

## 7:5-4.3 Development and execution of grant agreement

(a) If the ENSP approves the application submitted pursuant to N.J.A.C. 7:5-4.2, the grant amount shall be determined by the ENSP consistent with N.J.A.C. 7:5-3.3 and in accordance with an executed grant agreement between the Department and the applicant. The grant agreement shall specify, among other things, the following:

- 1.-2. (No change.)
  3. The work period, not to exceed two years;
  - 4.-5. (No change.)
- (b)-(e) (No change.)

## HUMAN SERVICES

### (a)

#### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Home- and Community-Based Services Provided in Assisted Living Residences, Comprehensive Personal Care Homes, and Assisted Living Programs

##### Adopted New Rules: N.J.A.C. 10:53

Proposed: August 1, 2022, at 54 N.J.R. 1463(a).

Adopted: November 15, 2022, by Sarah Adelman, Commissioner, Department of Human Services.

Filed: November 21, 2022, as R.2022 d.152, **with non-substantial changes**, not requiring additional public notice and comment (see N.J.A.C. 1:30-6.5).

Authority: N.J.S.A. 30:4D-1 et seq., and 30:4J-8 et seq.

Agency Control Number: 22-A-01.

Effective Date: December 19, 2022.

Expiration Date: December 19, 2029.

##### Summary of Public Comments and Agency Responses:

Three comment letters were received from:

1. Disability Rights New Jersey, Gwen Orłowski, Executive Director;
2. Legal Services of New Jersey, Rebecca Schore, Chief Counsel and Akil Roper, Senior Vice President; and
3. One letter signed by the following three trade organizations:
  - NJ Hospital Association, Theresa Edelstein, Senior Vice President;
  - Health Care Association of NJ, Andrew Aronson, President & CEO; and
  - Leading Age NJ & DE, James W. McCracken, President & CEO.

COMMENT: Disability Rights New Jersey (DRNJ) supports the Department of Human Services' (Department) proposed new rules to comply with Medicaid's Home and Community-Based Settings Rule (HCBS Rule) found at 42 CFR 441.301(c). The regulations, as proposed, place a greater emphasis of person-centered planning and providing more autonomy and inclusion in the community for individuals residing in these facilities.

RESPONSE: The Department appreciates this comment.

COMMENT: The New Jersey Hospital Association, the Health Care Association of New Jersey, and Leading Age NJ & DE expressed support for the proposed rules, noting that the current Department of Health rules at N.J.A.C. 8:86 are consistent in approach and intent with these proposed new rules and support the concepts of privacy, choice, independence, individuality, dignity, and the adherence to resident rights. They stated that they found the proposed new rules somewhat duplicative, but appreciate that they are required to mirror the HCBS Rule.

RESPONSE: The Department appreciates this comment. The specific provisions in the proposed rules are required by the HCBS Rule.

COMMENT: DRNJ commented that the term "Person-centered planning" should be changed to "Person-centered planning process" and defined consistent with the Federal person-centered planning rule at 42 CFR 441.301(c)(1), (2), and (3) to ensure that all licensees understand the process and use it consistently among all residences.

RESPONSE: "Person-centered planning," as defined in the proposed new rules, means a process of helping individuals, in accordance with their needs and preferences, to achieve a lifestyle that is consistent with the norms and patterns of general society and in ways that incorporate the principles of age appropriateness and least restrictive interventions. The Department believes that this definition is sufficient as written. The person-centered planning process utilized in New Jersey is robust and consistent with 42 CFR 441.301(c)(1), (2) and (3).

