

sink, and bathtub or shower maintained in good sanitary condition and available for every eight persons living in the residence.

1.-4. (No change.)

(r)-(u) (No change.)

(v) Only commercially available security devices that are quick release and visible shall be permitted for use with sliding glass exit doors. The placement of a stick or bar in the door track is prohibited.

(w)-(bb) (No change.)

10:44B-6.3 Fire safety

(a)-(h) (No change.)

(i) Documentation of the fire drills shall be maintained on the Office of Licensing's form, filed in the licensee's administrative records, and shall include:

1.-4. (No change.)

(j) (No change.)

(k) If there is any reason to believe that an evacuation problem exists, the licensee shall contact a representative of the placing agency to observe a fire drill conducted in the residence, and follow all recommendations made by the placing agency.

(l)-(r) (No change.)

(s) There shall be at least two means of egress from the residence, as approved by the Office of Licensing.

(t)-(u) (No change.)

10:44B-6.4 Individual bedrooms

(a) Individuals shall occupy only those bedrooms that have been inspected and approved by the Office of Licensing.

(b)-(f) (No change.)

(g) Licensed bedrooms shall be provided with a solid surface entry door in good condition that opens easily, latches securely, and that has a doorknob. These doors shall not be prevented from opening completely or be blocked in any way.

1. The doorknob must have a privacy lock, which can be unlocked readily from the inside. The key or other device to open the doorknob from the outside shall be kept readily available only to the licensee or alternate for emergency entry into the room.

2. (No change.)

(h) (No change.)

(i) Individuals shall not share a bedroom unless there is documentation in each individual's service plan, through a person-centered planning process, that this choice is based on the personal preference of each individual and that the individual has participated in the selection process.

(j)-(l) (No change.)

(m) At no time shall an occupant of the home, family member, or visitor occupy a licensed room while it is being occupied by individuals. A vacant licensed room may be temporarily occupied by someone other than individuals, only upon written request by the licensee and approval by the placing agency.

(n)-(p) (No change.)

10:44B-6.5 Transportation and vehicle safety

(a) (No change.)

(b) The licensees who drive shall have a driver's license valid in the State of New Jersey.

1. Licensees who do not possess a driver's license shall identify to the placing agency and Office of Licensing, a designated driver, with a valid driver's license, to transport individuals.

(c)-(e) (No change.)

(a)

OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY

Standards for Community Residences for Persons with Head Injuries

Adopted Amendments: N.J.A.C. 10:44C-1.1, 1.3, 1.4, 1.7, 1.8, 1.9, 1.12, 2.1, 2.2, 2.4 through 2.10, 3.2, 3.3, 3.4, 3.6, 4.1, 4.2, 4.3, 4.4, 5.2, 5.5, 5.6, 5.7, 6.1, 6.2, 6.3, 6.5, 6.6, 6.9, 6.13, 6.14, and 6.15

Adopted Repeal: N.J.A.C. 10:44C-1.5

Proposed: June 20, 2022, at 54 N.J.R. 1146(a).

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

Filed: December 8, 2022, as R.2023 d.005, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4.

Effective Date: January 3, 2023.

Expiration Date: January 10, 2024.

Summary of Public Comments and Agency Responses:

The Department of Human Services (Department) received comments from the following individuals in response to publication of the notice of proposal:

Barbara Young;

Jaymee Bernstein, Universal Institute; and

Mary Ciccone, Disability Rights NJ.

COMMENT: A commenter expressed concern about the requirement that bedrooms have a privacy lock because locks could be dangerous for individuals who could not open them. The commenter stated that the regulations should not override a guardian's instruction not to use a lock. Another commenter expressed several concerns about privacy locks, and recommended that individuals should have the option to have a lock, and if a lock is chosen, the providers keep a key above the door frame.

RESPONSE: Privacy locks are required by the Federal Home and Community Based Services Rule (HCBS Rule). The HCBS Rule requires that a key lock be the default for bedroom doors. However, a guardian may instruct that a lock not be used for individualized circumstances, as long as this is discussed with the Transdisciplinary Team (TDT) and presented before the Human Rights Committee (HRC).

