

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

OFFICE OF HEALTH CARE FINANCING

Ambulatory Care Facility Assessment

Proposed Readoption with Amendments: N.J.A.C. 8:31A

Authorized By: Judith M. Persichilli, R.N., B.S.N., M.A, Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-18.57.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-017.

Submit written comments by April 8, 2022, electronically to

<http://www.nj.gov/health/legal/ecomments.shtml>, or by regular mail postmarked by April

8, 2022 to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

Office of the Commissioner

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

Summary

N.J.A.C. 8:31A, Ambulatory Care Facility Assessment, establishes standards by which the Department of Health (Department) assesses and collects fees applicable to certain categories of licensed ambulatory care facilities based on those facilities' annual gross receipts, in accordance with the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., particularly at 26:2H-5 and 18.57. N.J.A.C. 8:31A also establishes facility reporting requirements. The Department, with the approval of the Health Care Administration Board, proposes to readopt N.J.A.C. 8:31A with amendments, as described below.

Pursuant to N.J.S.A. 52:14B-5.1.b, N.J.A.C. 8:31A was scheduled to expire on June 20, 2020. Pursuant to Executive Order No. 127 (2020) and P.L. 2021, c. 103, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) was extended through January 1, 2022. Therefore, this chapter has not yet expired and is extended 180 days from the later of the existing expiration date or the date of filing of this notice of proposed readoption, whichever is later, which date is June 14, 2022, pursuant to N.J.S.A. 52:14B-5.1.c, Executive Order No. 244 (2021), and P.L. 2021, c. 103.

As the Department is providing a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department proposes non-substantive amendments throughout the chapter to reflect the redesignation of the Department pursuant to N.J.S.A. 26:1A-2.1, update contact information and website addresses, and improve grammar.

Existing Subchapter 1 establishes general provisions. Existing N.J.A.C. 8:31A-1.2 establishes definitions of words and terms used throughout the chapter. The Department proposes to amend the section to add a definition of the term “Ambulatory Care Facility Assessment Unit” or “Unit.” The Department proposes to amend the existing definition of the term “de minimis amount,” to increase from five to 10 percent, the amount of understatement of a facility’s assessment liability that would constitute a de minimis amount. This proposed amendment aligns the definition of “de minimis amount” with the Department’s long-standing practice for determining a facility’s assessment liability when a facility under-reports its gross receipts on its annual report. The Department proposes to amend the existing definition of the term “uniform gross receipts assessment rate,” to reflect the applicable assessment rate pursuant to N.J.S.A. 26:2H-18.57.

Existing Subchapter 2 addresses assessment. The Department proposes to amend existing N.J.A.C. 8:31A-2.1, Calculation of assessment, to delete existing subsections (a) and (b), which contain obsolete text establishing expired assessment rates, to amend recodified subsection (a) to add the applicable rate that N.J.S.A. 26:2H-18.57 establishes, and to amend recodified subsection (b) to restate the regulation in the active voice. Existing N.J.A.C. 8:31A-2.2, Payment of assessment, establishes procedures for submission of payments to the Department. The Department proposes to amend the section to add instructions for submission of electronic payments. For

years, the Department has maintained a mechanism for electronic payment submission, and facilities have been submitting payments through this mechanism. The proposed amendment would reflect the existence of this mechanism as an option that facilities can elect for payment submission. Existing N.J.A.C. 8:31A-2.3, Appeal of assessment, establishes standards by which facilities can appeal an assessment. The Department proposes to amend existing N.J.A.C. 8:31A-2.3 to authorize the electronic submission of appeals.

Existing Subchapter 3 addresses financial reporting by facilities. The Department proposes to amend existing N.J.A.C. 8:31A-3.1, Annual report, to delete references to obsolete assessments, to increase the maximum fee to correspond to N.J.S.A. 26:2H-18.57, to add a reference to the Unit as the entity to which reports are submitted, and to update subsections (f) and (g), which provide outdated delivery information.

Existing Subchapter 4 addresses enforcement. The Department proposes to amend existing N.J.A.C. 8:31A-4.1 to delete an obsolete reference.

