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DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES

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**MEMORANDUM**

**TO: DISTRIBUTION LIST**

**DATE: January 17, 2018**

**SUBJECT: DIVISION CIRCULAR #20A – N.J.A.C. 10:42A, “LIFE-THREATENING EMERGENCIES”**

Attached is the revision of Division Circular #20A, N.J.A.C. 10:42A –“Life-Threatening Emergencies.” The adopted rules were issued and published in the New Jersey Register on December 18, 2017. This circular rescinds the prior version of Division Circular #20A, issued on August 3, 2005 and revised on October 11, 2013.

  
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Jonathan S. Seifried  
Acting Assistant Commissioner

RKS  
Attachment

DIVISION CIRCULAR #20A  
(N.J.A.C. 10:42A)

DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES

EFFECTIVE DATE: November 17, 2017

DATE ISSUED: January 17, 2018

(Rescinds Division Circular #20A, "Life-Threatening Emergencies," issued on August 3, 2005 and revised on October 11, 2013)

- I. **TITLE:** LIFE-THREATENING EMERGENCIES
- II. **PURPOSE:** To establish guidelines and criteria for the reporting of life-threatening emergencies.
- III. **SCOPE:** This circular applies to all components of the Division as well as agencies under contract with or regulated by the Division or licensed under N.J.A.C. 10:44A, "Community Residences for Individuals with Developmental Disabilities", 10:44B, "Community Care Residences", 10:44C, "Community Care Residences for Persons with Head Injuries" or 10:47, "Standards for Private Licensed Facilities for Persons with Developmental Disabilities.
- IV. **POLICIES:**
- Staff in facilities for individuals with developmental disabilities or traumatic brain injuries are required to call 911 in the event of a life-threatening emergency.
  - Failure to call 911 in the event of a life-threatening emergency may result in action against the staff.
  - Failure to call 911 may affect the reissuing of a license, approval to provide disability services or the renewal of a contract with the Division.
- V. **GENERAL STANDARDS:**

**NOTE:** The remainder of this circular is the regulation for Life-Threatening Emergencies as it appears at N.J.A.C. 10:42A.

  
Jonathan S. Seifried,  
Acting Assistant Commissioner

## CHAPTER 42A

### LIFE-THREATENING EMERGENCIES

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### **10:42A-1.1 Purpose**

Staff at a facility for persons with developmental disabilities or traumatic brain injury are required to call the 911 emergency telephone service in life-threatening emergencies. The purpose of this chapter is to provide guidelines for facilities in such instances.

##### **10:42A-1.2 Scope**

This chapter applies to facilities for persons with developmental disabilities or traumatic brain injury.

##### **10:42A-1.3 Definitions**

For the purpose of this chapter, the following terms shall have the following meanings:

"Assistant Commissioner" means the Assistant Commissioner of the Division of Developmental Disabilities.

"Chief executive officer" (CEO) means the person having administrative authority over, and responsibility for, a State-operated developmental center or private licensed facility for the developmentally disabled under N.J.A.C. 10:47, Standards for Private Licensed Facilities for Persons with Developmental Disabilities.

"Commissioner" means the Commissioner of the Department of Human Services.

"Contested matter" means an adversarial proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. (N.J.S.A. 52:14B-2; N.J.A.C. 1:1)

"Contract employee" means a person who works directly with persons with developmental disabilities or traumatic brain injury and is under contract with the Department of Human Services or is an employee of a private agency that is under contract with the Department of Human Services.

"Department" means the Department of Human Services.

"Division" means the Division of Developmental Disabilities.

"Do Not Resuscitate Order" or "DNR Order" means a physician's written order not to attempt cardiopulmonary resuscitation in a hospital or out-of-hospital situation in the event the person suffers cardiac or respiratory arrest.

"Executive director" means the individual with administrative authority over a residential program licensed in accordance with N.J.A.C. 10:44A, Standards for Community Residences for Individuals with Developmental Disabilities, 10:44C, Standards for Community Residences for Persons with Head Injuries and 10:47, Standards for Private Licensed Facilities for Persons with Developmental Disabilities, or agency under contract with or regulated by the Division.

"Facility" means a facility for persons with developmental disabilities or a facility for persons with traumatic brain injury.

