



State of New Jersey  
DEPARTMENT OF HEALTH

PHILIP D. MURPHY  
Governor

PO BOX 358  
TRENTON, N.J. 08625-0358

TAHESHA L. WAY  
Lt. Governor

[www.nj.gov/health](http://www.nj.gov/health)

KAITLAN BASTON, MD, MSC, DFASAM  
Commissioner

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In Re Licensure Violation: :  
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Berlin Rehabilitation and Healthcare Center : NOTICE OF ASSESSMENT OF  
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(NJ Facility ID# NJ156001) : PENALTIES  
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TO: Mr. Gary Bauer-Administrator  
Berlin Rehabilitation and Healthcare Center  
100 Long-A-Coming Lane  
Berlin, New Jersey 08009  
[gbauer@mqshealth.com](mailto:gbauer@mqshealth.com)

Dear Mr. Bauer,

Effective immediately, the Department of Health (hereinafter, "the Department") is assessing penalties pursuant to N.J.S.A. 26:2H-46.1 and N.J.A.C. 8:43E-3.4 upon Berlin Rehabilitation and Healthcare Center (hereinafter "Berlin" or "the Facility") because the Facility has incurred two or more of the same or substantially similar F-level or higher level deficiencies as defined by the federal Centers for Medicare and Medicaid Services (CMS) within the prior three years. N.J.S.A. 26:2H-46.1 requires the Department to impose an increased penalty upon a licensed nursing home for violations within a three-year period of the same or a substantially similar F-level or higher-level deficiency. N.J.S.A. 26:2H-46.1 requires that an increased penalty be imposed for a repeat F-level violation that is cited at a survey or any other inspection conducted "pursuant to State or federal law or regulation, . . . ."

The Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.) (the Act) provides a statutory scheme designed to ensure that all health care facilities are of the highest quality. Pursuant to the Act and N.J.A.C. 8:43E-1.1 et seq., General Licensure Procedures and Standards Applicable to All Licensed Facilities, the Commissioner of Health is authorized to inspect all health care facilities and to enforce the Standards for Licensure of Long-Term Care Facilities set forth at N.J.A.C. 8:39-1.1 et seq.

#### **LICENSURE VIOLATIONS:**

Based on surveys conducted by Department staff on September 26, 2024, May 1, 2024 and December 11, 2023, the Facility failed to comply with N.J.S.A. 30:13-18 (P.L. 2020. C. 112). N.J.S.A. 30:13-18 establishes minimum staffing requirements for nursing homes. N.J.S.A. 30:13-18 requires nursing homes to maintain the following minimum direct care staff -to-resident ratios: (1) one certified nurse aide (CNA) to every eight residents for the day shift; (2) one direct care staff member to every 10 residents for the evening shift, provided that no fewer than half of all staff members shall be CNAs, and each staff member shall be signed in to work as a CNA and shall perform CNA duties; and (3) one direct care staff member to every 14 residents for the night shift, provided that each direct care staff member shall sign in to work as a CNA and perform certified nurse aide duties.

The Department has determined that the staffing violations substantiated on September 26, 2024, May 1, 2024 and December 11, 2023, were F-level or higher deficiencies. The Facility's failure to comply with N.J.S.A. 30:13-18 at these surveys were F-level deficiencies because the violations were widespread and resulted in no actual harm with the potential for more than minimal harm that is not immediate jeopardy. 42 C.F.R. 488.404 (b) sets forth criteria for determining the seriousness of federal deficiencies. An F-level deficiency is a deficiency that results in no actual harm with a potential for more than minimal harm that is not immediate jeopardy, and the deficiency is widespread. 42 C.F.R. 488.404 (b) (1) (ii) and (2) (iii) and Nursing Home Compare Technical Users' Guide (cms.gov), p. 3.

The facility's violations of N.J.S.A. 30:13-18 were widespread because the September 26, 2024 survey substantiated that the Facility failed to comply with the nurse staffing requirements on eighteen different days (18 of 28-day shifts). The May 1, 2024 survey substantiated that the Facility failed to comply with the nurse staffing requirements on thirteen different days (13 of 14-day shifts). The December 11, 2023 survey substantiated that the Facility failed to comply with the nurse staffing requirements on forty-eight different days (48 of 49-day shifts). At these surveys, the Survey staff reviewed the Nurse Staffing Reports completed by the facility for various weeks, which revealed staff-to-resident ratios that did not meet the minimum requirements. In addition to being widespread, these staffing violations also had the potential for more than minimal harm to residents throughout the facility. Therefore, these violations of State law meet the federal criteria for F-level violations at 42 C.F.R. 488.404 (b) (1) (ii) and (2) (iii).

The facts supporting these deficiencies are set forth in surveys dated September 26, 2024, May 1, 2024 and December 11, 2023, which are incorporated herein by reference.

