

## HEALTH

### HEALTH SYSTEMS BRANCH

#### DIVISION OF CERTIFICATE OF NEED AND LICENSING

#### Standards for Licensure of Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs

##### Definitions

##### Surveys

##### **Adopted Amendments: N.J.A.C. 8:36-1.3 and 2.4**

Proposed: April 1, 2024, at 56 N.J.R. 456(a).

Adopted: March 24, 2025, by Kaitlan Baston, MD, MSc, DFASAM, Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Filed: March 24, 2025, as R.2025 d.045, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5.

Effective Date: April 21, 2025.

Expiration Date: November 29, 2028.

##### **Summary** of Public Comments and Agency Responses:

The Department of Health (Department) received comments from the following:

1. John W. Indyk, Vice President, Health Care Association of New Jersey;
2. Anna Tosti, LNHA, Quality Assurance Coordinator, Villa Raffaella Assisted

Living;

3. Sr. E. Rani Gnanapragasam, RN, CALA, Administrator, Villa Raffaella

Assisted Living;

4. Katherine Harrison, Executive Director, Arden Courts;
5. James McCracken, President and CEO, LeadingAge New Jersey and Delaware;
6. Angela Maioran, Regional Director of Business Operations, Brightview Senior Living;
7. Samantha Lawrence, Regional Vice President of Operations, Brightview Senior Living;
8. Lori Stampone, Arbor Terrace, Morris Plains;
9. Mohammad Ali; and
10. Shyla Cramsey, Brightview, Paramus.

The numbers in parentheses following each comment below correspond to the commenter numbers listed above.

1. COMMENT: A commenter expresses concern that the notice of proposal mischaracterizes the advanced standing program, in that the program was a collaborative effort of the Department and the regulated community. (1)

RESPONSE: The Department disagrees with the assertion that it mischaracterized the advanced standing program. The Department agrees that the advanced standing program was a collaborative effort of the Department and the regulated community. The Department will make no change upon adoption in response to the comment.

2. COMMENT: A commenter states the notice of proposal Summary inaccurately states that advanced standing status exempted an assisted living residence from required Department-led inspections because, pursuant to the program, a random 10 percent of participating communities were subject to Department-led follow-up inspections. (1)

RESPONSE: The Department disagrees with the commenter's assertion that the summary was inaccurate in stating that advanced standing status exempted an assisted living residence from required Department-led inspections. While a random 10 percent of participating facilities were subject to Department-led follow-up inspections, this is not equivalent to every facility being regularly subject to required Department-led inspections. The Department will make no change upon adoption in response to the comment.

3. COMMENT: The commenters state that the deemed status program standards are not as rigorous as the advanced standing program standards. (1, 2, and 3)

4. COMMENT: The commenters state that the Department should reconsider discontinuing the advanced standing program because it was a valuable program. (2, 3, 4, 7, and 8)

5. COMMENT: The commenters state that the deemed status program would not be as effective as the advanced standing program was in ensuring compliance with the rules. The advanced standing program required annual performance of licensure compliance visits by former Department surveyors, whereas, in contrast, the deemed status program would require the performance of accreditation visits only once every three years. (1, 2, and 3)

RESPONSE TO COMMENTS 3, 4, AND 5: After careful and in-depth consideration, the Department determined that it was prudent to replace the advanced standing program with the deemed status program, despite perceptions that the deemed status program would not be as rigorous as the advanced standing program. The Department acknowledges that the advanced standing program required annual licensure compliance visits, whereas the deemed status program would require licensure compliance visits only once every three years. However, the deemed status program is a rigorous program that would require participating facilities to adhere to minimum requirements while continuing to enable a facility to hold itself to higher than the minimum standards. Inspections performed pursuant to the deemed status program would be sufficient and appropriate to ensure the health, safety, and welfare of facility residents. Based on the foregoing, the Department will make no change upon adoption in response to the comments.

6. COMMENT: The commenters state that compliance with the deemed status program would be more costly for facilities than the advanced standing program. (2, 3, 5, and 7)

RESPONSE: The Department acknowledges that some facilities might find compliance with the deemed status program to be more costly than was compliance with the advanced standing program. Facility participation in the deemed status program is not mandatory. A facility can elect not to participate in the program.

7. COMMENT: Comprehensive personal care homes (CPCH) participated in the advanced standing program, but the proposed amendments do not address CPCH eligibility to participate in the deemed status program. (1)

RESPONSE: The commenter correctly notes that CPCHs participated in the advanced standing program and that the proposed amendments do not address a CPCH's eligibility to participate in the deemed status program. The Department has reviewed the deemed status program requirements and determined that a CPCH should be eligible to participate in the deemed status program. Therefore, the Department is developing a rulemaking to permit a CPCH to elect to participate in the deemed status program, for promulgation in the ordinary course.

8. COMMENT: A commenter states that accrediting bodies, such as the Joint Commission, teach standards beyond the Department's standards. (5)

RESPONSE: Accrediting bodies teach standards that require facility adherence to the minimum requirements of the deemed status program and may teach facilities to adhere to standards that are greater than those that the deemed status program requires. The Department finds that the deemed status program standards are the minimum standards necessary to ensure the health, safety, and welfare of facility residents. Therefore, the Department will make no change upon adoption in response to the comment.

9. COMMENT: The commenters express confusion as to why the proposed amendments would not increase the number of Department visits if the Department did

not feel involved enough, rather than terminating the advanced standing program. (2, 3, and 6)

RESPONSE: The Department determined to replace the advance standing program with the deemed status program because the latter would involve the participation of neutral parties and would establish minimum standards that are adequate to ensure facility residents' health, safety, and welfare. The Department will make no change upon adoption in response to the comment.

10. COMMENT: A commenter states that it is vital that the Department continues to perform staffed inspections of assisted living facilities rather than outsourcing inspections to outside organizations. (9)

RESPONSE: The Department will oversee applications for participation in the deemed status program. Involving neutral accrediting bodies would ensure the Department surveyors are available when needed in other aspects of their job duties. The Department will make no change upon adoption in response to the comment.

11. COMMENT: A commenter states that the advanced standing program addressed a delay in surveys performed by the Department. (1 and 6)

RESPONSE: Pursuant to the deemed status program, the use of neutral accrediting bodies would address and rectify the delays in surveys that the commenter indicates have existed. The Department will make no change upon adoption in response to the comment.

12. COMMENT: A commenter states that the Department could still perform a lookback, infection control, or complaint survey at any time pursuant to the advanced standing program. (2, 3, 4, and 7)

RESPONSE: The commenter is correct. The Department will make no change upon adoption in response to the comment.

13. COMMENT: A commenter states that the advanced standing program facilitated a collaborative approach that worked towards improvement, which was different from dealing directly with the Department's surveyors, who seemed to push for deficiencies. (10)

RESPONSE: The Department decided to replace the advance standing program with the deemed status program to involve neutral parties to ensure the health and safety of New Jersey residents. The Department will make no change upon adoption in response to the comment.

### **Federal Standards Statement**

Although the Federal government (the Centers for Medicare and Medicaid Services) authorizes the use of a deemed status program for other types of facilities, it authorizes no such program for assisted living residences. As such, no Federal standards analysis is required.

**Full text** of the adoption follows:

TEXT