

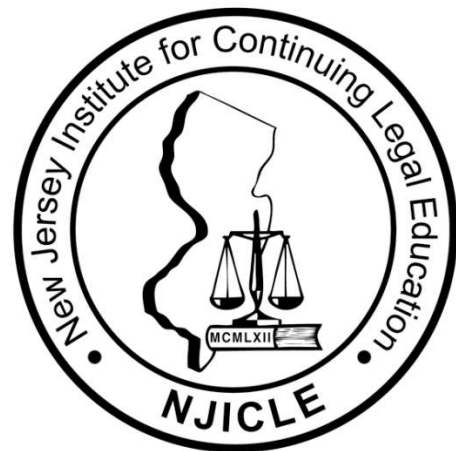
2022 HEALTH LAW SYMPOSIUM

2022 Seminar Material

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2022 HEALTH LAW SYMPOSIUM

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State Regulatory Update

Presented by:

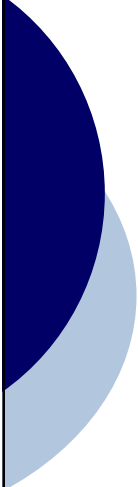
Anjali N. Baxi, Esq.

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What We're Going to Cover Today

- Executive Orders
- NJDOH Issuances
- NJDHS Issuances
- NJDOBI Regulation
- Professional Boards



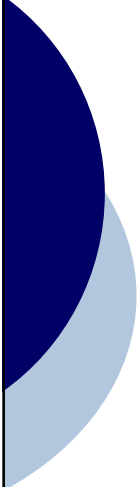
Executive Orders

<https://nj.gov/infobank/eo/056murphy/>

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Executive Orders

- **EO 292 (2022) on April 4, 2022 lifting the COVID-19 PHE**
 - EO Nos. 111, 112, and 207 (2020), Nos. 252, 253, and 271 (2021), and Nos. 283 and 290 (2022) remain in full force and effect pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq, except that any civil or criminal immunity related to the COVID-19 response bestowed by EO 112 shall not be in effect.
 - DCA Waivers in Effect until State of Emergency has ended.
<https://www.njconsumeraffairs.gov/Documents/EO28-DCA.pdf>
- **EO 283 (2022) issued on June 6, 2022 clarifying COVID-19 vaccine requirements for workers in health care and congregate settings.**
 - Applies to covered health care settings subject to the CMS rule and high risk congregate settings.
 - Required to maintain a policy that requires covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations by a certain date.
 - Exceptions for disability, medical and religious exemption.
 - Employer must establish disciplinary process for addressing non-compliance.
 - No testing option.



**NJDOH
RULEMAKING**

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NJDOH RULEMAKING

- Notices of Rulemaking
 - On February 7, 2022, at 54 N.J.R. 284(a), the Department of Health, Certificate of Need and Licensing Division, published a notice of action on petition of rulemaking for approval of a nurse aide in long-term care facilities training program and eligibility criteria for instructor/evaluators in training programs for long term care facility nurse aides. See N.J.A.C. 8:39-43.10. Notice of receipt of rulemaking was published in November 1, 2021, at 53 N.J.R. 1866(a).
 - On June 6, 2022, at 54 N.J.R. 1105(b), the Department of Health, Office of the Commissioner released a notice of action on petition for rulemaking. The Department denied the petition for rulemaking. The petitioner requested the Department amend N.J.A.C. 8:43G-1.2 to define the term, "next of kin," as used at N.J.A.C. 8:43G-4.1(a)7, to include a close friend or other adult who is familiar with the patient's health care preferences.

NJDOH RULEMAKING (cont'd)

- **Readoption and Recodification**
 - On December 6, 2021, at 53 N.J.R. 2008(a), the Department of Health issued a notice of readoption of Licensure Standards for Mental Health Programs with technical changes and recodification of N.J.A.C. 10:101 as N.J.A.C. 8:121. Effective Date: October 20, 2021; Technical Changes December 6, 2021. The Department is making technical changes throughout N.J.A.C. 8:121 to update references throughout the chapter to the Department of Health licensing authority.
 - Recodified from Title 10 to Title 8.
 - Enforcement is with NJDOH CN & Licensing Program.
 - On December 20, 2021, at 53 N.J.R. 2208(a), the Department of Health, Certificate of Need and Licensing Division, published a final rule readopting the Standards for Licensure of Residential Substance Use Disorder Treatment (at N.J.A.C. 10:161A) as N.J.A.C. 8:111. Effective November 10, 2021, Technical changes December 20, 2021.
 - Moves mental health regulations from Title 10 to Title 8.
 - Enforcement is with NJDOH.

NJDOH RULEMAKING –READOPTION (cont'd)

- **Readoptions**
 - On November 1, 2021, at 53 N.J.R. 1838(b), the Department of Health published a notice of readoption of N.J.A.C. 8:45, the regulations establishing clinical laboratory licensure requirements and fees and fees for services performed by the NJDOH Public Health and Environmental Laboratories. Effective September 29, 2021.
 - On December 20, 2021, at 53 N.J.R. 2198(a) the Department of Health, Certificate of Need and Licensing Division, CN & Healthcare Facility Licensure Program readopted with technical amendments, N.J.A.C. 8:33C, the Rules for Regionalized Perinatal Services and Maternal and Child Health Consortia. Effective November 18, 2021, Technical changes December 20, 2021.
 - On December 20, 2021, at 53 N.J.R. 2199(a), the Department of Health, Certificate of Need and Licensing Division, CN & Healthcare Facility Licensure Program readopted with technical amendments to N.J.A.C. 8:39, Standards for the Licensure of Long Term Care Facilities. Effective November 18, 2021, Technical changes December 20, 2021. The technical amendments include changes to Department's name and contact information and references to the change in name and contact information of the State Long Term Care Ombudsman's Office.

NJDOH RULEMAKING –READOPTION (cont'd)

- On December 20, 2021, at 53 N.J.R. 2204(a), the Department of Health, Certificate of Need and Licensing Division, CN & Healthcare Facility Licensure Program readopted with technical amendments to N.J.A.C. 8:43F, Standards for Licensure of Adult Day Health Services Facilities. Effective November 18, 2021, Technical changes December 20, 2021.
- On January 3, 2022, at 54 N.J.R. 54(a), the Department of Health, Health Systems Branch, Certificate of Need and Licensing Division, Certificate of Need and Healthcare Facility Licensure Program readopted the standard for licensure of assisted living residences, comprehensive personal care homes, and assisted living programs with technical changes. See readopted N.J.A.C. 8:36.
- On January 3, 2022, at 54 N.J.R. 60(a), the Department of Health, Health Systems Branch, Certificate of Need and Licensing Division, Certificate of Need and Healthcare Facility Licensure Program, readopted the manual of standards for licensing of ambulatory care facilities with technical changes. See readopted N.J.A.C. 8:43A.

NJDOH RULEMAKING –READOPTION (cont'd)

- On January 18, 2022, at 54 N.J.R. 149(a), the Department of Health, New Jersey Healthcare Facilities Financing Authority readopted prevailing wage rates for workers employed in the performance of construction contracts for New Jersey Health Care Facilities. See readopted N.J.A.C. 8:95.
- On February 22, 2022, the Department of Health, Certificate of Need and Healthcare Facility Licensure Program readopted with technical changes to the Act concerning transplantation services. See readopted N.J.A.C. 8:33Q.
- On June 20, 2022, at 54 N.J.R. 1168(a), the Department of Health, Division of Certificate of Need and Licensing issued a notice of readoption which readopted N.J.A.C. 8:33, Certificate of Need: Application and Review Process, which was scheduled to expire on June 18, 2022. The Department made technical changes upon readoption. See readoption with technical changes N.J.A.C. 8:33. Effective Date: May 4, 2022. New Expiration Date: May 4, 2029.

NJDOH RULEMAKING –READOPTION (cont'd)

- On July 5, 2022, at 54 N.J.R.1299(a), the Department of Health, Health Systems Branch, Division of Certificate of Need and Licensing, Office of Health Care Financings readopted with amendments the Ambulatory Care Facility Assessment. Such changes include (i) Purpose and Scope, (ii) Definitions, (iii) Calculation of Assessments, (iv) Payment of Assessments, (v) Appeal of Assessment, (vi) Annual Report, (vii) Audit of Annual Report, and (viii) Penalties. See readoption with amendments N.J.A.C. 8:31A. Proposed On February 7, 2022, at 54 N.J.R. 248(a).

NJDOH RULEMAKING –CN (cont'd)

- CN Calls-new review cycles and dates published 54 N.J.R. 458(b)
- Postponements
 - Transplantation. 54 N.J.R. 920(a)
 - Home health care services. 54 N.J.R. 1105(a)
- Cancellations
 - **New General Hospitals 54 N.J.R. 458(a)**
 - **Specialized LTC beds for pediatric care. 54 N.J.R. 457(a)**
 - **Specialized LTC beds for severe behavior management. 54 N.J.R. 457(b)**
 - **Specialized LTC beds for ventilator care. 54 N.J.R. 457(c)**
 - **All published on March 7, 2022**
 - **Maternal and child health services. 54 N.J.R. 1212(b) June 20, 2022**
 - **Designation as Trauma Center 54 N.J.R. 1560(c) August 1, 2022**
 - **Mobile ICU 54 N.J.R. 1648(a), August 15, 2022**

Readoption Related to CCRCs

- On April 4, 2022, at 54 N.J.R. 552(a), the Department of Community Affairs, Division of Codes and Standards released a notice of readoption for Continuing Care Retirement Community rules in N.J.A.C. 5:19. The rules are intended to enable the Department of Community Affairs to implement the Continuing Care Retirement Community Regulation and Financial Disclosure Act. See N.J.A.C. 5:19. Effective Date: March 8, 2022. New Expiration Date: March 8, 2029.



**NJ Department of Human Services
Issuances**



NJDHS ISSUANCES-PACE PROGRAM

- Program of All-Inclusive Care for the Elderly (PACE)
 - On May 16, 2022, at 54 N.J.R. 930(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the PACE for Middlesex County.
 - On May 16, 2022, at 54 N.J.R. 939(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the PACE for Somerset County.
 - On July 5, 2022, at 54 N.J.R. 1323(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the PACE for the Bergen County designated service area.
 - On July 5, 2022, at 54 N.J.R. 1332(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the PACE for the Passaic County designated service area.

NJDHS ISSUANCES-PACE PROGRAM (cont'd)

- What is PACE
 - PACE is an innovative program that provides frail individuals aged 55 and older with comprehensive medical and social services, coordinated and provided by an interdisciplinary team of professionals in a community-based center and in their homes, thereby helping the program participants delay or avoid admission to long-term care facilities.
 - The PACE may be a governmental entity, non-profit or a for-profit entity that has CMS a program waiver
 - Needs CMS Approval –See 42 U.S.C. 1396u-4
 - NJDOH License under N.J.A.C. 8:43A
 - Requires architectural review



**NJ Department of
Banking and Insurance
Issuances**

NJDOBI ISSUANCES

- On October 4, 2021, at 53 N.J.R. 1737(a), the Insurance – Department of Banking and Insurance, Individual Health Coverage Program Board, adopted amendments to N.J.A.C. 11:20, Appendix Exhibits A and B. Exhibits can be reviewed by contacting the New Jersey Individual Health Coverage Program. See adopted N.J.A.C. 11:20.
- On October 4, 2021, at 53 N.J.R. 1738(a), the Insurance – Department of Banking and Insurance, Small Employer Health Benefits Program, adopted amendments to N.J.A.C. 11:21, Appendix exhibits F, G, W, Y, HH, and II. Exhibits can be reviewed by contacting the New Jersey Small Employer Health Benefits Program. See adopted N.J.A.C. 11:21.
- On January 3, 2022, at 54 N.J.R. 73(a), the Department of Banking and Insurance, Division of insurance readopted the HMO regulations with technical changes. See readopted N.J.A.C. 11:24.

NJDOBI (cont'd)

- Third Party Billing Registration
- Citation:
 - N.J.S.A. 17B:27B-1 et seq
 - N.J.A.C. 11:23-1.1, Subchapter 5
- Penalty Provision: N.J.A.C. 11:23-5.10
 - “an amount not less than \$250.00 nor more than \$5,000 for each day that a third party billing”
- Changes in Enforcement Environment
- Fines have gone from \$ to \$\$\$\$
- Consent Degrees/Orders to Show Cause
- Enforcement Activity:
 - https://www.nj.gov/dobi/division_insurance/insfines.htm



Rulemaking by Professional Boards

NJ Board of Medical Examiners

- On December 6, 2021, at 53 N.J.R. 2013(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners adopted amendments, adopted a new rule and repealed a rule related to Surgery, Special Procedures, Anesthesia Services Performed in an Office Setting.
 - The new rule authorizes advanced practice clinicians to perform minor procedures in the office consistent with their respective scope of practice and as addressed within their individual collaborating agreements.
 - See amended N.J.A.C. 13:35-4A.1-4A.12, adopted new rule N.J.A.C. 13:35-4A.19; repealed N.J.A.C. 13:35-4.2. Effective December 6, 2021.
 - Notably, the amendments revise multiple definitions under the regulation, including “moderate sedation,” “early aspiration abortion,” and “office.”

NJ Board of Medical Examiners (cont'd)

- On June 20, 2022, at 54 N.J.R. 1171(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, Electrologists Advisory Committee adopted amendments and new rules to the Electrologists Advisory Committee Rules. Such changes include:
 - Purpose and Scope/Definitions,
 - Licensing Requirements/Renewals/Reinstatements/Reactivations for Electrologist/Electrologist Instructor,
 - Application for License: Electrologist,
 - Licensing Requirements for Office Premises,
 - Infection Prevention Standards, Posting of Licenses and Required Notices, Examination Requirements; Reexamination,
 - Unlicensed Practice,
 - Continuing Education; Programs
 - See N.J.A.C. 13:35-subchapter 12

NJBME –Waivers (cont'd)

•Effective August 1, 2022, the Division of Consumer Affairs (the "Division") discontinued the Temporary Emergency Reciprocity Licensure Program on August 1, 2022, for all classes of Group 2 health care practitioners, with the sole exception of respiratory care therapists.

•Group 2 health care practitioners affected:

- Advanced Practice Nurse
- Certified Social Worker
- Doctor of Osteopathy
- Homemaker Home Health Aid
- Licensed Practical Nurse
- Licensed Alcohol and Drug Counselor
- Licensed Clinical Social Worker
- Licensed Social Worker
- Marriage and Family Therapist
- Medical Doctor
- Professional Counselor
- Psychoanalyst
- Psychologist
- Registered Professional Nurse

Board of Dentistry

- On January 3, 2022, at 54 N.J.R. 83(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Dentistry adopted the following amendments:
 - Amending N.J.A.C. 13:30-1A.4 to reflect that the scope of practice of a Dental Hygienist under general supervision in a school setting may include, upon consent of a parent or guardian, preventative measures including biofilm with prophylaxis paste containing fluoride.
 - Amending N.J.A.C. 13:30-8.2 and 8.3 to reduce that the inspection interval and approval by the Board of Dentistry of offices in which parenteral conscious sedation is performed shall occur every from every six (6) years to every five (5) years. N.J.A.C. 13:30-1A.4, 8.2, and 8.3.
- On January 18, 2022, at 54 N.J.R. 149(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Dentistry adopted new rules regarding telemedicine and telehealth. See adopted N.J.A.C. 13:30-9.

Board of Dentistry (cont'd)

- On June 20, 2022, at 54 N.J.R. 1170(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Dentistry adopted an amendment which changes N.J.A.C. 13:30-8.18 to implement P.L. 2021, c. 54, which establishes the circumstances and conditions under which a health care practitioner must issue a prescription for an opioid antidote.
- Whenever a healthcare practitioner (including APN) issues a prescription for an opioid drug that is a controlled dangerous substance and one of the following conditions exists:
 - the patient has a history of substance use disorder, or
 - the prescription for the opioid drug is for a daily dose of more than 90 morphine milligram equivalents (MME),
 - or the patient holds a current, valid prescription for a benzodiazepine that is a Schedule III or Schedule IV controlled dangerous substance.

Board of Nursing

- On January 3, 2022, at 54 N.J.R. 87(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Nursing adopted a new rule regarding exit examinations. This rule requires that nursing programs administer a comprehensive examination at the end of the program. This exam shall not affect the students' ability to graduate or take a licensing exam. See adopted N.J.A.C. 13:37-1.21.
- On January 18, 2022, at 54 N.J.R. 117(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey Board of Nursing *proposed* substantial changes regarding limitations on prescribing, administering, or dispensing of controlled dangerous substances, and special requirements for management of acute and chronic pain (co-prescribing opioid antidote). See proposed N.J.A.C. 13:37-7.9A.

Board of Nursing (cont'd)

- On January 18, 2022, at 54 N.J.R. 152(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Nursing adopted amendments, adopted a new rule, and adopted a repeal regarding education programs. Changes were made to application for establishment of a new program in nursing, provisional accreditation, faculty responsibility for philosophy/missions, and student learning outcomes, maintaining accreditation, preceptors, renewing accreditation, waiver of on-site visits, changes to a nursing program, and other subsections. See adopted N.J.A.C. 13:37-1.2, 1.3, 1.5, 1.6, 1.7, 1.8, 1.13, 1.14, 1.15, 1.16, 1.18, 1.19; See repeal N.J.A.C. 13:37-1.17; See adopted new rule N.J.A.C. 13:37-1.10A.
- On March 21, 2022, at 54 N.J.R. 500(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey Board of Nursing release a notice that a moratorium has been placed on the acceptance of new applications for practical nursing programs.

Board of Nursing (cont'd)

- On July 18, 2022, at 54 N.J.R. 1415(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey Board of Nursing, adopted new rules to the Power of Attorney and Loan Ban. Such changes include (i) General Requirements of Licensure; License Renewal; Fee Schedule, and (ii) Homemaker-Home Health Aides. See adopted new rules N.J.A.C. 13:37-5.4 and 14.18. Rule proposal: February 22, 2022, at 54 N.J.R. 336(a),

Board of Optometrists

- On December 20, 2021, at 53 N.J.R. 2229(b), the Ophthalmic Dispensers and Ophthalmic Technicians adopted new final rules, amendments and repeals of rules in N.J.A.C. 13:33. The rules relate to the application for apprentice certificates, out of state dispenser applications, and reporting of unlawful conduct. Effective December 20, 2021.
- On January 18, 2022, at 54 N.J.R. 118(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey State Board of Optometrists *proposed* substantial changes regarding limitations on prescribing, administering, or dispensing of controlled dangerous substances, and special requirements for management of acute and chronic pain (co-prescribing opioid antidote). See proposed N.J.A.C. 13:38-2.5.

Board of Optometrists (cont'd)

- On June 20, 2022, at 54 N.J.R. 1175(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Optometrists adopted an amendment which changes N.J.A.C. 13:38-2.5 to implement P.L. 2021, c. 54, which establishes the circumstances and conditions under which a health care practitioner must issue a prescription for an opioid antidote.
- Whenever an optometrist issues a prescription for an opioid drug that is a controlled dangerous substance and one of the following conditions exists:
 - the patient has a history of substance use disorder, or
 - the prescription for the opioid drug is for a daily dose of more than 90 morphine milligram equivalents (MME),
 - or the patient holds a current, valid prescription for a benzodiazepine that is a Schedule III or Schedule IV controlled dangerous substance.

State Board of Pharmacy

- On September 20, 2021, at 53 N.J.R. 1562(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy proposed a new rule that will require every pharmacy permit holder to implement a continuous quality improvement program to address prescription errors. See proposed N.J.A.C. 13:39-1.9.
- On January 3, 2022, at 54 N.J.R. 88(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding opioid warning labels. When a pharmacist dispenses a prescription for an opioid medication, they must affix a warning to the bottle that states “opioid risk of addiction and overdose,” along with other requirements. See adopted N.J.A.C. 13:39-7.12.
 - Under the amendments, opioid medication labels must be (i) yellow, red or orange in color; printed in an easily and clearly readable, non-cursive font size of at least 10- point font; and, (iii) affixed to the side or cap of the prescription bottle or to the side of the box that contains the prescription label. The amended regulations may be found at N.J.A.C § 13:39-7.12(e).
- On January 18, 2022, at 54 N.J.R. 156(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding fees for out-of-state pharmacies. These fees include \$275 for an application permit, \$275 for change of ownership/name, and \$275 for change of location. See adopted N.J.A.C. 13:39-1.3.

State Board of Pharmacy (cont'd)

- On January 18, 2022, at 54 N.J.R. 156(c), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments that require the pharmacist to document that counseling was provided or refused at the time of prescription dispensing. See adopted N.J.A.C. 13:39-7.21.
- On March 7, 2022, at 54 N.J.R. 449(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding procedures for authorized prescriber ordered or government sponsored immunizations performed by pharmacists, pharmacy interns, or pharmacy externs. It is also regards to the requirement for pharmacists, pharmacy interns, or pharmacy externs to administer influenza vaccine to minors. A licensed pharmacist or pharmacy intern needs to be pre-approved by the Board to administer vaccines and related emergency medications. See adopted amendments N.J.A.C. 13:39-4.21 and 4.21A.

