

PUBLIC NOTICE

HEALTH

THE COMMISSIONER

Notice of Receipt of Petition for Rulemaking

Manual of Standards for Licensing of Ambulatory Care Facilities

Computerized Tomography (CT), Magnetic Resonance Imaging (MRI), and

Radiological Services

Additional Staffing

N.J.A.C. 8:43A-25.2

Petitioner: John D. Fanburg, Esq., Brach Eichler LLC, Roseland, New Jersey, on behalf of the Radiological Society of New Jersey, Whippany, NJ.

Take notice that on February 29, 2024, the Department of Health (Department) received a petition for rulemaking from John D. Fanburg, Esq., Brach Eichler LLC, Roseland, New Jersey, on behalf of the Radiological Society of New Jersey, Whippany, New Jersey (petitioner).

Substance or Nature of the Requested Rulemaking Action: The petitioner requests that the Department make certain amendments at N.J.A.C. 8:43A, Manual of Standards for Licensing of Ambulatory Care Facilities, at Subchapter 25, Computerized Tomography (CT), Magnetic Resonance Imaging (MRI), and Radiological Services, at N.J.A.C. 8:43A-25.2, Additional staffing.

Problem or Purpose of the Request: N.J.A.C. 8:43A-25.2 sets forth the minimum staff that an ambulatory care facility (facility) is required to have available for the provision of CT and MRI services. N.J.A.C. 8:43A-25.2(a)1 requires a facility to ensure that a

radiologist is on the premises when a contrast medium is being used for CT services. N.J.A.C. 8:43A-25.2(b)2 requires a facility to ensure that a radiologist is on the premises when a contrast medium is being used for MRI services.

The petitioner states that having a radiologist on-site for these services is challenging for facilities due to doctors' scheduling conflicts; cost considerations; geographical complexities when radiologists need to cover multiple locations, making it logistically difficult to ensure their presence at every site where contrast medium is administered; the need to address urgent cases; and a critical shortage of radiologists. The petitioner refers to the data from the "Career Center" database of the website of the American College of Radiology, which in 2023 showed that there were nearly 1,000 job openings for radiologists in New Jersey and 1,150 radiologists who were finishing their residency nationally; therefore, New Jersey's demand for radiologists exceeds 85 percent of the new radiologists coming out of residency for the entire United States.

The petitioner indicates that the Centers for Medicare and Medicaid Services (CMS) issued a Final Rule extending until December 31, 2024, a pandemic public health emergency rule that authorizes Medicaid and Medicare provider coverage when a supervising physician undertakes the required "direct supervision" of diagnostic testing by being immediately available to engage using audiovisual technology, and that does not require the supervising physician's real-time presence or observation of the service by interactive audiovisual technology throughout the procedure. The petitioner states that CMS justified the extension of this rule beyond the declared pandemic public health emergency period by noting a lack of evidence indicating compromised patient

safety with virtual supervision, coupled with ongoing concerns about limiting access or providing a barrier to needed services.

The petitioner provides suggested changes to the existing text at N.J.A.C. 8:43A-25.2(a)1 and (b)2.

Full text of the petitioner's suggested changes to existing N.J.A.C. 8:43A-25.2(a)1 and (b)2 (with technical modifications to comport the text to New Jersey Register style and formatting conventions) follows (additions to existing text indicated in boldface **thus**; deletions from existing text indicated in brackets [thus]):

8:43A-25.2 Additional staffing

(a) In addition to providing other staff as required by the rules in this chapter, a facility providing computerized tomography services shall have at least the following staff:

1. One radiologist available during the facility's hours of operation and **available either on the premises or virtually present through two-way, real-time audio/visual communication** whenever a contrast medium is being used;

2.-3. (No change.)

(b) In addition to providing other staff as required by this chapter, a facility providing magnetic resonance imaging services shall have at least the following staff:

1. (No change.)

2. One radiologist available during the facility's hours of operation and **available either on the premises or virtually present through two-way, real-time audio/visual communication** whenever a contrast medium is being used;

3.-4. (No change.)

(c) (No change.)