



State of New Jersey
DEPARTMENT OF HEALTH
PO BOX 358
TRENTON, N.J. 08625-0358

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

www.nj.gov/health

KAITLAN BASTON, MD, MSc, DFASAM
Acting Commissioner

In Re Licensure Violation:	:	NOTICE OF ASSESSMENT OF
	:	PENALTIES
Complete Care at Brick LLC	:	
	:	
(NJ Facility ID# NJ 62217)	:	
	:	
	:	
	:	

TO: Joseph Hiller, Administrator
415 Jack Martin Boulevard
Brick, New Jersey 08724

Dear Mr. Hiller:

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 Complete Care at Brick LLC (hereafter "Complete Care at Brick") 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 August 31, 2023, and May 31, 2022, 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 August 31, 2023, and May 31, 2022, were F-level or higher deficiencies. The facility's failure to comply with N.J.S.A. 30:13-18 on August 31, 2023 and May 31, 2022, 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.

As set forth below, the facility's violations of N.J.S.A. 30:13-18 on August 31, 2023 were widespread because the survey substantiated that the facility failed to comply with the nurse staffing requirements on 15 of 28 day shifts and 11 of 28 evening shifts. The May 31, 2022, survey substantiated that the facility failed to meet the nurse staffing requirements on three of 14 days shifts and six of 14 evening shifts. 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 August 31, 2023, and May 31, 2022, 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. The August 31, 2023, survey substantiated that Complete Care at Brick failed to meet the requirements of N.J.S.A. 30:13-18 on 19 days.

A review by Survey staff of the "Nurse Staffing Report," completed by the facility for the weeks of June 4, 2023 through June 10, 2023, and August 6, 2023, to August 26, 2023, revealed staff-to-resident ratios that did not meet the minimum requirements. The facility was deficient in CNA staffing for residents on 15 of 28 day shifts and 11 of 28 evening shifts as follows:

1. For the week of June 4, 2023, to June 10, 2023, the facility was deficient in CNA staffing for residents on 3 of 7 day shifts and deficient in CNAs to total staff on 3 of 7 evening shifts as follows:

- 06/04/23 had 7 CNAs for 83 residents on the day shift, required at least 10 CNAs.
- 06/04/23 had 8 CNAs to 18 total staff on the evening shift, required at least 9 CNAs.
- 06/07/23 had 9 CNAs to 20 total staff on the evening shift, required at least 10 CNAs.
- 06/09/23 had 10 CNAs for 85 residents on the day shift, required at least 11 CNAs.
- 06/09/23 had 7 CNAs to 17 total staff on the evening shift, required at least 8 CNAs.
- 06/10/23 had 8 CNAs for 80 residents on the day shift, required at least 10 CNAs.

2. For the 3 weeks from August 6, 2023, to August 26, 2023, the facility was deficient in CNA staffing for residents on 12 of 21 day shifts and deficient in CNAs to total staff on 8 of 21 evening shifts as follows:

- 08/06/23 had 4 CNAs for 89 residents on the day shift, required at least 11 CNAs.
- 08/07/23 had 10 CNAs for 89 residents on the day shift, required at least 11 CNAs.
- 08/11/23 had 10 CNAs for 86 residents on the day shift, required at least 11 CNAs.
- 08/12/23 had 9 CNAs for 86 residents on the day shift, required at least 11 CNAs.
- 08/12/23 had 3 CNAs to 9.5 total staff on the evening shift, required at least 5 CNAs.
- 08/13/23 had 9 CNAs for 91 residents on the day shift, required at least 11 CNAs.
- 08/13/23 had 4 CNAs to 11 total staff on the evening shift, required at least 5 CNAs.
- 08/14/23 had 7 CNAs for 91 residents on the day shift, required at least 11 CNAs.
- 08/14/23 had 4 CNAs to 10 total staff on the evening shift, required at least 5 CNAs.
- 08/15/23 had 4 CNAs to 10.5 total staff on the evening shift, required at least 5 CNAs.
- 08/17/23 had 9 CNAs for 96 residents on the day shift, required at least 12 CNAs.
- 08/18/23 had 9 CNAs for 95 residents on the day shift, required at least 12 CNAs.
- 08/19/23 had 5 CNAs for 89 residents on the day shift, required at least 11 CNAs.
- 08/19/23 had 4 CNAs to 9.5 total staff on the evening shift, required at least 5 CNAs.

- 08/20/23 had 5 CNAs for 89 residents on the day shift, required at least 11 CNAs.
- 08/20/23 had 5 CNAs to 12 total staff on the evening shift, required at least 6 CNAs.
- 08/22/23 had 5 CNAs to 12 total staff on the evening shift, required at least 6 CNAs.
- 08/24/23 had 8 CNAs to 17.5 total staff on the evening shift, required at least 9 CNAs.
- 08/25/23 had 7 CNAs for 88 residents on the day shift, required at least 11 CNAs.
- 08/26/23 had 5 CNAs for 88 residents on the day shift, required at least 11 CNAs.

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 (or the days the facility was not in compliance) is \$19,000.

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 X23035.**

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:

Complete Care at Brick 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). Complete Care at Brick may request a hearing to challenge any or all of the following: the factual findings and/or the assessed penalties. Complete Care at Brick 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 Complete Care at Brick is owned by a corporation, representation by counsel is required. In the event of an OAL hearing regarding the penalty, Complete Care at Brick 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.

Notice of Assessment

September 27, 2023

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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.

Sincerely,

A handwritten signature in blue ink that reads "Gene Rosenblum". The signature is fluid and cursive, with the first name "Gene" being more prominent.

Gene Rosenblum, Director

Office of Program Compliance

Division of Certificate of Need and Licensing

GR:JLM:eg

DATE: September 27, 2023

E-MAIL (joe.hiller@completecurebrick.com)

REGULAR AND CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Control # X23035