State Board of Pharmacy (cont'd)

- On May 2, 2022, at 54 N.J.R. 771(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy *proposed* new rules setting forth the requirements to allow a pharmacy to have licensed pharmacists and registered pharmacy technicians perform limited pharmaceutical functions at a location other than on the premises of a pharmacy.
 - Goal: greater flexibility in prescription processing.
 - Would permit pharmacists and pharmacy technicians to perform data entry of prescription medication information and refill authorizations.
 - No storing or dispensing of any medication from a remote location.
 - Any prescription processing functions performed at a remote location must be performed by qualified and appropriately trained individuals pursuant to safeguards designed to protect the confidentiality of prescription and patient information. See proposed new rules N.J.A.C. 13:39-4A.

Board of Physical Therapy Examiners

- On September 7, 2021, at 53 N.J.R. 1500(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Physical Therapy Examiners readopted the Rules of the State Board of Physical Examiners with amendments. See N.J.A.C. 13:39A. Additionally, repeals and new rules were adopted. See N.J.A.C. 13:39A-5.5, 5A and N.J.A.C. 13:39A-4.3, 5.2A.

Board of Polysomnography

- On June 20, 2022, at 54 N.J.R. 1176(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Polysomnography adopted new rules regarding telemedicine and telehealth. These include the purpose and scope, definitions, standard of care, licensee-patient relationship, provision of health care services through telemedicine or telehealth, records, prevention of fraud and abuse, and privacy and notice to patients. See N.J.A.C. 13:44L-7. Rules were proposed on January 18, 2022 at 54 N.J.R. 119(a).

Board of Psychological Examiners

- On September 20, 2021, at 53 N.J.R. 1570(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners adopted amendments, new rules, and repeals that revise the standard for denying a license based on conduct constituting a crime or offense. See adopted N.J.A.C. 13:42-5.3, 10.17, 9.3, 10.4, 10.18, 11.4, 10.18.
- On November 1, 2021, at 53 N.J.R. 1852(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners adopted an amendment of N.J.A.C. 13:42-8.1, regarding Client records: Confidentiality. The amendment requires that a licensee retain the permanent client record for at least 7 years from the date of last entry, unless otherwise provided by law. Records for minors must be kept for seven years from the date of last entry or until the client turns 25 years old, whichever is longer, unless otherwise provided by law.

Board of Psychological Examiners (cont'd)

- On January 3, 2022, at 54 N.J.R. 1, the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners, *proposed* amendments that allow for an online administration of the jurisprudence examination which applicants for a license to practice psychology in NJ must take. See proposed N.J.A.C. 13:42-3.1, 3.2, 3.6, 5.1, 5.3, 5.4 and 10.21.
- On March 7, 2022, at 54 N.J.R. 406(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners *proposed* an amendment regarding supervised practical experience prior to receiving a Doctoral Degree. This proposed rule would remove the requirement that at least one year of professional experience be completed subsequent to the applicant receiving a doctoral degree. See proposed amendment N.J.A.C. 13:42-4.1.

Board of Marriage and Family Therapists

- On November 1, 2021, at 53 N.J.R. 1868(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Marriage and Family Therapists issue a public notice of receipt of petition for rulemaking that requests an amendment to N.J.A.C. 13:34-5.3 to change the name "American Association for Marriage and Family Therapy of New Jersey Inc., (AAMFT-NJ)" to the "New Jersey Association for Marriage and Family Therapy (NJAMFT). This name change was recommended to accurately identify the entity that can approve CE courses and programs.



Board of Marriage and Family Therapists

- On February 7, 2022, at 54 N.J.R. 285(a), the Department of Law and Public Safety, Division of Consumer Affairs, published a notice of action on petition for rulemaking regarding the Board of Marriage and Family Therapy Examiners, Professional Counselor Examiners Committee.
 - This notice is for a petition received to amend N.J.A.C. 13:34-13.1(d), to permit the Committee to count clinical hours obtained before the submission of the proposed plan of supervision toward the number of supervised hours required to become a licensed counselor. See N.J.A.C. 13:34-13.1.
 - Committee determined to deny the petition because it is contrary to the applicable statute. N.J.S.A. 45:8B-50 provides: "No licensed associate counselor shall practice without direct supervision by a licensed professional counselor or a supervisor acceptable to the committee. The plan for supervision of the licensed associate counselor shall be approved by the committee prior to any actual performance of counseling by the licensed associate counselor."

Board of Marriage and Family Therapists (cont'd)

- On February 7, 2022, at 54 N.J.R 285(b), the Department of Law and Public Safety, Division of Consumer Affairs published a notice of action on petition for rulemaking for the Board of Marriage and Family Therapy Examiners, Professional Counselor Examiners Committee regarding N.J.A.C. 13:34-11.6(a) be amended to permit an applicant to submit proof of passing the required exam within one year of the date of application.
 - The Committee determined denied petition because it is contrary to the applicable statute. N.J.S.A. 45:8B-41 provides: "Each applicant shall furnish evidence satisfactory to the committee that he ... d. Has passed the National Counselor Examination of the National Board for Certified Counselors." 54 N.J.R. 285(b)

Board of Marriage and Family Therapists (cont'd)

- On February 22, 2022, the Department of Law and Public Safety, State Board of Marriage and Family Therapy Examiners, Alcohol and Drug Counselor Committee adopted new rules regarding telemedicine and telehealth. This new rule authorizes healthcare providers, who are alcohol and drug counselors, to engage in telemedicine and telehealth. This rule sets forth various other rules alcohol and drug counselors must follow regarding telehealth. See adopted N.J.A.C. 13:34C-7.

Board of Marriage and Family Therapists (cont'd)

- On May 2, 2022, at 54 N.J.R. 792(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Marriage and Family Therapy Examiners released a notice of action on petition for rulemaking regarding increasing social and cultural competence training for licensed professional counselors.
 - The Board denied the petition.
 - The Board held that three hours of training is a minimum requirement, though three hours is consistent with best practices nationwide and in New Jersey.
 - The Board does not offer continuing education on any topic, but rather approves providers who review and present continuing education courses.
 - The core curriculum of professional counselor training programs at higher learning institutions is set by nationally recognized accrediting agencies.

Board of Marriage and Family Therapists (cont'd)

- On June 20, 2022, at 54 N.J.R. 1212(c), the Department of Law and Public Safety, Division of Consumer Affairs, Board of Marriage and Family Therapy Examiners issued a notice of action on petition for rulemaking, in which the Department denied a petition for rulemaking that requested the Board to amend N.J.A.C. 13:34-13.1 to require that supervisors of licensed associate counselors be professional counselors licensed in New Jersey for at least three years and have an approved clinical supervisor certification.
 - The Board affirmed the Professional Counselor Examiners Committee's decision to deny the petition.
 - Notice of receipt of rulemaking was published May 16, 2022 at 54 N.J.R. 1212(c).

Board of Respiratory Care

- On December 6, 2021, at 53 N.J.R. 2050(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Respiratory Care adopted new rules regarding telehealth and telemedicine at N.J.A.C. 13:44F-11. Effective December 6, 2021. The new rules are identical to the telemedicine and telehealth rules already in place for other New Jersey healthcare providers.
- On April 4, 2022, at 54 N.J.R. 525(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Respiratory Care proposed to readopt the Board of Respiratory Care Rules in N.J.A.C. 13:44F with amendments. Following a thorough review in compliance with Executive Order No. 66 (1978), the Board determined that amendments were necessary to provide regulatory congruence and make practical and comprehensive updates to the Board's rules. The Board believed that the rules proposed for readoption, as amended, were necessary, reasonable, understandable, and responsive to the purposes for which they were promulgated. See N.J.A.C. 13:44F.

Other Professional Boards

Board of Social Workers

•On July 18, 2022, at 54 N.J.R. 1416(a), the Department of Law and Public Safety, Division of Consumer Affairs, Board of Social Workers published a notice of readoption of N.J.A.C. 13:44G, which establish the standards for the licensing, certification, and regulation of social workers and for the practice of social work. Effective Date: June 13, 2022. New Expiration Date: June 13, 2029.

Occupational Therapy Advisory Council

•On January 18, 2022, at 54 N.J.R. 157(a), the Department of Law and Public Safety, Division of Consumer Affairs, Occupational Therapy Advisory Council adopted new rules regarding telemedicine and telehealth. See adopted N.J.A.C. 13:44K-7.

Board Chiropractic Examiners

•On November 15, 2021, at 53 N.J.R. 1920(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board Chiropractic Examiners published a notice of readoption of N.J.A.C. 13:44E. Effective October 19, 2021.

Division of Consumer Affairs

- On April 18, 2022, at 54 N.J.R. 718(a), the Department of Law and Public Safety, Division of Consumer Affairs published a notice of readoption of N.J.A.C. 13:45B, which establish the standards for the regulation of personnel services. The chapter includes rules on employment agencies, health care service firms and placement of health care practitioners. Effective Date: March 14, 2022 until March 14, 2029.
- On May 2, 2022, at 54 N.J.R. 782(a), the Department of Law and Public Safety, Division of Consumer Affairs, Charities Registration Unit adopted amendments to require the most recent IRS filings, except for Schedule B (schedule of donors) to be included in initial and renewal registration statements. This eliminates the requirement to include a schedule of donors under Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021) and Americans for Prosperity Foundation v. Grewal No. 3:19-cv-14228-BRM-LHG (D.N.J. Oct. 2, 2019). Information for financial reports for the long form registration must now include a statement of functional expenses classified to include fundraising and also a statement of cash flows. Some sections have been reorganized and recodified. See N.J.A.C. 13:48-4.1, 4.3, 5.1, and 5.3. Effective May 2, 2022 and expires November 21, 2024 .



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EXECUTIVE ORDERS/COVID-19

- On April 4, 2022, at 54 N.J.R. 511(a), Governor Murphy issued an Executive Order lifting the COVID-19 public health emergency. See Executive Order No. 292 (2022). Executive Order Nos. 111, 112, and 207 (2020), Nos. 252, 253, and 271 (2021), and Nos. 283 and 290 (2022) remain in full force and effect pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq, except that any civil or criminal immunity related to the COVID-19 response bestowed by Executive Order No. 112 shall not be in effect.
- On June 6, 2022, at 54 N.J.R. 959(a), Governor Murphy issued an Executive Order clarifying COVID-19 vaccine requirements for workers in health care and congregate settings. The order directs covered health care settings subject to the CMS rule to maintain a policy pursuant to Executive Order No. 283 (2022) that requires covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations according to the following schedule: (a) Unvaccinated covered workers must obtain their primary series of a COVID-19 vaccination pursuant to the timeframes set forth by CMS; and (b) All covered workers must provide adequate proof that they have received their first booster dose by April 11, 2022, or within 3 weeks of becoming eligible for their first booster dose, whichever is later. Additionally, covered health care settings not subject to the CMS Rule and covered high-risk congregate settings must maintain a policy pursuant to Executive Order No. 283 (2022) that requires covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations according to the following schedule: (c) Unvaccinated covered workers must obtain their first dose of the primary series of a COVID-19 vaccination by February 16, 2022; and (d) All covered workers must provide adequate proof that they are up to date with their COVID-19 vaccination by May 11, 2022; provided however, that as to having received their first booster dose, covered workers must provide adequate proof that they are up to date with their COVID-19 vaccinations by May 11, 2022, or within 3 weeks of becoming eligible for their first booster dose, whichever is later. See Executive Order No. 294 (2022).

DEPARTMENT OF BANKING AND INSURANCE

- On October 4, 2021, at 53 N.J.R. 1737(a), the Insurance – Department of Banking and Insurance, Individual Health Coverage Program Board, adopted amendments to N.J.A.C. 11:20, Appendix Exhibits A and B. Exhibits can be reviewed by contacting the New Jersey Individual Health Coverage Program. See adopted N.J.A.C. 11:20.
- On October 4, 2021, at 53 N.J.R. 1738(a), the Insurance – Department of Banking and Insurance, Small Employer Health Benefits Program, adopted amendments to N.J.A.C. 11:21, Appendix exhibits F, G, W, Y, HH, and II. Exhibits can be reviewed by contacting the New Jersey Small Employer Health Benefits Program. See adopted N.J.A.C. 11:21.
- On January 3, 2022, at 54 N.J.R. 73(a), the Department of Banking and Insurance, Division of insurance readopted the health maintenance organizations with technical changes. See readopted N.J.A.C. 11:24.

DEPARTMENT OF COMMUNITY AFFAIRS

- On April 4, 2022, at 54 N.J.R. 552(a), the Department of Community Affairs, Division of Codes and Standards released a notice of readoption for Continuing Care Retirement Community rules in N.J.A.C. 5:19. The rules are intended to enable the Department of Community Affairs to implement the Continuing Care Retirement Community Regulation and Financial Disclosure Act. See N.J.A.C. 5:19. Effective Date: March 8, 2022. New Expiration Date: March 8, 2029.

DEPARTMENT OF HEALTH

Rule Adoptions

- On November 1, 2021, at 53 N.J.R. 1838(b), the Department of Health published a notice of readoption of N.J.A.C. 8:45, the regulations establishing clinical laboratory licensure requirements and fees and fees for services performed by the NJDOH Public Health and Environmental Laboratories. Effective September 29, 2021. The Department is developing a rulemaking to extensively revise, update, and reorganize existing N.J.A.C. 8:45, and anticipates filing this rulemaking with the Office of Administrative Law for processing in the ordinary course.
- On December 6, 2021, at 53 N.J.R. 2008(a), the Department of Health issued a notice of readoption of Licensure Standards for Mental Health Programs with technical changes and recodification of N.J.A.C. 10:101 as N.J.A.C. 8:121. Effective Date: October 20, 2021; Technical Changes December 6, 2021. The Department is making technical changes throughout N.J.A.C. 8:121 to update references throughout the chapter to the Department of Health licensing authority. **Recodified from Title 10 to Title 8. Enforcement is with NJDOH CN & Licensing Program.**
- On December 20, 2021, at 53 N.J.R. 2198(a) the Department of Health, Certificate of Need and Licensing Division, CN & Healthcare Facility Licensure Program readopted with technical amendments, N.J.A.C. 8:33C, the Rules for Regionalized Perinatal Services and Maternal and Child Health Consortia. Effective November 18, 2021, Technical changes December 20, 2021.
- On December 20, 2021, at 53 N.J.R. 2199(a), the Department of Health, Certificate of Need and Licensing Division, CN & Healthcare Facility Licensure Program readopted with technical amendments to N.J.A.C. 8:39, Standards for the Licensure of Long Term Care Facilities. Effective November 18, 2021, Technical changes December 20, 2021. The technical amendments include changes to Department's name and contact information and references to the change in name and contact information of the State Long Term Care Ombudsman's Office.
- On December 20, 2021, at 53 N.J.R. 2204(a), the Department of Health, Certificate of Need and Licensing Division, CN & Healthcare Facility Licensure Program readopted with technical amendments to N.J.A.C. 8:43F, Standards for Licensure of Adult Day Health Services Facilities. Effective November 18, 2021, Technical changes December 20, 2021. The technical amendments include changes to the name of the Department/Division throughout the rules.

- On December 20, 2021, at 53 N.J.R. 2208(a), the Department of Health, Certificate of Need and Licensing Division, published a final rule readopting the Standards for Licensure of Residential Substance Use Disorder Treatment (at N.J.A.C. 10:161A) as N.J.A.C. 8:111. This recodification of the standards from the Department of Human Services Chapter to the Department of Health Chapter is in furtherance of the reorganization of services under each Department. Effective November 10, 2021, Technical changes December 20, 2021. **Moves mental health regulations from Title 10 to Title 8. Enforcement and updating resource-related information (references to the latest version of the DSM) is with NJDOH**
- On January 3, 2022, at 54 N.J.R. 52(a), the Department of Health, Public Health Services Branch Office of Local Public Health readopted licensure of persons for public health positions with technical changes. See readopted N.J.A.C. 8:7.
- On January 3, 2022, at 54 N.J.R. 54(a), the Department of Health, Health Systems Branch, Certificate of Need and Licensing Division, Certificate of Need and Healthcare Facility Licensure Program readopted the standard for licensure of assisted living residences, comprehensive personal care homes, and assisted living programs with technical changes. See readopted N.J.A.C. 8:36.
- On January 3, 2022, at 54 N.J.R. 60(a), the Department of Health, Health Systems Branch, Certificate of Need and Licensing Division, Certificate of Need and Healthcare Facility Licensure Program, readopted the manual of standards for licensing of ambulatory care facilities with technical changes. See readopted N.J.A.C. 8:43A.
- On January 18, 2022, at 54 N.J.R. 149(a), the Department of Health, New Jersey Healthcare Facilities Financing Authority readopted prevailing wage rates for workers employed in the performance of construction contracts for New Jersey Health Care Facilities. See readopted N.J.A.C. 8:95.
- On February 22, 2022, the Department of Health, Certificate of Need and Healthcare Facility Licensure Program readopted with technical changes to the Act concerning transplantation services. See readopted N.J.A.C. 8:33Q.
- On June 20, 2022, at 54 N.J.R. 1168(a), the Department of Health, Division of Certificate of Need and Licensing issued a notice of readoption which readopted N.J.A.C. 8:33, Certificate of Need: Application and Review Process, which was scheduled to expire on June 18, 2022. The Department made technical changes upon readoption. References to the Department of Health and Senior Services are to be replaced throughout the chapter with the Department of Health pursuant to the renaming of the Department at P.L. 2012, c. 17. In 2012, N.J.S.A. 30:1A-14 transferred to the Division of Aging Services (DoAS), in the Department of Human Services, the powers and duties of the Department of Health and Senior Services that relate to the provision of programs or services for senior citizens, the New Jersey State Commission on Aging, the Division on Aging and Community Services, and any other division relating to senior benefits. The Department is developing rulemaking to revise, update, and reorganize existing N.J.A.C. 8:33, and anticipates filing this rulemaking with the Office of Administrative Law for processing in the ordinary

course. However, the Public Health Emergency had necessitated the reallocation of Department personnel and resources to pandemic response activities, which resulted in the Department being unable to finalize the anticipated rulemaking prior to chapter expiration. See readoption with technical changes N.J.A.C. 8:33. Effective Date: May 4, 2022. New Expiration Date: May 4, 2029.

- On July 5, 2022, at 54 N.J.R.1299(a), the Department of Health, Health Systems Branch, Division of Certificate of Need and Licensing, Office of Health Care Financings readopted with amendments the Ambulatory Care Facility Assessment. Such changes include (i) Purpose and Scope, (ii) Definitions, (iii) Calculation of Assessments, (iv) Payment of Assessments, (v) Appeal of Assessment, (vi) Annual Report, (vii) Audit of Annual Report, and (viii) Penalties. See readoption with amendments N.J.A.C. 8:31A. Proposed On February 7, 2022, at 54 N.J.R. 248(a),
- On July 18, 2022, at 54 N.J.R. 1392(a), the Department of Health, Public Health Services Branch, Division of Epidemiology, Environmental and Occupational Health, Consumer, Environmental, and Occupational Health Services, Public Health and Food Protection Program, adopted N.J.A.C. 8:27-11.2(a) without the language triggering a mandatory inspection by the local health authority following notification of an adverse reaction to a body art procedure. As proposed, N.J.A.C. 8:27-11.2(a) would have required the local health authority to conduct an inspection of a body art establishment every time that establishment submitted an adverse reaction notification pursuant to N.J.A.C. 8:27-4.6. Upon reconsideration, the Department concluded that a mandatory inspection by the local health authority following notification of an adverse reaction to a body art procedure unnecessarily removes discretion from the local health authority to not perform an inspection where one may not be warranted. In addition, the Department determined that mandatory inspections following notification of an adverse reaction may discourage body art establishments from reporting adverse reactions, depriving local health authorities of information that could reveal trends or patterns in connection with adverse reactions that would be valuable in identifying adulterated batches of pigments or supplies, for example. See readoption with amendments N.J.A.C. 8:27. See adopted repeals N.J.A.C. 8:27-4.3 and 4.7. See adopted repeals and new rules N.J.A.C. 8:27-8, 9.1, 11.1, and 11.5. See adopted new rules N.J.A.C. 8:27-4.1, 4.4, 4.8, 4.9 and 8:27 appendix.
- On July 18, 2022, at 54 N.J.R. 1408(a), the Department of Health, Public Services Branch, Division of HIV, STD and TB Services made non-substantial changes on adoptions to HIV Infection Reporting. Such changes include (i) the Department changing the definition of the term, “HIV-related laboratory result,” (ii) the Department adding a revision date for the referenced technical guidance, (iii) the Department providing additional mechanisms by which clinical laboratories may comply with mandatory reporting of HIV-related laboratory test results, and (iv) the Department requiring identification of a patient’s sex at birth and current gender identity, for consistency with CDC reporting requirements. See adopted recodification with amendments N.J.A.C. 8:57-2.1, 2.3, and 2.11 as 8:65-1.1, 1.3, and 3.2, respectively. See adopted new rules N.J.A.C. 8:65-1.2, 1.4, 2, 3.1, and 3.3. See adopted repeals N.J.A.C. 8:57-2.2, 2.4 through 2.10, and 2.12 and 8:57-2 appendices A through G.

