



State of New Jersey

DEPARTMENT OF HEALTH AND SENIOR SERVICES

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TO: Health Care Administration Board Members

THROUGH: Mary E. O'Dowd, Deputy Commissioner
William Conroy, Assistant Commissioner

FROM: John A. Calabria, Director
Certificate of Need and Healthcare Facility Licensure

SUBJECT: Notice of Proposal of the Readoption with Amendments to Rules
Governing Hospital Services, Codified at N.J.A.C. 8:43G

At the next meeting of the Health Care Administration Board (HCAB), the Department will present the notice of proposal for readoption with amendments to licensing standards governing hospital services, as set forth at N.J.A.C. 8:43G. Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 8:43G, Hospital Licensing Standards, was scheduled to expire on July 22, 2010. The Department of Health and Senior Services (the Department) has reviewed N.J.A.C. 8:43G and, with the exception of amendments described below, has determined the existing rules to be necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which they were originally promulgated.

The Department has determined that N.J.A.C. 8:43G and the amendments described below: are needed to implement the underlying statute; do not impede responsible economic growth; provide sufficient and non-contradictory guidance to applicants for licenses that do not, for the most part, lead to licensure delays or denials; and, do not exceed legislative intent or Federal standards without well-documented cause, thereby placing the state at a competitive advantage in attracting investment and jobs. The Department is proposing the readoption with amendments of the hospital licensing standards to update and revise licensure standards for all licensed general, psychiatric, and special hospitals. In accordance with N.J.S.A. 52:14B-5.1c, the filing of this notice of proposal for readoption with amendments with the Office of Administrative Law prior to July 22, 2010, operated to extend the expiration date of N.J.A.C. 8:43G to January 18, 2011.

The Department proposes amendments throughout the chapter to delete references to Department contact information for various activities such as obtaining forms and instructions and submitting required documents, and to add in their stead reference to the proposed new term, "Licensing Office," which contains the appropriate address.

The Department proposes amendments throughout existing N.J.A.C. 8:43G-2 to enable the Facility Survey Program (Program) in the Division of Health Facilities Evaluation and Licensing (Division) to make the most efficient use of the Program's limited personnel resources. Instead of focusing on biennial inspections, the Program would concentrate its efforts on complaint investigations at licensed healthcare facilities, focused hospital surveys following a complaint investigation, and monitoring surveys in licensed healthcare facilities that declare financial difficulties or have strike activity. In lieu of the routine biennial inspection, the Department proposes to require an attestation from a hospital's chief executive officer stating that the facility is in compliance, and evidence of accreditation from an accrediting body recognized by the Centers for Medicare and Medicaid Services (CMS). Submission of these items would be required with a hospital's application to renew its license. The rules would refer to these items collectively as a "regulatory compliance statement." All hospitals licensed in the State already hold accreditation from a CMS-approved accrediting body. CMS-approved accrediting bodies typically conduct an on-site survey every three years.

The Department proposes to amend existing N.J.A.C. 8:43G-2.2(g) to establish the purpose of the biennial facility inspection fee and that the fee would be assessed every other year at licensure renewal instead of being assessed in the year a facility is inspected. The Department proposes to reorganize the subsection to recodify part of the existing text into new (g)1 through 3. The Department proposes an amendment at new N.J.A.C. 8:43G-2.2(g)1 to establish that the biennial inspection fee is in addition to the annual licensure fee for that year.

The Department proposes to amend N.J.A.C. 8:43G-2.4(e) to establish that regardless of a facility having deemed status, authorized staff of the Department may make survey visits to a hospital at any time and conduct complaint investigations as part of these visits.

The Department proposes to amend N.J.A.C. 8:43G-2.5 to add new (f) to require facilities to submit regulatory compliance statements as part of the licensure renewal process.

The Department proposes to amend N.J.A.C. 8:43G-4.1(a)23, which addresses visitation privileges, to add new (a)23i through ii. These new subparagraphs would articulate specifically the obligations of hospitals to afford civil union partners and domestic partners the same visitation rights and privileges that they afford to spouses, as required by "An Act concerning marriage and civil unions, establishing a commission and revising and supplementing various parts of the statutory law," P.L. 2006, c. 103

(approved December 21, 2006), and as required by the Domestic Partnership Act, P.L. 2003, c. 246 (approved January 12, 2004), codified at N.J.S.A. 26:8A-1 et seq.

The Department proposes to add new N.J.A.C. 8:43G-5.2(1) to articulate the hospital's responsibility to ensure that there is no smoking in the facility by employees, visitors or patients.

