

SPECIAL ADOPTION

HEALTH

HEALTH SYSTEMS BRANCH

OFFICE OF HEALTH CARE FINANCING

OFFICE OF LONG-TERM CARE RESILIENCY

**Nursing Home Financial Transparency Reporting and National Health Care Safety
Network Participation**

**Special Adopted New Rules and Concurrently Proposed Readoption of Specially
Adopted New Rules: N.J.A.C. 8:97**

Specially Adopted and Concurrently Proposed Readoption of Specially Adopted New Rules Authorized February 21, 2024, By: Kaitlan Baston, MD, MSc, DFASAM, Acting Commissioner, Department of Health, with the approval of the Health Care Administration Board.

Filed: February 21, 2024, as R.2024 d.021.

Authority: P.L. 2021, c. 457.

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

Concurrent Proposal Number: PRN 2024-031.

Effective Date: February 21, 2024.

Expiration Date: January 29, 2026. (8/2/25)

Submit written comments by May 17, 2024, electronically to

<http://www.nj.gov/health/legal/ecomments.shtml> or by regular mail postmarked by May 17, 2024, to:

Kimberly E. Jenkins, Administrative Practice Officer
Office of Legal and Regulatory Compliance
Office of the Commissioner
New Jersey Department of Health
PO Box 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

On January 18, 2022, Governor Murphy approved P.L. 2021, c. 457, “An Act concerning nursing homes and supplementing Title 26 of the Revised Statutes” (the Act), codified at N.J.S.A. 26:2H-46.1 through 46.4 (effective November 1, 2022).

N.J.S.A. 26:2H-46.3.f, directs the Department of Health (Department) to establish a searchable “data dashboard” on its website containing information about each nursing home, as N.J.S.A. 26:2H-29 defines that term, which the Department licenses pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. (nursing home).

N.J.S.A. 26:2H-46.3.b and e, direct the Department to require a nursing home, as N.J.S.A. 26:2H-29 defines that term, to post on its internet website annual owner-certified financial statements, the most recent cost report the nursing home submitted to the Federal Centers for Medicare and Medicaid Services (CMS), a direct link to the Department’s data dashboard, as described above, and the contact information for a staff person whom the nursing home designates, who is to “be responsible for responding to questions from the public concerning the nursing home.” N.J.S.A. 26:2H-46.3.b directs the Department to require a nursing home to participate in the National

Health Care Safety Network's (NHSN) Long-Term Care Facility Annual Survey and Monthly Reporting Plan of the Centers for Disease Control and Prevention (CDC) and complete the pertinent modules. The NHSN is the nation's most widely used healthcare-associated infection tracking system. The NHSN provides facilities, states, regions, and the nation with data needed to identify problem areas, measure progress of prevention efforts, and ultimately eliminate healthcare-associated infections.

N.J.S.A. 26:2H-46.4 authorizes the Department to specially adopt rules to implement the Act, which are to be effective upon filing and for 18 months thereafter, and to promulgate rulemaking in the ordinary course to implement the Act. Pursuant to this authority, the Department hereby specially adopts new N.J.A.C. 8:97, Nursing Home Financial Transparency Reporting and National Health Care Safety Network Participation, to establish standards implementing the portions of the Act that are described above, and to provide enforcement penalties and remedies. The Department concurrently proposes to readopt the specially adopted new rules, which are described below. Such readoption extends the new chapter expiration date by an additional 180 days to January 29, 2026, pursuant to N.J.S.A. 52:14B-5.1.c.

Subchapter 1, General Provisions, establishes provisions of general applicability to the chapter. N.J.A.C. 8:97-1.1, Purpose and scope, establishes the purpose and scope of the chapter, that is, to implement the Act. N.J.A.C. 8:97-1.2, Definitions, establishes definitions of the following words and terms that the chapter uses: "audited," "Centers for Medicare and Medicaid Services' or 'CMS,'" "cost report," "data dashboard," "Department," "generally accepted accounting principles' or 'GAAP,'" "generally accepted auditing standards' or 'GAAS,'" "health care organization," "health

care system,” “IRS Form 990,” “Medicare-certified,” “nursing home,” “owner,” “owner-certified financial statement,” “revenue center,” and “system nursing home.”

