

STATE OF NEW JERSEY
DIVISION OF CONSUMER AFFAIRS
HEALTH CARE ADMINISTRATION BOARD

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VIRTUAL PUBLIC HEARING
MAY 18, 2023
9:15 a.m.

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BOARD MEMBERS:

MICHAEL BAKER, CHAIR

MARY KAY ROBERTS, VICE CHAIR

JOSEPH ROTH

ELLSWORTH HAVENS

JOY LINDO

MANUEL PAULINO

STAFF:

JACQUELINE CHADWICK

CARLA OAKLEY

1 MR. BAKER: This is Mike Baker. The
2 meeting is being recorded. Carla, could you
3 please call the roll?

4 MS. OAKLEY: Do you want me to do the
5 meeting notice?

6 MR. BAKER: The meeting notice.

7 MS. OAKLEY: Okay. This is a formal
8 meeting of the Healthcare Administration Board.
9 Adequate notice of this meeting has been
10 published in accordance with the provisions of
11 the New Jersey Open Public Meetings Act
12 including but not limited to NJSA 10:04-9.1,
13 10:4-9.3 and 10:4-10. Notice was sent to the
14 Secretary of State who posted the notice in a
15 public place. Notice was also provided
16 electronically on the departments website and
17 forwarded to two New Jersey newspapers. I will
18 now call the roll.

19 Ms. Lindo?

20 MS. LINDO: Here.

21 MS. OAKLEY: Mr. Paulino?

22 MR. PAULINO: Here.

23 MS. OAKLEY: Mr. Havens.

24 MR. HAVENS: Here.

25 MS. OAKLEY: Mr. Roth?

1 MR. ROTH: Here.

2 MS. OAKLEY: Ms. Roberts?

3 MS. ROBERTS: Here.

4 MS. OAKLEY: Mr. Baker?

5 MR. BAKER: Here.

6 MS. OAKLEY: We have six members of the
7 board present which does constitute a quorum.

8 MR. BAKER: Thank you. First item of
9 business is the approval of the minutes of our
10 April 20, 2023 meeting. Does anyone have any
11 corrections or comments on those minutes?
12 Hearing none, can I have a motion to approve
13 the April 20, 2023 minutes?

14 MR. HAVENS: So moved. It's Ellsworth.

15 MR. BAKER: Is there a second?

16 MS. ROBERTS: Mary Kay Roberts, second.

17 MR. BAKER: Thank you. If there are no
18 further comments, Carla, please call the roll.

19 MS. OAKLEY: Ms. Lindo?

20 MS. LINDO: Yes.

21 MS. OAKLEY: Mr. Paulino?

22 MR. PAULINO: Yes.

23 MS. OAKLEY: Mr. Havens?

24 MR. HAVENS: Yes.

25 MS. OAKLEY: Mr. Roth?

1 MR. ROTH: Abstain.

2 MS. OAKLEY: Ms. Roberts?

3 MS. ROBERTS: Yes.

4 MS. OAKLEY: Mr. Baker?

5 MR. BAKER: Yes. Next item is the
6 Commissioners report. Ms. Lindo?

7 MS. LINDO: I think we jumped ahead of
8 Carla approving the minutes but I take it they
9 were approved, correct?

10 MR. BAKER: Sorry Carla.

11 MS. OAKLEY: Yes. That's okay. There
12 were five yes' and one abstain so the motion
13 carries.

14 MS. LINDO: Thank you. Good morning
15 everyone. I wanted to start with a thank you
16 for everybody timely filing their financial
17 disclosure statements by the deadline so
18 everybody has avoided any daily late fines so
19 we're all good. I know how much everybody
20 loves those so I appreciate you doing that.
21 Thank you.

22 As far as updates from the department, we
23 talked about last time being in budget season.
24 Still in the throws of budget season.
25 Commissioner did complete her testimony before

1 the Senate Budget Committee, that happened on
2 May 4th. That as well as the Assembly Budget
3 Committee is available on the legislature
4 website if you would like to access and watch
5 and listen to that.

