

(CORRECTED COPY)
CHAPTER 234

AN ACT concerning free-standing residential health care facilities, and amending P.L.1953, c.212.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1953, c.212 (C.30:11A-1) is amended to read as follows:

C.30:11A-1 Definitions.

1. As used in P.L.1953, c.212 (C.30:11A-1 et seq.):

“Department” means the Department of Health or the Department of Community Affairs, as appropriate.

“Licensee” means the owner, operator, or administrator of a residential health care facility that is certified to operate pursuant to this chapter.

“Residential health care facility” means any facility, whether in single or multiple dwellings, whether public or private, whether incorporated or unincorporated, whether for profit or nonprofit, which:

(1) is operated at the direction, or under the management, of an individual or individuals, a corporation, a partnership, a society, or an association;

(2) furnishes food and shelter to four or more persons 18 years of age or older who are unrelated to the proprietor;

(3) provides any one or more of such persons with dietary services, recreational activities, supervision of self-administration of medications, supervision of and assistance in activities of daily living, and assistance in obtaining health services; and

(4) is regulated by either the Department of Health or the Department of Community Affairs.

“Residential health care facility” shall not include any community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2); any facility or living arrangement that is operated by, or under contract with, any other State department or agency, upon the written authorization of the Commissioner of Health or the Commissioner of Community Affairs, as appropriate; or any privately operated establishment licensed under chapter 11 of Title 30 of the Revised Statutes.

“Resident” means a person 18 years of age or older who:

(1) is ambulant, with or without assistive devices;

(2) has been certified by a licensed physician to be free from communicable disease and not in need of skilled nursing care; and

(3) except in the case of a person 65 years of age and over, is in need of dietary services, supervision of self-administration of medications, supervision of and assistance in activities of daily living, or assistance in obtaining health care services.

A resident shall not be given skilled nursing care while a resident, except as hereinafter provided. The foregoing definition shall not be construed to prevent care of residents in emergencies or during temporary illness for a period of one week or less, and shall not be construed to prevent a licensed physician from ordering nursing or other health care services.

2. Section 2 of P.L.1953, c.212 (C.30:11A-2) is amended to read as follows:

C.30:11A-2 Certificate of approval, license.

2. Residential health care facilities, as defined in section 1 of P.L.1953, c.212 (C.30:11A-1), shall operate within this State pursuant to a certificate of approval first had and obtained for that purpose from the Department of Health, or pursuant to a license had and obtained from the Department of Community Affairs. No such certificate of approval or license shall be issued unless the commissioner is satisfied that the institution in question is adequately prepared to furnish facilities, care, and service complying with standards relating thereto, except that temporary permits, valid for a period not exceeding six months and not subject to renewal, may be issued under the circumstances specified in section 6 of P.L.1953, c.212 (C.30:11A-6). Boarding and rooming houses shall not be construed to be within the provisions of P.L.1953, c.212 (C.30:11A-1 et seq.).

3. Section 3 of P.L.1953, c. 212 (C.30:11A-3) is amended to read as follows:

C.30:11A-3 Rules, regulations and standards.

3. a. The Department of Health and the Department of Community Affairs shall each adopt, promulgate, and enforce such rules, regulations, and standards with respect to the residential health care facilities that are approved hereunder, and that fall under each department's jurisdiction, as each such department may deem to be necessary to assure that: persons living in such facilities are afforded the opportunity to live with as much independence, autonomy, and interaction with the surrounding community as they are capable of; such persons are afforded a minimum standard of sanitation, housekeeping, heat, light, air, food, lodging, care, service, and fire safety which also preserves and promotes a homelike atmosphere appropriate to such facilities; such persons are not deprived of any constitutional, civil, or legal right solely by reason of their living in such facilities; employees of public and private agencies have reasonable access to such facilities; and other citizens have reasonable access to such facilities upon receiving the consent of a resident to be visited by them.

b. Nothing in this chapter, or in any rule or regulation promulgated hereunder, shall be construed to mean that any residential health care facility may advertise, hold itself out, or operate, as a nursing home.

c. Each department may determine that the various establishments covered by P.L.1953, c.212 (C.30:11A-1 et seq.), which are subject to each department's respective jurisdiction, are appropriately and reasonably classified into two or more classes, and may establish separate rules, regulations, and standards for each such class. Such rules, regulations, and standards shall include, but need not be limited to, all requirements and limitations legally imposed upon any such establishment by any other municipal, county, or State office or officer having inspection, approval, licensing, or regulatory authority with respect to such establishment.

d. The provisions of this subsection shall apply only to those free-standing residential health care facilities that are not located with, and operated by, a licensed health care facility, and which are subject to the authority of the Department of Community Affairs.

(1) No licensee shall cause any resident to be evicted from a residential health care facility that is not located with, and operated by, a licensed health care facility, except for good cause, as defined in P.L.1974, c.49 (C.2A:18-61.1 et seq.), and except in accordance with the procedural requirements of P.L.1974, c.49 (C.2A:18-61.1 et seq.). Nothing in P.L.1953, c.212 (C.30:11A-1 et seq.) shall prohibit the transfer of a resident to a screening center for an evaluation to determine whether the resident poses a risk of danger to the resident's own self or to others. In the event of such transfer, the licensee may

contemporaneously proceed with eviction against such resident pursuant to P.L.1974, c.49 (C.2A:18-61.1 et seq.). All references in P.L.1974, c.49 (C.2A:18-61.1 et seq.) to the terms "landlords," "tenants," "tenancy," "lease," or similar terminology shall be equally applicable to residents of and residential agreements used by a residential health care facility that is not located with, and operated by, a licensed health care facility.

