

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: Jeffrey A. Brown, 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 2025- .

Submit written comments by , 2025, electronically to

<http://www.nj.gov/health/legal/ecomments.shtml> or by regular mail postmarked on or

before , 2025, to:

Kimberly E. Jenkins, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner

New Jersey Department of Health

PO Box 360

The official versions of any Departmental rulemaking activity (notices of proposal or adoption) are published in the New Jersey Register and/or the New Jersey Administrative Code. Should there be any discrepancies between this document and the official version of the proposal or adoption, the official version will govern.

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, the Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs, implements the Act by establishing the standards for licensure of, and the provision of services by, assisted living residences (ALRs), comprehensive personal care homes (CPCHs), and assisted living programs (ALPs) in New Jersey.

The advanced standing pilot program (advanced standing) was in place from 2012 to 2023, enabling a licensed facility to obtain advanced standing status through inspections performed by the Health Care Association of New Jersey (HCANJ). The HCANJ is a trade association that represents the long-term care provider community. Advanced standing status exempted a CPCH from required Department-led inspections. On April 26, 2023, the Department issued a guidance memorandum informing the regulated community that the Department was replacing the advanced standing program with the deemed status program.

The Department proposes to move away from HCANJ facility oversight by requiring the use of a Department-recognized accrediting organization inspection for a CPCH. This would be accomplished through the deemed status program. A CPCH's

election to participation in the deemed status program would be in place of the Department determining the CPCH's compliance status by means of the Department performing a licensure inspection using Department staff.

The Department recently established rulemaking allowing an ALR to participate in the deemed status program at N.J.A.C. 8:36-1.3 and 2.4. 56 N.J.R. 456(a), 57 N.J.R. 839(a). The Department now proposes to extend eligibility to participate in the deemed status program to CPCHs, consistent with a comment that a member of the regulated community submitted on the proposal to establish deemed status program eligibility for ALRs. 57 N.J.R. 839(a).

The deemed status program would allow the Department to review certain documents submitted by a CPCH, which are described below, in place of the Department determining the CPCHs compliance status by means of the Department performing a licensure inspection using Department staff.

A CPCH's participation in the deemed status program would be an option, not a requirement. If a CPCH elects to apply for deemed status, it must submit to the Department a request, in writing, a report that an accrediting organization issued within the two years preceding the request, and a remediation plan, if one exists. The Department would grant or deny a request for, and may revoke or modify, deemed status. If a CPCH elects to continue participating in the deemed status program, it must supply updated documents every two years.

Subchapter 1 sets forth general provisions for the licensure of an ALR, a CPCH, and an ALP. At existing N.J.A.C. 8:36-1.3, Definitions, the Department proposes to add a CPCH to the types of facility that can apply for deemed status.

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 to amend N.J.A.C. 8:36-2.4(d) to include references to CPCHs. The Department may survey a CPCH, regardless of whether the CPCH 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 a beneficial social impact on the residents of CPCHs. Pursuant to the Act, the Department is responsible for promoting the health and safety of the residents of New Jersey. Licensure rules provide means by which the Department monitors the quality of health care services provided to the residents of CPCHs. The proposed amendments at N.J.A.C. 8:36 would expand eligibility to participate in the deemed status program to a CPCH.

The Department anticipates that the proposed amendments would have a beneficial social impact by ensuring that a CPCH provides high-quality care.

Economic Impact

A CPCH's participation in the deemed status is optional and the proposed amendments would not change the fees that the Department imposes on a CPCH. A CPCH that retains a recognized accrediting organization to participate in the deemed status program would incur administrative expenses associated with submitting an

application for deemed status and fees that the recognized accrediting organization would impose to provide services.

The residents of a CPCH would not realize an economic impact as a result of the proposed amendments. The Department may realize a cost savings from the proposed amendments because Department staff will not be used to perform inspections at CPCHs through the deemed status program, which in turn might be passed on to the taxpaying public.

Federal Standards Statement

Although the Federal Centers for Medicare and Medicaid Services has a deemed status program for other types of long-term care facilities, it has no such Federal program for CPCHs. Therefore, a Federal standards analysis is not 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 Statement

The proposed amendments would impose requirements on New Jersey's licensed CPCHs and an applicant for licensure as a CPCH. The Summary, above, describes those requirements. The Department licenses approximately 30 existing CPCHs, some of which could be considered "small businesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

A facility that elects to apply for, and maintain, deemed status would incur compliance costs. The Economic Impact, above, describes these costs. A CPCH that elects to participate in the deemed status program would need to retain the services of a recognized accrediting organization, the costs of which may vary.

The Department proposes no lesser or differing requirements based upon business size. The Department has determined that the proposed amendments would impose the minimum standards necessary to ensure public health, and safe, efficient, and quality care at a CPCH.

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 would establish licensing standards for CPCHs, 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, pursuant to the State Development and Redevelopment Plan because the proposed amendments would establish licensing standards for CPHCs, 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]):

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:

...

"Comprehensive personal care home" **or "CPCH"** means a facility [which is licensed by] **that** the Department [of Health] **licenses** to provide room and board and [to] assure that assisted living services are available, when needed, to four or more adults unrelated to the proprietor. [Residential] **A residential** unit[s] in [comprehensive personal care homes house] **a CPCH houses** no [more] **greater** than two residents and [have] **has** a lockable door on the unit entrance.

...

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

...

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

...

8:36-2.4 Surveys

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

(d) An assisted living residence **or a CPCH** 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.-2. (No change.)

(e) The Department may authorize staff to conduct a survey at a facility at any time, regardless of whether [an assisted living residence] **the facility** holds deemed status. Visits may include, but not be limited to, complaint investigations, the review of all facility documents and resident records, and conferences with residents.