6 COVID reminder, as usual, everyone six
7 months and older now is eligible for the
8 updated booster so keep that in mind and please
9 be public health advocates for that. Much
10 appreciated.

11 Recent publication by the department
12 occurred on Monday for the New Jersey Register
13 which is available online. The department
14 published certain revocations of waivers that
15 were in place during COVID specific to
16 healthcare facilities. There are various ones
17 listed in there and there are staggered
18 effective dates depending on the topic. Some
19 of the more significant ones were credentialing
20 standards and space waivers and also temporary
21 nurse aide competency requirements. You can
22 access the whole list online, like I said. If
23 any of the board members would like a list for
24 their review I am happy to circulate that
25 following the meeting. But anybody from the

1 public can access that at the New Jersey Office
2 of Administrative Law website. Another
3 reminder to subscribe to DOH Press Releases
4 website. You can always keep up with
5 developments and releases that we have.

6 I will end the update with pipeline
7 reminders, what's coming. I would expect NJAC
8 8:42, Home Health Agencies to be coming before
9 you. 8:43d, Pediatric Transitional Homes and
10 8:43j Pediatric Medical Day Care, 8:43h which
11 is Rehabilitation Hospitals, and there's
12 probably others that will be either amendments
13 or tweaks to our roles or as a result of
14 legislation. So that completes the update for
15 today.

16 MR. BAKER: Thank you, Joy. Any questions
17 for Ms. Lindo? Hearing none, we'll move onto
18 the next item of business, the long-term care
19 facility licensure item.

20 Ms. Chadwick, you are up.

21 MS. CHADWICK: Good morning, Mr. Baker and
22 members of the board. This is Jackie Chadwick.
23 I'm a Program Manager in the Department of
24 Health Division of Certificate of Need and
25 Licensing and I'm here to request your approval

1 of a Notice of Proposal of a new rule at NJAC
2 839 25.3 and amendments at NJAC 839 1.2 and
3 43.1, and at NJAC 843e 3.4. And as you
4 probably are aware, 839 pertains to the
5 standards of licensure of long-term care
6 facilities, and 843e pertains to general
7 licensure procedures and enforcement of
8 licensure regulations. This proposal has come
9 about because of an act entitled "Minimum
10 Staffing Requirements for Nursing Homes" that
11 went into effect on February 1st, 2021, and the
12 act itself can be found at New Jersey Statutes
13 annotated 30 Title 30:13-18. And as you are
14 aware, because the act is already in effect
15 nursing homes are already subject to compliance
16 with the act. These proposed rules would
17 closely track the acts requirements and would
18 impose no new requirements other than the
19 proposed amendment at 843e 3.4, which pertains
20 to the civil monetary penalties. There are a
21 few specific amendments that I'd like to
22 review. The proposed amendment at NJAC 839
23 1.2, that's the definition section, and that
24 would add a definition for direct care staff
25 member. This definition is taken directly from

1 the statute. We also have a proposed new NJAC
2 839 25.3 entitled "Mandatory Direct Care Staff
3 to Resident Ratios". That would address the
4 new statutory staffing standards. And then
5 specifically that particular section, 25.3
6 Subsection A, would establish minimum direct
7 care staffing standards for nursing homes to
8 follow on their day, evening and night shifts.
9 These standards also were taken directly from
10 the statute. Subsection A would also establish
11 the minimum number of certified nurse aides on
12 each shift. Again, this information was taken
13 directly from the statute.

14 Subsection B would provide that a facility
15 would have nine consecutive shifts after a
16 change in the census that requires additional
17 direct care staff members to be assigned to a
18 shift. So we're allowing the nursing home nine
19 consecutive shifts after a change in the census
20 in order to attain the required staffing level,
21 this new staffing level. This standard was
22 also taken directly from the statute.

23 Subsection C would provide the standards
24 for the computation of staffing levels for
25 direct care staff members, and this was taken

1 directly from the statute.

2 Subsection D would establish that a
3 nursing home may always staff above the minimum
4 standards set by this rule.

5 The department also proposes to amend
6 existing NJAC 839 43.1 which is entitled "Nurse
7 Aid Competency", and that's to recognize a
8 certified home -- I'm sorry, certified
9 homemaker home health aide who is enrolled in a
10 qualified certified nurse aid program and
11 working towards certification to recognize that
12 individual as a certified nurse aid and
13 competent to serve in a nursing home.

