



1 of 1 DOCUMENT

LexisNexis (TM) New Jersey Annotated Statutes

*** This section is current through New Jersey 214th Legislature ***
2nd Annual Session (P.L. 2011 Chapter 175 and JR 8)
State Constitution current through the November, 2011 Election
Annotations current through January 20, 2012

TITLE 26. HEALTH AND VITAL STATISTICS
CHAPTER 2H. HEALTH CARE FACILITIES
ARTICLE I. HEALTH CARE FACILITIES PLANNING ACT

GO TO THE NEW JERSEY ANNOTATED STATUTES ARCHIVE DIRECTORY

N.J. Stat. § 26:2H-12 (2012)

§ 26:2H-12. Operation requirements for health care service, facility; application for license; fee

a. No health care service or health care facility shall be operated unless it shall: (1) possess a valid license issued pursuant to this act, which license shall specify the kind or kinds of health care services the facility is authorized to provide; (2) establish and maintain a uniform system of cost accounting approved by the commissioner; (3) establish and maintain a uniform system of reports and audits meeting the requirements of the commissioner; (4) prepare and review annually a long range plan for the provision of health care services; and (5) establish and maintain a centralized, coordinated system of discharge planning which assures every patient a planned program of continuing care and which meets the requirements of the commissioner which requirements shall, where feasible, equal or exceed those standards and regulations established by the federal government for all federally-funded health care facilities but shall not require any person who is not in receipt of State or federal assistance to be discharged against his will.

b. (1) Application for a license for a health care service or health care facility shall be made upon forms prescribed by the department. The department shall charge a single, nonrefundable fee for the filing of an application for and issuance of a license and a single, nonrefundable fee for any renewal thereof, and a single, nonrefundable fee for a biennial inspection of the facility, as it shall from time to time fix in rules or regulations; provided, however, that no such licensing fee shall exceed \$ 10,000 in the case of a hospital and \$ 4,000 in the case of any other health care facility for all services provided by the hospital or other health care facility, and no such inspection fee shall exceed \$ 5,000 in the case of a hospital and \$ 2,000 in the case of any other health care facility for all services provided by the hospital or other health care facility. No inspection fee shall be charged for inspections other than biennial inspections. The application shall contain the name of the health care facility, the kind or kinds of health care service to be provided, the location and physical description of the institution, and such other information as the department may require. (2) A license shall be issued by the department upon its findings that the premises, equipment, personnel, including principals and management, finances, rules and bylaws, and standards of health care service are fit and adequate and there is reasonable assurance the health care facility will be operated in the manner required by this act and rules and regulations

thereunder.

c. (Deleted by amendment, P.L.1998, c.43).

d. The commissioner may amend a facility's license to reduce that facility's licensed bed capacity to reflect actual utilization at the facility if the commissioner determines that 10 or more licensed beds in the health care facility have not been used for at least the last two succeeding years. For the purposes of this subsection, the commissioner may retroactively review utilization at a facility for a two-year period beginning on January 1, 1990.

e. If a prospective applicant for licensure for a health care service or facility that is not subject to certificate of need review pursuant to P.L.1971, c.136 (*C.26:2H-1* et al.) so requests, the department shall provide the prospective applicant with a pre-licensure consultation. The purpose of the consultation is to provide the prospective applicant with information and guidance on rules, regulations, standards and procedures appropriate and applicable to the licensure process. The department shall conduct the consultation within 60 days of the request of the prospective applicant.

f. Notwithstanding the provisions of any other law to the contrary, an entity that provides magnetic resonance imaging or computerized axial tomography services shall be required to obtain a license from the department to operate those services prior to commencement of services, except that a physician who is operating such services on the effective date of P.L.2004, c.54 shall have one year from the effective date of P.L.2004, c.54 to obtain the license.

g. (1) Notwithstanding the provisions of any other law to the contrary, an entity that operates a surgical practice on the effective date [March 21, 2009] of this section of P.L.2009, c.24, as defined in this subsection, shall be required to register with the department within one year of the effective date of P.L.2009, c.24.

(2) An entity that has not commenced operation as a surgical practice on the effective date [March 21, 2009] of this section of P.L.2009, c.24, but has filed or files before the 180th day after the effective date of this section of P.L.2009, c.24 its plans, specifications, and required documents with the municipality in which the surgical practice will be located, shall register with the department prior to the commencement of services.

(3) As a condition of registration with the department, a surgical practice shall be required to obtain certification by the Centers for Medicare and Medicaid Services as an ambulatory surgery center provider or obtain ambulatory care accreditation from an accrediting body recognized by the Centers for Medicare and Medicaid Services.

(4) As a condition of registration with the department, a surgical practice shall be required to report the following information annually: the number of patients served by payment source, including the number of Medicaid-eligible and medically indigent persons served; the number of new patients accepted; and the number of physicians, physician assistants, and advanced practice nurses providing professional services at the surgical practice.