Subchapter 2, Owner-Certified Financial Statements And Cost Reports, establishes nursing home financial disclosure and reporting requirements. N.J.A.C. 8:97-2.1, Interpretation of terms, establishes that terms that the subchapter uses are to be interpreted consistently with the terms found in the IRS Form 990 and related instructions. N.J.A.C. 8:97-2.2, Owner-certified financial statement requirements, outlines the required components that must be included with the nursing home’s annual Owner-Certified Financial Statement submission. N.J.A.C. 8:97-2.3, Posting and Department notification of annual owner-certified financial statements and CMS cost reports, requires a nursing home to post, and notify the Department as to the posting of, the nursing home’s annual owner-certified financial statement and most recent CMS cost report on a nursing home’s internet website.

Subchapter 3, National Health Care Safety Network Participation (NHSN) and Reporting Requirements, establishes requirements for nursing home participation in, and reporting to, the NHSN. N.J.A.C. 8:97-3.1, Participation in the Long-term Care Facility Component of the National Health Care Safety Network and additional reporting requirements, establishes requirements pertaining to participation and completion of the Long-term Care Facility Component Annual Facility Survey, Monthly Reporting Plan, and other reports that the Department will use to maintain its nursing home data dashboard. N.J.A.C. 8:97-3.2, Internet posting of database link and designated staff, establishes requirements as to the internet posting of the dashboard link and designated staff person’s contact information.

Subchapter 4, Enforcement Remedies, establishes enforcement remedies. N.J.A.C. 8:97-4.1, Enforcement remedies and procedures, establishes the penalties applicable to nursing homes for noncompliance with Subchapters 1, 2, or 3.

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

Social Impact

If a nursing home becomes financially unstable or insolvent, interruptions of care and closures are possible outcomes. Sudden and unplanned interruptions of services and nursing home closures can have severe negative social impacts on the residents, their families, the people and businesses in the surrounding communities, and Statewide, such as interruptions of access to appropriate and high-quality nursing care services and supports.

Nursing home service interruptions and closures can impair the livelihoods of individuals whose economic well-being depends on a nursing home continuing to operate successfully, such as staff and surrounding local businesses, and can impose increased and unplanned strain on the resources of neighboring nursing homes and other healthcare providers that must make up for the lack of services once available at the now closed nursing home.

If a nursing home repeatedly is noncompliant with Department rules due to continued multiple severe deficiencies, poor quality outcomes, or insufficient staffing, this can result in severe adverse health consequences for residents and staff members. The specially adopted new rules ensure that residents, their family members, and other

stakeholders will have increased awareness of the practices implemented within, and the safety of, nursing home facilities through reported financial, operational, and clinical data that will be accessible to the public. This data will help patients, family members, and other stakeholders make informed choices when evaluating and selecting a nursing home. Furthermore, the release of this data will help encourage nursing homes to be more diligent about adhering to financial best practices and to health and safety standards while maintaining a high quality of care.

The specially adopted new rules require public disclosure of financial, operational, and clinical data and, thus, promote the transparency of nursing homes throughout the State. The rules will help the Department and the State to earlier, and more accurately, identify nursing homes that are in financial distress, or at risk of being in financial distress, while facilitating the Department's ability to better oversee and monitor nursing homes' operations. This allows the Department to anticipate potential nursing home closures and possibly reduce the number of nursing home closures through proactive measures and collaboration, thereby helping to ensure the availability of reliably and consistently available nursing home services and quality care for residents.

Economic Impact

The Department expects that the specially adopted new rules and concurrently proposed readoption of the specially adopted new rules will have a positive economic impact on nursing home communities and patients as the rules help promote financial transparency of nursing homes and minimize the likelihood of interruptions of services due to closures or severe financial instability. As stated in the Social Impact,

interruptions of services and unplanned closures of nursing homes have a negative impact not only on residents, but also on entities that rely on the continued operation of nursing homes for income, such as staff and businesses that provide services and supports for nursing homes.

The public disclosure of a nursing home's financial information allows residents, their families, and the surrounding communities to be more aware of the nursing home's financial stability, which in turn also might encourage the nursing home to be more diligent, responsible, and forthcoming about its finances.

