

SUBCHAPTER 2. LICENSURE PROCEDURE

8:39-2.1 Certificate of Need

(a) According to the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, a health care facility shall not be instituted, constructed, expanded, or licensed to operate except upon application for and receipt of a certificate of need issued by the Commissioner, in accordance with N.J.A.C. 8:33. Facilities exempt from certificate of need pursuant to law shall follow licensing procedures identified in N.J.A.C. 8:39-2.2 below.

(b) Application forms for a certificate of need and instructions for completion may be obtained from:

Certificate of Need Review Services
Division of Health Care Systems Analysis
New Jersey State Department of Health and Senior Services
P.O. Box 360
Trenton, NJ 08625-0360

(c) The facility shall implement all conditions imposed by the Commissioner as specified in the certificate of need approval letter. Failure to implement the conditions may result in the imposition of sanctions in accordance with the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto.

8:39-2.2 Application for licensure

(a) Following acquisition of a certificate of need, or a determination that a certificate of need is not required, any person, organization, or corporation desiring to operate a facility shall make application to the Commissioner for a license on forms prescribed by the Department which include information regarding facility ownership, corporate officers and stockholders, and approval forms from local building, fire, health and zoning departments. Such forms may be obtained from:

Long-Term Care Licensing and Certification
Division of Long-Term Care Systems
New Jersey State Department of Health and Senior Services
P.O. Box 367
Trenton, NJ 08625-0367

(b) The Department shall charge the following non-refundable fees:

Annual licensure fee (new and renewal)	\$1,500 plus \$15 per bed
Add-a-bed	\$1,500 plus \$15 per additional bed
Hemodialysis provided by the LTC facility	\$1,125
Hemodialysis provided by a separate provider	\$750
Relocation of a facility (within the same county)	\$375
Transfer of ownership (includes initial licensure fee)	\$2,500 plus \$15 per bed

Neither the maximum annual licensure fee nor the fee for transfer of ownership for any single facility shall exceed \$4,000.

(c) Any person, organization, or corporation considering application for license to operate a facility shall make an appointment for a preliminary conference at the Department with the Long-Term Care Licensing and Certification Program.

(d) For all projects that are exempt from the certificate of need requirement, the Department shall evaluate the track record of the applicant in accordance with N.J.A.C. 8:33-4.10(e).

(e) Any applicant denied a license to operate a facility shall have the right to a hearing in accordance with N.J.A.C. 8:33-4.10(e)4.

8:39-2.3 Newly constructed, expanded, or renovated facilities

Any construction, expansion, or renovation of a facility shall be completed in accordance with N.J.A.C. 8:39-31, Mandatory Physical Environment.

8:39-2.4 Surveys and license

(a) A license shall be issued to the operator of a facility when all of the following conditions are met:

1. A completed licensure application and the appropriate fee have been submitted;
2. An office conference for review of the conditions for licensure and operation has taken place between the Long-Term Care Licensing and Certification Program and representatives of the facility;
3. The applicant has submitted the following documents to the Long-Term Care Licensing and Certification Program: a copy of the certificate of occupancy, and written approvals from the Health Care Plan Review Unit of the New Jersey Department of Community Affairs and the local health authority;
4. Written approvals of the water supply and sewage disposal system from local officials are on file with the Department for any water supply or sewage disposal system not connected to an approved municipal system; and
5. Survey(s) by representatives of the Department indicate that the facility meets the mandatory standards set forth in this chapter.

(b) No facility shall begin to operate without prior approval from the Long-Term Care Licensing and Certification Program of the Department.

(c) The facility shall accept no more than that number of residents for which it is approved and/or licensed.

(d) Survey visits shall be made to a facility at any time by authorized staff of the Department. Such visits shall include, but shall not be limited to, the review of all facility documents and resident records and conferences with residents.

(e) The license shall be granted for a period of one year, unless suspended or revoked, and shall be renewable annually on the original licensure date, or within 30 days thereafter, in accordance with the following:

1. The facility shall receive a request for renewal fee as provided in N.J.A.C. 8:39-2.2(b), 30 days prior to the expiration of the license. A renewal license shall not be issued unless the licensure fee is received by the Department; and

2. The license shall not be renewed if local regulations, or any other requirements, which substantially affect the provision of services as required by this chapter, are not met.