Notice Rulemaking

- On February 7, 2022, at 54 N.J.R. 284(a), the Department of Health, Certificate of Need and Licensing Division, published a notice of action on petition of rulemaking for approval of a nurse aide in long-term care facilities training program and eligibility criteria for instructor/evaluators in training programs for long term care facility nurse aides. See N.J.A.C. 8:39-43.10. Notice of receipt of rulemaking was in November 1, 2021, at 53 N.J.R. 1866(a),
- On June 6, 2022, at 54 N.J.R. 1105(b), the Department of Health, Office of the Commissioner released a notice of action on petition for rulemaking. The Department denied the petition for rulemaking. The petitioner requested the Department amend N.J.A.C. 8:43G-1.2 to define the term, "next of kin," as used at N.J.A.C. 8:43G-4.1(a)7, to include a close friend or other adult who is familiar with the patient's health care preferences. The Department denied petitioner's request to define the term "next of kin" and add it to the definition section at N.J.A.C. 8:43G. The Department stated that the term "next of kin" is generally understood to include a spouse or a blood relative, such as a parent, sibling, or offspring, and may include a relation by marriage. Additionally, the Department determined that absent the continuing judicial oversight created by a guardianship proceeding, the Department would exceed its authority to permit, by rulemaking, individuals who are not related by blood or marriage to make discharge and transfer decisions for a patient who is unable to provide consent. Finally, allowing an interested friend to authorize a patient's discharge to a facility providing a less acute level of care would simply postpone the need for the appointment of a person with continuing decision-making authority with respect to the patient's social, medical, and financial needs, when a patient is unlikely to return to full mental capacity.

CN Calls

- On March 7, 2022, at 54 N.J.R. 457(a), the Department of Health, Office of the Commissioner released a notice regarding the cancellation of Certificate of Need call for new specialized long-term care beds for pediatric care.
- On March 7, 2022, at 54 N.J.R. 457(b), the Department of Health, Office of the Commissioner released a notice regarding the cancellation of Certificate of Need call for new specialized long-term care beds for severe behavior management.
- On March 7, 2022, at 54 N.J.R. 457(c), the Department of Health, Office of the Commissioner released a notice regarding the cancellation of Certificate of Need call for new specialized long-term care beds for ventilator care.
- On March 7, 2022, at 54 N.J.R. 458(b), the Department of Health, Office of the Commissioner released a notice regarding Certificate of Need review cycles and submission dates.
- On May 16, 2022, at 54 N.J.R. 920(a), the Department of Health, Office of the Commissioner released a notice of postponement of certificate of need call for

transplantation. The Department is in the process of gathering and evaluating data to determine whether there is currently a need for transplantation. Accordingly, it is necessary to delay the call for transplantation to allow the Department sufficient time to complete its evaluation of need and to provide potential applicants and affected parties sufficient time to respond appropriately to a certificate of need call notice in the event the Department determines that a call is appropriate.

- On June 6, 2022, at 54 N.J.R. 1105(a), the Department of Health, Office of the Commissioner released a notice of postponement of certificate of need call for home health care services. The Department is unable to provide sufficient advance notice to potential certificate of need applicants and interested parties to either prepare their respective certificate of need applications for home health care services or respond to such applications. The Department is in the process of gathering and evaluating data to determine whether there is currently a need for home health care services. Accordingly, the Department felt it is necessary to delay the call for home health care services to allow it sufficient time to complete its evaluation of need, and to provide potential applicants and affected parties sufficient time to respond appropriately to a certificate of need call notice in the event the Department determines that a call is appropriate.
- On June 20, 2022, at 54 N.J.R. 1212(b), the Department of Health, Office of the Commissioner issued a notice of cancellation of certificate of need call for maternal and child health services. On February 4, 2019, the Department issued a certificate of need call for additional Intermediate and Intensive Bassinets in certain counties at 51 N.J.R. 178(a). The Department is in the process of reviewing the applications that were submitted in response to the February 4, 2019 call. Accordingly, the Department found it necessary to cancel the January 1, 2022 certificate of need call for regionalized perinatal services and maternal and child health consortia, in order to allow the Department sufficient time to complete the review of the applications submitted February 4, 2019 certificate of need call applications.

DEPARTMENT OF HUMAN SERVICES

Division of Aging Services

- On October 18, 2021, at 53 N.J.R. 1791(c), the Department of Human Services, Division of Aging Services, Office of the State Health Insurance for the Aged and Disabled, readopted a rule regarding the Senior Gold Prescription Program Manual. See readopted N.J.A.C. 10:167B.

PACE PROGRAM:

- On October 18, 2021, at 53 N.J.R. 1792(a), the Department of Human Services, Division of Aging Services, Office of State Health Insurance for the Aged and Disabled, readopted a rule regarding the provision of pharmaceutical services under the Senior Gold Program. See readopted N.J.A.C. 10:167C.

- On May 16, 2022, at 54 N.J.R. 930(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the Program of All-Inclusive Care for the Elderly (PACE) for Middlesex County. The purpose of the notice is to solicit applications from eligible entities to establish a PACE program for Middlesex County. PACE is an innovative program that provides frail individuals age 55 and older with comprehensive medical and social services, coordinated and provided by an interdisciplinary team of professionals in a community-based center and in their homes, thereby helping the program participants delay or avoid admission to long-term care facilities. To participate in the program, an individual must be 55 years of age or older, meet clinical eligibility, be able to live safely in the community at the time of enrollment (with the help of PACE services), and must reside in the service area of the PACE program.
- On May 16, 2022, at 54 N.J.R. 930(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the Program of All-Inclusive Care for the Elderly (PACE) for Somerset County. The purpose of the notice is to solicit applications from eligible entities to establish a PACE program for Somerset County. PACE is an innovative program that provides frail individuals age 55 and older with comprehensive medical and social services, coordinated and provided by an interdisciplinary team of professionals in a community-based center and in their homes, thereby helping the program participants delay or avoid admission to long-term care facilities. To participate in the program, an individual must be 55 years of age or older, meet clinical eligibility, be able to live safely in the community at the time of enrollment (with the help of PACE services), and must reside in the service area of the PACE program.

On July 5, 2022, at 54 N.J.R. 1323(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the Program of All-Inclusive Care for the Elderly (PACE) for the Bergen County designated service area. This request for applications replaces the application that was published in the New Jersey Register at 54 N.J.R. 921(a). The purpose of the notice is to solicit applications from eligible entities to establish a PACE program for the Bergen County designated service area. PACE is an innovative program that provides frail individuals age 55 and older with comprehensive medical and social services, coordinated and provided by an interdisciplinary team of professionals in a community-based center and in their homes, thereby helping the program participants delay or avoid admission to long-term care facilities. To participate in the program, an individual must be 55 years of age or older, meet clinical eligibility, be able to live safely in the community at the time of enrollment (with the help of PACE services), and must reside in the service area of the PACE program.

- On July 5, 2022, at 54 N.J.R. 1332(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the Program of All-Inclusive Care for the Elderly (PACE) for the Passaic County designated service area. This request for applications replaces the application that was published in the New Jersey Register at 54 N.J.R. 921(a). The purpose of the notice is to solicit applications from eligible entities to establish a PACE program for the Passaic County designated service area. PACE is an innovative program that provides frail individuals age 55 and older with comprehensive medical and social services, coordinated and provided by an interdisciplinary team of professionals in a community-based center and in their homes,

thereby helping the program participants delay or avoid admission to long-term care facilities. To participate in the program, an individual must be 55 years of age or older, meet clinical eligibility, be able to live safely in the community at the time of enrollment (with the help of PACE services), and must reside in the service area of the PACE program.

Commission of the Department of Human Services

- On September 7, 2021, at 53 N.J.R. 1490(a), the Commission of the Department of Human Services readopted the Rules of Practice; Petition for Rulemaking, with technical changes. See N.J.A.C. 10:1.

Catastrophic Illness in Children Relief Fund Commission

- On May 2, 2022, at 54 N.J.R. 780(b), the Department of Human Services, Catastrophic Illness in Children Relief Fund Commission adopted amendments regarding assistance to families with children's medical expenses. Specifically, proposed amendments to time periods for measuring expenses and income. See adopted amendments N.J.A.C. 10:155-1.3 and 1.13.

Division of Family Development

- On June 6, 2022, at 54 N.J.R. 1082(a), the Department of Human Services, Division of Family Development issued a notice of administrative change whereby the Department adopted a new rule which increased the rate to be paid for Work First New Jersey/General Assistance individuals in residential care facilities to \$1,051.05 monthly. This change became effective January 1, 2022, and is the same in both the amount and effective date as the change in the rate for the same services paid to recipients under the Federal program of Supplemental Security Income. See adopted rule N.J.A.C. 10:90-3.17.
- On June 6, 2022, at 54 N.J.R. 1082(b), the Department of Human Services, Division of Family Development issued a notice of administrative change whereby the Department adopted a new rule which changed the rate of the personal needs allowance (PNA) reserved by the owner or operator for Supplemental Security Income (SSI) recipients and Work First New Jersey/General Assistance recipients living in residential health care facilities and for SSI recipients living in boarding homes. The amended rate is in the amount of at least \$ 126.00 per month provided that the rate of the total 2022 Federal Social Security cost-of-living increase is 5.9 percent. No owner or operator or agent thereof shall interfere with the recipient's retention, use, or control of the personal needs allowance. This change became effective January 1, 2022, for SSI recipients and Work First New Jersey/General Assistance recipients living in residential health care facilities and for SSI recipients living in boarding homes. See adopted rule N.J.A.C. 10:123-3.4.

DMAHS

- On September 7, 2021, at 53 N.J.R. 1491(b), the Department of Human Services, Division of Medical Assistance and Health Services readopted Psychiatric Adult Acute Partial Hospital and Partial Hospital Services. See N.J.A.C. 10:52A.
- On September 7, 2021, at N.J.R. 1492(a), the Department of Human Services, Division of Medical Assistance and Health Services readopted Case Management Services with technical changes. See N.J.A.C. 10:73.
- On October 18, 2021, at 53 N.J.R. 1783(a), the Department of Human Services, Division of Medical Assistance and Health Services adopted new rules regarding nursing facility patient care ratio requirements. This new chapter addresses requirements for defined nursing facilities to report information concerning certain revenues and the use of those revenues for the care of the residents. See adopted N.J.A.C. 10:49A.

- On October 18, 2021, at 53 N.J.R. 1788(a), the Department of Human Services, Division of Medical Assistance and Health Services readopted a rule regarding chiropractic services. There are also language changes to the chapter. See readopted N.J.A.C. 10:68.
- On November 1, 2021, at 53 N.J.R. 1840(a), the Department of Human Services, Division of Medical Assistance and Health Services (DMHAS) published a notice of re-adoption of N.J.A.C. 10:32, addressing advanced directives for mental health care. Effective September 24, 2021. The chapter applies to State psychiatric hospitals and DMHAS services. DMHAS has identified changes to be made to the rules but are too significant to be made part of this re-adoption. The anticipated amendments may include substantial amendments and/or recodifications in part, as may be appropriate, to the chapter to reflect the retention of the State psychiatric hospitals by the Department of Health following the return of the DMHAS to the Department of Human Services in accordance with Reorganization Plan 001-2018. Once the review is completed, a separate rulemaking containing proposed amendments and/or recodifications will be published in the New Jersey Register and a 60-day public comment period will be provided.
- 53 N.J.R. 1840(a), 53 N.J.R. 1841(a), the Department of Human Services, Division of Medical Assistance and Health Services published a notice of re-adoption of N.J.A.C. 10:37 (Community Mental Health Services Act) with technical amendments. The technical amendments include changes to update the Division's current table of organization, as well as the current name of the "Division of Mental Health and Addiction Services" and the Division's address. The change to the Division's name reflects the merger of the former Division of Mental Health and the former Division of Addiction Services under the Fiscal Year 2010-2011 State Appropriations Act. Additionally, an outdated reference to N.J.A.C. 10:37-12, Children's Partial Care Programs, is being removed because that subchapter was recodified within N.J.A.C. 10:191, Children's Partial Care Programs, by the Department in 2007; and N.J.A.C. 10:191 was subsequently recodified to N.J.A.C. 3A:58 by the Department of Children and Families in 2017. Effective October 4, 2021; Technical Changes: November 1, 2021.
- On November 1, 2021, at 53 N.J.R. 1841(b), the Department of Human Services, Division of Medical Assistance and Health Services published a notice of re-adoption of N.J.A.C. 10:37E (Outpatient Service Standards) with technical amendments. The technical amendments include changes to update the current name of the "Division of Mental Health and Addiction Services" and changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM). The change to the Division's name reflects the merger of the former Division of Mental Health and the former Division of Addiction Services pursuant to the Fiscal Year 2010-2011 State Appropriations Act. The changes to DSM references include updates to the current DSM criteria by the American Psychiatric Association (APA), including elimination of the multi-axial system of diagnoses, and correcting a reference to the publishing entity of the DSM to the APA. Effective September 24, 2021; Technical Changes November 2, 2021.
- On November 1, 2021, at 53 N.J.R. 1842(a), the Department of Human Services, Division of Medical Assistance and Health Services published a notice of re-adoption of

N.J.A.C. 10:37F (Partial Care Service Standards) with technical amendments. The technical changes include changes to update the current name of the "Division of Mental Health and Addiction Services" and changes to the Diagnostic and Statistical Manual of Mental Disorders (DSM). The change to the Division's name reflects the merger of the former Division of Mental Health and the former Division of Addiction Services pursuant to the Fiscal Year 2010-2011 State Appropriations Act. The changes to DSM references include updates to the current DSM edition and criteria by the American Psychiatric Association, including elimination of the multi-axial system of diagnoses. Effective September 24, 2021; Technical Changes November 2, 2021.

- On November 1, 2021, at 53 N.J.R. 1843(c), the Department of Human Services, Division of Medical Assistance and Health Services published a notice of readoption of N.J.A.C. 10:58 (Nurse Midwifery Services) with technical amendments. The technical changes include: correcting all references to "Department of Health" to reflect the current name of that Department pursuant to P.L. 2012, c. 17; changing all references to "Medicaid/NJ FamilyCare" to reflect the preferred nomenclature of the program; changing references to "Health Maintenance Organization" to "Managed Care Organization"; correcting contact information for the DMAHS fiscal agent; and changing references to "Health Care Financing Administration" to "Centers for Medicare and Medicaid Services" to reflect the current name of the Federal agency. Effective September 24, 2021; Technical Changes November 2, 2021.
- On November 1, 2021, at 53 N.J.R. 1846(a), the Department of Human Services, Division of Medical Assistance and Health Services published a notice of readoption of New Jersey Care ... Special Medicaid Programs Manual. The Manual extends Medicaid eligibility to certain persons not eligible under the provisions at N.J.A.C. 10:69, AFDC-Related Medicaid, or 10:71, Medicaid Only. Effective September 28, 2028. The Department is preparing a notice of proposal with substantive amendments to this chapter to be published following this readoption, which is intended to prevent the chapter from expiring.
- On December 20, 2021, at 53 N.J.R. 2222(a), the Department of Human Services, Division of Medical Assistance and Health Services, published a final rule readopting N.J.A.C. 10:64 (Hearing Aid Services) with technical changes relating to references to Medicaid/NJ FamilyCare and Gainwell Technologies (formerly UNISYS). Effective November 16, 2021, Technical changes December 20, 2021.
- On December 20, 2021, at 53 N.J.R. 2224(a), the Department of Human Services, Division of Medical Assistance and Health Services, published a final rule readopting N.J.A.C. 10:67 (Psychological Services) with technical changes related to agency name and contact information changes. The chapter contains rules for related to the provision of psychological services to Medicaid/NJ FamilyCare beneficiaries by psychologists in private practice who are reimbursed on a fee-for-service basis but not for psychologists employed by the State, county or private psychiatric hospitals, independent clinics, or those psychologists who are employed by residential treatment centers under contract with a State agency.

- On April 4, 2022, at 54 N.J.R. 620(b), the Department of Human Services, Division of Medical Assistance and Health Services adopted amendments to Transportation Services Rules. The chapter describes the policies and procedures of the New Jersey Medicaid/NJ FamilyCare program regarding transportation services. See N.J.A.C. 10:50.

Division of Mental Health and Addiction Services

- On May 16, 2022, at 54 N.J.R. 907(b), the Department of Human Services, Division of Mental Health and Addiction Services readopted rules that govern the provision of mental health services at inpatient psychiatric hospital units known as short-term care facilities (STCFs). The rules, which were scheduled to expire on May 21, 2022, delineate general requirements applicable to STCFs, including operational standards regarding admission, assessment, and service planning, provision of services, the termination, transfer, and referral of patients, administration and staffing, quality assurance activities, designation and re-designation, and determination of STCF bed need. Notably, the Department recognizes that while it is readopting these rules before expiration, further rulemaking may be necessary to update these rules to reflect current practices. See readopted rules at N.J.A.C. 10:37G.
- On July 5, 2022, at 54 N.J.R. 1300(b), the Department of Human Services, Division of Mental Health and Addiction Services issued a notice of re-adoption regarding the rules at N.J.A.C. 10:35 which govern the provision of mental health services in county psychiatric facilities. The chapter applies to the operation of current county psychiatric facilities or units, and any additional county psychiatric facilities or units that may be so designated by the Department in the future. The rules delineate requirements, including financial and management plans, affiliation agreements, and transfer of patients between regional State and county psychiatric facilities, as well as sanctions and appeals processes for violations of the rules. While the Department is readopting these rules before expiration, it recognized that further rulemaking may be necessary to update these rules to reflect current practices. The Department will continue to review the rules and may consider making substantive amendments prior to the next scheduled expiration. In addition to readopting the existing rules, the Department proposed technical changes throughout N.J.A.C. 10:35. The technical changes include updating the names of county psychiatric facilities, to reflect a 2018 reorganization through which the State psychiatric hospitals were retained by and fall under the operation of the New Jersey Department of Health, and to ensure consistent use of terminology. See re-adoption with technical changes N.J.A.C. 10:35. Effective Date: May 27, 2022. New Expiration Date: May 27, 2029.

Office of Program Integrity and Accountability

- On June 20, 2022, at 54 N.J.R. 1117(a), the Department of Human Services, Office of Program Integrity and Accountability proposed amendments, repeals, and new rules to comply with the Department's Fee-for-Service initiative, the Centers for Medicare and Medicaid Services' guidelines for funding, Danielle's Law, P.L. 2003, c. 191 (N.J.S.A. 30:6D-5.1--5.6), and Stephen Komminos' Law, P.L. 2017, c. 238 (N.J.S.A. 30:6D-9.1 et seq., 30:6D-5.4, and 30:6D-74 et seq.). The notice of proposal constitutes the general physical and program requirements for community residences, also known as group homes,

supervised apartments, or supported living, which are licensed by the Department to serve individuals with developmental disabilities. The rules set minimum requirements in the areas of general provisions and licensing procedures, organization and administration, advocacy and rights, service delivery/habitation, health and safety, and fire safety and physical environment. The Department feels that the rulemaking is necessary to implement the Department's statutory mandate to license community residences for individuals with developmental disabilities. See proposed amendments N.J.A.C. 10:44A-1.1, 1.3, 1.4, 1.9, 1.10, 1.11, 1.12, 2.1 through 2.6, 2.9, 2.10, 3, 4.1, 4.2, 5.1, 5.2, 5.3, 5.4, 5.5, 5.7, 5.8, 6.1 through 6.10, and 6.12 through 6.17. See proposed repeals and new Rules: N.J.A.C. 10:44A-1.5, 1.6, 1.7, 1.8, 2.7, 2.8, 4.3, and 5.6. See proposed repeal: N.J.A.C. 10:44A Appendix.