Nursing homes incur compliance costs associated with the preparation and auditing of financial statements by independent certified public accountants and the collection and preparation of nursing home operational and clinical data. However, nursing homes incur accounting costs as routine business operational expenses, notwithstanding the rules. A nursing home may incur costs for the professional services of information technology and administrative staff to assemble, maintain the accuracy of, and post to its websites copies of annual owner-certified financial statements, most recent CMS cost reports, its dashboard database link, and designated staff person's contact information.

Noncompliant nursing homes may be subject to Department enforcement actions and incur civil monetary penalties and legal fees associated with defending against an enforcement action. Civil monetary penalties are subject to reduction in the Department's discretion following its consideration of the mitigating factors that the rules identify.

The Department incurs administrative expenses associated with overseeing nursing homes' compliance with the rules, for example, to review submitted data, maintain the data dashboard, and undertake enforcement actions.

Federal Standards Statement

There are no Federal standards applicable to the specially adopted new rules and concurrently proposed readoption of the specially adopted new rules. The Department does not propose to readopt the specially adopted new rules at N.J.A.C. 8:97 pursuant to the authority of, or to implement, comply with, or participate in a program established pursuant to, Federal law, or a State law that incorporates or refers to a Federal law, standard, or requirement. The Department specially adopts and concurrently proposes the new rules pursuant to the authority at N.J.S.A. 26:2H-1 et seq., particularly at 26:2H-46.1 through 46.4. Therefore, a Federal standards analysis is not required.

Jobs Impact

The Department does not expect that the concurrently proposed readoption of the specially adopted new rules will result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The concurrently proposed readoption of the specially adopted new rules have no impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

The concurrently proposed readoption of the specially adopted new rules impose reporting, recordkeeping, and compliance requirements that apply to Department-licensed nursing homes in the State. The Department expects that many of these

facilities employ fewer than 100 people full-time and, therefore, may be “small businesses,” as the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., defines that term. The concurrently proposed readoption of the specially adopted new rules do not require nursing homes to retain services from professionals in the preparation of the required annual owner-certified financial statements and CMS cost reports. However, nursing homes annually prepare financial statements for tax purposes and, thus, a nursing home that retains a financial professional to assist in compliance would have had to retain that professional, regardless of the rules’ existence.

The concurrently proposed readoption of the specially adopted new rules may result in nursing homes retaining the services of information technology and administrative staff to assemble, maintain the accuracy of, and post to their websites, financial statements and other required information. Small facilities that do not have websites may incur costs associated with creation and maintenance of websites. Nursing homes may incur administrative costs associated with collecting and submitting to the Department required data, responding to questions and/or concerns from the public, and collecting data for participation in the NHSN’s Long-term Care Facility Component; however, these functions are likely subsumed within the responsibilities of existing administrative staff.

The collection and disclosure of operational and clinical data should not impose a significant burden as nursing homes should already be maintaining a record of their facility’s quality of care and should have staff members who are knowledgeable about the facility’s operations and available to answer questions; however, the Department acknowledges that some facilities may opt to employ additional staff to better meet the

reporting requirements. The Department has determined that these requirements establish the minimum standards necessary to implement N.J.S.A. 26:2H-46.3, regardless of business size.

Housing Affordability Impact Analysis

The concurrently proposed readoption of the specially adopted new rules have no impact on the affordability of housing in New Jersey and will not evoke a change in the average costs associated with housing because the concurrently proposed readoption of the specially adopted new rules address the financial transparency of nursing homes and do not affect housing costs.

Smart Growth Development Impact Analysis

The concurrently proposed readoption of the specially adopted new rules have no impact on the achievement of smart growth and will not evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the concurrently proposed readoption of the specially adopted new rules address the financial transparency of nursing homes and do not affect housing development.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

Full text of the specially adopted new rules and concurrently proposed readoption of the specially adopted new rules follows:

CHAPTER 97

NURSING HOME FINANCIAL TRANSPARENCY AND NATIONAL HEALTH CARE
SAFETY NETWORK PARTICIPATION

SUBCHAPTER 1. GENERAL PROVISIONS

8:97-1.1 Purpose and scope

(a) The purpose of this chapter is to establish nursing home financial reporting requirements and to require nursing homes to participate in the National Health Care Safety Network (NHSN) reporting standards in accordance with N.J.S.A. 26:2H-1 et seq., specifically 26:2H-46.1 through 46.4.