In November 2009, the Department received a petition for rulemaking filed on behalf of the New Jersey Association of Nurse Anesthetists, Inc., of Mount Laurel, New Jersey. 43 N.J.R. 529 (January 19, 2010). In that petition, the petitioner stated that the New Jersey Board of Nursing (Board) established rules in June 2008 recognizing certified nurse anesthetists as advanced practice nurses specializing in anesthesia, citing to 39 N.J.R. 1991(b) (May 21, 2007), 40 N.J.R. 3729(a) (June 16, 2008) and N.J.A.C. 13:37-7, particularly N.J.A.C. 13:37-7.5. *Id.* The petitioner requested that the Department engage in rulemaking to change the rules governing the licensure of ambulatory care facilities and hospitals, N.J.A.C. 8:43A and 8:43G, respectively, to reflect the Board's recognition of certified nurse anesthetists as advanced practice nurses specializing in anesthesia. *Id.* The petitioner further stated that New Jersey law addressing the scope of practice of advanced practice nurses, particularly N.J.S.A. 45:11-49, does not establish that advanced practice nurses are to be subject to physician supervision. *Id.* The petitioner requested that the Department engage in rulemaking to change the rules governing the licensure of ambulatory care facilities and hospitals to allow advanced practice nurses specializing in anesthesia to provide anesthesia services without anesthesiologist supervision. *Id.*

In accordance with N.J.A.C. 1:30-4.2(a)3, the Department referred the petition to ambulatory care facility and hospital licensing staff of the Division of Senior Services and Health Systems of the Department for review. The Department consulted with representatives of the New Jersey Board of Nursing and the State Board of Medical Examiners of the Division of Consumer Affairs of the New Jersey Department of Law and Public Safety, which respectively have jurisdiction over nurses and physicians, particularly anesthesiologists. The Department also met with members of the regulated community, particularly representatives of the petitioner, and of the New Jersey State Society of Anesthesiologists.

Based on this review and these consultations, the Department has determined to propose rulemaking to amend N.J.A.C. 8:43G, governing hospital licensure, to respond to the petitioner's request. A Notice of Action on Petition for Rulemaking with respect to that aspect of the petition that requests amendment of N.J.A.C. 8:43G appears elsewhere in this issue of the New Jersey Register. The Department continues to consider this issue with respect to ambulatory care facilities, for which N.J.A.C. 8:43A establishes licensure rules, and will respond to this aspect of the petition in a separate action on the petition.

The Department proposes to amend existing N.J.A.C. 8:43-6.2 at subsection (a) to require facilities to review their anesthesia services policies and procedures at least

annually, rather than every three years, with a view toward ensuring the safety of patients during the administration and conduct of, and emergence from, anesthesia. The Department proposes to add new N.J.A.C. 8:43-6.2(b) to establish that anesthesia departments are to be administered under the overall supervision of a physician and operated in accordance with applicable laws governing the respective scopes of practice of anesthesia professionals providing services within that department.

The Department proposes to delete existing N.J.A.C. 8:43G-6.3(e)3 to delete the requirement that a certified registered nurse anesthetist administer and monitor general or major regional anesthesia only under the supervision of a privileged physician who has privileges in accordance with medical staff bylaws to administer or supervise the administration of anesthesia.

The Department proposes to add new N.J.A.C. 8:43G-6.3(e)3 to include APNs/anesthesia within the list of professionals authorized to administer general, major regional anesthesia, conscious sedation or minor regional blocks provided that this is done in accordance with a joint protocol established in accordance with N.J.A.C. 13:37-6.3 Standards for joint protocols between advanced practice nurses and collaborating physicians. This protocol would need to include sections governing the availability of a physician to consult with the APN/anesthesia on site, on-call or by electronic means.

. The Department proposes to amend existing N.J.A.C. 8:43G-7A.2 to add a definition of the term "hospitalist." The Department also proposes to amend existing N.J.A.C. 8:43G-7A.4(b) to add hospitalists to the list of professionals who are authorized to serve on an acute care stroke team, and to add critical care, family medicine, general internal medicine, general surgery, and anesthesiology to the list of specializations in which a team member must hold board certification or board eligibility to be eligible to serve on the team.

The Department proposes to amend existing N.J.A.C. 8:43G-12.2 to require hospitals to maintain their trauma registries in accordance with N.J.A.C. 8:43G-12.21(b), in addition to (a) and (c), all of which establish standards for trauma registries.

The Department proposes to amend existing N.J.A.C. 8:43G-15.3 Medical records patient services at (d)5i to add domestic partners and civil union partners to the list of persons included within the definition of "legally authorized representatives" of patients for purposes of records access, for consistency with the Domestic Partnership Act, P.L. 2003, c. 246 (approved January 12, 2004), codified at N.J.S.A. 26:8A-1 et seq., and "An Act concerning marriage and civil unions, establishing a commission and revising and supplementing various parts of the statutory law," P.L. 2006, c. 103 (approved December 21, 2006).