- On June 20, 2022, at 54 N.J.R. 1137(a), the Department of Human Services, Office of Program Integrity and Accountability, proposed amendments to rules which establish minimum requirements for the provision of residential services to individuals with developmental disabilities residing in community care residences. The Department proposed amendments to update the rules to be consistent with best practices and to include provisions for the Fee-for-Service Initiative; the Centers for Medicare and Medicaid Services' guidelines for funding; the Central Registry of Offenders against Individuals with Developmental Disabilities (N.J.S.A. 30:4D-77); P.L. 2017, c. 328 (an act concerning background checks and licensing of certain entities); Stephen Komminos' Law (P.L. 2017, c. 238, an act placing requirements on adult developmental disability programs); and updated organizational changes. See proposed amendments N.J.A.C. 10:44B-1.3, 1.4, 1.5, 2.1, 2.2, 2.3, 2.4, 2A.1, 2A.2, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 5.1, 5.2, 6.1, 6.3, 6.4, and 6.5.
- On June 20, 2022, at 54 N.J.R.1146(a), the Department of Human Services, Office of Program Integrity and Accountability proposed amendments to comply with the Department's Fee-for-Service initiative, the Centers for Medicare and Medicaid Services' guidelines for funding Home and Community Based Services (42 CFR 441.300 et seq.), and Stephen Komminos' Law, P.L. 2017 c. 238. The rules constitute the minimum requirements for community residences, also known as group homes or supervised apartments, for persons with head injuries (traumatic brain injuries) that are licensed by the Department. The purpose of the proposed amendments is to protect the health, safety, welfare, and human rights of persons who reside in these residences, and to allow such individuals to develop their fullest potential in an environment that is normalized and supportive. The proposed amendments provide for individualized delivery of services to persons served, the establishment and maintenance of a safe environment, the support and encouragement to undertake dignified risk, and the delineation of personal rights to protect them. The Department feels that the proposed amendments are necessary to implement the Department's statutory mandate to license community residences for persons with traumatic brain injuries. See proposed amendments N.J.A.C. 10:44C-1.1, 1.3, 1.4, 1.7, 1.8, 1.9, 1.12, 2.1, 2.2, 2.4 through 2.10, 3.2, 3.3, 3.4, 3.6, 4.1, 4.2, 4.3, 4.4, 5.2, 5.5, 5.6, 5.7, 6.1, 6.2, 6.3, 6.5, 6.6, 6.9, 6.13, 6.14, and 6.15. See proposed repeal N.J.A.C. 10:44C-1.5.

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

Public Safety and Occupational Safety and Health

- On September 7, 2021, the Department of Labor and Workforce Development, Public Safety and Occupational Safety and Health adopted a special amendment to protect healthcare workers from occupational exposure to COVID-19 in settings where people with COVID-19 are expected to be. Healthcare employers must implement plans to control COVID-19 hazards and reduce transmission in the workplace, along with other rules regarding COVID-19 in the healthcare workplace. See adopted N.J.A.C 12:100-4.2.

DEPARTMENT OF LAW AND PUBLIC SAFETY

Board Chiropractic Examiners

- On November 15, 2021, at 53 N.J.R. 1920(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board Chiropractic Examiners published a notice of readoption of N.J.A.C. 13:44E. Effective October 19, 2021.

Board of Dentistry

- On January 3, 2022, at 54 N.J.R. 83(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Dentistry adopted the following amendments:
 - Amending N.J.A.C. 13:30-1A.4 to reflect that the scope of practice of a Dental Hygienist under general supervision in a school setting may include, upon consent of a parent or guardian, preventative measures including biofilm with prophylaxis paste containing fluoride.
 - Amending N.J.A.C. 13:30-8.2 and 8.3 to reflect that the inspection and approval by the Board of Dentistry of offices in which parenteral conscious sedation is performed shall occur every five (5) years, rather than every (6) years. N.J.A.C. 13:30-1A.4, 8.2, and 8.3.
 - the BOD has reduced the inspection interval from every six years to every five years for all dental offices in which parenteral conscious sedation or general anesthesia is conducted.
- On January 18, 2022, at 54 N.J.R. 149(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Dentistry adopted new rules regarding telemedicine and telehealth. See adopted N.J.A.C. 13:30-9.
- On June 20, 2022, at 54 N.J.R. 1170(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Dentistry adopted an amendment which changes N.J.A.C. 13:30-8.18 to implement P.L. 2021, c. 54, which establishes the circumstances and conditions under which a health care practitioner must issue a prescription for an opioid antidote. In accordance with the new law, a licensed dentist must co-prescribe an opioid antidote whenever the dentist issues a prescription for an opioid drug that is a controlled

dangerous substance and one of the following conditions exists: the patient has a history of substance use disorder, the prescription for the opioid drug is for a daily dose of more than 90 morphine milligram equivalents (MME), or the patient holds a current, valid prescription for a benzodiazepine that is a Schedule III or Schedule IV controlled dangerous substance. The statutory provisions differ from the Board's original notice of proposal by requiring the prescription for an opioid antidote whenever an opioid drug is prescribed, instead of when the practitioner continuously prescribes a controlled dangerous substance for the management of chronic pain. Additionally, the new law requires the co-prescribing of an opioid antidote if the patient has a history of substance abuse and modifies the threshold for the morphine milligram equivalents to require the co-prescribing of an opioid antidote where the MME exceeds--rather than equals or exceeds--90 MME. The new law also provides that the prescriber is not required to issue more than one prescription for an opioid antidote to a patient per year but may do so, either upon the patient's request or when the prescriber determines that there is a clinical or practical need for the additional prescription. To implement the new law, the Board is removing proposed new paragraph (h)8 (and the attendant technical change at paragraph (h)7) and to add new subsection (k). In addition, the Board is recodifying subsections (k) and (l) as new subsections (l) and (m), and changing recodified subsection (l) to reflect the addition of subsection (k). The Board is also changing subsection (a) to include a definition for the term "opioid antidote." See adopted amendment N.J.A.C. 13:30-8.18. Proposed Rule: • On January 18, 2022, at 54 N.J.R. 115(a),

Board of Marriage and Family Therapists

- On November 1, 2021, at 53 N.J.R. 1868(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Marriage and Family Therapists issue a public notice of receipt of petition for rulemaking that requests an amendment to N.J.A.C. 13:34-5.3 to change the name "American Association for Marriage and Family Therapy of New Jersey Inc., (AAMFT-NJ)" to the "New Jersey Association for Marriage and Family Therapy (NJAMFT). This name change was recommended to accurately identify the entity that can approve CE courses and programs.
- On December 20, 2021, at 53 N.J.R. 2132(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Marriage and Family Therapy proposed to delete N.J.A.C. 13:34-2.2(a)6 to remove the requirement to submit a written plan of supervision as a precondition for licensure as an associate marriage and family therapist. In addition, the Board proposed to add N.J.A.C. 13:34-3.3(k) to specify that it is the responsibility of a qualified supervisor to create a written plan of supervision. In accordance with N.J.S.A. 45:8B-18.2, the proposed amendments to N.J.A.C. 13:34-2.2 and new 3.3(l), specify that the written plan for supervision of the licensed associate marriage and family therapist must be approved by the Board prior to the performance of counseling by the licensed associate marriage and family therapist. There was a 60 day comment period for the proposed rule.
- On February 7, 2022, at 54 N.J.R. 285(a), the Department of Law and Public Safety, Division of Consumer Affairs, published a notice of action on petition for rulemaking regarding the Board of Marriage and Family Therapy Examiners, Professional Counselor

Examiners Committee. This notice is for a petition received to amend N.J.A.C. 13:34-13.1(d), to permit the Committee to count clinical hours obtained before the submission of the proposed plan of supervision toward the number of supervised hours required to become a licensed counselor. See N.J.A.C. 13:34-13.1.

- On February 7, 2022, at 54 N.J.R. 285(b), the Department of Law and Public Safety, Division of Consumer Affairs published a notice of action on petition for rulemaking for the Board of Marriage and Family Therapy Examiners, Professional Counselor Examiners Committee regarding N.J.A.C. 13:34-11.6(a) be amended to permit an applicant to submit proof of passing the required exam within one year of the date of application.
- On February 22, 2022, the Department of Law and Public Safety, State Board of Marriage and Family Therapy Examiners, Alcohol and Drug Counselor Committee adopted new rules regarding telemedicine and telehealth. This new rule authorizes healthcare providers, who are alcohol and drug counselors, to engage in telemedicine and telehealth. This rule sets forth various other rules alcohol and drug counselors must follow regarding telehealth. See adopted N.J.A.C. 13:34C-7.
- On May 2, 2022, at 54 N.J.R. 792(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Marriage and Family Therapy Examiners released a notice of action on petition for rulemaking regarding increasing social and cultural competence training for licensed professional counselors. The Board held that three hours of training is a minimum requirement, though three hours is consistent with best practices nationwide and in New Jersey. Additionally, the Board does not offer continuing education on any topic, but rather approves providers who review and present continuing education courses. Finally, the core curriculum of professional counselor training programs at higher learning institutions is set by nationally recognized accrediting agencies. Accordingly, the petition was denied.
- On June 20, 2022, at 54 N.J.R. 1212(c), the Department of Law and Public Safety, Division of Consumer Affairs, Board of Marriage and Family Therapy Examiners issued a notice of action on petition for rulemaking, in which the Department denied a petition for rulemaking that requested the Board to amend N.J.A.C. 13:34-13.1 to require that supervisors of licensed associate counselors be professional counselors licensed in New Jersey for at least three years and have an approved clinical supervisor certification. Granting the petition would require amending N.J.A.C. 13:34-13.1(a) to require that supervisors of licensed associate counselors hold both a professional counseling license in New Jersey for at least three years and an approved clinical supervisor certification. Granting the petition would also require amending the definition of "qualified supervisor" at N.J.A.C. 13:34-10.2. The definition of "qualified supervisor" includes professionals licensed to practice professional counseling, marriage and family therapy, psychology, psychiatry, and social work. The petitioner states that the education and training social workers receive do not match the education and training required of a professional counselor and, therefore, social workers are not qualified to serve as supervisors of associate counselors. The petitioner does not address whether professionals licensed to practice marriage and family therapy, psychology, or psychiatry should be permitted to supervise associate counselors. However,

the petitioner's proposed amendment at N.J.A.C. 13:34-13.1 would limit eligibility to supervise associate counselors to professional counselors. Accordingly, granting the petition would require amending N.J.A.C. 13:34-10.2 to remove the references to marriage and family therapists, psychologists, psychiatrists, and social workers from the definition of "qualified supervisor." The Board affirmed the Professional Counselor Examiners Committee's decision to deny the petition. Notice of receipt of rulemaking was published May 16, 2022 at 54 N.J.R. 1212©

State Board of Medical Examiners

- On October 18, 2021, at 53 N.J.R. 1808(a), the Department of Law and Public Safety, Division of Consumer Affairs, Board of Medical Examiners, made administrative changes regarding the Cannabis Regulatory Commission. This includes agency name updates, contact information, and addresses. See adopted N.J.A.C. 13:35-7.
- On December 6, 2021, at 53 N.J.R. 2013(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners adopted amendments, adopted a new rule and repealed a rule related to Surgery, Special Procedures, Anesthesia Services Performed in an Office Setting.
 - The new rule authorizes advanced practice clinicians to perform minor procedures in the office consistent with their respective scope of practice and as addressed within their individual collaborating agreements.
 - The new rule permit APNs, midwives and PAs to perform abortion procedures to expand abortion access. See amended N.J.A.C. 13:35-4A.1-4A.12, adopted new rule N.J.A.C. 13:35-4A.19; repealed N.J.A.C. 13:35-4.2. Effective December 6, 2021.
 - Notably, the amendments revise multiple definitions under the regulation, including "moderate sedation," "early aspiration abortion," and "office."
- On June 20, 2022, at 54 N.J.R. 1171(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, Electrologists Advisory Committee adopted amendments and new rules to the Electrologists Advisory Committee Rules. Such changes include (i) Purpose and Scope, (ii) Definitions, (iii) Licensing Requirements for Electrologist, (iv) Licensing Requirements for Electrology Instructor, (v) Application for License: Electrologist, (vi) Licensing Requirements for Office Premises, (vii) License Renewal; Reinstatement: Office Premises, (viii) Infection Prevention Standards, (ix) Posting of Licenses and Required Notices, (x) Examination Requirements; Reexamination, (xi) License Renewal: Electrologist and Electrology Instructor, (xii) License Reactivation: Electrologist and Electrology Instructor, (xiii) License Reinstatement: Electrologist and Electrology Instructor, (xiv) Unlicensed Practice, and (xv) Continuing Education; Programs; Standards See adopted amendments N.J.A.C. 13:35-12.1, 12.2, 12.6 through 12.13, 12.15, and 12.19. See adopted repeal and new rule N.J.A.C. 13:35-12.14. See adopted new rules: N.J.A.C. 13:35-12.10A, 12.14A, and 12.14B.

Board of Nursing

- On January 3, 2022, at 54 N.J.R. 87(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Nursing adopted a new rule regarding exit examinations. This rule requires that nursing programs administer a comprehensive examination at the end of the program. This exam shall not affect the students' ability to graduate or take a licensing exam. See adopted N.J.A.C. 13:37-1.21.
- On January 18, 2022, at 54 N.J.R. 117(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey Board of Nursing proposed substantial changes regarding limitations on prescribing, administering, or dispensing of controlled dangerous substances, and special requirements for management of acute and chronic pain (co-prescribing opioid antidote). See proposed N.J.A.C. 13:37-7.9A.
- On January 18, 2022, at 54 N.J.R. 152(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Nursing adopted amendments, adopted a new rule, and adopted a repeal regarding education programs. Changes were made to application for establishment of a new program in nursing, provisional accreditation, faculty responsibility for philosophy/missions, and student learning outcomes, maintaining accreditation, preceptors, renewing accreditation, waiver of on-site visits, changes to a nursing program, and other subsections. See adopted N.J.A.C. 13:37-1.2, 1.3, 1.5, 1.6, 1.7, 1.8, 1.13, 1.14, 1.15, 1.16, 1.18, 1.19; See repeal N.J.A.C. 13:37-1.17; See adopted new rule N.J.A.C. 13:37-1.10A.
- On March 21, 2022, at 54 N.J.R. 500(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey Board of Nursing release a notice that a moratorium has been placed on the acceptance of new applications for practical nursing programs.
- On June 20, 2022, at 54 N.J.R. 1174(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey Board of Nursing, adopted an amendment which changes N.J.A.C. 13:37-7.9A upon adoption to implement P.L. 2021, c. 54, which establishes the circumstances and conditions under which a health care practitioner must issue a prescription for an opioid antidote. In accordance with the new law, a certified advanced practice nurse must co-prescribe an opioid antidote whenever the advanced practice nurse issues a prescription for an opioid drug that is a controlled dangerous substance and one of the following conditions exists: the patient has a history of substance use disorder, the prescription for the opioid drug is for a daily dose of more than 90 morphine milligram equivalents (MME), or the patient holds a current, valid prescription for a benzodiazepine that is a Schedule III or Schedule IV controlled dangerous substance. The statutory provisions differ from the Board's original notice of proposal by requiring the prescription for an opioid antidote whenever an opioid drug is prescribed, instead of when the practitioner continuously prescribes a controlled dangerous substance for the management of chronic pain. Additionally, the new law requires the co-prescribing of an opioid antidote if the patient has a history of substance abuse and modifies the threshold for the morphine milligram equivalents to require the co-prescribing of an opioid antidote where the MME exceeds--rather than equals or exceeds--90 MME. To implement the new law, the Board is

removing proposed new paragraph (f)8 (and the attendant technical change at paragraph (f)7) and to add new subsection (i). In addition, the Board is recodifying subsections (i) and (j) as new subsections (j) and (k), and to change recodified subsection (j) to reflect the addition of subsection (i). The Board is also changing subsection (a) to include a definition for the term "opioid antidote." See adopted amendment 13:37-7.9A.

- On July 18, 2022, at 54 N.J.R. 1415(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey Board of Nursing, adopted new rules to the Power of Attorney and Loan Ban. Such changes include (i) General Requirements of Licensure; License Renewal; Fee Schedule, and (ii) Homemaker-Home Health Aides. See adopted new rules N.J.A.C. 13:37-5.4 and 14.18. Rule proposal: • On February 22, 2022, at 54 N.J.R. 336(a),

Occupational Therapy Advisory Council

- On January 18, 2022, at 54 N.J.R. 157(a), the Department of Law and Public Safety, Division of Consumer Affairs, Occupational Therapy Advisory Council adopted new rules regarding telemedicine and telehealth. See adopted N.J.A.C. 13:44K-7.

Board of Optometrists

- On December 20, 2021, at 53 N.J.R. 2229(b), the Ophthalmic Dispensers and Ophthalmic Technicians adopted new final rules, amendments and repeals of rules in N.J.A.C. 8:33. The rules relate to the application for apprentice certificates, out of state dispenser applications, and reporting of unlawful conduct. Effective December 20, 2021.
 - The New Jersey Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians has adopted new rules and regulations regarding applications for an Ophthalmic Dispenser Apprentice Certificate and for an Ophthalmic Technician Apprentice Certificate. The rules establish new standards for applying for these certificates, though the new criteria do not apply to ophthalmic dispenser/technician apprentices or students who began their apprenticeships or coursework prior to 12/20/21. The new regulations may be found at N.J.A.C. § 13:33-1.1, 1.2, 2.1, 2.2, 8.9 and 1A.
- On January 18, 2022, at 54 N.J.R. 118(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey State Board of Optometrists proposed substantial changes regarding limitations on prescribing, administering, or dispensing of controlled dangerous substances, and special requirements for management of acute and chronic pain (co-prescribing opioid antidote). See proposed N.J.A.C. 13:38-2.5.
- On June 20, 2022, at 54 N.J.R. 1175(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Optometrists adopted an amendment which changes N.J.A.C. 13:38-2.5 to implement P.L. 2021, c. 54, which establishes the circumstances and conditions under which a health care practitioner must issue a prescription for an opioid antidote. In accordance with the new law, a licensed optometrist must co-prescribe an opioid antidote whenever the optometrist issues a prescription for an opioid drug that is a

controlled dangerous substance and one of the following conditions exists: the patient has a history of substance use disorder, the prescription for the opioid drug is for a daily dose of more than 90 morphine milligram equivalents (MME), or the patient holds a current, valid prescription for a benzodiazepine that is a Schedule III or Schedule IV controlled dangerous substance. The statutory provisions differ from the Board's original notice of proposal by requiring the prescription for an opioid antidote whenever an opioid drug is prescribed, instead of when the licensee continuously prescribes a controlled dangerous substance for the management of chronic pain. Additionally, the new law requires the co-prescribing of an opioid antidote if the patient has a history of substance abuse and modifies the threshold for the morphine milligram equivalents to require the co-prescribing of an opioid antidote where the MME exceeds--rather than equals or exceeds--90 MME. To implement the new law, the Board is removing proposed new paragraph (f)8 (and the attendant technical change at paragraph (f)7) and adding new subsection (i). In addition, the Board is recodifying subsections (i) and (j) as new subsections (j) and (k), and changing recodified subsection (j) to reflect the addition of subsection (i). The Board is also changing subsection (a) to include a definition for the term "opioid antidote." See adopted amendment N.J.A.C. 13:38-2.5.

State Board of Pharmacy

- On September 20, 2021, at 53 N.J.R. 1562(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy proposed a new rule that will require every pharmacy permit holder to implement a continuous quality improvement program to address prescription errors. See proposed N.J.A.C. 13:39-1.9.
- On January 3, 2022, at 54 N.J.R. 88(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding opioid warning labels. When a pharmacist dispenses a prescription for an opioid medication, they must affix a warning to the bottle that states “opioid risk of addiction and overdose,” along with other requirements. See adopted N.J.A.C. 13:39-7.12.
 - Under the amendments, opioid medication labels must be (i) yellow, red or orange in color; printed in an easily and clearly readable, non-cursive font size of at least 10- point font; and, (iii) affixed to the side or cap of the prescription bottle or to the side of the box that contains the prescription label. The amended regulations may be found at N.J.A.C § 13:39-7.12(e).
- On January 18, 2022, at 54 N.J.R. 156(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding fees for out-of-state pharmacies. These fees include \$275 for an application permit, \$275 for change of ownership/name, and \$275 for change of location. See adopted N.J.A.C. 13:39-1.3.
- On January 18, 2022, at 54 N.J.R. 156(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding the removal of the waiting period to retake the examination for licensure. See adopted N.J.A.C. 13:39-2.2 and 2A.5.

- On January 18, 2022, at 54 N.J.R. 156(c), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments that require the pharmacist to document that counseling was provided or refused at the time of prescription dispensing. See adopted N.J.A.C. 13:39-7.21.
- On March 7, 2022, at 54 N.J.R. 449(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding procedures for authorized prescriber ordered or government sponsored immunizations performed by pharmacists, pharmacy interns, or pharmacy externs. It is also regards to the requirement for pharmacists, pharmacy interns, or pharmacy externs to administer influenza vaccine to minors. A licensed pharmacist or pharmacy intern needs to be pre-approved by the Board to administer vaccines and related emergency medications. See adopted amendments N.J.A.C. 13:39-4.21 and 4.21A.
- On May 2, 2022, at 54 N.J.R. 771(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy proposed new rules setting forth the requirements to allow a pharmacy to have licensed pharmacists and registered pharmacy technicians perform limited pharmaceutical functions at a location other than on the premises of a pharmacy. For example, pharmacists and pharmacy technicians may perform data entry of prescription medication information and refill authorizations. The Board believed that the proposed new rules will provide pharmacies greater flexibility in managing prescription processing operations. The proposed rules, however, do not allow the storing or dispensing of any medication from a remote location. The proposed new rules will ensure that any prescription processing functions performed at a remote location (that is, other than on the premises of a pharmacy) are performed by qualified and appropriately trained individuals pursuant to safeguards designed to protect the confidentiality of prescription and patient information. See proposed new rules N.J.A.C. 13:39-4A.