(2) In addition to the other requirements of this subsection, a licensee shall provide prompt written notice to the county welfare agency, to the Department of Community Affairs, and to the New Jersey Office of the Ombudsman for the Institutionalized Elderly of any proposed eviction of a resident. The written notice required by this paragraph shall be provided at the time that a complaint for eviction is filed with the appropriate court and appended thereto. No Judgment of Possession shall be entered unless the requirements of this paragraph have been met.

4. Section 10 of P.L.1953, c.212 (C.30:11A-10) is amended to read as follows:

C.30:11A-10 Penalties for operating uncertified, unlicensed residential health care facility.

10. a. Any person, firm, corporation, partnership, society, or association who shall operate or conduct a residential health care facility without first obtaining the certificate of approval or license required by P.L.1953, c.212 (C.30:11A-1 et seq.), or who shall operate such establishment after revocation or suspension of a certificate of approval or license, shall be liable to a penalty of \$10.00 for each day of operation in violation hereof for the first offense, and for any subsequent offense shall be liable to a penalty of \$20.00 for each day of operation in violation hereof.

The penalties authorized by this section shall be recovered in a summary proceeding, brought in the name of the State of New Jersey pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.74 (C.2A:58-10 et seq.). Money penalties, when recovered, shall be payable to the General State Fund.

The Department of Health or the Department of Community Affairs, as appropriate, may, in the manner provided by law, maintain an action in the name of the State of New Jersey for injunctive relief against any person, firm, corporation, partnership, society, or association that continues to conduct, manage, or operate a residential health care facility without a certificate of approval or license, or after suspension or revocation of such certificate of approval or license.

The practice and procedure in actions instituted under authority of this section shall conform to the practice and procedure in the court in which the action is instituted.

No officer or agent of any municipal or county agency having responsibility for making payments of any form of public assistance under the provisions of Title 44 of the Revised Statutes, shall make such payments to or on behalf of a person residing in a residential health care facility as defined in P.L.1953, c.212 (C.30:11A-1 et seq.), unless such establishment is, at the time of such payment, approved or provisionally approved pursuant to P.L.1953, c.212 (C.30:11A-1 et seq.).

b. No residential health care facility, licensed hereunder, shall by public or private advertisement or by any other means hold out to the public that it is equipped to provide post-operative or convalescent care for persons with a mental illness or an intellectual disability or who are suffering or recovering from illness or injury or who are critically ill. Any person, firm, association, partnership, society, or corporation who violates the provisions of this subsection shall cease and desist from such practices and shall be liable to

a penalty of \$100.00 for the first offense and \$200.00 for each subsequent offense, which penalties shall be recovered in the manner provided for in subsection a. of this section.

c. No residential health care facility licensed hereunder, shall operate as a private mental hospital, convalescent home, private nursing home, or private hospital, unless it is licensed pursuant to chapter 11 of Title 30 of the Revised Statutes. Whenever there is reason to believe that any such facility or institution is in violation of the provisions of this subsection, the Department of Health or the Department of Community Affairs, as appropriate, may conduct a reasonable inspection of the premises for the purpose of ascertaining whether there is any violation. Any facility or institution which violates the provisions of this subsection shall be liable to a penalty of \$25.00 for each day of operation in violation of this subsection for the first offense and to a penalty of \$50.00 for each day of operation for any subsequent offense. The Department of Health and the Department of Community Affairs, with the approval of the Attorney General, are hereby authorized and empowered to compromise and settle claims for the monetary penalty in appropriate circumstances where it appears to the satisfaction of the department that payment of the full penalty will work severe hardship on any individual not having sufficient financial ability to pay the full penalty but in no case shall the penalty be compromised for a sum less than \$250.00 for the first offense and \$500.00 for any subsequent offense; provided, however, that any penalty of less than \$250.00 or \$500.00, as the case may be, may be compromised for a lesser sum. The penalties authorized by this subsection shall be recovered in the manner provided for in subsection a. of this section.

d. No owner, operator, or employee of a residential health care facility shall serve notice upon a resident to leave the premises, or take any other action in retaliation for: (1) the efforts of the resident or a person acting on the resident's behalf to secure or enforce any rights under a contract, the laws of this State or any of its subdivisions, or the laws of the United States; or (2) the good faith complaint of a resident or a person acting on the resident's behalf to a governmental authority concerning the owner, operator, or employee's alleged violation of P.L.1953, c.212 (C.30:11A-1 et seq.) or any health or safety law, regulation, code, or ordinance, or other law or regulation which has as its objective the regulation of residential health care facilities.

5. Section 12 of P.L.1953, c.212 (C.30:11A-12) is amended to read as follows:

C.30:11A-12 Conditions for denial of application, regulation of care under certain circumstances.

12. Nothing in P.L.1953, c.212 (C.30:11A-1 et seq.) shall vest authority, or be construed to vest authority, in either the Department of Health or the Department of Community Affairs, to deny any application for a certificate of approval or license on the sole ground that adequate residential health care facilities are already available in the vicinity or area for which the certificate of approval or license is sought.

Nothing in P.L.1953, c.212 (C.30:11A-1 et seq.) shall be so construed as to give authority to supervise or regulate or control the remedial care or treatment of individuals who are adherents of any well-recognized church or religious denomination which subscribes to the art of healing by prayer and the principles of which are opposed to medical treatment and who are living in any home or institution operated by a member or members, or by an association or corporation composed of members of such well-recognized church or religious denomination; provided, that such home or institution admits only adherents of such church or denomination and is so designated; nor shall the existence of any of the above conditions

alone militate against granting a certificate of approval or license to such establishment; and provided further, that such establishment shall comply with all rules, regulations, and standards relating to sanitation and safety of the premises and be subject to inspection therefor.

6. This act shall take effect immediately.

Approved September 13, 2017.