(5) As used in this subsection and subsection i. of this section, "surgical practice" means a structure or suite of rooms that has the following characteristics:

(a) has no more than one room dedicated for use as an operating room which is specifically equipped to perform surgery, and is designed and constructed to accommodate invasive diagnostic and surgical procedures;

(b) has one or more post-anesthesia care units or a dedicated recovery area where the patient may be closely monitored and observed until discharged; and

(c) is established by a physician, physician professional association surgical practice, or other professional practice form specified by the State Board of Medical Examiners pursuant to regulation solely for the physician's, association's or other professional entity's private medical practice.

"Surgical practice" includes an unlicensed entity that is certified by the Centers for Medicare and Medicaid

Services as an ambulatory surgery center provider.

(6) Nothing in this subsection shall be construed to limit the State Board of Medical Examiners from establishing standards of care with respect to the practice of medicine.

h. An ambulatory care facility licensed to provide surgical and related services shall be required to obtain ambulatory care accreditation from an accrediting body recognized by the Centers for Medicare and Medicaid Services as a condition of licensure by the department.

An ambulatory care facility that is licensed to provide surgical and related services on the effective date [March 21, 2009] of this section of P.L.2009, c.24 shall have one year from the effective date of this section of P.L.2009, c.24 to obtain ambulatory care accreditation.

i. Beginning on the effective date [March 21, 2009] of this section of P.L.2009, c.24, the department shall not issue a new registration to a surgical practice or a new license to an ambulatory care facility to provide surgical and related services unless:

(1) in the case of a registered surgical practice or licensed facility in which a transfer of ownership of the practice or facility is proposed, the commissioner reviews the qualifications of the new owner or owners and approves the transfer;

(2) (a) except as provided in subparagraph (b) of this paragraph, in the case of a registered surgical practice or licensed facility for which a relocation of the practice or facility is proposed, the relocation is within 20 miles of the practice's or facility's current location or the relocation is to a "Health Enterprise Zone" designated pursuant to section 1 of P.L.2004, c.139 (C.54A:3-7), there is no expansion in the scope of services provided at the new location from that of the current location, and the commissioner reviews and approves the relocation; or

(b) in the case of a licensed facility described in paragraph (5) or (6) of this subsection for which a relocation of the facility is proposed, the commissioner reviews and approves the relocation;

(3) the entity is a surgical practice required to be registered pursuant to paragraph (1) of subsection g. of this section and meets the requirements of that subsection;

(4) the entity has filed its plans, specifications, and required documents with the Health Care Plan Review Unit of the Department of Community Affairs or the municipality in which the surgical practice or facility will be located, as applicable, on or before the 180th day following the effective date of this section of P.L.2009, c.24;

(5) the facility is owned jointly by a general hospital in this State and one or more other parties; or

(6) the facility is owned by a hospital or medical school.

j. (1) The department shall require an applicant for registration as a surgical practice, as provided in subsection g. of this section, to submit an application for registration in a form and manner prescribed by the department. The applicant shall submit the name and address of the surgical practice that is to be registered, the name of the chief administrator or designated agent of the practice, the names and addresses of all owners of the practice, the scope of services provided at the practice, proof of certification by the Centers for Medicare and Medicaid Services or accreditation from an accrediting body recognized by the Centers for Medicare and Medicaid Services, and such other information as the commissioner deems necessary and as provided by regulation.

(2) The registration shall be valid for a one-year period and may be renewed upon submission to the department of an application for renewal.

(3) The commissioner may suspend, revoke, or deny a registration if the registrant or applicant, as applicable, is not in compliance with the requirements of this section.

(4) No registered surgical practice shall be owned, managed, or operated by any person convicted of a crime relating adversely to the person's capability of owning, managing, or operating the practice.

(5) The department may charge a reasonable fee for filing an application for registration and for each renewal thereof.

HISTORY: L. 1971, c. 136, § 12; amended 1977, c. 250; 1978, c. 83, § 8; 1991, c. 187, § 38; 1998, c. 43, § 12, eff. June 30, 1998; 2004, c. 54, § 4, eff. July 1, 2004; 2009, c. 24, § 1, eff. Mar. 21, 2009.

NOTES:

Amendment Note:

2009 amendment, by Chapter 24, added g. through j.

OLS Corrections:

Pursuant to *R.S.1:3-1*, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, substituted "advanced" for "advance" preceding "practice nurses" in g.(4) and corrected other technical errors in L. 2009, c. 24, § 1.

Publisher's Note: The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

Section 6 of L. 2009, c. 24 provides: "The Commissioner of Health and Senior Services shall adopt rules and regulations, pursuant to the 'Administrative Procedure Act,' P.L.1968, c.410 (*C.52:14B-1* et seq.), to carry out the provisions of section 1 of this act, including prescribing the application form and process to register with the department as a surgical practice and the information that shall be reported to the department pursuant to paragraph (4) of subsection g. of section 12 of P.L.1971, c.136 (*C.26:2H-12*)."