Board of Physical Therapy Examiners

- On September 7, 2021, at 53 N.J.R. 1500(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Physical Therapy Examiners readopted the Rules of the State Board of Physical Examiners with amendments. See N.J.A.C. 13:39A. Additionally, repeals and new rules were adopted. See N.J.A.C. 13:39A-5.5, 5A and N.J.A.C. 13:39A-4.3, 5.2A.

Board of Polysomnography

- On June 20, 2022, at 54 N.J.R. 1176(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Polysomnography adopted new rules regarding telemedicine and telehealth. These include the purpose and scope, definitions, standard of care, licensee-patient relationship, provision of health care services through telemedicine or telehealth, records, prevention of fraud and abuse, and privacy and notice to patients. See N.J.A.C. 13:44L-7. Rules were proposed on January 18, 2022 at 54 N.J.R. 119(a)

Board of Psychological Examiners

- On September 20, 2021, at 53 N.J.R. 1570(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners adopted amendments, new rules, and repeals that revise the standard for denying a license based on conduct constituting a crime or offense. See adopted N.J.A.C. 13:42-5.3, 10.17, 9.3, 10.4, 10.18, 11.4, 10.18.
- On November 1, 2021, at 53 N.J.R. 1852(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners adopted an amendment of N.J.A.C. 13:42-8.1, regarding Client records: Confidentiality. The amendment requires that a licensee retain the permanent client record for at least 7 years from the date of last entry, unless otherwise provided by law. Records for minors must be kept for seven years from the date of last entry or until the client turns 25 years old, whichever is longer, unless otherwise provided by law.
- On January 3, 2022, at 54 N.J.R. 1, the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners, proposed amendments that allow for an online administration of the jurisprudence examination which applicants for a license to practice psychology in NJ must take. See proposed N.J.A.C. 13:42-3.1, 3.2, 3.6, 5.1, 5.3, 5.4 and 10.21.
- On March 7, 2022, at 54 N.J.R. 406(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners proposed an amendment regarding supervised practical experience prior to receiving a Doctoral Degree. This proposed rule would remove the requirement that at least one year of professional experience be completed subsequent to the applicant receiving a doctoral degree. See proposed amendment N.J.A.C. 13:42-4.1.

Board of Respiratory Care

- On December 6, 2021, at 53 N.J.R. 2050(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Respiratory Care adopted new rules regarding telehealth and telemedicine at N.J.A.C. 13:44F-11. Effective December 6, 2021. The new rules are identical to the telemedicine and telehealth rules already in place for other New Jersey healthcare providers.
- On April 4, 2022, at 54 N.J.R. 525(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Respiratory Care proposed to readopt the Board of Respiratory Care Rules in N.J.A.C. 13:44F with amendments. Following a thorough review in compliance with Executive Order No. 66 (1978), the Board determined that amendments were necessary to provide regulatory congruence and make practical and comprehensive updates to the Board's rules. The Board believed that the rules proposed for readoption, as amended, were necessary, reasonable, understandable, and responsive to the purposes for which they were promulgated. See N.J.A.C. 13:44F.

Board of Social Workers

- On July 18, 2022, at 54 N.J.R. 1416(a), the Department of Law and Public Safety, Division of Consumer Affairs, Board of Social Workers published a notice of readoption of N.J.A.C. 13:44G, which establish the standards for the licensing, certification, and regulation of social workers and for the practice of social work. Effective Date: June 13, 2022. New Expiration Date: June 13, 2029.

DCA

- On April 18, 2022, at 54 N.J.R. 718(a), the Department of Law and Public Safety, Division of Consumer Affairs published a notice of readoption of N.J.A.C. 13:45B, which establish the standards for the regulation of personnel services. The chapter includes rules on employment agencies, health care service firms and placement of health care practitioners. Effective Date: March 14, 2022 until March 14, 2029.
- On May 2, 2022, at 54 N.J.R. 782(a), the Department of Law and Public Safety, Division of Consumer Affairs, Charities Registration Unit adopted amendments to require the most recent IRS filings, except for Schedule B (schedule of donors) to be included in initial and renewal registration statements. This eliminates the requirement to include a schedule of donors under Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021) and Americans for Prosperity Foundation v. Grewal No. 3:19-cv-14228-BRM-LHG (D.N.J. Oct. 2, 2019). Information for financial reports for the long form registration must now include a statement of functional expenses classified to include fundraising and also a statement of cash flows. Some sections have been reorganized and recodified. See N.J.A.C. 13:48-4.1, 4.3, 5.1, and 5.3. Effective May 2, 2022 and expires November 21, 2024.

DEPARTMENT OF TREASURY

- On September 20, 2021, at 53 N.J.R. 1580(a), the Department of Treasury, Cannabis Regulatory Commission, recodified the Department of Health's rules to account for the creation of the Cannabis Regulatory Commission. See recodification of N.J.A.C. 8:64 as 17:30A.

NJDOBI Bulletins:

No Surprises Act: https://www.nj.gov/dobi/bulletins/blt21_14.pdf

COVID coverage: https://www.nj.gov/dobi/bulletins/blt21_01.pdf

BME: Reciprocity is over: <https://www.njconsumeraffairs.gov/COVID19/Pages/Temporary-Emergency-License-for-Out-of-State-Practitioners.aspx>

EO 28: <https://www.njconsumeraffairs.gov/Documents/EO28-DCA.pdf> -Waivers that are still in effect.

Look at this: <https://www.njconsumeraffairs.gov/bme/Pages/Licensee-COVID-19.aspx>



Licensing Update

Eugene Brenycz, Regulatory Officer
New Jersey State Department of Health
Division of Certificate of Need and Licensing

Helpful Tidbits of Information

1. Health Care Administration Board

<https://www.nj.gov/health/bc/health-care-administration-board/index.shtml>

2. Guidance Memorandums

<https://www.nj.gov/health/healthfacilities/certificate-need/guidance/>

3. Online Payments

<https://www.nj.gov/health/healthfacilities/epayments.shtml>

4. Public Notices

<https://nj.gov/health/legal/public-notices/>

5. COVID-19 Documents

<https://nj.gov/health/legal/covid19/>

6. Forms (Link is off of this page)

<https://www.nj.gov/health/healthfacilities/>

Health Care Administration Board

State of New Jersey DEPARTMENT OF HEALTH
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Health Care Administration Board

The Board advises generally the Commissioner on issues related to health care policy and reviews and makes recommendations with respect to rules and regulations necessary to implement the Health Care Facilities Planning Act.

More information:
 On Governor's Boards, Authorities and Commissions page, please look for "Health Care Administration Board"

- 2022 Meeting Schedule
- Subscription for Meeting Minutes (pdf 153kb)

Kindly send all mail for board members to:

Department of Health
 Office of Legal and Regulatory Compliance
 75 South Willow Street - PO Box 360
 Trenton, NJ 08625
 Email: boards.com@health.nj.gov
 Phone: 609.776.4020
 Fax: 609.776.3333

Members

- P. Mitchell | Board: Ex-Off, Chair
- C. Mary Kay Roberts, Esq. | Vice Chair
- C. Elizabeth Harris
- P. Joseph S. Roth
- P. Mary Weitzer
- * Valeri Bognar (represents the Commissioner of Banking & Insurance)
- * J. Jay L. Lindo (represents the Commissioner of Health)

KEY:
 P - PSENDER
 C - CHAIRMAN
 * - EX-OFFICIO VOTING MEMBER

Meeting Archive

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 Department of Health
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Guidance Memorandums



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Certificate of Need and Facility Licensing

Guidance Memorandums

Guidance Memorandums

Date Issued	Name	Summary
July 23, 2021	Cardiac Services Memo	The statute removes the Certificate of Need requirements for full-service adult diagnostic cardiac catheterization, primary angioplasty and elective angioplasty, and permits general hospitals to add these three services through a licensing process.
July 21, 2021	Hospital at Home Waiver	This waiver provides the requirements for general hospitals to participate in the CMS Hospital at Home program.
July 6, 2021	Statutory Amendments to the Licensing of Cardiac Services pursuant to P.L. 2021, c. 18	Changes to licensing process for full-service adult diagnostic cardiac catheterization, primary angioplasty and elective angioplasty
May 12, 2021	P.L. 2020, c. 87 Additional Responsibilities	<ul style="list-style-type: none"> Duties of long-term care facilities during an infectious disease outbreak Reporting Requirements to the National Healthcare Safety Network Database Included in the Act Electronic Health Record System Outbreak Response Plans

Licensure Payments



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- [4. Fingerprint Archive Request](#)
- [5. Nursing Home Administrator Licensure](#)
- [6. Open Public Records Act \(OPRA\)](#)

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- [Long Term Care Licensure Payments](#)
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Legal and Regulatory Compliance

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Home - Public Notices

Public Notices

Date of Publication and Register Citation	Title	Branch/Division	Important Dates
September 19, 2022 54 N.J.R. 1857(b)	Notice of Receipt of Petition for Rulemaking: Standards For Licensure of Residential Substance Use Disorder Treatment Facilities: Definitions and Qualifications: Qualifications and Responsibilities of the Medical Director and Physicians N.J.A.C. 8:111-1.3 and 1.4	Health The Commissioner	
September 19, 2022 54 N.J.R. 1857(a)	Notice of Action on Petition for Rulemaking: Hospital Licensing Standards: Infection Control: Sepsis Protocols N.J.A.C. 8:33G-14.9	Health Systems Branch Division of Certificate of Need and Licensing	
August 15, 2022 54 N.J.R. 1648(a)	Notice of Cancellation of Certificate of Need Call for Mobile Intensive Care Unit Programs	Health The Commissioner	

COVID-19 Guidance



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Applications and Forms



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Health Department Forms

Additional Health Department Forms

Forms for Health Facilities, Licensing and Certification

Ambulatory Care Assessment			
Form #	Form Name/Title	Linked File	Instruction/ Comments
ARR	Rehabilitative Hospital and Special Hospital subject to a \$10 Adjusted Admission Assessment	pdf (755k)	Instructions (pdf 86k)
HFEL-5	Financial Report for Licensed Ambulatory Care Facilities Subject to the Ambulatory Assessment <i>(Last edited April 19, 2022)</i> Submit Online	HFEL-5 (1340k)	Instructions (745k)
Certificate of Need and Healthcare Facility Licensure			
Form #	Form Name/Title	Linked File	Instruction/ Comments
CN-1	Full Review Certificate of Need Application for Long Term Care Facilities: General Long Term Care Beds; Specialized Long Term Care Beds <i>(Updated December 1, 2016)</i>	pdf (394k)	

The logo for HCP RREA, featuring the text "HCP RREA" in a gold, serif font on a blue gradient background with a dark blue horizontal bar at the bottom.

THANK YOU

Best Means of Contact
eugene.brenycz@doh.nj.gov

NJ Department of Health

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Embedded Legal Ethics Problems

Presented by Kim D. Ringler, Esq.

www.ringlerlawfirm.com



- I. Lawyers in the healthcare space face multifaceted issues.
 - a. Don't arise with a headline screaming "watch out!"
 - b. In addition to business pressures and concerns, steering away from personal professional liability risk requires vigilance.
- II. First important step: identify who is your client, and who isn't.
 - a. RPC 1.2 Scope of Representation and Allocation of Authority
 - b. RPC 1.13 Organization as the Client
 - c. Understand the difference between the organization and the people who are the face of the organization
- III. RPC 1.4 - Communicate clearly
 - a. Explain your role and the duties to the organization, its control group, the individuals qua individuals.
 - i. Include whether or not a privilege attaches to the relationship
 - ii. If a business role, not protected, such as investigations of alleged violations of company policy, including policies prohibiting sexual harassment or discrimination, are ordinary business activities and not confidential under AC privilege or RPC 1.6.
- IV. Highlighting two topical areas requiring alertness to shifting realities:
 - a. NJ new outside counsel guidelines from the Department of Law & Public Safety, targeting conflicts of interest
 - b. Eradication of federal constitutional right to legal abortion by U.S. Supreme Court in *Dobbs v. Jackson Women's Health Organization*
- V. Attorney General Promulgated New Guidelines.
 - a. Effective November 1, 2022.
 - b. RPC 1.7, RPC 1.8, RPC 1.9 and Conflict of Interest Law
 - c. And beyond! Positional conflicts prohibited
 - d. Governments cannot give consent if an actual conflict exists
 - e. Intro - <https://www.youtube.com/watch?v=EgJNfSx3K6o>
 - f. The 2022 Guidelines - https://www.nj.gov/oag/law/pdf/rfq/Revised_Outside_Counsel_Guidelines_2021.pdf
 - g. Acknowledgement that the State is not a monolith (the representation of one subsidiary unit within a Department or Authority while being adverse to another subsidiary unit will not necessarily create a conflict).
- VI. Lawyers Cannot Counsel, Facilitate or Advise Illegal Activity.
 - a. Lessons and Analysis from pre-legalized marijuana era apply somewhat in advising medical professionals and entities

- b. RPC 1.2(d) Scope of Representation – prohibits counseling or assisting in illegal conduct
- c. RPC 1.16 Declining or Terminating Legal Representation
- d. RPC 8.4 Misconduct
- e. Outlawing aiding and abetting by other states, possible corporate criminal liability – uninsured loss; no corporate 5th amendment right; no act of production doctrine; crime-fraud exception to attorney-client privilege; impact on providers licensed in restrictive states as well as New Jersey.
- f. Risk is real, e.g., some Texas lawmakers publicly calling for disbarment of any lawyer aiding violation of the Texas abortion ban through out of state travel for reproductive health services.
- g. New Jersey Reproductive Choice Act –
https://pub.njleg.gov/bills/2020/S0500/49_I1.PDF
- h. NJ statute exempting extradition for service providers -
https://pub.njleg.state.nj.us/Bills/2022/A4000/3974_R1.PDF

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About the Panelists...

Anjali N. Baxi is Of Counsel to the Healthcare Law Practice Group at Giordano, Halleran & Ciesla, P.C. with offices in Red Bank and Trenton, New Jersey, and New York City. She represents healthcare providers and licensed healthcare entities in transactional matters and focuses on state regulatory issues for healthcare providers in addition to compliance with federal and state law relevant to healthcare providers, facilities and licensees. She formerly served as an analyst at the NJDOH Certificate of Need and Healthcare Facility Licensure Program.

Admitted to practice in New Jersey, Ms. Baxi is Vice Chair of the Health Law Section of the New Jersey State Bar Association and has been Co-Chair of the Section's Regulatory Committee and a member of the American Health Lawyers Association (AHLA) and the South Asian Bar Association of New Jersey. She has also served on the Board of Trustees of the Central Jersey Family Health Consortium.

Ms. Baxi received her B.A., *cum laude*, from The College of William and Mary and her J.D. from Villanova University's Charles Widger School of Law.

Eugene L. Brenycz , M.P.A. is a Regulatory Officer, Department of Health and Senior Services, Division of Certificate of Need and Licensing, in Trenton, New Jersey. Serving in the Department of Health since 2005, he has drafted regulations for long-term care facilities and acute care rules. After the passage of "Codey's Law" in 2009 he was also tasked with becoming the program's expert in this area.

Mr. Brenycz is admitted to practice in New Jersey and New York, and has been registered as a Patent Attorney with the United States Patent and Trademark Office. Prior to his employment at the Department of Health, he spent 5 years in the Division of Consumer Affairs, Department of Law and Public Safety, where he drafted regulations governing several professional licensing boards.

Mr. Brenycz received his B.S. and M.P.A. from Seton Hall University and his J.D. from Seton Hall University School of Law.

Margaret J. Davino is a Partner in Fox Rothschild LLP with offices in Princeton, New Jersey, and New York City. For more than 20 years she has handled a broad spectrum of healthcare matters, including transactional, compliance, contractual, corporate, regulatory, governance, managed care/payer and risk management issues. Her clients include hospitals, physicians and physician groups, start-up companies, FQHCs, home care agencies, ACOs, pharmacies, laboratories, agencies for the developmentally-disabled, care management companies, billing companies, nonprofit companies, healthcare IT vendors and other providers and entities in the healthcare field.

Admitted to practice in New Jersey, New York and Connecticut, Ms. Davino is Chair of the Providers and In-House Counsel Committee of the New York State Bar Association Health Law Section, Past Chair of the NYSBA Health Law Section and a member of the New Jersey State Bar Association Health and Hospital Law Section and the American Health Lawyers Association (AHLA). She has sat on the boards of a number of organizations, including Women in Health

Management, Saving Mothers and Lifespire, and is a former member of the Board of Directors of the New Jersey Hospice & Palliative Care Organization.

Ms. Davino has lectured on multiple healthcare legal topics and has written articles and a book chapter in *Managed Care – Survival Strategies* on the legal issues associated with managed care. Also a registered nurse, she wrote a column on HIPAA issues for two years for the publication *Medical Economics*.

Ms. Davino received her B.S.N., with honors, from the University of Michigan, her J.D. from Vanderbilt University School of Law and her M.B.A. in Finance, *magna cum laude*, from Seton Hall University.

Kim D. Ringler, Principal of The Ringler Law Firm in Waldwick, New Jersey, reestablished her private practice after leaving public service in 2015, and concentrates in advising and representing professionals and state licensees on regulatory and ethics matters. She also serves as *pro bono* appointed counsel for indigent attorneys in disciplinary cases. She is a former Deputy Director of the New Jersey Division of Consumer Affairs, a former New Jersey Deputy Attorney General, Professional Boards Prosecution Section, and served as the Legal Ethics Liaison Officer for the Division of Law in Newark, New Jersey.

Past President of the Association of Professional Responsibility Lawyers and Women Lawyers in Bergen, Ms. Ringler is a former Assistant District Attorney in Kings County (Brooklyn), New York, and served as Special Trial Counsel to the New York Supreme Court, Appellate Division, Departmental Disciplinary Committee for Manhattan and the Bronx. She served on the New Jersey State Bar Association Standing Committee on Professional Responsibility and Unlawful Practice, and has been a member of the New York State Bar Association Committee on Professional Ethics, the New York City Bar Association Committees on Professional Responsibility and Professional Discipline, and the New Jersey Supreme Court District IIB Ethics Committee. Ms. Ringler has also been Chair of the District Fee Arbitration Committee and is a former Trustee of the Bergen County Bar Association, where she co-chairs the Association's Committee on Professionalism. The New Jersey Supreme Court appointed her to the Committee on Permanent Disbarment.

Listed in *Who's Who in America*, *Who's Who in American Law* and *Who's Who in the World*, Ms. Ringler has lectured and published on ethics topics including pay-to-play legislation, conflicts of interest in health care law and law firm risk management to bar associations and numerous professional organizations. She is the recipient of an Exceptional Service Award from the New Jersey Attorney General and a Collaboration Award from the U.S. Food and Drug Administration for her participation in a joint federal/state investigation, as well as several other honors.

Ms. Ringler received her B.A. from Oberlin College and her J.D. from Georgetown University Law School, where she was a Law Fellow. She received a certification in Health Care Compliance from Seton Hall Law School.

Michael F. Schaff is a Shareholder in Wilentz, Goldman & Spitzer P.A., with offices in Woodbridge and Eatontown, New Jersey; New York City; and Philadelphia, PA. Co-Chair of the Corporate and Healthcare Departments and the Cannabis Practice Group, and a member of the firm's Management Committee, he handles the structuring of professional practices for many

healthcare professionals including physicians, dentists, chiropractors and other professionals. He also handles the structuring of business entities and assists entities interested in buying, selling or merging businesses.

Admitted to practice in New Jersey and New York, and before the United States District Court for the District of New Jersey and the District of Maryland, and the United States Tax Court, Mr. Schaff is a Fellow of the American Health Lawyers Association (AHLA), having served on the Board of Directors, Executive Committee, and in several other capacities for the organization. He is a Trustee of the New Jersey State Bar Association, Co-Chair of the NJSBA Cannabis Law Committee, a past Chair of the NJSBA Health Law Section, serves on the Section's *Emeritus* Board and is a past Chair of the NJSBA Internet and Computer Law Committee.

Mr. Schaff is an Adjunct Associate Professor at Robert Wood Johnson Medical School (formerly UMDNJ) and St. John's University, serves on the Advisory Board of Seton Hall Law School's Center for Health & Pharmaceutical Law & Policy, and frequently lectures to healthcare, accounting, computer and insurance professionals, attorneys and business owners. In December 2016, he received ICLE's 2016 Distinguished Service Award and in 2006 was the recipient of the NJSBA Health Law Section's first Distinguished Service Award. He is also the 2008 recipient of the Middlesex County Bar Association's Transactional Attorney of the Year Award.

Having served as Chair of the Editorial Board of the *New Jersey Lawyer Magazine* and as special editor of several issues of the periodical, including issues on Health Care, Business Law, Internet and the October 2018 issue on *Cannabis Law*, Mr. Schaff is the author of numerous articles which have appeared in the *New Jersey Law Journal* and other publications, and the co-author of a monthly column in the *New Jersey Law Journal* on the impact of legal cannabis on New Jersey businesses. He is author and editor of several editions of the *Representing Physicians Handbook* and has contributed to *AHLA Fundamentals of Health Law*, *Representing Hospitals Handbook* and *The ACO Handbook: A Guide to Accountable Care Organizations*. Mr. Schaff is also a member of the Editorial Advisory Board of *Bloomberg Law Health Law and Business* and serves on several other editorial and advisory boards. He has been listed in *Who's Who in American Law*, *Who's Who in the World* and *Who's Who in the East*, and is the recipient of the AHLA *Pro Bono* Champion Award, the 2018 AHLA David J. Greenburg Service Award and several other honors.