COMMENT: DRNJ commented that the rule should include a definition for the term "eviction" and that the definition be consistent with State law and the HCBS Rule, which requires that the individual must have the same responsibilities and protections from eviction that tenants have under the landlord/tenant laws of New Jersey. DRNJ suggested that the definition requires compliance with New Jersey's Eviction with Good Cause statute, N.J.S.A. 2A-18-61.1 et seq., and that the definition should specifically refer to all New Jersey landlord/tenant protections including, but not limited to, those at N.J.S.A. 2A-18.61.1 et seq. DRNJ further commented that the proposed language at N.J.A.C. 10:53-2.3(a)1 is confusing and should be rewritten to more clearly and fully meet the requirements of the HCBS Rule and New Jersey landlord/tenant eviction law. DRNJ suggested rewriting the first sentence as follows: "Upon admission, a written lease agreement shall be signed by the person receiving services (the tenant) or guardian, where applicable, and the licensee (the landlord), which shall provide the tenant with all the rights and responsibilities accorded by New Jersey tenant and landlord law, including but not limited to N.J.S.A. 2A:18-61.1 et seq., and shall be comparable to leases for all other persons in the State." DRNJ suggested that the second proposed sentence at N.J.A.C. 10:53-2.3(a)1 should be deleted because they feel that it is inconsistent with New Jersey's landlord tenant statute, and is unenforceable as written (that is, a consumer residency agreement cannot provide eviction processes, only the law can). DRNJ suggests that this rule should state that when licensees engage in "self-help lockout or evictions," the tenant can avail themselves of New Jersey's forceable or unlawful entry and detainer laws, N.J.S.A. 2A:39-1 et seq., to affirmatively seek redress in Superior Court. They provided an example of a "self-help eviction" as a situation where a provider/licensee will not allow the return of a resident of an assisted living residence after a hospitalization. According to DRNJ, that would not be lawful in a traditional apartment, and it should not be lawful in an HCBS setting subject to the HCBS Rule. DRNJ commented that the Federal requirements that licensees and residents enter into a landlord/tenant relationship and be governed by the Eviction for Good Cause statute conflicts with other rules regarding assisted living residences and comprehensive personal care home settings, specifically those at N.J.A.C. 8:86-5.6 and 5.14, which they suggested need to be rewritten to include the Eviction for Good Cause statute to comply with the HCBS Rule.

Legal Services of New Jersey also expressed concerns regarding tenancy rights as it relates to the eviction process. They stated that the proposed language at N.J.A.C. 10:53-2.3(a)1 and 2.3(b) implies that a housing provider may remove a resident through some process other than judicial eviction, so long as that process is "comparable" to applicable landlord/tenant law. They stated that such action would violate New Jersey law, specifically N.J.S.A. 2A:39-1 et seq., and may result in the illegal removal of residents from HCBS facilities, thereby both endangering residents and creating liability for facility owners. They suggested adding language to the proposed rule that would prohibit eviction absent compliance with New Jersey's Anti-Eviction Act, N.J.S.A. 2A:18-61.1 et seq., which prohibits eviction without good cause as defined therein.

RESPONSE: The Department feels the rules are sufficient as written. The Department disagrees with the commenters' interpretation of State and Federal law. The HCBS Rule does not require licensees to enter into leases with residents that strictly mirror landlord/tenant eviction processes, but rather allows for residency agreements or other forms of written agreements that offer "protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law" in settings in which landlord-tenant law does not apply. 42 CFR 441.301(c)(4)(iv)(A). In the settings covered by the proposed rules, where a provider is providing services in conjunction with housing, the Department requires providers and residents to enter into

residency agreements that offer comparable protections to leases. The licensee may not discharge an individual from a residence and correspondingly terminate services without following certain guidelines. Disputes regarding these decisions are appealable through the administrative appeals process; they are not cognizable in the New Jersey Superior Court, Special Civil Part. If the Special Civil Court exercised such jurisdiction, situations could arise where an individual can no longer be appropriately served by a provider, yet continues to reside in the covered setting, thus, jeopardizing the individual's health and safety. For these reasons, the Department declines to make the amendments recommended by the commenters.

COMMENT: DRNJ commented that the rules should include a definition for the term "roommate" that specifies that a roommate is a person with whom one shares a bedroom and should also make clear that individuals sharing units must have a choice of roommates, 42 CFR 441.301(c)(4)(vi)(B)(2).