Social Impact

The rules proposed for reoption have generated, and, with the proposed amendments, would continue to generate, revenues to support hospital charity care. The proliferation in New Jersey of ambulatory care facilities in the categories that are subject to the assessment has resulted in greater competition among these facilities and general hospitals. Unlike general hospitals, ambulatory care facilities in the categories subject to the assessment are not required to provide care regardless of patients' ability to pay, and the Department has no evidence that these ambulatory care

facilities voluntarily serve uninsured and medically underserved populations. Thus, the rules proposed for re-adoption with the proposed amendments, would continue to address inequities between ambulatory care facilities and hospitals that provide the same services. Given the vital role of hospitals in assuring the availability of care for uninsured and medically underserved people in New Jersey, the assessment would continue to strengthen New Jersey's health care safety net by providing revenues for charity care subsidies and balancing the competitive environment.

Economic Impact

The rules proposed for re-adoption with amendments would impose a maximum assessment of \$350,000 per year on higher-volume ambulatory care facilities. N.J.S.A. 26:2H-18.57 establishes the method for calculating the assessment, including the \$350,000 cap. Thus, facilities that are subject to the assessment would continue to realize an economic impact by operation of the law. As the Social Impact statement describes, the rules proposed for re-adoption with amendments would continue to level the competitive environment among hospitals and ambulatory care facilities that provide comparable services, given the absence of an obligation applicable to ambulatory care facilities that is comparable to the obligation of hospitals to provide care to medically underserved and uninsured populations in New Jersey.

Federal Standards Statement

The rules proposed for re-adoption with amendments are consistent with, and would not exceed, 42 CFR 433.55, a regulation that the Centers for Medicare and Medicaid Services administer, which addresses "health care-related taxes." There are

no other Federal standards applicable to the rules proposed for re-adoption with amendments. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for re-adoption with amendments would not result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The rules proposed for re-adoption with amendments would not have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The Department licenses approximately 830 ambulatory care facilities. Of these, approximately 450 are covered facilities that are subject to the ambulatory care facility assessment. The Department expects that most of these covered facilities employ fewer than 100 people full-time, and, therefore, these facilities may be “small businesses,” as the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines that term. The Summary describes the requirements applicable to covered facilities, and the Social and Economic Impact sections describe the costs of compliance. The rules proposed for re-adoption with amendments would not increase the existing requirements or burdens on ambulatory care facilities, because the proposed amendments that would increase the assessment rates would conform the rule to the rates that already exist by statute at N.J.S.A. 26:2H-18.57.

The rules proposed for re-adoption with amendments would not require facilities to retain the services of professionals to comply. However, it is likely that covered facilities would retain the services of healthcare accounting professionals to assist in the

preparation of the required annual financial reports, but already will have retained these professionals as an ordinary business expense to assist in the preparation of tax returns, which require the same kind of information that annual reports to the Department require. In addition, covered facilities might elect to retain the services of legal counsel to assist in pursuing assessment appeals and defending against enforcement actions.

The amount of the assessment a facility will incur is self-scaling to the amount of each facility's gross receipts. Thus, facilities that have fewer employees likely have smaller gross receipts than facilities with a greater number of employees and will incur a smaller assessment than the assessment a larger facility will incur. Enforcement penalties are self-scaling, based on the amount of a facility's understatement of receipts. The Department otherwise provides no lesser or differing standards specifically based on business size, because the Department has no discretion with respect to the amount of the assessment; N.J.S.A. 26:2H-18.57 establishes the formula by which to calculate the assessment. The other rule requirements, such as the information to be contained in annual reports and the processes for submission of reports, payments, and appeals, are procedural. The Department has determined that these requirements establish the minimum standards necessary to implement N.J.S.A. 26:2H-18.57, regardless of business size.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments would not have an impact on the affordability of housing or the costs associated with housing in New Jersey,

because the rules proposed for readoption with amendments address ambulatory care facility assessments and have no bearing on housing costs.

Smart Growth Impact Analysis

The rules proposed for readoption with amendments would not have an impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey, because the rules proposed for readoption with amendments address ambulatory care facility assessments and have no bearing on development in the State.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:31A.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

8:31A-1.1 Purpose and scope

(a) The purpose of this chapter is to implement the requirements [of] **at** N.J.S.A. 26:2H-1 et seq.[]; specifically, N.J.S.A.], **particularly at** 26:2H-18.57[, amended by P.L. 2004, c.54], which requires [that] the Department of Health [and Senior Services] **to** assess a

fee in the manner described [in] **at** N.J.A.C. 8:31A-2 [to] **on** each ambulatory care facility that is licensed to provide one or more of the ambulatory care services listed [in] **at** (b) below.

(b)-(c) (No change.)

