

PUBLIC NOTICE

HEALTH AND SENIOR SERVICES DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Moratorium Affecting Licensure of Adult Day Health Care Facilities and Services

Take notice that, in accordance with the provisions set forth in N.J.S.A. 26:2H-1 et seq., the Commissioner of the Department of Health and Senior Services shall not accept licensure applications for new or expanded adult day health care facilities and services, effective immediately extending the current moratorium and for 12 months thereafter. Pursuant to the Public Notice at 40 N.J.R. 6487(d) (November 3, 2008), the Commissioner reviewed the current moratorium and determined an extension is necessary to achieve the intent of the Moratorium.

This action is taken because the Department has determined, based on survey activity, that it is necessary to develop new licensure standards to replace those at N.J.A.C. 8:43F and new clinical eligibility and prior authorization standards at N.J.A.C. 8:86. The Department is meeting with stakeholders in the process of developing amendments to the referenced administrative rules. This moratorium on adult day health care licensure processing is necessary to protect the health, safety and welfare of the population served within adult day health care facilities. The interests of the beneficiaries of adult day health care services are best served through the promulgation of appropriate licensure and eligibility standards and the Department's survey and enforcement activity. The recent survey activity carried out by the Department concerning adult day health care facilities demonstrates that the Department's licensure and prior authorization administrative rules governing this service require amendment to maintain appropriate utilization, access, and services. There is adequate access to adult day health care facilities.

Since January 2007, 88 adult day health care facilities had been approved to conduct prior authorizations under N.J.A.C. 8:86-1.5(d). The Department initially found it necessary to revoke the privilege to conduct eligibility assessments in 41 facilities on the Department's behalf for failing to reassess a participant's condition as required under N.J.A.C. 8:43F-5.4(c) and for failing to discharge a participant who is no longer appropriate for services under N.J.A.C. 8:43F-5.4(d)1. By September 2009, prior authorization had been removed from all but eight providers.

The Department has licensed approximately 11,800 adult day health care slots in 137 facilities, with applications pending for 6,279 additional slots. Of these 6,279 slots, 5,723 are pending for 43 new facility applications, with the remainder of 556 slots pending for the expansion of seven existing facilities. There has been a dramatic growth in the number of licensed slots available since the prior moratorium was lifted on October 1, 2006 (38 N.J.R. 3324(c)), with even more slots and facilities pending in the licensing pipeline. Recently, staff of the Office of Community Choice Options, Division of Aging and Community Services, conducted monitoring visits that resulted in assessments of 6,001

clients. Of this number, staff found that 4,687 met the Medicaid level of care, while 1,314 were recommended for discharge, or were denied coverage.

On June 29, 2009, Governor Jon S. Corzine signed into law the 2010 Appropriations Act, P.L. 2009, Chapter 68 (the Act). Pursuant to the Act, all adult day health care facilities were notified by the Department that, effective July 6, 2009, no facility in the adult day health care program could serve or receive compensation for more than 200 Medicaid beneficiaries per day.

The moratorium is necessary to prevent the proliferation of facilities with deficient policy practices that are serving medically fragile adults. The interests of the beneficiaries of adult day health care services are best served through the promulgation of appropriate rules governing licensure, Medicaid eligibility standards and the Department survey and enforcement activity. Recent and continuing survey and enforcement activity carried out by the Department concerning adult day health care facilities demonstrates overwhelmingly that the Department's licensure and eligibility administrative rules governing this service require revision and the industry requires closer regulatory scrutiny on the whole. This moratorium allows limited personnel resources of the Department to be focused on ensuring that currently licensed adult day health care facilities are providing appropriate services to appropriate recipients. Departmental resources will be focused upon monitoring surveys to ensure that existing facilities are complying with licensing standards and will permit staff engaged in prior authorizations to continue reviewing the appropriateness of recipients who have been approved under N.J.A.C. 8:86-1.5(d).

Therefore, it is necessary for the Department to temporarily cease accepting licensure applications for new or expanded adult day health care facilities. Licensure applications for adult day health care facilities and services formally submitted to the Department prior to November 3, 2008, shall continue to be processed by the Department. This moratorium applies to applications for new facilities, applications to relocate facilities not currently licensed, applications seeking to add additional shifts, as well as applications for the addition of adult day health care slots within already-licensed facilities. Any person holding an adult day health care license may undertake activities to construct and operate a replacement facility with the same or lower census as is presently licensed, provided that such replacement facility may only be licensed upon the otherwise unconditional cessation of operation of the previously licensed adult day health care facility. Applications seeking the approval of a transfer of ownership shall also continue to be processed by the Department provided that the transfer does not result in an increase in the number of licensed entities or slots. The current moratorium for pediatric day health care facilities remains in effect.