

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE

Readoption with Technical Changes: N.J.A.C. 8:33H

Notice of Readoption

Certificate of Need: Policy Manual for Long-Term Care Services

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

Authorized By: Cathleen D. Bennett, Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Effective Date: .

New Expiration Date: .

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the Commissioner of the Department of Health (Department) hereby readopts with technical amendments N.J.A.C. 8:33H, Certificate of Need: Policy Manual for Long-Term Care Services, which was scheduled to expire on May 20, 2017.

N.J.A.C. 8:33H, Certificate of Need: Policy Manual for Long-Term Care Services governs the certificate of need process for long-term care facilities, including nursing homes, pediatric and specialized long-term care services, continuing care retirement communities, Statewide restricted admission facilities, assisted living residences and programs and comprehensive personal care homes. This readoption with technical amendments would continue to impose requirements on applicants for and holders of certificates of need for these kinds of long-term care facilities.

The official version 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.

In addition to readopting the existing rules, the Department is proposing technical amendments throughout N.J.A.C. 8:33H. These would include updating the Department's name by deleting "and Senior Services," addressing the recodification of former N.J.A.C. 10:63 to new N.J.A.C. 8:85, and updating the name of the program addressing Medicaid waivers from "Enhanced Community Options" to the "Comprehensive Medicaid" waiver program. In addition, the Department proposes to change the name of the Department's licensing program for long-term care facilities from "Long-Term Care Licensing" to the "Office of Certificate of Need and Licensing" and to update the change in the name of the "Division of Mental Health" in the Department of Human Services to the "Division of Mental Health and Addiction Services." In addition, the Department proposes to delete a reference to N.J.A.C. 8:33M at N.J.A.C. 8:33H-1.1(e) because that chapter has expired.

The Department has reviewed N.J.A.C. 8:33H and has determined that, subject to the technical amendments, the existing chapter remains necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which the Department originally promulgated it, as amended and supplemented over time, and should be readopted. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), N.J.A.C. 8:33H is readopted and shall continue in effect for seven years.

Full text of the technical changes follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

8:33H-1.1 Purpose; scope

(a) – (d) (No change.)

(e) Some patients in nursing homes may, on occasion, require rehabilitative care. The rehabilitative services offered to patients in most nursing homes are distinguished from comprehensive rehabilitation, which may only be offered by a licensed rehabilitation hospital. Applicants interested in offering comprehensive rehabilitation should refer to N.J.A.C. [8:33M and]8:33-4.1(a). However, applications for this service will only be accepted in response to a call issued by the Department and published in the New Jersey Register.

(f) – (g) (No change.)

8:33H-1.2 Definitions

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

...

"Assisted living program provider" means an organization licensed by the New Jersey Department of Health [and Senior Services], in accordance with N.J.A.C. 8:36, to provide all services required of an assisted living program.

...

"Commissioner" means the State Commissioner of Health[and Senior Services].

...

"Deficiency" means a finding or findings by the Department that a facility is not in compliance with applicable State licensure requirements and/or Federal requirements for a health care facility. A deficiency remains valid unless overruled by the Commissioner of Health [and Senior Services]or a judicial appeal process.

"Department" means the New Jersey State Department of Health[and Senior Services].

...

"Hospice" means a program which is licensed by the New Jersey State Department of Health[and Senior Services] to provide palliative services to terminally ill persons in the person's home or place of residence, including medical, nursing, social work, volunteer and counseling services.

...

8:33H-1.7 Assisted living residences and assisted living programs

(a) – (e) (No change.)

(f) Existing assisted living residences that add additional assisted living beds shall be required, as a condition of licensure approval, to maintain 10 percent of the additional licensed beds for Medicaid-eligible persons through Medicaid conversion of persons who enter the assisted living residence as private paying persons and subsequently become eligible for Medicaid, or through direct admission of Medicaid-eligible persons.

1. – 2. (No change.)

3. For the purposes of this subsection, "Medicaid-eligible person" means an individual who has been determined as satisfying the financial eligibility criteria for medical assistance under the Medicaid program, has been assessed as being in need of nursing facility level of care as specified at N.J.A.C. [10:63-2.1] **8:85-2.1**, and has been approved by the Department for participation in the [Federally approved Enhanced Community Options] **Comprehensive Medicaid** waiver program for assisted living services. "Medicaid-eligible person" includes:

The official version 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.

i. – ii. (No change.)

