

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

Licensing Standards for Home Health Agencies

Readoption with Amendments: N.J.A.C. 8:42

Adopted Repeals: N.J.A.C. 8:42-6.1 and 12.5; 8:42 Appendix and Appendix B

Adopted New Rule: N.J.A.C. 8:42-6.7

Adopted Repeal and New Rule: N.J.A.C. 8:42-12.4

Proposed: August 21, 2023, at 55 N.J.R. 1796(a).

Adopted: November 20, 2023, by Kaitlan Baston, MD, MSc, DFASAM, Acting Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Filed: November 20, 2023, as R.2023 d.146, **with non-substantial changes** not requiring additional notice or public comment (see N.J.A.C. 1:30-6.3).

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

Effective Dates: November 20, 2023, Readoption;

December 18, 2023, Amendments, New Rules, and Repeals.

Expiration Date: November 20, 2030.

Summary of Public Comments and Agency Responses:

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

1. Nancy Fitterer, President and CEO of the Home Care and Hospice Association of NJ, Cranford, NJ;

2. Cathleen D. Bennett, President and CEO of the New Jersey Hospital Association, Princeton, NJ; and

3. Shawn Griffin, M.D., President and CEO of the Utilization Review Accreditation Commission (URAC), Washington, DC.

The numbers in parentheses following each comment below, correspond to the commenter numbers listed above.

1. COMMENT: A commenter states, “If possible, we would like to see section 3.8 amended. We support the need for timely communication and updating [the Department] when there is a change in the Administrator. Agencies are vulnerable when there is no response from [the Department] as to the attempt to communicate the change. We are asking that a phone call OR email be acceptable. This will give the agencies proof that communication was made according to the regulations.” (1)

RESPONSE: The Department acknowledges it would be beneficial to the facility to be able to communicate with the Department through email. Therefore, the Department will change N.J.A.C. 8:42-3.8 upon adoption to permit communication through email with the Department.

2. COMMENT: A commenter states, “In the interest of completeness ... the Department [should] resume work with the broader healthcare field on revising and updating the Universal Transfer Form (UTF) so that it accurately reflects changes in information needed to provide safe and high-quality care in all licensed settings. This work began in 2018 and was put on hold during the COVID-19 pandemic. [The commenter] remains ready to work with the Department to develop a plan for introduction of the revised UTF,

ongoing education and improved enforcement of the requirements related to the UTF.”

(2)

RESPONSE: The UTF is part of N.J.A.C. 8:43E. Therefore, the comment exceeds the scope of the proposed rulemaking. The Department intends to propose substantive changes to that chapter in a future rulemaking and will work with commenter and other stakeholders to update the UTF. Based on the foregoing, the Department will make no change upon adoption in response to the comment.

3. COMMENT: A commenter states, “While proposed new N.J.A.C. 8:42-6.7 contains basic requirements for telehealth that [are] applicable to home health agencies, [the commenter suggests] telehealth accreditation ... as an alternative option to ensuring that patient care provided via telehealth is done in a safe and secure manner that improves quality and access to care. [The commenter] believes that states interested in expanding telehealth services, such as New Jersey, should consider the addition of language specifying that entities satisfying national telehealth accreditation standards are presumed to be in compliance with state standards.” (3)

RESPONSE: The comment exceeds the scope of the rulemaking. Nonetheless, the Department agrees to “consider the addition of language specifying that entities satisfying national telehealth accreditation standards are presumed to be in compliance with state standards.” Based on the foregoing, the Department will make no change upon readoption in response to the comment.

Summary of Agency-Initiated Changes:

The Department is making a non-substantial change upon adoption to delete binary gender language and replace it with non-binary gender language.

Federal Standards Statement

The rules readopted with amendments, repeals, and new rules would continue to impose standards on home health agencies in New Jersey that do not exceed the Federal standards for home health agencies, with limited exceptions that are necessary for patient safety and well-being. The Federal home health agency standards are established by Medicare and are set forth at 42 CFR Part 484. Additionally, 42 CFR 440.70(d) provides that home health agencies must comply with the Medicare home health agency requirements as a condition of participation in the Medicaid program. As such, both programs maintain the same requirements for participation. As the Medicaid requirements for home health agencies are the same as those for the Medicare program, this analysis applies equally to the Medicaid and the Medicare programs.

Additionally, N.J.A.C. 8:42-7.3(d) would continue to require that a home health agency have a registered nurse (RN) available 24 hours a day. Federal law does not require on-call coverage by a registered nurse. However, in order to ensure that a patient's needs are addressed appropriately, the Department believes that agencies must have 24-hour on-call RN coverage.

N.J.A.C. 8:42 would also continue to impose a prohibition on full contracting of nursing services and provides that the subcontracting of nursing services shall only be permitted under certain conditions. Federal law does not limit the subcontracting of nursing services by home health agencies. The Department believes that the subcontracting of

nursing services by home health agencies should only be permitted under limited circumstances in order to ensure continuity of care for patients.

The Department is unable to estimate the cost of providing two therapeutic services, in addition to, nursing services and 24/7 coverage by a registered nurse, or any increase in costs because of the limitation on subcontracting of services. However, the Department believes that patient safety is paramount, and that the costs of these requirements are justified because they serve to ensure patient health and safety through the provision of high-quality care. The Department believes the rulemaking to readopt N.J.A.C. 8:42 with amendments, repeals, and new rules is sufficiently complete and informative as to permit the public to understand accurately and plainly the legal authority, purposes, and expected consequences of the rulemaking.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 8:42.

Full text of the adopted amendments and 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

8:42-1.2 Definitions

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

...

“Signature” means at least the first initial and full surname and title (for example, R.N., L.P.N., D.D.S., M.D.) of a person, legibly written with **[his or her]** ***the person’s*** own hand, generated by computer with authorization safeguards, or communicated by a facsimile communications system (FAX). A controlled electronic signature system may be used.

...

SUBCHAPTER 3. GENERAL REQUIREMENTS

8:42-3.8 Reportable events

(a) The agency shall notify the Department immediately by telephone at (800) 792-9770 ***or by email at CNLapps@doh.nj.gov***, followed within 72 hours by written confirmation*,* of the termination of employment of the administrator and/or the director of nursing, and the name and qualifications of **[his or her]** ***the administrator’s or nursing director’s*** replacement.

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