N.J.A.C. 8:43G-15.4 Medical records staff qualifications would continue to establish standards for medical records staff qualifications. Existing N.J.A.C. 8:43G-15.4 requires directors of medical records to hold credentials, issued by the American Medical Record Association, as either accredited record technicians or registered

record administrators. The American Medical Record Association changed its name in 1991 to the American Health Information Management Association, and changed the titles of the professional credentials it conveys to members of the profession from “accredited record technician” to “accredited health information technician” and from “registered record administrator” to “registered health information administrator.” See the Association’s website, <http://www.ahima.org>, particularly at <http://www.ahima.org/about/history.aspx>. The Department proposes to amend existing N.J.A.C. 8:43G-15.4 to reflect these changes in nomenclature, and to provide contact information for the Association.

The Department proposes to amend N.J.A.C. 8:43G-16.6(b) to expand from seven days to 30 days the period within which preadmission medical histories and physical examinations are to be performed for hospital and outpatient surgery admissions, and to expand from 24 to 48 hours the period within which these are to be performed after admission.

The Department proposes to amend existing N.J.A.C. 8:43G-16.6(b) further by recodifying part of the subsection as new paragraph (b)1. The Department proposes to amend new (b)1 to establish that, if a preadmission medical history and physical examination is performed earlier than seven days before admission within the 30-day period that (b) establishes, the facility is required to supplement the patient’s medical record with records memorializing the performance of the following additional evaluation procedures.

Proposed new N.J.A.C. 8:43G-16.6(b)1i would require the attending physician, advanced practice nurse or physician assistant to perform a written assessment of the patient that includes a physical examination no earlier than seven days prior to admission and no later than 48 hours after admission. Proposed new N.J.A.C. 8:43G-16.6(b)1i would articulate that purpose of this assessment would be to observe changes that have occurred with respect to the patient’s medical status since the preadmission medical history and physical examination, to identify areas with respect to which the facility needs additional data, and to confirm that the patient continues to need the procedure or care for which the facility admitted the patient.

Proposed new N.J.A.C. 8:43G-16.6(b)1ii would require the patient’s attending physician, advanced practice nurse or physician assistant to write an update note no earlier than seven days prior to admission and no later than 48 hours after admission addressing the patient’s current status and any changes thereto, regardless of whether changes were noted during an assessment performed pursuant to (b)1ii, and would require this update note to be written on or attached to the medical history and physical examination performed pursuant to (b).

Proposed new N.J.A.C. 8:43G-16.6(b)2 would require the medical history and physical examination, and any assessment or update performed pursuant to (b)1, to be included in the patient’s medical record within 48 hours of admission, except in an emergency, or, for an outpatient, prior to surgery.

The procedure established in N.J.A.C. 8:43G-16.6(b), as proposed for amendment, would authorize advanced practice nurses and physician assistants to perform assessments in the hospital setting, in addition to physicians, who are the only professionals authorized to conduct these assessments under the existing rule. The proposed amendment would make the rule consistent with the Advanced Practice Nurse Certification Act, N.J.S.A. 45:11-45 and the Physician Assistant Licensing Act, N.J.S.A. 9-27.10, et seq., which expanded the respective licensed scopes of practice of these healthcare professionals to include these assessments.

The Department proposes to amend existing N.J.A.C. 8:43G-20.2(d), which addresses tuberculosis screening, to reflect the most recent editions of and citations to publications governing facilities' development of tuberculosis infection control exposure plans. The Department proposes to amend existing N.J.A.C. 8:43G-20.2(d)1 to improve sentence structure and user-friendliness, to address the necessity of and procedures for repeat and follow-up screenings, and to add the interferon gamma release assay to the Mantoux tuberculin skin test as the approved methods by which to screen for tuberculosis

The Department proposes to amend existing N.J.A.C. 8:43G-24.8(a) to reflect the correct title and most recent edition of a hospital architecture publication to which hospitals must adhere, as amended and supplemented, and to provide contact information for the publisher and retailer of the publication. The Department also proposes to amend the section by deleting reference to portions of the BOCA Basic Building Code of the New Jersey Uniform Construction Code, N.J.A.C. 5:23 that could conflict with the hospital architecture publication, as these potential conflicts are resolved in the revised version of the hospital architecture publication.

The Department proposes to amend existing N.J.A.C. 8:24.13(a) to reflect the correct title and most recent edition of an applicable publication establishing fire code standards, and to provide contact information for the publisher. The Department proposes to amend existing N.J.A.C. 8:24.13(k) to change the telephone numbers of the Department to which facilities are to report fires that require patient relocation.

I will be at the meeting to respond to any questions that you may have.

Attachments