(b) This chapter applies to all nursing homes licensed pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., as defined at N.J.S.A. 26:2H-29, including for-profit and nonprofit organizations, and regardless of payer or insurance status.

8:97-1.2 Definitions

The following words and terms, as used in this chapter, apply to both for-profit and nonprofit nursing homes and have the following meanings, unless the context clearly indicates otherwise. Financial terms should be interpreted consistently with Generally Accepted Accounting Principles (GAAP).

“Audited” means the same as described in the instructions to Internal Revenue Services (IRS) Form 990, as amended and supplemented. Consistent with the instructions to IRS Form 990, the term means a formal examination of an organization's financial records and practices by an independent, certified public accountant with the objective of issuing a report on the organization's financial statements as to whether

those statements are fairly stated in all material respects according to generally accepted accounting principles (or other recognized comprehensive basis of accounting).

“Centers for Medicare and Medicaid Services” or “CMS” means the Federal agency within the United States Department of Health and Human Services (HHS) that administers the Medicare program and, among other responsibilities, also oversees quality standards in nursing homes.

“Cost report” means the most recent annual report that a nursing home files pursuant to 42 CFR 413.20(b), as a condition of being a Medicare-certified provider or facility, files with CMS to provide, using the applicable Federal form, information regarding, among other things, the nursing home’s characteristics, utilization data, costs and charges by cost center, Medicare settlement data, and financial data (42 U.S.C. § 1395g (section 1815(a) of the Social Security Act)).

“Data dashboard” means the website that the Department maintains at <https://www.nj.gov/health/ltc/nursing-homes> pursuant to N.J.S.A. 26:2H-46.3, which provides a separate page or listing for each nursing home and links to the sites at which information and data relevant to each nursing home may be found, and a description of the data and information that is accessible through each link.

“Department” means the New Jersey Department of Health.

“Generally accepted accounting principles” or “GAAP” means the accounting principles that a reporting entity determines to be applicable, and that are generally accepted in the United States as authoritative by:

1. The Financial Accounting Standards Board (FASB) with respect to nongovernmental entities, as articulated in the *Financial Accounting Standards Board Accounting Standards Codification*® (2009), incorporated herein by reference, as amended and supplemented, available at www.fasb.org, and from the FASB at 401 Merritt 7, PO Box 5116, Norwalk, CT 06856; or

2. The Governmental Accounting Standards Board (GASB) with respect to State and local governmental entities, as articulated in the *GASB Codification of Governmental Accounting and Financial Reporting Standards* (2021), incorporated herein by reference, as amended and supplemented, available at www.gasb.org, and from the GASB at 401 Merritt 7, PO Box 5116, Norwalk, CT 06856.

“Generally accepted auditing standards” or “GAAS” means the auditing standards that are generally accepted in the United States as authoritative, as specified in the *AICPA Professional Standards* (2021), incorporated herein by reference, as amended and supplemented.

“Health care organization” means any organization or entity engaged in providing, financing, improving, supervising, evaluating, or other activity related to health care. Examples include, but are not limited to, physician practices, hospitals, and skilled nursing facilities.

“Health care system” means any combination of a nursing home with one or more other health care organizations or related parties that share any amount of common ownership or control with an entity responsible for providing centralized management and administrative services to the entities pursuant to its common ownership or control.

“IRS Form 990” means Internal Revenue Service Form 990 and relevant related schedules, instructions, and glossary thereto, contained in the information collection of the Internal Revenue Service of the United States Department of the Treasury, bearing Office of Management and Budget Control Number OMB No. 1545-0047 (last Information Collection Review concluded January 23, 2023), incorporated herein by reference, as amended and supplemented, available at:

https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202212-1545-014, and includes the instructions and glossary thereto.

“Medicare-certified” means, that a facility has been approved or certified by Medicare and has met all necessary Federal requirements (including certain specific Federal health and safety requirements, among other things) to receive Medicare payments.

“Nursing home” means a nursing home as defined at N.J.S.A. 26:2H-29, which includes:

1. Both freestanding and “hospital-based” facilities; and
2. Hospital-based subacute care units, commonly referred to as “transitional care units” or “TCUs,” as defined at N.J.A.C. 8:39-47.2.