14 The last proposed amendment can be found
15 at NJAC 843e 3.4, and that would establish
16 penalties for violations of this act, and the
17 proposed new 25.3.

18 Does anyone from the board have any
19 questions?

20 MR. BAKER: Hearing none, is there anyone
21 from the public who would like to be heard on
22 this matter? Please identify yourself and
23 limit your comments to three minutes.

24 MS. EDELSTEIN: Good morning. This is
25 Theresa Edelstein from the New Jersey Hospital

1 Association. I'm also the Regulatory
2 Consultant to Leading Age New Jersey and
3 Delaware and this morning I'm also representing
4 Andy Aaronson of the Healthcare Association of
5 New Jersey. We have all spoken about these
6 proposals so I'm offering comments representing
7 all three organizations this morning.

8 Let me just start by saying our nursing
9 home members recognize the statutory
10 requirements and have been working diligently
11 to comply with them since February 2021. We
12 are, of course, in the midst of a staffing
13 crisis throughout healthcare not limited to
14 long-term care by any means, and this has made
15 compliance with the statute extremely difficult
16 for nursing homes and that is evidenced by the
17 fact that many nursing homes have been cited
18 with state level deficiencies in this area over
19 the last few years in spite of their ongoing
20 efforts to recruit and retain personnel in
21 these very important roles in these facilities.
22 These are the direct line staff who work every
23 day with our residents and who are critical to
24 quality of care.

25 So my first comments have to do with 839

43.1a and the new number 4 related to certified homemaker home health aides. A couple of questions here. This language is lifted right out of the statute, however, the term "working towards certification as a certified nurse aide" is not defined in the regulations. So it is unclear what this means. For example, how long can the homemaker home health aide be working towards certification before they have to actually pass their test? Is it the same as for another nurse aide candidate who has two years from the day they finish the training course or is it some other period of time? And also, how long can the certified homemaker home health aide work as a nurse aide? As you can see in the prior provisions, other nurse aide candidates can only work for up to 120 days from the date of hire in that nurse aide role. So we believe that there should be clarifying language and more definition around this new provision. My comments -- oh, one further comment in this area. It is our understanding based on other Department of Health communications that a nurse aide cannot begin working in a facility unless they've completed

1 the first 16 hours of that nurse aide training
2 program. That is not in the regulation, but it
3 has been communicated in other ways. So if
4 that is indeed a requirement, we believe that
5 that first 16 hours of completion of the course
6 needs to be codified in regulation.

7 My additional comments have to do with the
8 enforcement regulations that are proposed at
9 843e 3.4, A 22 through 24. While this section
10 provides the department with discretion to
11 assess penalties by using the word "may" at the
12 beginning of the section, we are concerned
13 about the language that is at new number 23 and
14 24. Our concerns are by having in 24 that the
15 monetary penalty can be up to \$500.00 per
16 violation for a second or subsequent violation
17 of the requirement, we are injecting a level of
18 subjectivity here that has, you know, who will
19 determine the amount and what will it be based
20 upon; what are the criteria for deciding what
21 the per violation monetary penalty will be. In
22 24 specifically little i2, i3, i4, we are
23 concerned about i needing a definition. It
24 states now that "the violation must represent a
25 risk to the health, safety or welfare of a

1 facility's resident", but it doesn't say what
2 that risk is. What are the criteria to
3 determine it? This leaves it up to the
4 discretion and judgment of the surveyor, and we
5 don't think that that is a good idea for the
6 surveyor or for the facility. And then in IV,
7 24 Roman Numeral IV, the way that violations
8 are being counted we believe is extremely
9 punitive on facilities who are really doing
10 their best to meet this requirement. Everyone
11 is trying to hire staff. But to count
12 violations more than once, once for the shift
13 and once for every whole staff member by which
14 the shift doesn't meet the requirement just
15 keeps penalties on a facility when they should
16 be using those resources for their recruitment,
17 retention and resident care responsibilities.
18 We don't think double or multiple counting of
19 violations is a fair approach to enforcement
20 and we ask for the department's review and
21 reconsideration of this approach.