Mr. Schaff received his B.A. from Rutgers College, his M.B.A. from Bernard M. Baruch College, C.U.N.Y., his J.D. from New York Law School and his LL.M. in Taxation from Boston University.

Lisa D. Taylor, Board Certified as an Expert in Health Law by the Florida Bar, is a founding Partner of Inglesino, Webster, Wyciskala & Taylor, LLC in Parsippany, New Jersey, and Boca Raton, Florida, and concentrates her practice in health care law. She handles business and employment transactions, regulatory matters and litigation, and represents professionals in disciplinary matters. She also serves as a neutral arbitrator and mediator, and as an expert witness in health care disputes and professional proceedings.

Admitted to practice in New Jersey, New York, Pennsylvania, Tennessee, Florida and the District of Columbia, and before numerous federal courts, Ms. Taylor is a two non-consecutive term Past Chair of the New Jersey State Bar Association Health Law Section and a member of the Section's *Emeritus* Board, after serving for 20 years on its Board of Directors. She is Secretary of the American Bar Association's Health Law Section and Vice Chair of the Health

Care Certification Committee of The Florida Bar. A Life Fellow of the American Bar Foundation, she is also a member of the Million Dollar Advocates Forum, which recognizes lawyers who have achieved a trial verdict, award or settlement of \$1,000,000 or more.

Ms. Taylor is the recipient of the New Jersey State Bar Association Health & Hospital Law Section's 2007 Distinguished Service Award for service to the health bar and health industry as well as ICLE's Distinguished Service Award for Excellence in Continuing Legal Education in 2014. In 2016 she received the Ira Geller Award from Community Access Unlimited for zealous advocacy of the disabled and in 2004 was one of ten attorneys nationally recognized as Outstanding Physician Practice Lawyers by *Nightingale's Healthcare News*. She is listed in *Who's Who in America*, *Who's Who in American Law* and *Who's Who in the World*, and is the recipient of several other honors, including being named to the *New Jersey Law Journal's* list of leading women and minority attorneys in 2005.

Ms. Taylor received her undergraduate degree, *cum laude*, from Barnard College, Columbia University, her M.A. in Philosophy from Duke University and her law degree from Duke University. She also studied finance and accounting at Columbia Business School and attended Executive and Continuing Professional Education at Harvard University's T.H. Chan School of Public Health.



Health Law Symposium

Licensing Update 2022 Health Law Symposium

**Eugene Brenycz, Regulatory Officer
New Jersey State Department of Health
Division of Certificate of Need and Licensing**

1. Health Care Administration Board

<https://www.nj.gov/health/bc/health-care-administration-board/index.shtml>

2. Guidance Memorandums

<https://www.nj.gov/health/healthfacilities/certificate-need/guidance/>

3. Online Payments

<https://www.nj.gov/health/healthfacilities/epayments.shtml>

4. Public Notices

<https://nj.gov/health/legal/public-notices/>

5. COVID-19 Documents

<https://nj.gov/health/legal/covid19/>

6. Forms (Link is off of this page)

<https://www.nj.gov/health/healthfacilities/>



Health Care Administration Board



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- State Health Planning Board

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Health Care Administration Board

The Board advises, generally, the Commissioner on issues related to health care policy and reviews and makes recommendations with respect to rules and regulations necessary to implement the Health Care Facilities Planning Act.

More information:

On Governor's Boards, Authorities and Commissions page, please look for "Health Care Administration Board."

- [2022 Meeting Schedule](#)
- [Subscription for Meeting Materials](#) (pdf 157kb)

Kindly send all mail for board members to:

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Office of Legal and Regulatory Compliance
55 North Willow Street - PO Box 360
Trenton, NJ 08625
Email: boards-councils@doh.nj.gov
Phone: 609-376-0930
Fax: 609-292-5333

Members

- P - Michael J. Baker, Esq., Chair
- C - Mary Kay Roberts, Esq., Vice Chair
- C - Ellsworth Havens
- P - Joseph S. Roth
- P - Mary Wachter
- * - Vacant (Represents the Commissioner of Banking & Insurance)
- * - Joy L. Lindo (Represents the Commissioner of Health)

KEY:

- P - PROVIDER
- C - CONSUMER
- * - EX-OFFICIO VOTING MEMBER

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Certificate of Need and Facility Licensing

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Guidance Memorandums

Date Issued	Name	Summary
July 23, 2021	Cardiac Services Memo	The statute removes the Certificate of Need requirements for full-service adult diagnostic cardiac catheterization, primary angioplasty and elective angioplasty, and permits general hospitals to add these three services through a licensing process.
July 21, 2021	Hospital at Home Waiver	This waiver provides the requirements for general hospitals to participate in the CMS Hospital at Home program.
July 6, 2021	Statutory Amendments to the licensing of cardiac services pursuant to P.L. 2021, c. 18	Changes to licensing process for full-service adult diagnostic cardiac catheterization, primary angioplasty and elective angioplasty
May 12, 2021	P.L. 2020, c. 87 Additional Responsibilities	<ul style="list-style-type: none"> Duties of long-term care facilities during an infectious disease outbreak Reporting Requirements to the National Healthcare Safety Network Database included in the Act Electronic Health Record System Outbreak Response Plans



Licensure Payments



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Public Notices

Date of Publication and Register Citation	Title	Branch/Division	Important Dates
September 19, 2022 54 N.J.R. 1857(b)	Notice of Receipt of Petition for Rulemaking Standards For Licensure of Residential Substance Use Disorder Treatment Facilities Definitions and Qualifications Definitions Qualifications and Responsibilities of the Medical Director and Physicians N.J.A.C. 8:111-1.3 and 1.4	Health The Commissioner	
September 19, 2022 54 N.J.R. 1857(a)	Notice of Action on Petition for Rulemaking Hospital Licensing Standards Infection Control Sepsis Protocols N.J.A.C. 8:43G-14.9	Health Systems Branch Division of Certificate of Need and Licensing	
August 15, 2022 54 N.J.R. 1648(a)	Notice of Cancellation of Certificate of Need Call for Mobile Intensive Care Unit Programs	Health The Commissioner	



COVID-19 Guidance



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Applications and Forms



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Forms for Health Facilities, Licensing and Certification

Ambulatory Care Assessment			
Form #	Form Name/Title	Linked File	Instruction/ Comments
ARR	Rehabilitative Hospital and Special Hospital subject to a \$10 Adjusted Admission Assessment	pdf (755k)	Instructions (pdf 86k)
HFEL-5	Financial Report for Licensed Ambulatory Care Facilities Subject to the Ambulatory Assessment <i>(Last edited April 19, 2022)</i> Submit Online	HFEL-5 (1340k)	Instructions (745k)
Certificate of Need and Healthcare Facility Licensure			
Form #	Form Name/Title	Linked File	Instruction/ Comments
CN-1	Full Review Certificate of Need Application for Long Term Care Facilities: General Long Term Care Beds; Specialized Long Term Care Beds <i>(Updated December 1, 2016)</i>	pdf (394k)	

N.J.S.A. 26:2H-7.25 et seq. – Application prior to transferring ownership of a nursing home

- **Effective date 11/8/21**

Application for the transfer of ownership of a nursing home must include:

- 1. Fee;**
- 2. Cover letter;**
- 3. Identification of 100% of the proposed owners, including names and addresses of principals (5% or more) and interested parties (between 1 and 5%);**

4. Organizational charts; and

5. Copy of the agreement of sale, and any lease or management agreements.

The transfer or ownership application or summary shall:

- 1. Be posted within 30 days on the Department's website; and**
 - 2. Be subject to a public comment period of no less than 30 days.**
- Department has 120 days to make a decision on the application. Date of receipt shall be the date the application is deemed complete.**

When the transfer is to an entity that has never operated a health care facility in New Jersey or is submitted within 6 months of a prior application to transfer, the applicant shall:

- 1. Submit a three-year projection of profits and losses and a three-year capital budget;**
- 2. Disclose all facilities owned, operated or managed for the last year years, as well as owner-certified financial statements and disclosure of any enforcement actions;**
- 3. Hold a public hearing no earlier than 30 days from applying; and**
- 4. CBI for each proposed owner and principal.**

When the applicant has owned or operated a facility in New Jersey, the applicant shall:

- 1. Submit a three-year projection of profits and losses and a three-year capital budget; and**
- 2. Disclose all facilities owned, operated or managed for the last year years, as well as owner-certified financial statements and disclosure of any enforcement actions.**

Sale of Real Property of a Nursing Home

- **Prior to the sale the following must be submitted to the Department and the Department of Human Services:**
 - 1. Fee;**
 - 2. Cover letter;**
 - 3. Description of the proposed transaction;**
 - 4. Copy of the sale agreement, lease and any management agreements; and**
 - 5. Attestation by the purchaser that the rate charged will be consistent with fair market value.**

N.J.S.A. 26:2H-14.3 et seq. - Establishes minimum and maximum temperature levels for nursing homes, dementia care homes and residential health care facilities

- **Guidance Memo distributed April 14, 2022**
- **Maximum temperature in areas used by residents lowered to 81 degrees from 82**
- **Minimum temperature in areas used by residents is not to fall below 65 degrees**

There are exemptions:

- 1. Does not apply to rooms designated for activities requiring physical exertion**
 - 2. Where residents can control the temperature in their own living unit**
- Where the Centers for Medicare & Medicaid Services (CMS) has a set temperature range that differs, the facility may follow the CMS temperature levels**

N.J.S.A. 26:2H-12,28 et seq. – New Licensing Standards for Stroke Centers

Guidance Memo distributed April 20, 2022

- **Can only hold the facility out at the level of the accrediting bodies designation after January 20, 2023**
- **May be eligible for two one-year extensions**
- **Facilities seeking designation for the first time must have accreditation prior to applying**

N.J.S.A. 26-2H-12.101 – 12.107 (Rights of Lesbian, Gay, Bisexual, Transgender, Undesignated/Non-Binary, Questioning, Queer, Intersex, and HIV-positive Residents of Long-Term Care Facilities)

- **Guidance Memo distributed April 19, 2022**
- **The law provides 9 specific actions that a facility (nursing home, assisted living residence, comprehensive personal care home, residential health care facility, or dementia care home) is prohibited to take based on an individual's status**

- **Resident's records are to indicate the resident's gender identity and chosen pronouns as indicated by the resident**
- **Confidentiality – Facilities are required to take steps to limit accidental disclosure of a resident's information**

- **Training – Facilities are required to have a management employee and an employee representing direct care staff receive in-person training provided by an entity that has demonstrated expertise in the legal, social and medical challenges faced by LGBTQI+ and HIV+ seniors in LTC facilities**
- **These two employees are required to develop a training plan for the facility**

N.J.S.A. 26:2H-46.1 - Increase in penalties for deficiencies outlined in federal Centers for Medicare and Medicaid Services guidance

- **If, over a three-year period a facility “is cited for the same or a substantially similar F-level deficiency or higher” any penalty assessed “shall be more severe than the penalty imposed for the previous violation.”**

N.J.S.A. 45:1-74 - Restrictions on invasive examination; informed written consent

- **Health care practitioners shall not perform an invasive examination “while the patient is under general anesthesia or otherwise unconscious without the patient’s informed written consent to the invasive examination.”**

- **“If ... an additional invasive examination is required that is different in nature from the invasive examination to which the patient previously consented, the health care practitioner shall obtain a separate informed written consent prior to performing the additional invasive examination.**
- **Does not apply in the case of an emergency though the health care practitioner is to notify the patient as soon as practicable of the invasive examination**

- **Separate written consent is necessary of the invasive examination is to be performed for training or educational purposes**
- **Department will be promulgating a form to be used for informed consent**
- **Failure to do so opens the practitioner to disciplinary action**

N.J.S.A. 34:11-4.15 - Disclosure of employee information, certain; change in control, health care entity employer

No later than 30 days prior to a change in control of a health care entity the seller is required to provide the purchaser, and any union representing employees, with:

- 1. The specified information regarding employees;**
- 2. Inform all employees of their rights under this law;
and**
- 3. Post a notice of those rights in the facility**

The seller and purchaser of a health care entity must have a contract that provides:

- 1. Each employee must be offered a position for a transition period of no less than 4 months, with no loss of pay or benefits;**
- 2. During the transition period all available positions are to be offered to existing employees; and**
- 3. At the close of the transition period a written evaluation must be done for each employee and continued employment shall be offered if performance was satisfactory.**

- **Violators are subject to penalties**
- **Actions against an employee may be considered retaliation**
- **Effective date - November 16, 2022**

N.J.S.A. 26:2H-5n - Medical Record Fees

- **Amendments signed into law on September 22, 2022**
- **Hospital fee is for a copy of an individual admission record and is capped at \$50, exclusive of items such as:**
 - **Search fee of \$20**
 - **Things that can't be copied on a photocopier, such as x-rays, \$15 per printed image, \$30 per compact disc or DVD, plus a \$10 administrative fee**

- **Amends the definition of “Authorized third party” by adding an exclusion for an “authorized representative of the patient.”**
- **Amends the definition of “Legally authorized representative” by deleting “third party” and adding “automotive” from insurer.**
- **Also amends N.J.S.A. 45:9-22.27 which addresses the fees charged by a BME regulated profession**
- **Takes effect immediately**

THANK YOU

Best Means of Contact
eugene.brenycz@doh.nj.gov



New Jersey State Bar Association Health Law Symposium

September 23, 2022

State Regulatory Update

Presented by:

Anjali N. Baxi, Esq.

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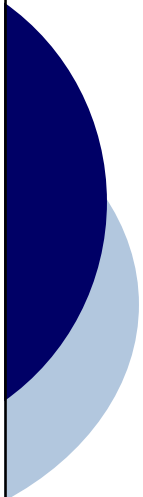
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- Professional Boards



Executive Orders

<https://nj.gov/infobank/eo/056murphy/>

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Executive Orders

- EO 292 (2022) on April 4, 2022 lifting the COVID-19 PHE
 - EO Nos. 111, 112, and 207 (2020), Nos. 252, 253, and 271 (2021), and Nos. 283 and 290 (2022) remain in full force and effect pursuant to the Disaster Control Act, N.J.S.A. App. A:9-33 et seq, except that any civil or criminal immunity related to the COVID-19 response bestowed by EO 112 shall not be in effect.
 - DCA Waivers in Effect until State of Emergency has ended.
<https://www.njconsumeraffairs.gov/Documents/EO28-DCA.pdf>
- EO 283 (2022) issued on January 19, 2022 clarifying COVID-19 vaccine requirements for workers in health care and congregate settings.
 - Applies to covered health care settings subject to the CMS rule and high risk congregate settings.
 - Required to maintain a policy that requires covered workers to provide adequate proof that they are up to date with their COVID-19 vaccinations by a certain date.
 - Exceptions for disability, medical and religious exemption.
 - Employer must establish disciplinary process for addressing non-compliance.
 - No testing option.



NJDOH RULEMAKING

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NJDOH RULEMAKING

- Notices of Rulemaking
 - On February 7, 2022, at 54 N.J.R. 284(a), the Department of Health, Certificate of Need and Licensing Division, published a notice of action on petition of rulemaking for approval of a nurse aide in long-term care facilities training program and eligibility criteria for instructor/evaluators in training programs for long term care facility nurse aides. See N.J.A.C. 8:39-43.10. Notice of receipt of rulemaking was published in November 1, 2021, at 53 N.J.R. 1866(a).
 - On June 6, 2022, at 54 N.J.R. 1105(b), the Department of Health, Office of the Commissioner released a notice of action on petition for rulemaking. The Department denied the petition for rulemaking. The petitioner requested the Department amend N.J.A.C. 8:43G-1.2 to define the term, "next of kin," as used at N.J.A.C. 8:43G-4.1(a)7, to include a close friend or other adult who is familiar with the patient's health care preferences.



NJDOH RULEMAKING (cont'd)

- **Readoption and Recodification**
 - On December 6, 2021, at 53 N.J.R. 2008(a), the Department of Health issued a notice of readoption of Licensure Standards for Mental Health Programs with technical changes and recodification of N.J.A.C. 10:101 as N.J.A.C. 8:121. Effective Date: October 20, 2021; Technical Changes December 6, 2021. The Department is making technical changes throughout N.J.A.C. 8:121 to update references throughout the chapter to the Department of Health licensing authority.
 - Recodified from Title 10 to Title 8.
 - Enforcement is with NJDOH CN & Licensing Program.
 - On December 20, 2021, at 53 N.J.R. 2208(a), the Department of Health, Certificate of Need and Licensing Division, published a final rule readopting the Standards for Licensure of Residential Substance Use Disorder Treatment (at N.J.A.C. 10:161A) as N.J.A.C. 8:111. Effective November 10, 2021, Technical changes December 20, 2021.
 - Moves mental health regulations from Title 10 to Title 8.
 - Enforcement is with NJDOH.



NJDOH RULEMAKING –READOPTION (cont'd)

- **Readoptions**

- On November 1, 2021, at 53 N.J.R. 1838(b), the Department of Health published a notice of readoption of N.J.A.C. 8:45, the regulations establishing clinical laboratory licensure requirements and fees and fees for services performed by the NJDOH Public Health and Environmental Laboratories. Effective September 29, 2021.
- On December 20, 2021, at 53 N.J.R. 2198(a) the Department of Health, Certificate of Need and Licensing Division, CN & Healthcare Facility Licensure Program readopted with technical amendments, N.J.A.C. 8:33C, the Rules for Regionalized Perinatal Services and Maternal and Child Health Consortia. Effective November 18, 2021, Technical changes December 20, 2021.
- On December 20, 2021, at 53 N.J.R. 2199(a), the Department of Health, Certificate of Need and Licensing Division, CN & Healthcare Facility Licensure Program readopted with technical amendments to N.J.A.C. 8:39, Standards for the Licensure of Long Term Care Facilities. Effective November 18, 2021, Technical changes December 20, 2021. The technical amendments include changes to Department's name and contact information and references to the change in name and contact information of the State Long Term Care Ombudsman's Office.



NJDOH RULEMAKING –READOPTION (cont’d)

•On December 20, 2021, at 53 N.J.R. 2204(a), the Department of Health, Certificate of Need and Licensing Division, CN & Healthcare Facility Licensure Program readopted with technical amendments to N.J.A.C. 8:43F, Standards for Licensure of Adult Day Health Services Facilities. Effective November 18, 2021, Technical changes December 20, 2021.

•On January 3, 2022, at 54 N.J.R. 54(a), the Department of Health, Health Systems Branch, Certificate of Need and Licensing Division, Certificate of Need and Healthcare Facility Licensure Program readopted the standard for licensure of assisted living residences, comprehensive personal care homes, and assisted living programs with technical changes. See readopted N.J.A.C. 8:36.

•On January 3, 2022, at 54 N.J.R. 60(a), the Department of Health, Health Systems Branch, Certificate of Need and Licensing Division, Certificate of Need and Healthcare Facility Licensure Program, readopted the manual of standards for licensing of ambulatory care facilities with technical changes. See readopted N.J.A.C. 8:43A.



NJDOH RULEMAKING –READOPTION (cont'd)

- On January 18, 2022, at 54 N.J.R. 149(a), the Department of Health, New Jersey Healthcare Facilities Financing Authority readopted prevailing wage rates for workers employed in the performance of construction contracts for New Jersey Health Care Facilities. See readopted N.J.A.C. 8:95.
- On February 22, 2022, at 54 N.J.R. 363(a) the Department of Health, Certificate of Need and Healthcare Facility Licensure Program readopted with technical changes to the Act concerning transplantation services. See readopted N.J.A.C. 8:33Q.
- On June 20, 2022, at 54 N.J.R. 1168(a), the Department of Health, Division of Certificate of Need and Licensing issued a notice of readoption which readopted N.J.A.C. 8:33, Certificate of Need: Application and Review Process, which was scheduled to expire on June 18, 2022. The Department made technical changes upon readoption. See readoption with technical changes N.J.A.C. 8:33. Effective Date: May 4, 2022. New Expiration Date: May 4, 2029.



NJDOH RULEMAKING –READOPTION (cont'd)

- On July 5, 2022, at 54 N.J.R.1299(a), the Department of Health, Health Systems Branch, Division of Certificate of Need and Licensing, Office of Health Care Financings readopted with amendments the Ambulatory Care Facility Assessment. Such changes include (i) Purpose and Scope, (ii) Definitions, (iii) Calculation of Assessments, (iv) Payment of Assessments, (v) Appeal of Assessment, (vi) Annual Report, (vii) Audit of Annual Report, and (viii) Penalties. See readoption with amendments N.J.A.C. 8:31A. Proposed On February 7, 2022, at 54 N.J.R. 248(a).

