

PUBLIC NOTICES

HEALTH AND SENIOR SERVICES

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

42 N.J.R. 2644(b) – November 1, 2010

Moratorium Affecting Licensure of Adult Day Health Care Facilities and Services

Take notice that, in accordance with the provisions set forth in N.J.S.A. 26:2H-1 et seq., the Commissioner of the Department of Health and Senior Services shall not accept licensure applications for new or expanded adult day health care facilities and services, effective immediately extending the current moratorium and for 12 months thereafter. Pursuant to the public notice at 41 N.J.R. 4328(b) (November 16, 2009 New Jersey Register), the Commissioner reviewed the current moratorium and determined an extension is necessary to achieve the intent of the moratorium.

This action is taken because the Department has determined, based on survey activity, that it is necessary to develop new licensure standards to replace those at N.J.A.C. 8:43F and new clinical eligibility and prior authorization standards at N.J.A.C. 8:86. The Department has met with stakeholders and is in the process of developing amendments to the referenced administrative rules. This moratorium on adult day health care licensure processing is necessary to protect the health, safety and welfare of the population served within adult day health care facilities. The interests of the beneficiaries of adult day health care services are best served through the promulgation of appropriate licensure and eligibility standards and the Department's survey and enforcement activity. Survey activity carried out by the Department, concerning adult day health care facilities demonstrates that the Department's licensure and prior authorization administrative rules governing this service require amendment to maintain appropriate utilization, access and services. There continues to be adequate access to adult day health care facilities.

The Department has licensed 13,015 adult day health care slots in 143 facilities, with applications pending for over 5,000 additional slots. The vast majority of the pending slots are for over 30 new facility applications that are under review. There has been a dramatic growth in the number of licensed slots available since the prior moratorium was lifted on October 1, 2006 (see 38 N.J.R. 3324(c)), with even more slots and facilities pending in the licensing pipeline. In 2009, staff of the Office of Community Choice Options, Division of Aging and Community Services, conducted monitoring visits that resulted in assessments of 6,001 clients. Of this number, staff found that 4,687 met the Medicaid level of care, while 1,314 were recommended for discharge, or were denied coverage.

On June 29, 2010, Governor Chris Christie signed into law the 2011 Appropriations Act, P.L. 2010, c. 35 (the Act). Pursuant to the Act, the prohibition on all adult day

health care facilities from serving or receiving compensation for more than 200 Medicaid beneficiaries per day was continued.

The continuation of the moratorium is necessary to prevent the proliferation of facilities with deficient policy practices that are serving medically fragile adults. The interests of the beneficiaries of adult day health care services are best served through the promulgation of appropriate rules governing licensure, Medicaid eligibility standards and the Department survey and enforcement activity. Recent and continuing survey and enforcement activity carried out by the Department concerning adult day health care facilities demonstrates overwhelmingly that the Department's licensure and eligibility administrative rules governing this service require revision and the industry requires closer regulatory scrutiny on the whole. This moratorium allows the limited personnel resources of the Department to be focused on ensuring that currently licensed adult day health care facilities are providing appropriate services to appropriate recipients. Department resources will be focused upon monitoring surveys to ensure that existing facilities are complying with licensing standards and will permit staff engaged in prior authorizations to continue reviewing the appropriateness of recipients who have been approved under N.J.A.C. 8:86-1.5(d).

Therefore, it is necessary for the Department to continue to temporarily cease accepting licensure applications for new or expanded adult day health care facilities. Licensure applications for adult day health care facilities and services formally submitted to the Department prior to November 3, 2008, shall continue to be processed by the Department. This moratorium applies to applications for new facilities, applications to relocate approved applications for a facility which is not currently licensed, on new facilities starting operation with multiple shifts (that is, only one shift shall be approved), as well as to existing licensed facilities adding shifts. Any person holding an adult day health care license may undertake activities to construct and operate a replacement facility with the same or lower census as is presently licensed, provided that such replacement facility may only be licensed upon the otherwise unconditional cessation of operation of the previously licensed adult day health care facility. Applications seeking the approval of a transfer of ownership shall also continue to be processed by the Department provided that the transfer does not result in an increase in the number of licensed entities or slots. The current moratorium for pediatric day health care facilities remains in effect.