



State of New Jersey
DEPARTMENT OF HEALTH

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

www.nj.gov/health

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

JUDITH M. PERSICILLI, RN, BSN, MA
Commissioner

In Re Licensure Violation:	:	
	:	
Windsor Gardens	:	NOTICE OF ASSESSMENT OF
Care Center	:	PENALTIES
(NJ Facility ID# NJ 60722)	:	
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TO: Trevor Dublin, Administrator (Tdublin@windsorgardenscc.com)
Windsor Gardens Care Center
140 Park Ave
East Orange, NJ 07017

Dear Mr. Dublin:

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:

Staff from the Department of Health (Department) visited Windsor Gardens Care Center (the facility) on February 1, 2022, for the purpose of a conducting a recertification survey. The report of this visit, which is incorporated herein by reference, revealed the following licensure violations:

Based on observation and interview, the surveyor and the facility's Maintenance Director observed that the basement area was provided with only one exit. N.J.A.C. 8:39-31.1(d) requires that maintenance inspections of a facility participating in Medicare or Medicaid be conducted in accordance with the edition

of the National Fire Protection Associations Life Safety Code adopted by the federal Centers for Medicare and Medicaid. N.J.A.C. 8:39-31.2(e) requires that the facility be kept in good repair and maintained without harm or jeopardy to residents. The exit was a stairway to the first floor. The basement level was used only for mechanical space, maintenance office and laundry. No residents were allowed into the basement and residents do not have access to this level.

Based on an interview with the Maintenance Director it was revealed that there were not two exits in the basement area. At the time of the surveyor's observation, there were three laundry staff and one assistant maintenance staff member working in the basement area.

Subsequently, the surveyor interviewed the Administrator and Maintenance Director and they confirmed that the project for the basement exit was to be completed by the facility, but at the time of survey the project had not been started.

At a recertification and life safety code compliance survey conducted on February 24, 2020, the Department issued a deficiency to the facility for not having two exits in the basement. The facility was granted a time-limited waiver by the Department from the requirement to have two exits from the basement. Because a waiver was granted, a monetary penalty was not assessed. The construction was to have been completed by October 31, 2021, but the facility did not complete the work.

The Administrator was notified of the deficiency at the life safety code survey exit conference on February 3, 2022.

MONETARY PENALTIES:

N.J.A.C. 8:43E-3.4(a)9 provides that the Department may assess a monetary penalty for repeated violations of any licensing regulation within a 12-month period or on successive annual inspections in the amount of \$500 per violation where such violation was not the subject of a previous penalty assessment. A penalty of \$500 per violation may be assessed for each day noncompliance is found.

In accordance with N.J.A.C. 8:43E-3.4(a)9, and because the repeated violations of the licensure regulation occurred on successive recertification inspections, a \$500 penalty is being assessed for each day the facility has been in non-compliance since the waiver expired on October 31, 2021, through the date of the survey. The total penalty assessed for the days through the survey that Windsor Gardens Care Center was not in compliance is \$46,000 (\$500 x 92). Thus, the total penalty that is being assessed is \$46,000.

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 X22062.**

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:

Jannelie Claudio
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.**

FORMAL HEARING:

Windsor Gardens Care Center is entitled to challenge the assessment of penalties pursuant to N.J.S.A. 26:2H-14, by requesting a formal hearing at the Office of Administrative Law (OAL). Windsor Gardens Care Center may request a hearing to challenge any or all of the following: the factual survey findings and/or the assessed penalties. Windsor Gardens Care Center must advise this Department within 30 days of the date of this letter if it requests an OAL hearing regarding the curtailment.

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

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.

Corporations are not permitted to represent themselves in OAL proceedings. Therefore, if Windsor Gardens Care Center is owned by a corporation, representation by counsel is required. In the event of an

OAL hearing Windsor Gardens Care Center, is 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.

Finally, be advised that Department staff will monitor compliance to determine whether corrective measures are implemented by Windsor Gardens Care Center to comply with N.J.A.C. 8:39-31.1(d) and 31.2(e). Failure to comply with these and any other applicable requirements, as set forth in pertinent rules and regulations, may result in the imposition of additional penalties. 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. Should you have any questions concerning this order, please contact Lisa King, Office of Program Compliance at (609) 376-7751.

Sincerely,



Gene Rosenblum
Director, Office of Program Compliance
Division of Certificate of Need and Licensing

DATE: May 12, 2022
FACSIMILE
E-MAIL (Tdublin@windsorgardenscc.com)
REGULAR AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Control # X22062