

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

**Standards for Licensure of Assisted Living Residences, Comprehensive Personal
Care Homes, and Assisted Living Programs**

Definitions

Surveys

Proposed Amendments: N.J.A.C. 8:36-1.3 and 2.4

Authorized By: Kaitlan Baston, MD, MSc, DFASAM, Acting Commissioner, Department
of Health, with the approval of the Health Care Administration Board.

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

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

Proposal Number: PRN 2024-029.

Submit written comments by May 31, 2024, electronically to

www.nj.gov/health/legal/ecomments.shtml or by regular mail postmarked on or before

May 31, 2024, to:

Kimberly E. Jenkins, 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

The Health Care Facilities Planning Act (Act), N.J.S.A. 26:2H-1 et seq., requires the Department of Health (Department) to develop standards and procedures relating to the licensing of health care facilities and the institution of additional health care services to ensure the efficient and effective delivery of health care services. N.J.A.C. 8:36 implements the Act by establishing the standards for licensure of, and the provision of services by, assisted living residences, comprehensive personal care homes, and assisted living programs in New Jersey.

The Advanced Standing Pilot Program (Advanced Standing) has been in place since 2012. Advanced Standing permits a licensed assisted living residence the opportunity to be granted advanced standing status through inspections that are performed by the Health Care Association of New Jersey (HCANJ). Advanced standing status exempts an assisted living residence from required Department-led inspections. The Department seeks to move away from oversight by the HCANJ, which is a trade association that represents the long-term care provider community and seeks, instead, to use a Department-recognized accreditation organization. This would be accomplished through the new deemed status program.

The Department plans to replace Advanced Standing with the deemed status program. Deemed status would allow the Department to review certain documents submitted by an assisted living residence, which are described below, in place of the Department determining the assisted living residence's compliance status by means of the Department performing a licensure inspection using Department staff.

Participation in the deemed status program would be voluntary, and seeking deemed status through accreditation would be an option, not a requirement, for assisted living residences. If an assisted living residence chooses to apply for deemed status, it must submit a request, in writing, to the Department, along with an accrediting body report that was issued within the two years preceding the request. A remediation plan, if one exists, must also be submitted. A request for deemed status would be granted or denied and may be revoked or modified by the Department. If the assisted living residence seeks to continue participating in the deemed status program, it would be required to supply updated documents every two years.

On April 26, 2023, the Department issued a guidance memorandum regarding the replacement of Advanced Standing with the deemed status program; as such, facilities are aware of the planned change. The guidance memorandum further explained that within the next few months, the Department would be conducting outreach and education for assisted living residences regarding this new program.

Subchapter 1 sets forth general provisions for the licensure of assisted living residences, comprehensive personal care homes, and assisted living programs. At existing N.J.A.C. 8:36-1.3, Definitions, the Department proposes to add definitions of “deemed status” and “recognized accrediting organization.”

Subchapter 2 sets forth licensure procedures. N.J.A.C. 8:36-2.4, Surveys, describes the survey process and the circumstances pursuant to which the Department issues licenses. The Department proposes amending N.J.A.C. 8:36-2.4 to add new subsection (d) to identify the process by which an assisted living residence can apply for deemed status. The Department proposes to recodify existing N.J.A.C. 8:36-2.4(d) as

new N.J.A.C. 8:36-2.4(e) and to indicate that the Department may conduct surveys regardless of whether an assisted living residence obtains deemed status, for example, to conduct a complaint investigation.

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 Department anticipates that the proposed amendments would have minimal but beneficial social impact on the residents of assisted living residences. Pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., the Department is responsible for promoting the health and safety of the residents of New Jersey. Licensure regulations provide means by which the Department monitors the quality of health care services provided to the residents of assisted living residences. The proposed amendments provides two additional definitions and the framework of a replacement program that the Department will be offering – the deemed status program.

The Department anticipates that the proposed amendments would have a beneficial social impact because the proposed amendments would continue to ensure the provision of high-quality assisted living residences.

In summary, the Department expects a minimal but positive social impact from the proposed amendments.

Economic Impact

The Department foresees minimal financial consequences as a result of the proposed amendments.

With regard to the regulated industry, the Department expects minimal financial impact to assisted living residences. This is a voluntary program; as such, an assisted living residence may opt not to apply for deemed status. If that is the case, then there will not be any financial impact to the facility. If an assisted living residence determines to apply for deemed status, a request, in writing, must be submitted to the Department, along with an accrediting body report, indicating that the assisted living residence is currently accredited. A remediation plan, if there is one, must also be submitted.

The proposed amendments will not place any economic burden on the residents who are served by assisted living residents. Further, the proposed amendments are expected to have no economic impact on the general public because they do not impose any new costs on the State budget.

Federal Standards Statement

Although the Federal government (the Centers for Medicare and Medicaid Services) does have a deemed status program for other types of facilities, there is no such Federal program for assisted living residences. As such, no Federal standards analysis is required.

Jobs Impact

The Department does not anticipate that the proposed amendments would result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendments would have no impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Analysis

The proposed amendments would impose requirements on New Jersey's licensed assisted living residences. Some of the State's 240 existing assisted living residences could be considered "small businesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as would most new applicants for licensure.

Facilities would have the option to, but would not be required to, apply for deemed status. The proposed amendments do not require a facility to submit a formal application; instead, a written request is all that is necessary to be submitted, along with an accrediting body report and a remediation plan, if one exists.

The cost of these requirements to the facilities would be minimal. As the requirements imposed are necessary to provide safe, efficient, and appropriate care, the costs are not considered inappropriately burdensome. No lesser requirements or exceptions can be provided based upon business size in the interest of public health, quality of care, and safety.

Housing Affordability Impact Analysis

The proposed amendments would not evoke a change in the average costs associated with housing or on the affordability of housing because the proposed amendments establish the licensing standards for assisted living residences, comprehensive personal care homes, and assisted living programs, and would have no bearing on housing costs.

Smart Growth Development Impact Analysis

The proposed amendments would not 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 establish licensing standards for assisted living residences, comprehensive personal care homes, and assisted living programs, and would not affect housing production or development.

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]):

SUBCHAPTER 1. GENERAL PROVISIONS

8:36-1.3 Definitions

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

...

“Deemed status” means an acknowledgment of compliance with certain Department licensure standards that the Department grants to an assisted living residence because the assisted living residence holds accreditation from a Department-recognized accreditation organization, in place of the Department determining the assisted living residence's compliance status by means of the Department performing a licensure inspection using Department staff.

...

“Recognized accrediting organization” means a national organization that accredits assisted living residences, which the Department recognizes for deemed status purposes.

...

SUBCHAPTER 2. LICENSURE PROCEDURES

8:36-2.4 Surveys

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

(d) An assisted living residence can apply at the time of its biennial inspection for issuance or renewal of deemed status by submitting a written request therefor to the Department accompanied by:

1. Documentation of accreditation by a recognized accrediting organization issued within the two years preceding the request; and

2. The accrediting organization’s report, and, if applicable, any remediation plan that the accrediting organization issued.

[(d)] (e) [Survey visits may be made to] Authorized staff of the Department may survey a facility at any time [by authorized staff of the Department], regardless of whether an assisted living residence holds deemed status. Such visits may include, but not be limited to, **complaint investigations**, the review of all facility documents and resident records, and conferences with residents.