harbor pursuant to N.J.A.C. 8:43E-3.4(a)11 until the facility complies with N.J.S.A. 26:2H-12.87. **This revised notice replaces the prior notice.**

LICENSURE VIOLATIONS AND MONETARY PENALTIES:

N.J.S.A. 26:2H-12.87 requires all long-term care facilities to have an Outbreak Response Plan and to submit the plan to the Department for verification. Your facility has failed to complete and submit the Outbreak Response Plan Survey sent to you by email on October 31, 2022, on November 18, 2022, and

again on December 15, 2022. Survey Link: <http://healthsurveys.nj.gov/NoviSurvey/n/zz3d8.aspx>. A final reminder was sent to you on January 9, 2023, at which time you were advised that if you did not submit the survey and your Outbreak Response Plan by January 20, 2023, the Department would impose a \$250 per-day penalty pursuant to N.J.A.C. 8:43E-3.4(a)11 for your failure to comply. The survey and your Outbreak Response Plan **were not filed by** January 20, 2023.

The Department is now imposing a **\$250 per day** civil monetary penalty pursuant to N.J.A.C. 8:43E-3.4(a)11, beginning on January 20, 2023 until the facility completes the survey and files its Outbreak Response Plan. Compliance with the statute is a condition of State licensure, and the Department reserves the right to impose any other enforcement remedies available by law, including, but not limited to, revocation of the facility's license.

In accordance with N.J.A.C. 8:43E-3.4(a)11, the total penalty assessed upon Excel Care at Egg Harbor from January 20, 2023, through February 17, 2023) (the date of this notice) is \$7,000 (28 days times \$250 = \$7,000). An additional \$250 per day will accrue until the facility submits the survey and its Outbreak Response Plan.

The total amount of this penalty is required to be paid within 30 days of receipt of this letter by certified check or money order made payable to the "Treasurer of the State of New Jersey" and forwarded to Office of Program Compliance, New Jersey Department of Health, P.O. Box 358, Trenton, New Jersey 08625-0358, Attention: Lisa King. **On all future correspondence related to this Notice, please refer to Control X23005.**

INFORMAL DISPUTE RESOLUTION (IDR):

N.J.A.C. 8:43E-2.3 provides facilities the option to challenge factual findings by requesting Informal Dispute Resolution with Department representatives. Facilities wishing to challenge only the assessment of penalties are not entitled to IDR review, but such facilities may request a formal hearing at the Office of Administrative Law as set forth herein below. Please note that the facility's rights to IDR and administrative hearings are not mutually exclusive and both may be invoked simultaneously. IDR requests **must be made in writing within ten (10) business days from receipt of this letter** and must state whether the facility opts for a telephone conference, or review of facility documentation only. The request must include an original and ten (10) copies of the following:

1. The written survey findings;
 2. A list of each specific deficiency the facility is contesting;
 3. A specific explanation of why each contested deficiency should be removed; and
 4. Any relevant supporting documentation.
- Any supporting documentation or other papers submitted later than 10 business days prior to the scheduled IDR may not be considered at the discretion of the IDR panel.

Send the above-referenced information to:

Nadine Jackman
Office of Program Compliance

New Jersey Department of Health
P.O. Box 358
Trenton, New Jersey 08625-0358

The IDR review will be conducted by professional Department staff who do not participate in the survey process. **Requesting IDR does not delay the imposition of any enforcement remedies.**

FORMAL HEARING:

Excel care at Egg Harbor is entitled to a prompt formal hearing at the Office of Administrative Law (OAL) to challenge this assessment of penalties pursuant to N.J.S.A. 26:2H-13. Please note that a facility's rights to IDR and an administrative law hearing are not mutually exclusive and both may be simultaneously invoked by the facility. The facility must advise this Department within 30 days of receipt of this letter if it requests an OAL hearing regarding this matter.

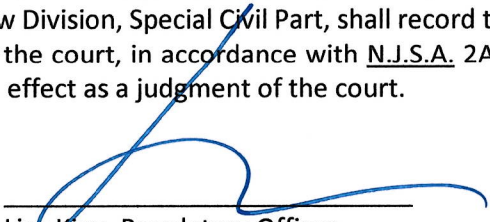
Please forward your OAL hearing request to:

Attention: OAL Hearing Requests
Office of Legal and Regulatory Compliance
New Jersey Department of Health
P.O. Box 360
Trenton, New Jersey 08625-0360

Corporations are not permitted to represent themselves in OAL proceedings. Therefore, if Excel Care at Egg Harbor is owned by a corporation, representation by counsel is required by law.

In the event of an OAL hearing regarding this matter, the facility is further required to submit a written response to every charge as specified in this Notice, which shall accompany its request for a hearing.

In accordance with N.J.A.C. 8:43E-3.5(c)1, failure to submit a written request for a hearing within 30 days from the date of receipt of this notice will render this a final agency decision assessing the amount of the penalty, which shall then become due and owing. Further, at the request of the Department, the Clerk of the Superior Court or the Clerk of the Superior Court, Law Division, Special Civil Part, shall record the final order assessing the penalty on the judgment docket of the court, in accordance with N.J.S.A. 2A-58-10. The final agency decision shall thereafter have the same effect as a judgment of the court.



Lisa King, Regulatory Officer
Office of Program Compliance

DATE: February 17, 2023
REGULAR AND
CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

Control # X23005