RESPONSE: The Department does not feel that such a definition is necessary. Individuals are afforded a choice in roommates pursuant to 42 CFR 441.301(c)(4)(vi)(B)(2).

#### Federal Standards Statement

Sections 1902(a)(10) and 1905(a) of the Social Security Act, 42 U.S.C. §§ 1396a(a)(10) and 1396d(a), respectively, specify who may receive services through a Title XIX Medicaid program and which services may be provided pursuant to the program, including home health services.

Section 1915(c) of the Social Security Act, 42 U.S.C. § 1396n, and 42 CFR 440, 441, and 484 allow a state Medicaid program to provide in-home community-based waiver services.

Title XXI of the Social Security Act allows a state, at its option, to provide a state Child Health Insurance Plan (SCHIP). New Jersey has elected this option with the development of the NJ FamilyCare Program. Sections 2103 and 2110 of the Social Security Act, 42 U.S.C. §§ 1397cc and 1397jj, respectively, describe services that a State may provide to targeted, low-income children.

The Department has reviewed the applicable Federal laws and regulations. The adopted new rules do not exceed the Federal standards for the Medicaid Home and Community Based Services waiver at 42 CFR 411 or the other CMS guidance at 42 CFR Parts 430, 431, 435, 438, 440, and 447. Therefore, a Federal standards analysis is not required.

**Full text** of the adopted new rules follows (addition to proposal indicated in boldface with asterisks **\*thus\***; deletion from proposal indicated in brackets with asterisks **\*[thus]\***):

#### CHAPTER 53

#### **\*[HOME AND COMMUNITY BASED]\* \*HOME- AND COMMUNITY-BASED\* SERVICES PROVIDED IN ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL CARE HOMES, AND ASSISTED LIVING PROGRAMS**

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10:53-1.1 Scope

The rules in this chapter shall apply to assisted living residences, comprehensive personal care homes, and assisted living programs licensed by the Department of Health, in accordance with N.J.A.C. 8:36 that are also enrolled Medicaid/NJ FamilyCare providers, providing services through the Home and Community Based Services (HCBS) waiver to Medicaid/NJ FamilyCare beneficiaries.

##### 10:53-1.2 Purpose

The purpose of this chapter is to implement HCBS waiver provisions for services provided by assisted living residences, comprehensive personal care homes, and assisted living programs to Medicaid/NJ FamilyCare beneficiaries, which supplement the licensing requirements included at N.J.A.C. 8:36.

##### 10:53-1.3 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Assisted living program" means a program, licensed by the New Jersey Department of Health, in accordance with N.J.A.C. 8:36, that offers

assisted living services to the tenants/residents of certain publicly subsidized housing buildings by a provider capable of providing or arranging for assistance with personal care, and of nursing, pharmaceutical, dietary, and social work services to meet the individual needs of each resident. Individuals receiving services from an assisted living program reside in their own independent apartments and are responsible for their own rent and utility payments, as defined in a lease agreement with the landlord.

"Assisted living residence" means a facility that is licensed by the Department of Health, in accordance with N.J.A.C. 8:36, to provide apartment-style housing and congregate dining and to ensure that assisted living services are available, when needed, for four or more adults unrelated to the proprietor. Apartment units offer, at a minimum, one unfurnished room, a private bathroom, a kitchenette, and a lockable door on the unit entrance.

"Comprehensive personal care home" means a facility that is licensed by the New Jersey Department of Health, in accordance with N.J.A.C. 8:36, to provide room and board and to assure that assisted living services are available, when needed, to four or more adults unrelated to the proprietor. Residential units in comprehensive personal care homes house no more than two residents and have a lockable door on the unit entrance.

"Home and community based services (HCBS)" means the provision of services for Medicaid/NJ FamilyCare beneficiaries integrated into the community in homes and residences as an alternative to institutionalized care and services.