"Facility for persons with developmental disabilities" means a facility operated by the Division, including developmental centers, under contract with the Division or licensed under N.J.A.C. 10:44A, Standards for Community Residences for Individuals with Developmental Disabilities, 10:44B, Standards for Community Residences for Individuals with Developmental Disabilities (Community Care Residences) or 10:47, Standards for Private Licensed Facilities for Persons with Developmental Disabilities or program under contract with or regulated by the Division.

"Facility for persons with traumatic brain injury" means a facility for persons with traumatic brain injury that is licensed under N.J.A.C. 10:44C, Standards for Community Residences for Persons with Head Injuries or under contract with the Department.

"Life-threatening emergency" means a situation in which a prudent person could reasonably believe that immediate intervention is necessary to protect the life of a person receiving services at a facility for persons with developmental disabilities or traumatic brain injury or to protect the lives of other persons at the facility or agency, from an immediate threat or actual occurrence of a potentially fatal injury, impairment to bodily functions, or dysfunction of a bodily organ or part.

"911 call" means a telephone call to the emergency 911 system.

"Office of Administrative Law" (OAL) means an independent unit assigned to the Department of Treasury, which has the authority to hear contested matters.

"Practitioner's Order for Life Sustaining Treatment (POLST)" means a form of standardized medical order signed by a physician or advanced practice nurse that comports with New Jersey State laws and rules.

"Staff" means any licensee and any full time, part time, temporary employment services or contract employee at a facility for persons with developmental disabilities or traumatic brain injury present in the living or program area who work directly with the person served. For the purpose of this rule, this term does not include housekeepers, food service workers, maintenance workers, clerical staff or volunteers.

"Under contract" means a provider under a written agreement with the Division or a provider approved by the Division to provide disability services to individuals who are eligible to receive services from the Division.

## **SUBCHAPTER 2 REPORTING REQUIREMENTS**

### **10:42A-2.1 General standards**

- (a) All staff shall be responsible to immediately call 911 in a situation in which a prudent person could reasonably believe that immediate intervention is necessary to protect the life of a person receiving services at a facility for persons with developmental disabilities or traumatic brain injury, or to protect the lives of other persons at the facility or agency, from an immediate threat or actual occurrence of a potentially fatal injury, impairment to bodily functions, or dysfunction of a bodily organ or part, except as provided in (b) below.
- (b) A staff member need not call 911 if the staff member is certain that another staff member has already called 911 about the life-threatening emergency.

- (c) When only one staff member is present when a life-threatening emergency occurs that staff member shall call 911 and, if he or she is trained to provide immediate assistance, the staff member shall provide assistance.
- (d) When the person suffering the life-threatening emergency has a DNR Order or POLST in effect, existence of the DNR Order or POLST does not relieve the staff member from the requirement to call 911. Staff shall call 911 if there is a life-threatening emergency but provide a copy of the DNR Order or POLST to emergency staff responding to the 911 call. Circumstances arising from a terminal condition for which a person is receiving hospice care shall not be considered a life-threatening emergency.
- (e) If a person experiences chronic seizure activity, that person's licensed medical practitioner, who is not employed by the facility where the person resides, may provide a prescription or standing order to the facility defining when 911 should not be called because the person's seizure activity is not a life-threatening emergency.
- (f) The 911 call shall include:
  - 1. The address and/or location of the emergency;
  - 2. The telephone number where the emergency is located;
  - 3. A brief description of the problem including whether the person(s) is conscious and/or breathing; and
  - 4. The name of staff member calling 911.
- (g) Once the call has been made, the staff member shall stay on the line if necessary to respond to questions from the 911 operator.
- (h) Each facility covered by this chapter, except those facilities licensed under N.J.A.C. 10:44B, Standards for Community Care Residences for the Developmentally Disabled, shall provide training in life-threatening emergencies to all staff members through curriculum developed by the Division. Facilities licensed under N.J.A.C. 10:44B shall be trained by the Division.
- (i) Each facility covered by this chapter shall maintain documentation of completion of staff training and provide it to the Department or Division upon request.
- (j) Every 911 call and every failure to make a 911 call in the event of a life-threatening emergency shall be reported to the Department as an unusual incident and the facility shall maintain a copy of the unusual incident report.