8:31A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Ambulatory Care Facility Assessment Unit” or “Unit” means a unit of the Department for which the contact information is Ambulatory Care Facility Assessment Unit, Office of Health Care Financing, New Jersey Department of Health, 55 North Willow Street, 5th Floor, Room 5015, Trenton, NJ 08625-0360, telephone: (609) 376-8530, electronic mail: AAP@doh.nj.gov.

“Commissioner” means the Commissioner of the New Jersey Department of Health [and Senior Services or his or her designee].

...

“De minimis amount” means a difference between [the] reported and audited gross receipts that results in less than a [five] **10** percent understatement of [the] a facility’s assessment liability.

“Department” means the New Jersey Department of Health [and Senior Services].

...

“Uniform gross receipts assessment rate” means the rate that the Department uses to calculate the assessment on the gross revenues of covered facilities beginning with the State fiscal year [2006] **2011** assessment. The Department [calculated] **calculates** the rate according to N.J.S.A. 26:2H-18.57. The rate equals [2.9464494] **2.95** percent.

SUBCHAPTER 2. ASSESSMENT

8:31A-2.1 Calculation of assessment

[(a) For the State fiscal year 2005 (beginning July 1, 2004), each covered facility with at least \$300,000 in gross receipts in calendar year 2003 shall remit to the Department an assessment of 3.5 percent of its gross receipts or \$200,000, whichever amount is less.

(b) For the State fiscal year 2006 (beginning July 1, 2005), each covered facility with at least \$300,000 in gross receipts in calendar year 2004 shall remit to the Department an assessment based on a uniform gross receipts assessment rate to be determined by the Commissioner using the 2004 data submitted to the Department by each covered facility as part of its annual reporting requirement under N.J.A.C. 8:31A-3 and calculated by the Commissioner so as to raise the same amount in the aggregate as was assessed in State fiscal year 2005, except that no covered facility shall pay an assessment greater than \$ 200,000.]

[(c)] **(a)** [Beginning in State fiscal year 2007,] **The uniform gross receipts assessment rate of 2.95 percent applies to** each covered facility with at least \$300,000 in gross receipts, as documented in the facility’s most recent annual report to the Department [under] **pursuant to** N.J.A.C. 8:31A-3, [shall remit to the Department an assessment

based on the uniform gross receipts assessment rate determined by the Commissioner under (b) above,] except that no facility shall pay an assessment greater than [\$200,000] **\$350,000**.

[(d)] **(b)** [The assessments under] **Each facility shall submit the amount that the Department assesses pursuant to** (a)[, (b) and (c)] above [shall be remitted] to the Department in accordance with [the timetable set forth at] N.J.A.C. 8:31A-2.2.

8:31A-2.2 Payment of assessment

(a) Each covered facility shall pay **its** annual assessment[s] in four equal installments [payments], **which are** due on October 1, January 1, March 15, and June 15 **of each year**.

(b) [In the event that] **if** a due date for submission of an installment payment falls on a weekend or a holiday, the payment shall be due on the first business day following the payment due date.

(c) [Payments mailed] **Facilities** shall [be remitted to the following address: Financial Services, New Jersey Department of Health and Senior Services, 12D Quakerbridge Plaza, PO Box 360, Trenton, NJ 08625-0360, ATTN: Ambulatory Assessment.

(d) Payments hand delivered shall be remitted to the following address: Financial Services, New Jersey Department of Health and Senior Services, 12D Quakerbridge Plaza, Quakerbridge Road, Mercerville, NJ 08619, ATTN: Ambulatory Assessment; telephone (609) 584-4081.] **remit payments, payable to the Treasurer, State of New Jersey, using any of the following means:**

1. By United States Postal Service regular mail, hand delivery, or overnight mail to the following address:

Ambulatory Care Facility Payment Unit

Accounting and Procurement

New Jersey Department of Health

55 North Willow Street, 6th Floor

PO Box 360

Trenton, NJ 08625-0360

Telephone: (609) 376-8530

2. Electronically through the Department’s licensing portal webpage at <https://dohlicensing.nj.gov>.

i. Under “FAQs,” select either “Create New Account” or, to sign into an existing account, “Sign in to your account.”

ii. The direct link to the sign-in page is:

<https://dohlicensing.nj.gov/SignIn?returnUrl=%2F>.

iii. Instructions to complete an electronic payment through the licensing portal webpage are available at: <https://dohlicensing.nj.gov/hfel-5Epayhelp>.

3. Electronically through an Automated Clearing House (ACH) payment after execution and submission to the Department at the address indicated in the Authorizing Agreement for Automated Payments/Deposits form, available at: <https://dohlicensing.nj.gov/ACHform/>.