NJDOH RULEMAKING –CN (cont'd)

- CN Calls-new review cycles and dates published 54 N.J.R. 458(b)
- Postponements
 - Transplantation. 54 N.J.R. 920(a)
 - Home health care services. 54 N.J.R. 1105(a)
- Cancellations
 - New General Hospitals 54 N.J.R. 458(a)
 - Specialized LTC beds for pediatric care. 54 N.J.R. 457(a)
 - Specialized LTC beds for severe behavior management. 54 N.J.R. 457(b)
 - Specialized LTC beds for ventilator care. 54 N.J.R. 457(c)
 - All published on March 7, 2022
 - Maternal and child health services. 54 N.J.R. 1212(b) June 20, 2022
 - Designation as Trauma Center 54 N.J.R. 1560(c) August 1, 2022
 - Mobile ICU 54 N.J.R. 1648(a), August 15, 2022



Readoption Related to CCRCs

- On April 4, 2022, at 54 N.J.R. 552(a), the Department of Community Affairs, Division of Codes and Standards released a notice of readoption for Continuing Care Retirement Community rules in N.J.A.C. 5:19. The rules are intended to enable the Department of Community Affairs to implement the Continuing Care Retirement Community Regulation and Financial Disclosure Act. See N.J.A.C. 5:19. Effective Date: March 8, 2022. New Expiration Date: March 8, 2029.



NJ Department of Human Services Issuances

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NJDHS ISSUANCES-PACE PROGRAM

- Program of All-Inclusive Care for the Elderly (PACE)
 - On May 16, 2022, at 54 N.J.R. 930(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the PACE for Middlesex County.
 - On May 16, 2022, at 54 N.J.R. 939(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the PACE for Somerset County.
 - On July 5, 2022, at 54 N.J.R. 1323(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the PACE for the Bergen County designated service area.
 - On July 5, 2022, at 54 N.J.R. 1332(a), the Department of Human Services, Division of Aging Services, released a notice of request for applications for the PACE for the Passaic County designated service area.



NJDHS ISSUANCES-PACE PROGRAM (cont'd)

- What is PACE
 - PACE is an innovative program that provides frail individuals aged 55 and older with comprehensive medical and social services, coordinated and provided by an interdisciplinary team of professionals in a community-based center and in their homes, thereby helping the program participants delay or avoid admission to long-term care facilities.
 - The PACE may be a governmental entity, non-profit or a for-profit entity that has CMS a program waiver.
 - Needs CMS Approval –See 42 U.S.C. 1396u-4
 - NJDOH License under N.J.A.C. 8:43A
 - Requires architectural review



NJ Department of Banking and Insurance Issuances

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NJDOBI ISSUANCES

- On October 4, 2021, at 53 N.J.R. 1737(a), the Insurance – Department of Banking and Insurance, Individual Health Coverage Program Board, adopted amendments to N.J.A.C. 11:20, Appendix Exhibits A and B. Exhibits can be reviewed by contacting the New Jersey Individual Health Coverage Program. See adopted N.J.A.C. 11:20.
- On October 4, 2021, at 53 N.J.R. 1738(a), the Insurance – Department of Banking and Insurance, Small Employer Health Benefits Program, adopted amendments to N.J.A.C. 11:21, Appendix exhibits F, G, W, Y, HH, and II. Exhibits can be reviewed by contacting the New Jersey Small Employer Health Benefits Program. See adopted N.J.A.C. 11:21.
- On January 3, 2022, at 54 N.J.R. 73(a), the Department of Banking and Insurance, Division of insurance readopted the HMO regulations with technical changes. See readopted N.J.A.C. 11:24.



NJDOBI (cont'd)

- Third Party Billing Registration
- Citation:
 - N.J.S.A. 17B:27B-1 et seq
 - N.J.A.C. 11:23-1.1, Subchapter 5
- Penalty Provision: N.J.A.C. 11:23-5.10
 - “an amount not less than \$250.00 nor more than \$5,000 for each day that a third party billing service is in violation of the Act ”
- Changes in Enforcement Environment
- Fines have gone from \$ to \$\$\$\$
- Consent Degrees/Orders to Show Cause
- Enforcement Activity:
 - https://www.nj.gov/dobi/division_insurance/insfines.htm



Rulemaking by Professional Boards

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NJ Board of Medical Examiners

- On December 6, 2021, at 53 N.J.R. 2013(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners adopted amendments, adopted a new rule and repealed a rule related to Surgery, Special Procedures, Anesthesia Services Performed in an Office Setting.
 - The new rule authorizes advanced practice clinicians to perform minor procedures in the office consistent with their respective scope of practice and as addressed within their individual collaborating agreements.
 - See amended N.J.A.C. 13:35-4A.1-4A.12, adopted new rule N.J.A.C. 13:35-4A.19; repealed N.J.A.C. 13:35-4.2. Effective December 6, 2021.
 - Notably, the amendments revise multiple definitions under the regulation, including “moderate sedation,” “early aspiration abortion,” and “office.”



NJ Board of Medical Examiners (cont'd)

- On June 20, 2022, at 54 N.J.R. 1171(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, Electrologists Advisory Committee adopted amendments and new rules to the Electrologists Advisory Committee Rules. Such changes include:
 - Purpose and Scope/Definitions,
 - Licensing Requirements/Renewals/Reinstatements/Reactivations for Electrologist/Electrologist Instructor,
 - Application for License: Electrologist,
 - Licensing Requirements for Office Premises,
 - Infection Prevention Standards, Posting of Licenses and Required Notices, Examination Requirements; Reexamination,
 - Unlicensed Practice,
 - Continuing Education; Programs
 - See N.J.A.C. 13:35-subchapter 12



NJBME –Waivers

•Effective August 1, 2022, the Division of Consumer Affairs (the "Division") discontinued the Temporary Emergency Reciprocity Licensure Program on August 1, 2022, for all classes of Group 2 health care practitioners, with the sole exception of respiratory care therapists.

•Group 2 health care practitioners affected:

- Advanced Practice Nurse
- Certified Social Worker
- Doctor of Osteopathy
- Homemaker Home Health Aid
- Licensed Practical Nurse
- Licensed Alcohol and Drug Counselor
- Licensed Clinical Social Worker
- Licensed Social Worker
- Marriage and Family Therapist
- Medical Doctor
- Professional Counselor
- Psychoanalyst
- Psychologist
- Registered Professional Nurse



Board of Dentistry

- On January 3, 2022, at 54 N.J.R. 83(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Dentistry adopted the following amendments:
 - Amending N.J.A.C. 13:30-1A.4 to reflect that the scope of practice of a Dental Hygienist under general supervision in a school setting may include, upon consent of a parent or guardian, preventative measures including biofilm with prophylaxis paste containing fluoride.
 - Amending N.J.A.C. 13:30-8.2 and 8.3 to reduce that the inspection interval and approval by the Board of Dentistry of offices in which parenteral conscious sedation is performed shall occur every from every six (6) years to every five (5) years. N.J.A.C. 13:30-1A.4, 8.2, and 8.3.
- On January 18, 2022, at 54 N.J.R. 149(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Dentistry adopted new rules regarding telemedicine and telehealth. See adopted N.J.A.C. 13:30-9.



Board of Dentistry (cont'd)

- On June 20, 2022, at 54 N.J.R. 1170(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Dentistry adopted an amendment which changes N.J.A.C. 13:30-8.18 to implement P.L. 2021, c. 54, which establishes the circumstances and conditions under which a health care practitioner must issue a prescription for an opioid antidote.
- Whenever a healthcare practitioner (including APN) issues a prescription for an opioid drug that is a controlled dangerous substance and one of the following conditions exists:
 - the patient has a history of substance use disorder, or
 - the prescription for the opioid drug is for a daily dose of more than 90 morphine milligram equivalents (MME),
 - or the patient holds a current, valid prescription for a benzodiazepine that is a Schedule III or Schedule IV controlled dangerous substance.



Board of Nursing

- On January 3, 2022, at 54 N.J.R. 87(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Nursing adopted a new rule regarding exit examinations. This rule requires that nursing programs administer a comprehensive examination at the end of the program. This exam shall not affect the students' ability to graduate or take a licensing exam. See adopted N.J.A.C. 13:37-1.21.



Board of Nursing (cont'd)

- On January 18, 2022, at 54 N.J.R. 152(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Nursing adopted amendments, adopted a new rule, and adopted a repeal regarding education programs. Changes were made to application for establishment of a new program in nursing, provisional accreditation, faculty responsibility for philosophy/missions, and student learning outcomes, maintaining accreditation, preceptors, renewing accreditation, waiver of on-site visits, changes to a nursing program, and other subsections. See adopted N.J.A.C. 13:37-1.2, 1.3, 1.5, 1.6, 1.7, 1.8, 1.13, 1.14, 1.15, 1.16, 1.18, 1.19; See repeal N.J.A.C. 13:37-1.17; See adopted new rule N.J.A.C. 13:37-1.10A.
- On March 21, 2022, at 54 N.J.R. 500(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey Board of Nursing published a notice that it has ended a moratorium on the acceptance of new applications for accreditation of practical nursing programs.



Board of Nursing (cont'd)

- On July 18, 2022, at 54 N.J.R. 1415(a), the Department of Law and Public Safety, Division of Consumer Affairs, New Jersey Board of Nursing, adopted new rules to the Power of Attorney and Loan Ban. Such changes include (i) General Requirements of Licensure; License Renewal; Fee Schedule, and (ii) Homemaker-Home Health Aides. See adopted new rules N.J.A.C. 13:37-5.4 and 14.18. Rule proposal: February 22, 2022, at 54 N.J.R. 336(a),



Board of Nursing (cont'd)

- On June 20, 2022, at 54 N.J.R. 1174(a), the Department of Law and Public Safety, Division of Consumer Affairs, Board of Nursing adopted an amendment which changes N.J.A.C. 13:37-7.9A to implement P.L. 2021, c. 54, which establishes the circumstances and conditions under which a health care practitioner must issue a prescription for an opioid antidote.
- Whenever an APN issues a prescription for an opioid drug that is a controlled dangerous substance and one of the following conditions exists:
 - the patient has a history of substance use disorder, or
 - the prescription for the opioid drug is for a daily dose of more than 90 morphine milligram equivalents (MME),
 - or the patient holds a current, valid prescription for a benzodiazepine that is a Schedule III or Schedule IV controlled dangerous substance.



Board of Optometrists

- On December 20, 2021, at 53 N.J.R. 2229(b), the Ophthalmic Dispensers and Ophthalmic Technicians adopted new final rules, amendments and repeals of rules in N.J.A.C. 13:33. The rules relate to the application for apprentice certificates, out of state dispenser applications, and reporting of unlawful conduct. Effective December 20, 2021.



Board of Optometrists (cont'd)

- On June 20, 2022, at 54 N.J.R. 1175(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Optometrists adopted an amendment which changes N.J.A.C. 13:38-2.5 to implement P.L. 2021, c. 54, which establishes the circumstances and conditions under which a health care practitioner must issue a prescription for an opioid antidote.
- Whenever an optometrist issues a prescription for an opioid drug that is a controlled dangerous substance and one of the following conditions exists:
 - the patient has a history of substance use disorder, or
 - the prescription for the opioid drug is for a daily dose of more than 90 morphine milligram equivalents (MME),
 - or the patient holds a current, valid prescription for a benzodiazepine that is a Schedule III or Schedule IV controlled dangerous substance.



State Board of Pharmacy

- On September 20, 2021, at 53 N.J.R. 1562(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy *proposed* a new rule that will require every pharmacy permit holder to implement a continuous quality improvement program to address prescription errors. See proposed N.J.A.C. 13:39-1.9.
- On January 3, 2022, at 54 N.J.R. 88(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding opioid warning labels. When a pharmacist dispenses a prescription for an opioid medication, they must affix a warning to the bottle that states “opioid risk of addiction and overdose,” along with other requirements. See adopted N.J.A.C. 13:39-7.12.
 - Under the amendments, opioid medication labels must be (i) yellow, red or orange in color; printed in an easily and clearly readable, non-cursive font size of at least 10- point font; and, (iii) affixed to the side or cap of the prescription bottle or to the side of the box that contains the prescription label. The amended regulations may be found at N.J.A.C § 13:39-7.12(e).
- On January 18, 2022, at 54 N.J.R. 156(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding fees for out-of-state pharmacies. These fees include \$275 for an application permit, \$275 for change of ownership/name, and \$275 for change of location. See adopted N.J.A.C. 13:39-1.3.



State Board of Pharmacy (cont'd)

- On January 18, 2022, at 54 N.J.R. 156(c), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments that require the pharmacist to document that counseling was provided or refused at the time of prescription dispensing. See adopted N.J.A.C. 13:39-7.21.
- On March 7, 2022, at 54 N.J.R. 449(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy adopted amendments regarding procedures for authorized prescriber ordered or government sponsored immunizations performed by pharmacists, pharmacy interns, or pharmacy externs. Includes requirement for pharmacists, pharmacy interns, or pharmacy externs to administer influenza vaccine to minors. A licensed pharmacist or pharmacy intern needs to be pre-approved by the Board to administer vaccines and related emergency medications. See adopted amendments N.J.A.C. 13:39-4.21 and 4.21A.



State Board of Pharmacy (cont'd)

- On May 2, 2022, at 54 N.J.R. 771(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Pharmacy *proposed* new rules setting forth the requirements to allow a pharmacy to have licensed pharmacists and registered pharmacy technicians perform limited pharmaceutical functions at a location other than on the premises of a pharmacy.
 - Goal: greater flexibility in prescription processing.
 - Would permit pharmacists and pharmacy technicians to perform data entry of prescription medication information and refill authorizations.
 - No storing or dispensing of any medication from a remote location.
 - Any prescription processing functions performed at a remote location must be performed by qualified and appropriately trained individuals pursuant to safeguards designed to protect the confidentiality of prescription and patient information. See proposed new rules N.J.A.C. 13:39-4A.



Board of Physical Therapy Examiners

- On September 7, 2021, at 53 N.J.R. 1500(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Physical Therapy Examiners readopted the Rules of the State Board of Physical Examiners with amendments. See N.J.A.C. 13:39A. Additionally, repeals and new rules were adopted. See N.J.A.C. 13:39A-5.5, 5A and N.J.A.C. 13:39A-4.3, 5.2A.



Board of Polysomnography

- On June 20, 2022, at 54 N.J.R. 1176(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Polysomnography adopted new rules regarding telemedicine and telehealth. These include the purpose and scope, definitions, standard of care, licensee-patient relationship, provision of health care services through telemedicine or telehealth, records, prevention of fraud and abuse, and privacy and notice to patients. See N.J.A.C. 13:44L-7. Rules were proposed on January 18, 2022 at 54 N.J.R. 119(a).



Board of Psychological Examiners

- On September 20, 2021, at 53 N.J.R. 1570(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners adopted amendments, new rules, and repeals that revise the standard for denying a license based on conduct constituting a crime or offense. See adopted N.J.A.C. 13:42-5.3, 10.17, 9.3, 10.4, 10.18, 11.4, 10.18.
- On November 1, 2021, at 53 N.J.R. 1852(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners adopted an amendment of N.J.A.C. 13:42-8.1, regarding Client records: Confidentiality. The amendment requires that a licensee retain the permanent client record for at least 7 years from the date of last entry, unless otherwise provided by law. Records for minors must be kept for seven years from the date of last entry or until the client turns 25 years old, whichever is longer, unless otherwise provided by law.



Board of Psychological Examiners (cont'd)

- On January 3, 2022, at 54 N.J.R. 1, the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners, *proposed* amendments that allow for an online administration of the jurisprudence examination which applicants for a license to practice psychology in NJ must take. See proposed N.J.A.C. 13:42-3.1, 3.2, 3.6, 5.1, 5.3, 5.4 and 10.21.
- On March 7, 2022, at 54 N.J.R. 406(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Psychological Examiners *proposed* an amendment regarding supervised practical experience prior to receiving a Doctoral Degree. This proposed rule would remove the requirement that at least one year of professional experience be completed subsequent to the applicant receiving a doctoral degree. See proposed amendment N.J.A.C. 13:42-4.1.



Board of Marriage and Family Therapists

- On November 1, 2021, at 53 N.J.R. 1868(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Marriage and Family Therapists issued a public notice of receipt of petition for rulemaking that requests an amendment to N.J.A.C. 13:34-5.3 to change the name "American Association for Marriage and Family Therapy of New Jersey Inc., (AAMFT-NJ)" to the "New Jersey Association for Marriage and Family Therapy (NJAMFT). This name change was recommended to accurately identify the entity that can approve CE courses and programs.



Board of Marriage and Family Therapists

- On February 7, 2022, at 54 N.J.R. 285(a), the Department of Law and Public Safety, Division of Consumer Affairs, published a notice of action on petition for rulemaking regarding the Board of Marriage and Family Therapy Examiners, Professional Counselor Examiners Committee.
 - This notice is for a petition received to amend N.J.A.C. 13:34-13.1(d), to permit the Committee to count clinical hours obtained before the submission of the proposed plan of supervision toward the number of supervised hours required to become a licensed counselor. See N.J.A.C. 13:34-13.1.
 - Committee determined to deny the petition because it is contrary to the applicable statute. N.J.S.A. 45:8B-50 provides: "No licensed associate counselor shall practice without direct supervision by a licensed professional counselor or a supervisor acceptable to the committee. The plan for supervision of the licensed associate counselor shall be approved by the committee prior to any actual performance of counseling by the licensed associate counselor."



Board of Marriage and Family Therapists (cont'd)

- On February 7, 2022, at 54 N.J.R 285(b), the Department of Law and Public Safety, Division of Consumer Affairs published a notice of action on petition for rulemaking for the Board of Marriage and Family Therapy Examiners, Professional Counselor Examiners Committee regarding N.J.A.C. 13:34-11.6(a) be amended to permit an applicant to submit proof of passing the required exam within one year of the date of application.
 - The Committee determined denied petition because it is contrary to the applicable statute. N.J.S.A. 45:8B-41 provides: "Each applicant shall furnish evidence satisfactory to the committee that he ... d. Has passed the National Counselor Examination of the National Board for Certified Counselors." 54 N.J.R. 285(b)



Board of Marriage and Family Therapists (cont'd)

- On February 22, 2022, the Department of Law and Public Safety, State Board of Marriage and Family Therapy Examiners, Alcohol and Drug Counselor Committee adopted new rules regarding telemedicine and telehealth. This new rule authorizes healthcare providers, who are alcohol and drug counselors, to engage in telemedicine and telehealth. This rule sets forth various other rules alcohol and drug counselors must follow regarding telehealth. See adopted N.J.A.C. 13:34C-7.



Board of Marriage and Family Therapists (cont'd)

- On May 2, 2022, at 54 N.J.R. 792(b), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Marriage and Family Therapy Examiners released a notice of action on petition for rulemaking regarding increasing social and cultural competence training for licensed professional counselors.
 - The Board denied the petition.
 - The Board held that three hours of training is a minimum requirement, though three hours is consistent with best practices nationwide and in New Jersey.
 - The Board does not offer continuing education on any topic, but rather approves providers who review and present continuing education courses.
 - The core curriculum of professional counselor training programs at higher learning institutions is set by nationally recognized accrediting agencies.



Board of Marriage and Family Therapists (cont'd)

- On June 20, 2022, at 54 N.J.R. 1212(c), the Department of Law and Public Safety, Division of Consumer Affairs, Board of Marriage and Family Therapy Examiners issued a notice of action on petition for rulemaking, in which the Department denied a petition for rulemaking that requested the Board to amend N.J.A.C. 13:34-13.1 to require that supervisors of licensed associate counselors be professional counselors licensed in New Jersey for at least three years and have an approved clinical supervisor certification.
 - The Board affirmed the Professional Counselor Examiners Committee's decision to deny the petition.
 - Notice of receipt of rulemaking was published May 16, 2022 at 54 N.J.R. 1212(c).



Board of Respiratory Care

- On December 6, 2021, at 53 N.J.R. 2050(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Respiratory Care adopted new rules regarding telehealth and telemedicine at N.J.A.C. 13:44F-11. Effective December 6, 2021. The new rules are identical to the telemedicine and telehealth rules already in place for other New Jersey healthcare providers.
- On April 4, 2022, at 54 N.J.R. 525(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board of Respiratory Care proposed to readopt the Board of Respiratory Care Rules in N.J.A.C. 13:44F with amendments. Following a thorough review in compliance with Executive Order No. 66 (1978), the Board determined that amendments were necessary to provide regulatory congruence and make practical and comprehensive updates to the Board's rules. The Board believed that the rules proposed for readoption, as amended, were necessary, reasonable, understandable, and responsive to the purposes for which they were promulgated. See N.J.A.C. 13:44F.



Other Professional Boards

Board of Social Workers

•On July 18, 2022, at 54 N.J.R. 1416(a), the Department of Law and Public Safety, Division of Consumer Affairs, Board of Social Workers published a notice of readoption of N.J.A.C. 13:44G, which establish the standards for the licensing, certification, and regulation of social workers and for the practice of social work. Effective Date: June 13, 2022. New Expiration Date: June 13, 2029.

