

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

**General Licensure Procedures and Standards Applicable to All Licensed
Facilities**

Lactation Rooms in Healthcare Facilities

Proposed New Rule: N.J.A.C. 8:43E-15.1

Authorized By: Kaitlan Baston, MD., MSc, DFASAM, Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-5 and 26:4C-2.

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

Proposal Number: PRN 2024-091.

Submit written comments by October 4, 2024, electronically to

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

October 4, 2024, to:

Kimberly E. Jenkins, 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

On August 15, 2019, Governor Murphy approved P.L. 2019, c. 242, an act concerning lactation rooms and policies and supplementing Title 26 of the Revised Statutes, codified at N.J.S.A. 26:4C-1 et seq. (Act), which requires, among other entities, healthcare facilities licensed pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., where practicable, to make at least one lactation room available upon request to any breastfeeding person who is utilizing on-site services and post signage developed by the Department of Health (Department) regarding the availability of the room and how to access it. The Act authorizes the Department to promulgate rules to implement the Act, establish standards for the placement of lactation rooms and the posting of signage, and establish staff training requirements.

To implement the Act as it applies to healthcare facilities that the Department licenses pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., the Department is proposing, within the General Licensure Procedures and Standards Applicable to All Licensed Facilities, a new rule at N.J.A.C. 8:43E-15.1, to establish standards concerning lactation rooms for breastfeeding persons utilizing on-site services at licensed healthcare facilities. As the Department is providing a 60-day comment period for this notice of proposal, pursuant to N.J.A.C. 1:30-3.3(a)5, the notice is excepted from the rulemaking calendar requirement.

Proposed new N.J.A.C. 8:43E-15.1 would establish standards for the placement and accessibility of a lactation room in a healthcare facility; would identify requirements for facilities to post signage that the Department developed regarding the availability of the lactation room and share information about breastfeeding in waiting rooms and in

required lactation rooms pursuant to N.J.S.A. 26:4C-3; and would establish staff training standards regarding the lactation room.

Social Impact

Pursuant to P.L. 2019, c. 242, the proposed new rule would have a beneficial social impact on patients and employees of, and visitors to, licensed healthcare facilities, who need to breastfeed or express milk while they are in those facilities.

The proposed new rule would encourage and help to normalize breastfeeding among persons using services at licensed healthcare facilities by distributing information about the benefits of breastfeeding and the right to breastfeed in public and by ensuring that breastfeeding persons have access to private lactation rooms, if desired.

Economic Impact

The proposed new rule would have a minimal economic impact on healthcare facilities. The Act establishes the requirement that a healthcare facility must have a lactation room available to those using on-site services. Likewise, the Act establishes the requirement that a facility must provide training to staff regarding the lactation room. Facilities would incur nominal costs associated with printing and posting the required informational public notices.

Federal Standards Statement

The proposed new rule is not being proposed pursuant to the authority of, or to implement, comply with, or participate in, any program established pursuant to Federal law or any State statute that incorporates or refers to any Federal law, standard, or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed new rule would not result in an increase or decrease in the number of jobs in the State.

Agriculture Industry Impact

The proposed new rule would not have an impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed new rule would impose requirements on healthcare facilities in New Jersey, some of which could be considered “small businesses” within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Facilities would have to designate a room, other than a restroom, the size of which is not specified, as a lactation room. The cost to designate a room for lactation would vary by facility, depending on whether the facility has a room available or would have to create such a room. Healthcare facilities would also have to provide staff training and download signage from the Department’s website and post the signage in two areas within the facility.

Healthcare facilities that require modification of an existing room or construction of a new room may incur costs to retain the services of construction or remodeling professionals to comply. Healthcare facilities may elect to retain the services of professional trainers to provide staff training. However, the Act imposes the requirement of a designated lactation room and staff training; the rules reiterate this requirement. Therefore, healthcare facilities incur costs to comply with these requirements as a function of the Act, and not the proposed new rules.

The cost of these requirements to the facilities would be minimal to moderate, in the case of a facility that would have to construct a room or divide an existing area. As the proposed new rule would be consistent with the Act and is necessary to provide a safe and appropriate area for persons to lactate, and the Act does not provide any exceptions to facilities based on size, the Department proposes no lesser or differing requirements for businesses based on the business size in the interest of public health and safety.

Housing Affordability Impact Analysis

The proposed new rule would not have an impact on the affordability of housing or the costs associated with housing in New Jersey because the proposed rule would establish standards addressing the availability of lactation rooms in healthcare facilities and would have no bearing on housing costs.

Smart Growth Development Impact Analysis

The proposed new rule would not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the proposed new rule requires the availability of lactation rooms in healthcare facilities.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department evaluated this rulemaking and determined that it would 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 proposed new rule follows:

SUBCHAPTER 15. LACTATION ROOM RULES

8:43E-15.1 Availability of lactation room

(a) A facility shall provide at least one lactation room, as that term is defined pursuant to N.J.S.A. 26:4C-1, that is available, upon request, for the purpose of breastfeeding or expressing milk to persons utilizing on-site services.

(b) A facility shall post signage provided by the Department pursuant to N.J.S.A. 26:4C-2 in the facility's public waiting room and in each lactation room, available on the Department's forms page at <https://www.nj.gov/health/forms>.

(c) A facility shall train appropriate staff that a pregnant person may encounter on the following:

1. The purpose of the lactation room;
2. Providing access to the lactation room;
3. Maintaining cleanliness of the lactation room; and
4. Ensuring privacy while the lactation room is in use.