(f) The license shall be conspicuously posted in the facility.

(g) The license shall not be assignable or transferable and shall be immediately void if the facility ceases to operate or if its ownership changes.

(h) Any facility which was closed or substantially ceased operation of any of its beds, facilities, services, or equipment for any consecutive two-year period shall be required to obtain a certificate of need in accordance with N.J.A.C. 8:33-3.2 et seq., before renewing its license to operate such beds, facilities, services, or equipment.

8:39-2.5 Surrender of license

The facility shall directly notify the Department, each resident, the resident's physician or advanced practice nurse, and any guarantors of payment concerned at least 30 days prior to the voluntary surrender of a license, or as directed under an order of revocation, refusal to renew, or suspension of licensure. In such cases, the license shall be returned to the Long-Term Care Licensing and Certification Program of the Department within seven calendar days from voluntary surrender, order of revocation, expiration, or suspension of license, whichever is applicable.

8:39-2.6 Waiver

(a) The Commissioner or his or her designee may, in accordance with the general purposes and intent of the Health Care Facilities Planning Act, P.L. 1971, c.136 and c.138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, and the standards in this chapter, waive sections of this chapter if, in his or her opinion, such waiver would not endanger the life, safety, or health of the facility's residents or the public.

(b) A facility seeking a waiver of the standards in this chapter shall apply in writing to the Director of the Long-Term Care Licensing and Certification Program of the Department.

(c) A written application for waiver shall include at least the following:

1. The nature of the waiver requested;
2. The specific standards for which a waiver is requested;
3. Reasons for requesting a waiver, including a statement of the type and degree of hardship that would result to the facility or any individual upon full compliance;
4. An alternative proposal which would ensure resident safety; and
5. Documentation to support the application for waiver.

(d) The Department reserves the right to request additional information before processing an application for waiver.

(e) The Department shall issue to the facility written confirmation of either a grant or denial of any waiver request.

8:39-2.7 Action against licensee

Violations of this subchapter may result in action by the Department in accordance with N.J.A.C. 8:43E.

8:39-2.8 Special long-term care services

In accordance with N.J.A.C. 8:33H-1.7, the Department recognizes the following two special long-term care services, both of which require a certificate of need: behavior management and ventilator care. Long-term care beds that are approved for these special services shall be designated separately on the facility's license.

8:39-2.9 Chronic hemodialysis services

(a) If a facility provides hemodialysis services to its own long-term care residents only, the following conditions shall be met:

1. The facility shall be authorized to provide the service by the Long-Term Care Licensing and Certification Program of the Department subsequent to the submission and review of the information contained in this subchapter. The application shall describe how the standards in (a)2 through 4 below will be met. The facility shall comply with ambulatory care requirements for a chronic dialysis provider, in accordance with N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved. Waivers from the nine station minimum requirement at N.J.A.C. 8:43A-24.2 shall be considered on an individual basis;

2. A consultant nephrologist who is Board Certified or Board eligible shall be designated and available to provide medical direction for the hemodialysis service;

3. The facility shall identify the space where hemodialysis services will be provided:

i. Identified space shall be in compliance with the requirements at N.J.A.C. 8:43A-24, Licensure Standards for Ambulatory Care;

ii. If bedside hemodialysis services are offered, they shall be provided only in private rooms; and

4. Hemodialysis shall be listed as a "service" on the facility's license.

(b) If the facility or other separately licensed dialysis provider provides outpatient dialysis services on-site to persons who are not residents of the facility, the following conditions shall be met:

1. The facility shall file a licensing application in order to be authorized to provide the service. The facility shall comply with ambulatory care regulations for chronic dialysis services, in accordance with N.J.A.C. 8:43A, particularly N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved;

2. Outpatient records shall be kept separately from inpatient records; and

3. The hemodialysis program shall not utilize any space required by the long-term care program, such as passageways, corridors, or treatment room, and shall not require the commingling of hemodialysis patients with facility residents.