COMMENT: A commenter expressed several concerns about visitation being allowed at any time, and recommended that agencies and residents be able to establish house rules around visitation.

RESPONSE: The HCBS Rule requires visitation to be allowed at any time. The residents, in conjunction with the provider, may develop house visitation rules, but the rules must be driven by the residents, rather than for the convenience of the provider. Any agency visitor policy must afford residents the ability to have visitors at any time.

COMMENT: A commenter recommended that a written agreement be required between the resident and the provider that attendance at a day program be mandatory, absent legitimate exceptions, while also acknowledging that individuals can leave the program if this condition is burdensome.

RESPONSE: The Department declines to accept this recommendation. The HCBS Rule requires individuals to have the ability to set their schedule. The individual's schedule and the program's ability to provide services within this schedule should be discussed prior to admission. Should an individual's schedule change after admission, and a program is not able to provide appropriate support, this would be addressed through the TDT.

COMMENT: A commenter stated that, as service recipients age, egress protocols should be updated to accommodate them. The commenter also recommended that providers be educated on the I-1 Use Group classification.

RESPONSE: The Department finds the rules are sufficient as written as the fire safety requirements for an I-1 Use Group are within the scope at N.J.A.C. 5:70, Uniform Fire Code.

COMMENT: An advocate stated that programs serving up to 15 people may violate the HCBS Rule.

RESPONSE: The Department is satisfied that the proposed rules comply with the HCBS Rule. 42 CFR 441.301 does not indicate a maximum number of residents, but rather states that a residence may not have the qualities of an institutional setting. Such qualities include being located on or near the campus of an institution, or otherwise, isolating individuals receiving HCBS from the broader community. The rules permit up to 15 residents in a community residence, but prohibits a residence from having the qualities of an institutional setting. The Department requires all settings governed by these rules to maintain integration with the community and has a process for determining whether a residence complies with the HCBS Rule based on the characteristics of the residence, and not solely the number of individuals who live there.

COMMENT: An advocate commented that the proposed definition of "eviction" is not compliant with the HCBS Rule. The advocate stated that, in order to meet the requirements of the rules, the individual must have the same responsibilities and protections from eviction that tenants have under the landlord/tenant laws of New Jersey. The centerpiece of that law is New Jersey's Eviction with Good Cause statute, N.J.S.A. 2A:18-61.1 et seq. The commenter recommended that the proposed definition be amended to 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. The commenter also recommended that the regulations make clear that the forum for seeking an eviction order is the Superior Court, Special Civil Part. The advocate stated that N.J.A.C. 10:44C-4.1(e) is confusing and should be rewritten to more clearly and fully meet the requirements of the HCBS Rule and State landlord/tenant eviction law. The advocate commented that the second proposed paragraph at N.J.A.C. 10:44C-4.1(e)1 should be deleted because 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). The advocate also recommended that this section make clear that where licensees engage in self-help lockout or evictions, the person served (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. The advocate also recommended that the licensees be required to provide the residents, upon admission, a copy of their rights under the New Jersey Landlord/Tenant law. The advocate stated that N.J.A.C. 10:44C-4.4 appears to be in conflict with N.J.A.C. 10:44C-4.1(e) as it permits the licensee and the placing agency to determine that the residence is no longer suitable and to transfer or discharge the resident without going through the process set forth in the Eviction for Good Cause statute.

RESPONSE: The Department thanks the commenter for this feedback, but does not share the same interpretation of the cited 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 community residences for persons with head injuries, 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 community residence and correspondingly terminate services without following the guidelines at N.J.A.C. 10:44C-4.4. 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 provider's home, thus jeopardizing the individual's health and safety. For these reasons, the Department declines to make the changes recommended by the commenter.

COMMENT: An advocate recommended that "person-centered planning process" be defined consistent with the Federal person-centered planning rule, 42 CFR 441.301(c)(1), (2), and (3).