"Person-centered service plans" means the general service and health service plans at N.J.A.C. 8:36-7, Resident Assessments and Care Plans, that address an individual's long-term care needs and reflect the services and supports important to the individual to meet his or her needs, as identified through an assessment of functional need.

#### SUBCHAPTER 2. RESIDENTIAL SETTING REQUIREMENTS

##### 10:53-2.1 Person-centered service plans

(a) In order for service providers to receive Medicaid/NJ FamilyCare reimbursement for HCBS, beneficiaries in assisted living residences, comprehensive personal care homes, and assisted living programs must have person-centered service plans that meet the requirements for general service and health service plans found at N.J.A.C. 8:36-7 and follow any applicable Managed Care Organization service plan requirements.

1. The beneficiary must have a leading role in creating the service plans, whenever possible, along with the participation of their representative, as needed, and defined by the beneficiary, or, where appointed, the beneficiary's guardian.

(b) To justify modifications to person-centered service plans, the following must be documented in the beneficiary's general service and/or health service plans:

1. The specific and individualized assessed need;
2. The positive interventions and supports used prior to any modifications to the person-centered service plans;
3. The less intrusive methods of meeting the need that have been tried, but did not work;
4. A clear description of the condition that is directly proportionate to the specific assessed need;
5. A regular collection and review of data to measure the ongoing effectiveness of the modification;
6. Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;
7. The informed consent of the beneficiary; and
8. Assurance that interventions and supports will cause no harm to the beneficiary.

(c) The person-centered planning process must offer informed choices to the beneficiary regarding the services and supports he or she receives and from whom.

##### 10:53-2.2 General integrated residential setting

(a) In order to be eligible to receive Medicaid/NJ FamilyCare reimbursement for the provision of HCBS to Medicaid/NJ FamilyCare beneficiaries in assisted living residences, assisted living programs, and comprehensive personal care homes, these beneficiaries must be integrated in, and have support to engage in, the greater community. This

shall include, but not be limited to, providing the beneficiary with opportunities to seek employment, work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community to the same degree of access as persons not receiving Medicaid/NJ FamilyCare.

(b) The beneficiary must have the ability to select their community residence from options including, but not limited to, assisted living residences and comprehensive personal care homes. Beneficiaries in publicly subsidized housing, where the housing authority has contracted with a licensed assisted living program provider, shall have the option to consider assisted living programs. The setting options must be identified and documented in the beneficiary’s person-centered service plans and based on the person’s needs, preferences, and resources available for room and board.

(c) The assisted living residences, comprehensive personal care homes, and assisted living programs must ensure the beneficiary’s rights of privacy, dignity, respect, as well as freedom from coercion and restraint. This shall include, at a minimum, the requirements at N.J.A.C. 8:36-4.1(a).

(d) The assisted living residences, comprehensive personal care homes, and assisted living programs must optimize, but not regiment, individual initiative, autonomy, and independence in making life choices. This includes, but is not limited to, daily activities, physical environment, and personal interactions.

(e) The assisted living residences, comprehensive personal care homes, and assisted living programs must facilitate individual choice regarding services and supports, and who provides them.

10:53-2.3 Facility setting

(a) In addition to the requirements at N.J.A.C. 8:36, assisted living residences and comprehensive personal care homes must meet the following criteria for HCBS Medicaid/NJ Family Care reimbursement:

1. The unit or dwelling must be a specific physical place that can be rented or occupied pursuant to a legally enforceable lease agreement by the beneficiary that, at a minimum, must provide protections that address eviction processes and appeals comparable to those provided pursuant to applicable landlord/tenant law. If a residential lease is not utilized, the facility must enter into a residency agreement or other written agreement with the beneficiary and such agreement must have the same responsibilities and protections from eviction that tenants have pursuant to State, county, and municipal landlord/tenant laws.