“Owner” means any person, partnership, corporation, company, trust, or any other organization that owns, directly or indirectly (including ownership by any family members), more than five percent of the voting rights, profit or beneficial interest in an organization, regardless of whether that interest is evidenced by shares, certificates, stocks, contract, agreement or any other form used to represent a voting, profit or beneficial interest, including any person whose combined ownership, individually and/or

through a controlling interest in any other organizations, owns more than five percent voting, profit, or beneficial interest in the organization.

“Owner-certified financial statement” means a financial statement that is prepared using the accrual basis and includes, at a minimum, a balance sheet, statement of operations or income, statement of changes in net assets, and statement of cash flows, and is prepared in accordance with GAAP, and is then subsequently audited by an independent certified public accountant in accordance with GAAS.

“Revenue center” means a distinct operating unit within a health care organization that generates revenue.

“System nursing home” means a nursing home that is part of a network or system of nursing homes or other health care facilities that are commonly referred to as a “health care system.”

SUBCHAPTER 2. OWNER-CERTIFIED FINANCIAL STATEMENTS AND COST REPORTS

8:97-2.1 Interpretation of terms

The terms set forth in this subchapter shall be interpreted consistently with the terms found in the IRS Form 990 and its instructions and schedules, as promulgated in accordance with Internal Revenue Code sections 501 and 6033, and apply equally to for-profit and non-profit nursing homes formed pursuant to Internal Revenue Code section 501(c)(3).

8:97-2.2 Owner-certified financial statement requirements

(a) The owner of a nursing home, whether an individual or member of a governing body, must submit an owner-certified financial statement, which consists of:

1. A balance sheet;
2. A statement of operations or income;
3. A statement of changes in net assets;
4. A statement of cash flows;
5. Additional information, data, and documents related to receipt and expenditures by nursing homes as required by the Department; and
6. A supplemental schedule with a statement detailing gross (charges) and net patient services revenue by payer, including, but not limited to, Medicare, NJ FamilyCare/Medicare, and other payers, and by revenue center.

8:97-2.3 Posting and Department notification of annual owner-certified financial statements and CMS cost reports

(a) A nursing home shall post to its internet website its annual owner-certified financial statement, and, if applicable, its most recently submitted CMS cost report, by no later than the 15th day of the sixth month following the end of the nursing home's fiscal year.

(b) A nonprofit nursing home may post its most recent public inspection copy of Internal Revenue Service Form 990, including applicable schedules and supporting documents, to satisfy all or part of the requirements of posting an annual owner-certified financial statement pursuant to (a) above.

(c) The requirement at (a) above, to post a CMS cost report applies only to nursing homes that are Medicare-certified and accept Medicaid or Medicare patients, receive funds from CMS, or submit cost reports to CMS.

(d) A health care system may satisfy the requirements at (a) above by posting on each of its system nursing homes' internet websites financial statements, and CMS cost reports, aggregating the financial data of all nursing homes that are part of the health care system; provided:

1. The health care system submits the average daily census, operating margin, and adjusted operating margin for each of the system nursing homes;

2. The health care system submits a statement of operations or income, with respect to each of the system nursing homes; and

3. Only nursing home financial data, and no data from any other facility types, should be included in the aggregated owner-certified financial statement for the health care system.

i. Health care systems may submit a supplemental schedule with specific line-of-business segment reporting, or the applicable Worksheets (Worksheets B Part II, G, G-1, G-2, and G-3) from their most recent CMS Cost Report to satisfy the requirement at (d)3 above.

(e) A nursing home shall submit the required internet website link to the Department in one of the following ways:

1. By email: financial.reports@doh.nj.gov;

2. By regular mail:

Office of Health Care Financing

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360; or

3. By overnight delivery service or hand delivery:

Office of Health Care Financing

New Jersey Department of Health

55 N Willow Street, 5th Floor

Trenton, NJ 08608

SUBCHAPTER 3. NATIONAL HEALTH CARE SAFETY NETWORK PARTICIPATION AND REPORTING REQUIREMENTS

8:97-3.1 Participation in the Long-Term Care Facility Component of the National Health
Care Safety Network and additional reporting requirements

(a) Each nursing home shall participate in the Long-term Care Facility (LTCF)