8:31A-2.3 Appeal of assessment

(a) (No change.)

(b) An appeal [under] **pursuant to** this section shall be filed with the Commissioner, in writing, [at the following address:] **by regular or electronic mail, to:**

[Ambulatory Care Facility Assessment

Health Facilities Evaluation and Licensing

Department of Health and Senior Services Assessment Appeal

PO Box 367

Trenton, NJ 08625-0367]

Office of Legal and Regulatory Compliance

New Jersey Department of Health

PO Box 360

Trenton, New Jersey 08625-0360

Email: OLRC@nj.doh.gov

(c)-(h) (No change.)

SUBCHAPTER 3. FINANCIAL REPORTING

8:31A-3.1 Annual report

(a) (No change.)

(b) The content and format of the annual report for covered facilities [shall be] **is** available [from] **upon request to the** Ambulatory Care Facility Assessment [Program] **Unit** at PO Box [367] **358**, Trenton, NJ 08625-0360, telephone [(609) 341-2124] **(609) 913-5791** and **from the Department's forms page** at

[<http://nj.gov/health/hcsa/hcsaforms.html>] <https://nj.gov/health/forms>. **Instructions on how to submit the electronic standardized Department form may be found at <https://dohlicensing.nj.gov/helphfe15>.**

(c)-(d) (No change.)

[(e) The timetable for submission of annual reports shall be as follows:

1. For State fiscal year 2005, all covered facilities shall provide proof of gross receipts for the calendar year 2003 to the Department no later than September 15, 2004. Covered facilities failing to provide proof of receipts by September 15, 2004, shall pay the maximum assessment of \$ 200,000 for the State fiscal year.]

[2.] **(e)** [For State fiscal year 2006 and thereafter, all covered facilities shall provide the] **Covered facilities shall submit an** annual report for the calendar year preceding the State fiscal year to the Department, **in care of the Ambulatory Care Facility Assessment Unit**, by no later than May 31 preceding the start of the State fiscal year.

1. Facilities failing to provide annual reports by June 30 preceding the start of the State fiscal year shall pay the maximum assessment of [\$200,000] **\$350,000** for the State fiscal year.

(f) Annual reports mailed shall be submitted to the following address:

[Ambulatory Care Facility Assessment Program, Health Facilities Evaluation and Licensing, Department of Health and Senior Services, PO Box 367, Trenton, NJ 08625-0367; facsimile: (609) 633-9087.] **New Jersey Department of Health, Office of Health Care Financing, Ambulatory Care Facility Assessment Unit, PO Box 358, Trenton, NJ 08625-0358, telephone (609) 913-5791.**

(g) Annual reports hand delivered shall be submitted to the following address:

[Department of Health and Senior Services, 120 S. Stockton St., Lower Level, Trenton, NJ 08611; telephone (609) 341-2124.] **New Jersey Department of Health, Office of Health Care Financing, Ambulatory Care Facility Assessment Unit, 55 North Willow Street, 5th Floor, Room 5015, Trenton, NJ 08608, telephone (609) 913-5791.**

8:31A-3.2 Audit of annual report

(a)-(b) (No change.)

(c) If **the Department determines**, upon audit [as provided for in] **pursuant to** this section, [it is determined by the Department] that a covered facility understated its gross receipts in its annual report by more than a de minimis amount, the **Department shall increase retroactively the** covered facility's assessment for the fiscal year that was based on the defective report [shall be retroactively increased by the Department] to the appropriate amount and the facility shall be liable for a penalty in the amount set forth at N.J.A.C. 8:31A-4.1(c).

SUBCHAPTER 4. ENFORCEMENT

8:31A-4.1 Penalties

(a) (No change.)

(b) A covered facility that is operating one or more ambulatory care services listed [in] **at** N.J.A.C. 8:31A-1.1(b) without a license from the Department [, on or after July 1, 2004,] shall be liable for double the amount of the assessment provided [for in] **at** N.J.A.C.

8:31A-2.1, in addition to such other penalties as the Department may impose by law [or rule] for operating an ambulatory care facility without a license.

(c) If **the Department determines**, upon audit [as provided for in] **pursuant to** N.J.A.C. 8:31A-3.2, [it is determined by the Department] that a covered facility understated its gross receipts in its annual report by more than a de minimis amount, the covered facility shall be liable for a penalty in the amount of the difference between the original and corrected assessments, **which shall be in addition to the amount of the retroactive assessment difference that the Department imposes pursuant to N.J.A.C. 8:31A-3.2(c).**