2. The beneficiary must have privacy in his or her sleeping or living unit.

i. The unit must have entrance door(s) lockable by the beneficiary, with only appropriate staff having keys to doors;

ii. Beneficiaries sharing units must have a choice of roommates in that residence;

iii. The beneficiary must have the freedom to furnish and decorate his or her sleeping or living unit within the lease or other agreement;

3. The beneficiary must have the freedom and support to control his or her own schedules and activities;

4. The beneficiary must have access to food at any time;

5. The beneficiary must be able to have visitors of his or her choosing at any time;

6. The residence must be physically accessible to the beneficiary; and

7. The residential setting must not have the qualities of an institution and must have the qualities of a home and community-based setting.

(b) If any of the above requirements cannot be met, any limitations must be approved through a person-centered planning process and documented in the beneficiary’s person-centered plan.

SUBCHAPTER 3. REQUIRED NOTICES

10:53-3.1 Licenses

(a) In addition to the notice requirements at N.J.A.C. 8:36, the assisted living residence or comprehensive personal care home must post its license from the Department of Health in a conspicuous location near the main entrance or office of the facility.

(b) The assisted living program must conspicuously post a notice that its license is available to beneficiaries and the public at the program site

and at the assisted living program provider’s main office, in accordance with N.J.A.C. 8:36-23.6.

10:53-3.2 Inspection and survey reports

(a) The assisted living residence or comprehensive personal care home must conspicuously post the most recent inspection report from the Department of Health in the entry or another equally prominent location in the building and, upon request, shall provide a copy of the report to each beneficiary or their legal guardian.

(b) The assisted living residence or comprehensive personal care home shall inform each beneficiary that he or she may review a copy of the survey report and a list of deficiencies, if applicable, from the last annual licensure inspection from the Department of Health and from any valid complaint investigation during the past 12 months.

(c) The assisted living program provider and each program site must conspicuously post notice that a copy of the last annual licensure inspection survey report and the list of deficiencies from any valid complaint investigation during the past 12 months is available for review.

10:53-3.3 Required contact information

(a) Assisted living residences and comprehensive personal care homes must post the following contact information in a conspicuous location in the facility:

1. “911” for the police department and the fire department that serve the municipality in which the facility is located;

2. The complaint hotline of the New Jersey Department of Health (1-800-792-9770); and

3. The toll-free number for the office of the New Jersey Long-Term Care Ombudsman (1-877-582-6995).

(b) The assisted living program provider and each program site shall conspicuously post a notice that the information listed at (a) above is available to residents and the public at the program site and at the assisted living program provider’s main office.

(a)

**DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES**

**Notice of Readoption Programs of Assertive Community Treatment Readoption with Technical Changes: N.J.A.C. 10:37J**

Authority: N.J.S.A. 30:1-12, 30:9A-1, and 9A-10; and Reorganization Plan 001-2018.

Authorized By: Sarah Adelman, Commissioner, Department of Human Services.

Effective Dates: November 21, 2022, Readoption; December 19, 2022, Technical Changes.

New Expiration Date: November 21, 2029.

**Take notice** that pursuant to N.J.S.A. 52:14B-5.1.c, the rules at N.J.A.C. 10:37J, Programs of Assertive Community Treatment, were scheduled to expire on January 25, 2023.

This chapter applies to all Programs of Assertive Community Treatment (PACT). PACT provide comprehensive, integrated rehabilitation treatment, and support services to individuals with serious and persistent mental illness through a multi-disciplinary service delivery team. N.J.A.C. 10:37J is comprised of two subchapters. Subchapter 1, General Provisions, describes the scope and purpose of the rules and defines words and terms used throughout the chapter. Subchapter 2, Program Operation, specifies requirements regarding written policies and procedures, licensing, eligibility, program intensity, services to be provided and service coordination, assessment, recovery planning, progress notes, terminations and discharges, staff requirements and training, PACT team office space, records, and continuous quality improvement activities.

In addition to readopting the existing rules, the Department of Human Services (Department) is making technical changes throughout N.J.A.C.