(c) Hemodialysis services may be provided to residents of the long-term care facility by separately licensed dialysis providers under the following circumstances:

1. The dialysis provider shall file a licensing application in order to be authorized to provide the service. The facility shall comply with ambulatory care requirements for chronic dialysis services, in accordance with N.J.A.C. 8:43A, particularly N.J.A.C. 8:43A-24, and the application shall describe how such compliance will be achieved;

2. The provider shall demonstrate the ability to serve nine patients Statewide within six months of licensing approval;

3. The provider shall have a New Jersey office or execute a jurisdictional agreement with the Department;

4. The provider shall describe all staffing, and how staffing will be provided at multiple sites, if applicable;

5. A copy of the contract between the dialysis provider and the long-term care facility shall be included with the licensing application. The contract shall clearly state the roles and responsibilities of both the dialysis provider and the long-term care facility. Any change in dialysis provider shall require prior authorization and submission of a separate licensure application by the dialysis provider;

6. The Department shall charge a fee for licensure of the dialysis service as an ambulatory care facility in accordance with N.J.A.C. 8:43A-2.2(b). Each site of service provision shall be considered a satellite. The Department shall charge a biennial inspection fee in accordance with N.J.A.C. 8:43A-2.2(m);

7. Hemodialysis shall be listed as a "service" on the facility's license; and

8. Both the provider and the long-term care facility shall inform the Department in writing 30 days prior to any planned service interruption and shall include a plan for the continuing care of any dialysis patients.

(d) Any long-term care facility which proposes to offer hemodialysis services through a separately licensed dialysis provider shall also comply with the following requirements:

1. The facility shall request written authorization from the Long-Term Care Licensing and Certification Program to contract with a licensed outside provider prior to implementing the service. A copy of the contract between the dialysis provider and the long-term care facility shall be included with the licensing application. The contract shall clearly state the roles and responsibilities of both the dialysis provider and the long-term care facility. Any change in dialysis provider shall require prior authorization and submission of a separate licensure application by the new dialysis provider; and

2. The facility shall identify the space in which the service will be provided, including documentation that the space meets the requirements of N.J.A.C. 8:43A-24. Any renovations or construction shall receive prior approval from the Department. Space required by the long-term care facility programs shall not be used.

8:39-2.10 Peritoneal dialysis

(a) If a long-term care facility offers peritoneal renal dialysis services to its own residents only, the following conditions shall be met:

1. A licensing application shall not be required;

2. The facility shall forward to the Department an attestation that the information listed below is available at the facility for review. Following receipt of this attestation, authorization to provide the service may be granted:

i. Policies and procedures for service provision, which shall include the following:

- (1) Staff qualifications and training;
- (2) Admission criteria;
- (3) Transfer agreement with a certified ESRD hospital facility;
- (4) Quality assurance mechanisms and criteria;
- (5) Infection prevention and control, including bag disposal;
- (6) Emergency situations;

(7) Dietary requirements; and

(8) How and where any necessary laboratory work will be completed.

3. A consultant nephrologist shall be designated and available to provide medical direction for the service; and

4. Peritoneal dialysis shall be listed as a "service" on the facility's license.

(b) Separately licensed dialysis providers may offer peritoneal dialysis services in a long-term care facility under the following circumstances:

1. All requirements in (a) above shall be met;

2. The dialysis provider shall be licensed as specified at N.J.A.C. 8:39-2.9(c);

3. A copy of the contract agreement for service provision between the dialysis provider and the long-term care facility shall be reviewed and approved by the Long-Term Care Licensing and Certification Program of the Department prior to the authorization of the long-term care facility to provide the service through a separately licensed agency. The agreement shall clearly state the roles and responsibilities of both parties; and

4. Both the long-term care facility and the dialysis agency shall notify the Department in writing 30 days prior to any planned service interruption and shall include a plan for the continuing care of any dialysis patients.

8:39-2.11 Add-a-bed

(a) Pursuant to N.J.S.A. 26:2H-7.2, a facility may request approval from the Department to increase total licensed beds by no more than 10 beds or 10 percent of its licensed bed capacity, whichever is less, without certificate of need approval. No more than one such request for approval shall be submitted every five years.