Occupational Therapy Advisory Council

•On January 18, 2022, at 54 N.J.R. 157(a), the Department of Law and Public Safety, Division of Consumer Affairs, Occupational Therapy Advisory Council adopted new rules regarding telemedicine and telehealth. See adopted N.J.A.C. 13:44K-7.

Board Chiropractic Examiners

•On November 15, 2021, at 53 N.J.R. 1920(a), the Department of Law and Public Safety, Division of Consumer Affairs, State Board Chiropractic Examiners published a notice of readoption of N.J.A.C. 13:44E. Effective October 19, 2021.



Division of Consumer Affairs

- On April 18, 2022, at 54 N.J.R. 718(a), the Department of Law and Public Safety, Division of Consumer Affairs published a notice of readoption of N.J.A.C. 13:45B, which establish the standards for the regulation of personnel services. The chapter includes rules on employment agencies, health care service firms and placement of health care practitioners. Effective Date: March 14, 2022 until March 14, 2029.
- On May 2, 2022, at 54 N.J.R. 782(a), the Department of Law and Public Safety, Division of Consumer Affairs, Charities Registration Unit adopted amendments to require the most recent IRS filings, except for Schedule B (schedule of donors) to be included in initial and renewal registration statements. This eliminates the requirement to include a schedule of donors under Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021) and Americans for Prosperity Foundation v. Grewal No. 3:19-cv-14228-BRM-LHG (D.N.J. Oct. 2, 2019). Information for financial reports for the long form registration must now include a statement of functional expenses classified to include fundraising and also a statement of cash flows. Some sections have been reorganized and recodified. See N.J.A.C. 13:48-4.1, 4.3, 5.1, and 5.3. Effective May 2, 2022 and expires November 21, 2024 .



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NEW JERSEY HEALTH LAW UPDATE

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1) NJ Medical Aid in Dying for Terminally Ill Act upheld

Appellate Division, Docket #A-3837-19, June 10, 2022

Background: NJ Medical Aid in Dying for Terminally Ill Act became law April 2019

Law allows an adult NJ resident with a terminal illness and whose physician has certified a life expectancy of six months or less to obtain from physician a prescription for medicine that the patient can choose to self-administer to end life in a dignified manner.

Patient must have capacity and have made two oral requests and one written request, with certain timing, and witnessed by at least two persons.

Margaret Davino



NJ Medical Aid in Dying Act upheld

A terminally ill patient, a physician and a pharmacist challenged the law on constitutional grounds

Court: plaintiffs lacked standing because the act is totally voluntary, and did not violate plaintiff's constitutional right to enjoy and defend life, because they had no constitutional right to defend life of others

In summary, the NJ MAID law was upheld

2) No strict liability for patient privacy breach

Estate of Marc Cooper v AHS Hosp Corp/Morristown Medical Ctr, Appellate Div., Docket # A-3713-19, 6/28/22

Facts:

Patient suffered drug overdose in his rented room and brought to hospital ED. His landlord was an ER nurse at hospital and on duty when he was hospitalized. She was somehow put on "Patient/Family Contact list" (which was not signed) and entered his hospital room twice to inquire as to his status, including while family present, before family asked that no one enter except immediate family. She did not provide direct care.

Family hospital and landlady for breach of privacy, legal fraud, emotional distress. Landlady settled w/family

Margaret Davino



No strict liability for privacy breach

Plaintiff alleged that hospital had a “non-delegable” duty to protect patient privacy that was violated

Holding: Although sometimes liability of an employer for torts of an employee acting outside the scope of employment is permitted when conduct violates a non-delegable duty of employer, Appellate Division reluctant to say that hospitals have absolute liability for breaches of medical privacy by employees regardless of measures taken to guard against such

But summary judgment premature until all facts clear, inc. access to patient medical records

Margaret Davino



3) Providers can't force DOBI to investigate/act against payers

Garden State Bariatric v. State of NJ Dept of Banking & Insurance, Appellate Div., Docket A-0631-19, July 22, 2022

Facts: Out of network facilities complained to DOBI that Horizon reprogrammed its systems to automatically process claims incorrectly

- NJ 2018 Out of Network (OON) Consumer Protection Act protects NJ patients from surprise out of network charges, but doesn't apply to elective services at OON facilities
- Horizon treated OON facilities' claims for elective procedures as if they were prohibited inadvertent services at in-network facilities

Margaret Davino



Providers can't force DOBI to investigate or act

DOBI investigated and Horizon reprocessed many of the claims, and DOBI closed matters without further action against Horizon

Facilities complained that problems persisted, with Horizon continuing to automatically apply the OON Act for claims for elective treatment at OON facilities, and to plans not covered by OON law

Claim: DOBI erred in accepting Horizon's reprocessing of certain claims without holding Horizon for systematic problems

Appellate Division: Facilities lack standing to compel DOBI to take any specific action on their complaints. It is not the duty of DOBI to adjudicate disputes over claims.

- Legislature determined persons violating the OON Act "shall be liable to a penalty" collected by DOBI
- But a Court cannot compel DOBI to exercise its discretion in a specific manner

4) DOBI can pursue out of state companies

Applied Underwriters Captive Risk Assurance Co v NJ Dept of Banking and Insurance, Appellate Div., 4/27/22

Facts: 4 related companies (two of which are “non-admitted”) sold workers comp policies in NJ, with multiple complaints to DOBI. DOBI determined the companies’ actions to violate NJ law.

Companies claim: DOBI can’t take action against non-admitted foreign insurance companies, and only the Attorney General may do so.

Court holding: DOBI has authority to pursue an administrative complaint (remedy is not just a lawsuit brought by the AG).

Margaret Davino



5) A physician group cannot own & refer to a pharmacy

In re Oncology & Hematology Specialists, PA, Appellate Division, NO. A-2080-19, 12/22/21

Facts: Medical practice owned by 4 doctors applied to open a “closed door clinic pharmacy” within its practice location, exclusively for its patients.

Board of Pharmacy denied pharmacy application, concluding such a pharmacy would violate the Codey Law, prohibiting physicians from referring patients to healthcare services owned by them

Margaret Davino



Physician practice cannot own & refer to a pharmacy

Board of Pharmacy: “in-office” exception did not apply because the pharmacy would have to provide a medical treatment or a procedure in the doctors’ office, but a pharmacy provides neither medical treatments nor medical procedures to patients

Court holding: There is no evidence that the Board of Pharmacy acted with an improper motive or arbitrarily, capriciously or unreasonably, and upheld decision that doctors can’t own a refer to a pharmacy.

Margaret Davino



6) Cases against nursing homes re Covid remain in state court

Estate of Maglioli v Alliance HC Holdings, 3rd Circuit Ct of Appeals, 10/20/21

Facts: Four individuals, residents of two different New Jersey nursing homes, contracted and passed away from COVID-19. The estates of each of these individuals claim that the nursing homes acted negligently in handling the COVID-19 pandemic, causing the residents' deaths.

The nursing homes filed a notice of removal, arguing that the federal district court has jurisdiction because (1) the defendants are acting under the direction of a federal officer such that they can remove under the Federal Officer Removal Statute; (2) the PREP Act completely preempts the state law claims raised in the various complaints; and (3) the state law complaints raise significant federal issues.

Patient covid claims vs nursing home stay in state court

- The court further noted that *nearly* all district courts that have considered these issues have ordered the cases remanded back to the state courts. While not all were cited by the *Maglioli* court, there are nearly 100 such decisions and orders – a notable exception being *Garcia v Welltower OpCo Grp. LLC*, No. SACV 20-02250, 2021 WL 492581 (C.D. Cal. Feb. 10, 2021).
- The court addressed four major arguments in the opinion: (1) whether certain interpretations contained in declarations from the Health and Human Services Secretary are entitled to deference; (2) whether the nursing homes at issue can remove under the Federal Officer Removal Statute; (3) whether the PREP Act completely preempts state law claims; and (4) whether the PREP Act defense raised a significant federal issue such to allow removal. The court held that the answer to each issue was: no.

Patient covid claims vs nursing home stay in state court

Despite the court's complete rejection of the appellants' arguments, the court was careful to limit the scope of its decision to the jurisdictional questions presented. Third Circuit made clear that it was not addressing "whether the PREP Act preempts the estates' claims under ordinary preemption rules. That is for the state court to determine on remand."

- The court left open possibility that other allegations may "necessarily raise" a PREP Act defense such that removal would be proper.
- While *Maglioli* appears to significantly limit the ability of a nursing home to move a case from a state court to a US district court based on the PREP Act, many open issues remain. Given the large number of filings across the country, this is certainly not going to be the final word on any of the issues addressed above.

February 7, 2022 – Third Circuit declined (all 14 active judges) to reconsider its ruling

7) Hackensack acquisition of Englewood enjoined

Federal Trade Commission v Hackensack Meridian, Englewood Healthcare Foundation, 3rd Circuit Court of Appeals, 3/22/2022

Background: Englewood and Hackensack (NJ's largest healthcare system) agreed on a merger. FTC opposed merger, saying it violated Clayton Act because it is likely to substantially affect competition. FTC filed suit for preliminary injunction.

Englewood provides primary, secondary and some non-complex tertiary services, operates 350 beds

Hackensack Meridian Health is largest hospital system in NJ, w/16 hospital, a medical school and a research institution, and two hospitals in Bergen County

Each time Hackensack acquired other providers, it raised prices at the acquired faculty

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Hackensack acquisition of Englewood enjoined

Court findings: FTC established a prima facie case that :

1. the merger will substantially lessen competition in the relevant market (Bergen County)
 - Study showed the bargaining leverage for the 6 hospitals in Bergen County was 65% higher than if each negotiated individually
2. The merger will lead to anticompetitive effects
 - The post-merger HHI index crosses the highly concentrated market threshold, and the merger increases the HHI by for times the benchmarked that creates a presumption of enhanced market power (post-merger combination is 47% of market, w/next 2 competitors only 21% and 9%)

Hackensack acquisition of Englewood Hospital enjoined

Hackensack is Englewood's main competitor

- both draw patients from a similar area, and after merger, a competitor would be lost from area
- The price impact of the merger: increase in prices by \$31 million after the merger

Hackensack argued procompetitive benefits from merger: upgrades and capacity limits at Englewood, expansion of tertiary care, quality improvements

- But these efficiencies insufficient to overcome FTC case

Conclusion: merger enjoined

8) NJ law re taxation of hospitals upheld

Colacitti, City of Elizabeth, Plainsboro Township, City of Vineland & Township of Livingston v Murphy and State of NJ, Superior Court of NJ, Merger County, Docket # 000738-2021, July 22, 2022

A.B. 1135 passed after NJ courts in 2015 in AHS Hospital Corp. v. Morristown stated that property used as a hospital did not qualify for a local property tax exemption because it commingled nonprofit and for-profit activities, and advanced the hospital's for-profit enterprises. After that case, several taxing districts filed lawsuits challenging the property tax exemptions enjoyed by nonprofit hospitals.

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NJ law re taxation of hospitals upheld

NJ law A.B. 1135 was passed in 2021. The law provides that facilities of nonprofit hospitals and certain satellite emergency facilities, including those with leases to for-profit entities that deliver health care services, are exempt from local property taxation and instead must pay a local per-bed fee called an annual community service contribution.

The law applies retroactively to 2014 to stop taxing districts from imposing assessments for the years since 2015 case

NJ law re taxation of hospitals upheld

The municipalities argued that applying the local property tax exemption to hospitals with for-profit lessees violated the state constitution's exemption clause, which prohibits tax exemptions to specific industries, individuals or entities.

The court disagreed, saying the reasons for the law are rational and promote the state legislative and constitutional intent to grant the exemption to nonprofit entities organized exclusively for the delivery of health care in a world demanding modern approaches

Margaret Davino



NJ law re taxation of hospitals upheld

The court also dismissed the claim that the annual community service contribution, or ACSC, is a tax that violates the state's uniformity clause, which mandates property taxation at a uniform rate. The ACSC starts at \$3 per day per licensed hospital bed and \$300 per bed per day for satellite emergency care facilities. The court said the fee is not a tax for the purposes of the uniformity clause because its goal is to compensate municipalities for providing local services.

9) Doctors lawsuit re Covid vaccine dismissed

Facts: CareOne implemented a policy as of 9/30/2021 requiring medical providers to be vaccinated against Covid-19 to treat patients at CareOne facilities. Based on that policy, two doctors, an internist and a physiatrist were barred from treating patients at the facilities.

Doctors claimed religious and medical exemptions to vaccine, and claimed discrimination under Title VII, ADA and NJ Law Against Discrimination.

Covid claims: must obtain right to sue letter from EEOC

CareOne arguments: doctors were not Care One employees, and CareOne is a holding company that does not operate facilities and therefore were wrong parties

Court holding: the physicians had not received a “right to sue” letter from the EEOC after filing related charges with the EEOC, and therefore they failed to exhaust their administrative remedies

- so Title VII and ADA claims dismissed, and judge declined to exercise supplemental jurisdiction over state law claims



10) Private hospital can fire employee for social media post

McVey v AtlantiCare and Geisinger, Appellate Division, Docket No. A-0737-20, May 20, 2022

Facts: Corporate Director of Customer Service at AtlantiCare posted on social media, during height of George Floyd protests, that she found “Black Lives Matters” to be racist, and that “black citizens were killing themselves.” Her Facebook profile stated she was an AtlantiCare Corporate Director.

* AtlantiCare had written social media policy explaining each person was “personally responsible” for social media content, and be aware of association with AtlantiCare.



Private hospital can fire employee for social media post

AtlantiCare fired employee for her post after meeting with her

Employee sued, claiming her termination was punishment for her exercise of rights protected by free speech amendment and NJ Constitution

Court: no NJ cases directly on point, but free speech claims apply only to government authorities. Since hospital was a private employer, and she was an at-will employee, she could be terminated



11) Can't charge patient anesthesia without assent

Bergen Anesthesia Gp v Bogdana Arshynova, Appellate Div, Docket A-3310-20, 6/7/22

Facts: Patient entered Valley Hospital to give birth to her child as a scheduled procedure, and was assured all costs of treatment would be covered by insurance. When patient's doctor decided to do C-section 10 hours later, plaintiff anesthesia group provided anesthesia. Neither anesthesiologist nor hospital informed patient of any additional charges or that anesthesia group wouldn't accept her insurance.

- anesthesia group billed insurance and sent patient bill for \$1500 for remainder

- patient refused to pay and plaintiff filed a collection action on a breach of contract ground

Can't charge patient for anesthesia w/o patient assent

Trial court: no agreement presented that patient agreed to pay more than insurance. Anesthesia group failed to provide it had a valid contract with patient, so collection case dismissed.

Appeal: anesthesia group alleged unjust enrichment and quantum merit. Court: appellate review of a trial court's fact-finding is limited. Anesthesia group failed to prove it had an agreement with patient that she would pay anything more than insurance, and doctor may not raise new issues for the first time on appeal.

12) Insurance co. must pay for Covid tests even not in plan

Open MRI & Imaging of RP Vestibular Diagnostics, PA v Cigna, US District Court NJ,
5/18/22

Facts: Medical practice provided Covid-19 testing to Cigna-insured patients, among other services. Submitted invoices to Cigna of \$1.5 million, claiming that Cigna patient received these tests did so pursuant to their medical insurance plans

Cigna denied payment because services not rendered as billed, and did not match services billed

Practice sued Cigna for payment

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Insurance must pay for Covid under federal law

Issues:

1. Under ERISA, only a participant or beneficiary may bring a claim.
 - A healthcare provider may bring claims if it has a valid assignment of benefits from a plan participant
 - Provider must show that the patient, who possesses the right to seek reimbursement from insurer, has authorized the provider to exercise that right on patient's behalf
 - Here, provider had valid assignment of benefit forms

Insurance must pay for Covid tests per federal law

2. Erisa requires that the provider identify a term of the plan that Cigna breached. However, Cigna's plan did not address Covid testing

- Federal law, under Families First Act, requires health insurers to cover Covid test, and this obligation is incorporated as "a term of the plan"

Holding: Congress mandated that health insurance plans cover Covid-19 testing, raising it to the status of a benefit under the plans, and allows insureds to sue for benefits due to them. Therefore, if the insured assigns the right to benefits to the provider, the provider can sue Cigna requiring payment for Covid tests.

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13) Employee can get whistleblower \$ even if problem

Novartis stuck with \$1.8 million whistleblower award granted to a former company executive after a state appellate panel upheld a jury's finding that the business fired her in retaliation for objecting that a proposed study was a kickback to drug distributor McKesson Corp.

New Jersey appellate court refused to disturb 2019 verdicts that included awards of \$1.8 million to employee on her state Conscientious Employee Protection Act claim and nearly \$350,000 to Novartis on its counterclaim for unjust enrichment over her violation of company policy.



Employee can get whistleblower \$ even if problem

Facts:

Head of health economics and outcomes research group at Novartis claimed McKesson's study of Afinitor's use as a breast cancer drug would violate a corporate integrity agreement between Novartis and DOJ. Novartis did not move forward with the study. That agreement required Novartis to comply with federal health care program requirements, including the federal Anti-Kickback Statute, court documents state. Among alleged objections to the proposed study was that it appeared to be a kickback to McKesson to help sell Afinitor.

Employee was fired for whistleblowing after she raised objections about the study. Novartis has countered that she was lawfully terminated after an internal probe revealed that she violated company policy.



Whistleblower can get \$ even if problematic employee

Novartis argued that the CEPA award should be dismissed in light of the jury's mixed decision. Jury found that plaintiff had engaged in numerous violations of company policy justifying the claw-back of prior incentive awards on the unjust enrichment claim but that her complaint about the McKesson study, given the coincidence of its timing and of the investigation revealing the other violations, nonetheless was a decisive factor in defendant's decision to terminate her employment

Appellate Division upheld awards.



14) Hosp liable to dr group for exclusive contract w/other drs

Comprehensive Neurosurgical PC, dba North Jersey Brain & Spine Ctr v Valley Hospital and Neurosurgical Assoc of NJ, Appellate Division, Docket A-2866-19, 8/8/22

An appellate court upheld a \$24.3 million award to a group of neurosurgeons, finding that Valley Hospital in Ridgeview, N.J., breached the implied covenant of good faith and fair dealing with them when it signed an exclusive agreement with another surgical group

Facts:

1. 11 neurosurgeons and their practice, Oradell-based New Jersey Brain and Spine, provided on-call coverage for the hospital's ER and were "instrumental" in obtaining specialized equipment — including biplane angiography and a Gamma Knife — that allowed Valley Hospital to treat stroke patients rather than transfer cases to Columbia

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Hospital liable to dr group for exclusive contract w/other drs

2. Valley Hospital recruited neurosurgical group in 2003. Mandate was to curb the flow of patients out of the hospital by building a contemporary neurosurgical practice. Hospital developed an endovascular program, a biplane suite and was designated a comprehensive stroke center by HHS.

3. Hackensack North reopened in 2013, 6 miles from Valley Hospital, which had attempted to purchase the site. Two of the plaintiff neurosurgeons met with Valley Hospital president, who allegedly was upset about their "lack of loyalty" and their appointment as chair of surgery at Hackensack North.

4. Hospital signed exclusive agreement with another group in 2015, including exclusive access to gamma knife and biplane angiography, ending relationship with New Jersey Brain and Spine

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Hospital liable to dr group for exclusive contract w/other drs

New Jersey Brain and Spine sued Valley Hospital for several claims, including breach of contract, breach of the implied covenant of good faith and fair dealing, and tortious interference with prospective economic advantage.

A jury returned a no-cause verdict on the breach-of-contract claim, but found in favor of the neurosurgeons on the implied covenant claim.

Valley Hospital's appeals and motion for a new trial were ultimately rejected because its arguments lacked merit and the court found no miscarriage of justice



15) Cal. corporate practice of medicine lawsuit survives

Am. Acad of Emergency Med. Physician Grp Inc v Envision Healthcare Corp, US District court for Northern District Cal, May 27, 2022

Facts: AAEMPG provides business and administrative services to physician groups. Having lost out on business to Envision Healthcare Corp, AAEMPG sued Envision, alleging that its business model (specifically its relationship with the professional medical groups with which it works) violates California's ban on the corporate practice of medicine.



Structure of Envision arrangements

Envision's business model: allegedly "to circumvent the ban [on CPOM] by purchasing, controlling or creating a separate subsidiary licensed professional medical corporations." The captive PCs are "controlled entirely by Envision

- Envision requires the PCs to enter into a management service agreement, giving Envision control over the practice
- Envision decides how many doctors to hire, establishes best practices, requires physicians to assign billing, and insists on restrictive covenants

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Envision case

AAEMPG first sued Envision in state court, but Envision removed the case to federal court based on diversity jurisdiction

Causes of action: unlawful, unfair and fraudulent business practices, injunctive relief

AAEMPG requested that 1) Envision be enjoined from engaging in CPOM, 2) Envision be enjoined from offering value to hospitals in exchange for patient referrals, 3) a declaration that causing PCs to enter into these covenants violate Cal law, 4) declaration that control of PCs is CPOM in violation of Cal. law

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Questions?

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