Component of the NHSN (LTCF-NHSN) by:

1. Enrolling in the LTCF-NHSN by completing and submitting the online
enrollment form through the website at: <https://www.cdc.gov/nhsn/ltc/enroll.html>, and
ensuring that it maintains continued enrollment and satisfies all associated reporting
requirements;

2. Completing the LTCF Annual Facility Survey upon initial enrollment in the
LTCF-NHSN, and by March 31 of each calendar year thereafter; and

3. Reporting data in accordance with the LTCF Monthly Reporting Plan by submitting to the NHSN the data or reports identified below in accordance with the indicated schedule, by the end of each month for the previous month's submission:

i. Weekly:

(1) LTCF COVID-19 Module, unless and until the Department deems this requirement no longer to be necessary based upon Federal guidance and communicates this to all facilities through formal notice through regular channels; and

(2) Health care personnel (HCP) and resident COVID-19 vaccination, unless and until the Department deems this requirement no longer to be necessary based upon Federal guidance and communicates this to all facilities through formal notice through regular channels; and

ii. Monthly:

(1) Multidrug-resistant organism and *Clostridioides difficile* infection (MDRO/CDI);

(2) Urinary tract Infection (UTI);

(3) Healthcare personnel (HCP) safety component; and

(4) Prevention process measures, including hand hygiene, gloves, and gown adherence.

(b) Each nursing home shall complete the COVID-19 Facility Outbreak Reporting survey daily, unless and until the Department deems it no longer necessary based upon Federal guidance and communicates this to all facilities through formal notice through regular channels.

(c) The Department will use the data reported pursuant to (a) and (b) above to maintain the data dashboard at: <https://www.nj.gov/health/ltc/nursing-homes/>.

(d) To ensure compliance, each nursing home by March 31 annually shall complete and submit through email to NHSNAttestation@doh.nj.gov an attestation, confirming its participation in the LTCF Annual Facility Survey, the LTCF Monthly Reporting Plan and the COVID-19 Facility Outbreak Reporting survey.

8:97-3.2 Internet posting of database link and designated staff

(a) Concurrent with the reporting and submission of information to the Department pursuant to this chapter, a nursing home shall post on its website:

1. A direct link to the nursing home's webpage on the data dashboard; and
2. The contact information for a staff person whom the nursing home designates to respond to questions from the public about the nursing home's policies, procedures, and operations.

(b) A nursing home shall submit the required contact information to the Department in one of the following ways:

1. By email: OLTCR@njlincs.net;
2. By regular mail:
Office of Long-Term Care Resiliency
New Jersey Department of Health
PO Box 360
Trenton, NJ 08625-0360; or
3. By overnight delivery service or hand delivery:

Office of Long-Term Care Resiliency

New Jersey Department of Health

55 N Willow Street, 5th Floor

Trenton, NJ 08608

(c) If a nursing home fails to comply with the requirements outlined in this subchapter, the Department will impose necessary corrective actions to achieve compliance, which may include requiring the nursing home to submit an attestation that:

1. Outlines specific steps that the facility will undertake to achieve compliance within 120 days following the date of attestation;
2. Acknowledges legal obligations and penalties; and
3. Provides relevant information.

SUBCHAPTER 4. ENFORCEMENT REMEDIES

8:97-4.1 Enforcement remedies and procedures

(a) In accordance with applicable enforcement procedures, and in addition to available enforcement remedies at N.J.A.C. 8:43E-3, and subject to (b) below, the Department may assess civil monetary penalties pursuant to N.J.S.A. 26:2H-13 and 14, as well as N.J.S.A. 26:2H-46.12, for violations of this chapter as follows:

1. For failure to comply with the requirements set forth in this chapter, in regard to financial, operational, and clinical reporting and posting of applicable information, or to timely submit an attestation and plan of correction for any areas of noncompliance, up to \$200.00 per day until compliance occurs; and

(b) The Department may assess a penalty that is less than the maximum amount authorized pursuant to (a) above, upon consideration of:

1. A nursing home's compliance history;
2. The number, frequency, or severity of the violations;
3. The measures a nursing home takes to mitigate the effects of a violation or to prevent future violations;
4. The deterrent effect of the penalty; and
5. Mitigating circumstances that are particular to the nursing home or the violation.