### **SUBCHAPTER 3. MONITORING**

#### **10:42A-3.1 Enforcement**

- (a) The Department shall maintain a record of:
  - 1. All reports received in which a 911 call was made in a life-threatening emergency;

2. All reports in which it is identified that a 911 call was not made in life-threatening emergencies; and
  3. Any other instance in which the Department determines that a 911 call should have been made.
- (b) The reports under (a) above shall not be considered public records under the Open Public Records Act, (N.J.S.A. 47:1A-1. et. seq.).
  - (c) The Department shall conduct a review of all reports and instances under (a) 2 and 3 above, and any complaints that a 911 call was not made, to determine whether there was a life-threatening emergency, whether a 911 call was made and any other relevant facts. The Department shall report all findings to the Assistant Commissioner. Reports containing aggregate data of all calls are considered government records and are subject to disclosure under Open Public Records Act (N.J.S.A. 47:1A-1. et. seq.).
  - (d) The Assistant Commissioner shall determine whether a staff member has violated Danielle's Law, N.J.S.A. 30:6D-5.3. The Assistant Commissioner may ask the Department to conduct further investigation before rendering a decision.
  - (e) A staff member who violates N.J.S.A. 30:6D-5.3 shall be liable to a civil penalty of \$5,000 for the first offense, \$10,000 for the second offense and \$25,000 for the third and each subsequent offense.
  - (f) When the Assistant Commissioner has determined that a staff member has violated N.J.S.A. 30:6D-5.3, the Division shall notify that staff member of this determination by certified mail (return receipt requested) or by personal service. A copy of that notice shall be sent to the chief executive officer or executive director of the facility. The notice of violation shall:
    1. Identify the section of the statute or rule violated;
    2. Concisely state the facts which constitute the violation;
    3. Specify the amount of the penalty to be imposed; and
    4. Advise the staff member of how the notice of violation may be appealed.
  - (g) If an appeal of the notice of violation is not requested, the notice of violation shall become the final decision of the Department upon expiration of the 30 day period following the receipt thereof.
  - (h) A request for appeal shall be submitted in writing to the Assistant Commissioner within 30 days of the date of receipt of the notice of violation and shall contain the information required below. This information shall be the basis of an initial pleading should the matter be transmitted to the Office of Administrative Law. If the required information is not provided, an appeal shall be denied and the notice of violation becomes the final decision of the Department upon receipt of notice of such denial. The request shall include:
    1. The name, address and telephone number of appellant and any authorized representative;

2. A brief statement of the matter under appeal;
  3. A list of potential witnesses; and
  4. A statement as to whether the staff member agrees to the Department's holding the request for a reasonable period prior to referral to the Office of Administrative Law to allow for possible settlement of the dispute as provided by N.J.A.C. 1:1-8.1 (b).
- (i) If a request for an appeal meets the requirements set forth in (h) above and is timely submitted, this matter shall be considered a contested case and shall be referred to the Office of Administrative Law for a hearing, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
  - (j) If the contested matter is not settled and the staff member has not agreed to the Department's holding the appeal request for a reasonable period prior to referral to the Office of Administrative Law for purposes of possible settlement of the dispute, the Assistant Commissioner shall transmit the matter to the Office of Administrative Law within 30 days of the receipt of the appeal.
  - (k) The Assistant Commissioner shall notify the appellant that the matter has been transmitted to the Office of Administrative Law.
  - (l) An initial decision rendered by Office of Administrative Law shall be adopted, rejected or modified by the Commissioner within 45 days of its receipt (N.J.S.A. 52:14B-10(c)). The decision of the Commissioner constitutes the final decision of the Department.
  - (m) Upon issuance, the final decision of the Department shall be sent to the involved parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.
  - (n) The Commissioner shall take appropriate action on any final decision of the Department which may include a referral to the Attorney General to collect a civil penalty in a summary proceeding pursuant to the "Penalty Enforcement Act of 1999", P.L. 1999, c.274 (N.J.S.A. 2A:58-10 et. seq.).
  - (o) The Department shall report to professional licensing boards for appropriate action any final decision of the agency that finds violations of N.J.S.A. 30:6D-5.3.
  - (p) The Department shall maintain a record of violations of N.J.S.A. 30:6D-5.3 and these rules which shall be included in the criteria that the Department considers in making a decision on whether to revoke or not renew the license of a facility licensed under N.J.A.C. 10:44A, 10:44B, 10:44C or 10:47 or whether to terminate or not renew a contract with a public or private agency, as applicable.