(b) The Department shall charge a nonrefundable fee of \$1,500.00 plus \$15.00 per additional bed for the filing of an application to add beds to increase a facility's total licensed capacity. Applicants shall contact the Long-Term Care Licensing and Certification Program at (609) 633-9042 to obtain Add-a-bed application forms. The completed forms, along with scaled floor plans and the appropriate fee, must be forwarded to the Department at the following address:

Director
Long-Term Care Licensing and Certification Program
New Jersey Department of Health and Senior Services
P.O. Box 367
Trenton, New Jersey 08625-0367

(c) The Department shall deny an Add-a-bed application if any of the following conditions exist:

1. The facility's track record is unsatisfactory, in accordance with N.J.A.C. 8:33-4.10 and N.J.A.C. 8:43E-5.1;

2. The applicant fails to demonstrate that the facility has sufficient space to implement the new licensed bed capacity in a manner meeting Federal construction standards contained in the 1996-97 edition of "Guidelines For Design and Construction of Hospital and Health Care Facilities" (American Institute of Architects Academy of Architecture for Health, with assistance from the U.S. Department of Health and Human Services. The American Institute of Architects Press: Washington, DC), incorporated herein by reference as amended and supplemented;

3. The applicant fails to demonstrate that the facility has provided sufficient nurse staffing hours, in accordance with this chapter, to meet the needs of the current resident census;

4. The addition of beds will result in a unit size in excess of 64 beds;

5. The addition of beds will result in a violation of State licensure or Federal certification requirements; or

6. The proposed additional beds will result in a room occupancy that exceeds two residents per room.

8:39-2.12 Transfer of ownership

(a) In accordance with N.J.A.C. 8:33-3.3(a)4, the transfer of ownership of a long-term care facility shall not require a certificate of need except when the proposed owner does not satisfy the Department's track record review.

(b) Prior to transferring ownership of a facility, the prospective new owner shall submit an application to the Long-Term Care Licensing and Certification Program. The application shall include the following items:

1. The transfer of ownership fee of \$2,500 plus \$15 per bed, in accordance with N.J.A.C. 8:39-2.2 (b);

2. A cover letter stating the applicant's intent to purchase the facility, and identification of the facility by name, address, county, and number and type of licensed beds;

3. A description of the proposed transaction, including:

- i. Identification of the current owners of the facility;
- ii. Identification of 100% of the proposed new owners, including the names and addresses of all principals (i.e., individuals and/or entities with a 10% or more interest); and,
- iii. If applicable, a copy of an organizational chart, including parent corporations and wholly owned subsidiaries;

4. A copy of the agreement of sale and, if applicable, a copy of any lease and/or management agreements; and

5. Disclosure of any licensed health care facilities owned, operated, or managed by the proposed owner or any of the principals, in New Jersey or any other state. If facilities are owned, operated, or managed in other states, letters from the regulatory agencies in each respective state, verifying that the facilities have operated in substantial compliance during the last 12 month period and have had no enforcement actions imposed during that period of time, shall be included in the application.

(c) Approval of a transfer of ownership is contingent upon a review of the applicant's track record, in accordance with N.J.A.C. 8:33-4.10 and N.J.A.C. 8:43E-5.1.

(d) Approval of a transfer of ownership is contingent upon payment of all outstanding Medicaid audit claims and State penalties issued by the Department against the current owner, or written verification by the applicant that the applicant will assume responsibility for payment of such audit findings and State penalties.

(e) When a transfer of ownership application has been reviewed and deemed acceptable, an approval letter from the Long-Term Care Licensing and Certification Program shall be sent to the applicant along with licensure application forms.

(f) Within five (5) days after the transaction has been completed, the applicant shall submit the following documents to the Long-Term Care Licensing and Certification Program:

1. Completed licensure application forms;
2. A notarized letter stating the date on which the transaction occurred; and
3. A copy of a certificate of continuing occupancy from the local township, or a letter from the township verifying a policy of not issuing any such document for changes of ownership.

(g) For Medicaid certification, the new owner shall contact the Long-Term Care Licensing and Certification Program at (609) 633-9042.

(h) For Medicare certification, the new owner shall contact the Assistant Director of Long-Term Care Assessment and Survey at (609) 633-8981.