Cross References:

Definitions., see *26:2H-2*.

Requirements for subacute care unit, see *26:2H-7.6*.

Administrative Code:

1. *N.J.A.C. 5:27A-2.1* (2009), CHAPTER STANDARDS FOR LICENSURE OF RESIDENTIAL HEALTH CARE FACILITIES NOT LOCATED WITH, AND OPERATED BY, LICENSED HEALTH CARE FACILITIES, Application for licensure.

2. *N.J.A.C. 8:36-2.2* (2009), CHAPTER STANDARDS FOR LICENSURE OF ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL CARE HOMES, AND ASSISTED LIVING PROGRAMS, Application for licensure.

3. *N.J.A.C. 8:42-2.4* (2009), CHAPTER LICENSING STANDARDS FOR HOME HEALTH AGENCIES, Licensure.

4. *N.J.A.C. 8:43-2.1* (2009), CHAPTER STANDARDS FOR LICENSURE OF RESIDENTIAL HEALTH CARE FACILITIES LOCATED WITH, AND OPERATED BY, LICENSED HEALTH CARE FACILITIES, Application for licensure.

5. *N.J.A.C. 8:43A-2.2* (2009), CHAPTER MANUAL OF STANDARDS FOR LICENSING OF AMBULATORY CARE FACILITIES, Application for licensure.

6. *N.J.A.C. 8:43G-2.2* (2009), CHAPTER HOSPITAL LICENSING STANDARDS, Application for licensure.

LexisNexis (R) Notes:

OPINIONS OF ATTORNEY GENERAL

1. FORMAL OPINION No. 15 -- 1977, *1977 N.J. AG LEXIS 13*.

CASE NOTES

1. *N.J. Stat. Ann. § 26:2H-12(b)(2)* provides that a license shall be issued by the Department of Health upon its findings that there is reasonable assurance the health care facility will be operated in the manner required by the act and the rules and regulations thereunder. *New Jersey Asso. of Health Care Facilities v. Finley*, 168 *N.J. Super.* 152, 402 *A.2d* 246, 1979 *N.J. Super.* LEXIS 757 (*App.Div.* 1979), affirmed by 83 *N.J.* 67, 415 *A.2d* 1147, 1980 *N.J. LEXIS 1365* (1980).

2. N.J. Administrative Code provision which required nursing homes to make available "a reasonable number of their beds to indigent persons" as a condition of licensure under *N.J. Stat. Ann. §§ 26:2H-5, 26:2H-8, and 26:2H-12*, did not exceed the power given to the state under *N.J. Stat. Ann. § 26:2H-1* et seq.; the argument that the state was attempting to regulate the quantity of health care services, rather than the quality of health care services, was rejected because the acute shortage of nursing home beds for indigent persons was a public health concern, and the regulations were not arbitrary or unreasonable. *In re Health Care Administration Board*, 83 *N.J.* 67, 415 *A.2d* 1147, 1980 *N.J. LEXIS 1365* (1980), writ of certiorari denied by 449 *U.S.* 944, 101 *S. Ct.* 342, 66 *L. Ed.* 2d 208, 1980 *U.S. LEXIS 3668*, 49 *U.S.L.W.* 3331 (1980).

3. *N.J. Stat. Ann. § 26:2H-12(b)(2)* provides that a license shall be issued by the Department of Health upon its findings that there is reasonable assurance the health care facility will be operated in the manner required by the act and the rules and regulations thereunder. *New Jersey Asso. of Health Care Facilities v. Finley*, 168 *N.J. Super.* 152, 402 *A.2d* 246, 1979 *N.J. Super.* LEXIS 757 (*App.Div.* 1979), affirmed by 83 *N.J.* 67, 415 *A.2d* 1147, 1980 *N.J. LEXIS 1365* (1980).

4. N.J. Administrative Code provision which required nursing homes to make available "a reasonable number of their beds to indigent persons" as a condition of licensure under *N.J. Stat. Ann. §§ 26:2H-5, 26:2H-8, and 26:2H-12*, did not exceed the power given to the state under *N.J. Stat. Ann. § 26:2H-1* et seq.; the argument that the state was attempting to regulate the quantity of health care services, rather than the quality of health care services, was rejected because the acute shortage of nursing home beds for indigent persons was a public health concern, and the regulations were not arbitrary or unreasonable. *In re Health Care Administration Board*, 83 *N.J.* 67, 415 *A.2d* 1147, 1980 *N.J.*

LEXIS 1365 (1980), writ of certiorari denied by *449 U.S. 944, 101 S. Ct. 342, 66 L. Ed. 2d 208, 1980 U.S. LEXIS 3668, 49 U.S.L.W. 3331 (1980)*.

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Medical Facility Licensing