#### **MONETARY PENALTIES:**

N.J.A.C. 8:43E-3.4(a)8 allows the Department to impose a monetary penalty of \$1,000 per violation for each day noncompliance is found for multiple deficiencies related to patient care or physical plant standards throughout a facility, and/or where such violations represent a direct risk that a patient's physical or mental health will be compromised, or where an actual violation of a resident's or patient's rights is found.

Subsequent to the staffing deficiencies found at the December 11, 2023 survey, the September 26, 2024 and May 1, 2024 surveys substantiated that the facility failed to meet the requirements of N.J.S.A. 30:13-41 on thirty-one different days.

In accordance with N.J.A.C. 8:43E-3.4(a)8, the penalty assessed for each day on which noncompliance was found is \$1,000 per day. The total penalty assessed for the violations on the surveys on September 26, 2024 and May 1, 2024, (or the days the facility was not in compliance) is **\$31,000 (31 days x \$1,000)**.

The total amount of this penalty is required to be paid within 30 days of receipt of this letter by certified check or money order made payable to the "Treasurer of the State of New Jersey" and forwarded to Office of Program Compliance, New Jersey Department of Health, P.O. Box 358, Trenton, New Jersey 08625-0358, Attention: Lisa King. **On all future correspondence related to this Notice, please refer to Control X24137.**

#### **INFORMAL DISPUTE RESOLUTION (IDR):**

N.J.A.C. 8:43E-2.3 provides facilities the option to challenge factual survey findings by requesting Informal Dispute Resolution with Department representatives. Facilities wishing to challenge only the assessment of penalties are not entitled to IDR review, but such facilities may request a formal hearing at the Office of Administrative Law as set forth herein below. Please note that the facility's rights to IDR and administrative hearings are not mutually exclusive and both may be invoked simultaneously. IDR requests **must be made in writing within ten (10) business days from receipt of this letter** and must state whether the facility opts for an in-person conference at the Department, a telephone conference, or review of facility documentation only. The request must include an original and ten (10) copies of the following:

1. The written survey findings;
2. A list of each specific deficiency the facility is contesting;
3. A specific explanation of why each contested deficiency should be removed; and

4. Any relevant supporting documentation.

Any supporting documentation or other papers submitted later than 10 business days prior to the scheduled IDR may not be considered at the discretion of the IDR panel.

Send the above-referenced information to:

Nadine Jackman  
Office of Program Compliance  
New Jersey Department of Health  
P.O. Box 358  
Trenton, New Jersey 08625-0358

The IDR review will be conducted by professional Department staff who do not participate in the survey process. **Requesting IDR does not delay the imposition of any enforcement remedies.**

**If IDR was offered and requested by your facility for the corresponding federal deficiency that was cited at the same survey and your facility requests another IDR for the corresponding State deficiency cited at the same survey and arising from the same set of facts, the Department will either consolidate the IDRs or treat the first IDR decision as binding. The Department does not offer a second IDR for the same set of disputed facts that were challenged in a prior IDR offered by the Department.**

**FORMAL HEARING:**

The facility is entitled to contest the assessment of penalties pursuant to N.J.S.A. 26:2H-13, by requesting a formal hearing at the Office of Administrative Law (OAL). The facility may request a hearing to challenge any or all of the following: the factual findings and/or the assessed penalties. The facility must advise this Department within 30 days of the date of this letter if it requests an OAL hearing.

Please forward your OAL hearing request to:


Attention: OAL Hearing Requests  
Office of Legal and Regulatory Compliance, New Jersey Department of Health  
P.O. Box 360  
Trenton, New Jersey 08625-0360

Corporations are not permitted to represent themselves in OAL proceedings. Therefore, if the facility is owned by a corporation, representation by counsel is required. In the event of an OAL hearing regarding the penalty, the facility is further required to submit a written response to each and every charge as specified in this notice, which shall accompany its written request for a hearing.

Failure to submit a written request for a hearing within 30 days from the date of this notice will render this a final agency decision. The final agency order shall thereafter have the same effect as a judgment of the court. The Department also reserves the right to pursue all other remedies available by law.

Thank you for your attention to this important matter and for your anticipated cooperation. If you have any questions regarding this Notice of Assessment, please contact Nadine Jackman, Office of Program Compliance, at [Nadine.Jackman@doh.nj.gov](mailto:Nadine.Jackman@doh.nj.gov).

Sincerely,



Lisa King, Program Manager  
Office of Program Compliance  
Division of Certificate of Need and Licensing

LK:RSM:nj

DATE: December 9, 2024

EMAIL: [gbauer@mqshealth.com](mailto:gbauer@mqshealth.com)

REGULAR AND CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Control # X24137