4. The Commissioner or his or her designee may waive or reduce this 10 percent Medicaid occupancy requirement for some or all regions of the State if it is determined that sufficient numbers of licensed beds are available in the State to meet the needs of Medicaid-eligible persons within the limits of the [Federally approved Enhanced Community Options] **Comprehensive Medicaid** waiver as it pertains to assisted living services.

i. The Commissioner or his or her designee shall waive this 10 percent Medicaid occupancy requirement if limitations on funding result in the Department establishing a waiting list for Medicaid-eligible persons requesting assisted living services through the [Enhanced Community Options] **Comprehensive Medicaid** waiver.

ii. (No change.)

5. (No change.)

8:33H-1.10 Comprehensive personal care homes

(a) – (e) (No change.)

(f) In converting to a comprehensive care home from a residential health care facility or Class C boarding home, the facility shall maintain its existing residents who are Supplemental Security Income-eligible recipients and former psychiatric patients. On an ongoing, annual basis, at least five percent of the facility's residents shall be Supplemental Security Income-eligible recipients, at least half of whom shall be former psychiatric patients. This percentage shall be computed based on the number of resident days per calendar year. The facility shall report this information to the Department's [Long-Term

Care Licensing] **Office of Certificate of Need and Licensing** Program by April 15 of each year for the prior calendar year.

1. In the event that the facility's Supplemental Security Income-eligible residents develop the need for nursing home level care, as defined at N.J.A.C. 8:33H-1.2 and determined by Medicaid's pre-admission screening process at N.J.A.C. [10:63] **8:85**, the facility shall maintain these residents in accordance with the licensing standards at N.J.A.C. 8:36, subject to the facility's discharge criteria in accordance with N.J.A.C. 8:36-4.1(d), provided that Medicaid reimbursement is available. However, if Medicaid reimbursement is not available, the facility shall make all necessary arrangements to transfer the person to a nursing home.

2. (No change.)

(g) (No change.)

(h) Existing comprehensive personal care homes that add additional assisted living beds shall maintain, as a condition of licensure approval, where such approval was given on or after August 31, 2001, 10 percent of the additional beds for Medicaid-eligible persons through Medicaid conversion of persons who enter the comprehensive personal care home as private paying persons and subsequently become eligible for Medicaid, or through direct admission of Medicaid-eligible persons.

1. – 2. (No change.)

3. For the purposes of this subsection, "Medicaid-eligible person" means an individual who has been determined as satisfying the financial eligibility criteria for medical assistance under the Medicaid program, has been assessed as being in need of nursing facility level of care as specified at N.J.A.C. [10:63-2.1] **8:85-2.1**,

and has been approved by the Department for participation in the [Federally approved Enhanced Community Options] **Comprehensive Medicaid** waiver program for assisted living services. "Medicaid-eligible person" includes:

i. - ii. (No change.)

4. The Commissioner or his or her designee may waive or reduce this 10 percent Medicaid occupancy requirement for some or all regions of the State if it is determined that sufficient numbers of licensed beds are available in the State to meet the needs of Medicaid-eligible persons within the limits of the [Federally approved Enhanced Community Options] **Comprehensive Medicaid** waiver as it pertains to assisted living services.

i. The Commissioner or his or her designee shall waive this 10 percent Medicaid occupancy requirement if limitations on funding result in the Department establishing a waiting list for Medicaid-eligible persons requesting assisted living services through the [Enhanced Community Options] **Comprehensive Medicaid** waiver.

ii. (No change.)

5. (No change.)

8:33H-1.15 Utilization requirements for Medicaid-eligible residents and former psychiatric patients

(a) Applicants receiving certificate of need approval to add general or specialized long-term care beds to an existing facility or to construct a new nursing home or a replacement facility shall comply with the following utilization requirements:

1. – 4. (No change.)

5. As a condition of certificate of need approval, seven percent of the total number of long-term care beds shall be available for occupancy by persons in need of nursing home care who are present or former patients of State/county psychiatric hospitals or community inpatient psychiatric units.

i. (No change.)

ii. At the time of initial licensure of any long-term care bed approved in accordance with this chapter, the nursing home shall sign and subsequently maintain a written transfer agreement with the Division of Mental Health **and Addiction** Services (within the New Jersey Department of Human Services) or at least one county psychiatric hospital or a facility with a community inpatient psychiatric unit, for the purpose of complying with the percentage requirement specified in (a)5 above.

(b) – (c) (No change.)