22 Thank you very much for your time this
23 morning and for the opportunity to comment.

24 MR. BAKER: Thank you very much. Are
25 there any board members who have any questions?

1 This is Joy Lindo. Just a point of
2 clarification. Thank you, Ms. Edelstein, for
3 those detailed comments. Appreciate that.
4 What I would like to remind our board members
5 and then also clarify with you, we are, of
6 course, at a Notice of Proposal stage so upon
7 publication we will enter a 60-day public
8 comment period. So while the department I am
9 guessing likely does not have answers for all
10 of the questions or concerns, certainly we'll
11 consider that and appreciate the heads up. My
12 point of clarification for you is I anticipate
13 that these concerns and issues will likely be
14 reflected in the public comment period as far
15 as written comments being submitted and
16 therefore the department can consider those
17 along the lines of adoption, what gaps, you
18 know, may or may not be filled, clarified,
19 perhaps what could be done in guidance, et
20 cetera. So, am I correct that we can
21 anticipate receiving comments reflective of
22 your comments today?

23 MS. EDELSTEIN: Yes, that is correct.

24 MS. LINDO: Thank you.

25 MR. BAKER: Thank you both. I know the

1 department always takes the public comment
2 especially from state coworkers seriously and
3 I'm sure they will consider these and other
4 comments that come in during the open comment
5 period.

6 If there are no further questions I will
7 entertain a motion to approve for publication.
8 Anyone?

9 MR. ROTH: This is Joe Roth. I move the
10 approval for publication of standards for
11 licensure of long-term care facilities, general
12 licensure procedures and enforcement of
13 licensure regulations, proposed rule NJAC
14 8:39-25.3, proposed amendments NJAC 8:39-1.2,
15 and 43.1, and 843e-3.4.

16 MR. BAKER: Thank you, Joe. Is there a
17 second?

18 MR. HAVENS: I'll second.

19 MR. BAKER: Second from Ellsworth. Thank
20 you. If there are no other comments or
21 questions, Carla, can you please call the roll?

22 MS. OAKLEY: Sure. Ms. Lindo?

23 MS. LINDO: Yes.

24 MS. OAKLEY: Mr. Paulino?

25 MR. PAULINO: Yes.

1 MS. OAKLEY: Mr. Havens.

2 MR. HAVENS: Yes.

3 MS. OAKLEY: Mr. Roth?

4 MR. ROTH: Yes.

5 MS. OAKLEY: Ms. Roberts?

6 MS. ROBERTS: Yes.

7 MS. OAKLEY: Mr. Baker?

8 MR. BAKER: Yes.

9 MS. OAKLEY: We have six yes'. Motion
10 carries.

11 MR. BAKER: Thank you. Is there any other
12 business any of the commissioners would like to
13 bring before the board? Hearing none, I will
14 make the motion to adjourn. If there is a
15 second.

16 MR. HAVENS: Second.

17 MR. BAKER: All in favor?

18 ALL: Aye.

19 MR. BAKER: We are adjourned. See you
20 next month everyone. Be safe.

21

22 (Whereupon the proceeding was concluded at
23 9:42 a.m.)

24

25

C E R T I F I C A T E

I, Danielle Golba, a Certified Court
Reporter and Notary Public of the State of New
Jersey, certify that the foregoing is a true and
accurate transcript of the proceedings to the best
of my ability.

DANIELLE GOLBA, C.C.R.
License #30X100195400
EXP. 6-30-24

	14:17	17,19	change (2)	consecutive (2)
\$	always (3)	based (2)	8:16,19	8:15,19
\$500.00 (1)	6:4;9:3;15:1	11:23;12:19	circulate (1)	consider (3)
12:15	amend (1)	begin (1)	5:24	14:11,16;15:3
A	9:5	11:24	cited (1)	constitute (1)
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adjourned (1)	around (1)	candidates (1)	communicated (1)	daily (1)
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