RESPONSE: The Department finds that this definition is sufficient. The person-centered planning process utilized in New Jersey is robust and consistent with 42 CFR 441.301(c)(1), (2), and (3).

COMMENT: An advocate stated that the regulations should have a definition for "roommate" that makes clear that individuals sharing units must have a choice of roommates, 42 CFR 441.301(c)(4)(vi)(B)(2).

RESPONSE: The definition of roommate is included in the proposed rules at N.J.A.C. 10:44C-1.3. Individuals are afforded a choice of roommate at N.J.A.C. 10:44C-3.4(b)26.

COMMENT: An advocate noted that N.J.A.C. 10:44C-2.9(c) states that "A person served shall have access to his or her records, unless clinically contra-indicated and documented," and recommended that it be amended as follows: "A person served shall have access to his or her records, unless otherwise determined and documented through the person-centered planning process." 42 CFR 441.301(c)(1), (2), and (3).

RESPONSE: The Department finds that the rule is sufficient as written. Denying an individual access to their records based solely on the person-centered planning process without a finding that it is clinically contra-indicated may have the undesired effect of broadening the reasons access to one's records may be denied.

COMMENT: An advocate recommended that N.J.A.C. 10:44C-2.10 be amended as follows: "If the TDT has determined through a person-centered planning process that the person served cannot independently manage his or her funds and finances, the TDT shall determine in consultation with the individual how much money, if any, can be managed by the person served at any given time." 42 CFR 441.301(c)(1), (2), and (3).

RESPONSE: The Department disagrees with this comment. To note that the TDT shall make a determination in consultation with the individual implies the individual is not already a member of the TDT. The definitions of both TDT and individual treatment plan (ITP) were revised in the notice of proposal to include "person-centered planning."

COMMENT: An advocate recommended that N.J.A.C. 10:44C-3.3 be amended as follows: "Notices of advocacy or self-advocacy conferences, seminars or meetings shall be made available to all persons served in each residence unless determined otherwise by the TDT, and justification for not providing this information to the individual is documented in the individuals ITP." 42 CFR 441.301(c)(1), (2), and (3).

RESPONSE: The Department finds that the rule is sufficient as written. Access to information about activities in the community is an individual right, and any restriction to this right would need be documented in the ITP pursuant to N.J.A.C. 10:44C-3.6.

Federal Standards Statement

The requirements of the adopted amendments and repeal do not exceed those imposed by Federal law, specifically Home and Community Based Services regulations found at 42 CFR Parts 430, 431, 435, 436, 440, 441, and 447. Therefore, a Federal standards analysis is not required.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:44C-1.1 Purpose and scope

(a) The purpose of this chapter is to establish specific requirements for the provision of residential services to persons with head injuries who reside in group homes and supervised apartments.

(b) Group homes and supervised apartments designed specifically to meet the needs of individuals with developmental disabilities are licensed pursuant to N.J.A.C. 10:44A.

(c) Community care residences and owner-occupied living arrangements that are also community residences for individuals with developmental disabilities, are licensed pursuant to N.J.A.C. 10:44B.

(d) (No change.)

10:44C-1.3 Definitions

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

"Abuse" means wrongfully inflicting or allowing to be inflicted, physical abuse, sexual abuse, or verbal or psychological abuse or mistreatment by a caregiver upon a person served.

...
 “Advanced practice nurse,” also known as a nurse practitioner (see N.J.S.A. 45:11-46c), is defined at N.J.S.A. 45:11-23 and may, in addition to those tasks lawfully performed by a registered professional nurse, manage specific common deviations from wellness and stabilized long-term care illnesses by initiating laboratory and other diagnostic tests and prescribing or ordering certain medications, treatments, and devices (see N.J.S.A. 45:11-49).

...
 “Community agency” means an agency licensed by the Department to provide services to persons with head injuries.

“Community agency head” means the person responsible for the overall operation of the agency under contract with or licensed by the Department. This may be the licensee, owner, or executive director.

“Community residence for persons with head injuries” means a community residential facility licensed pursuant to N.J.S.A. 30:11B-1 et seq., providing food, shelter, personal guidance, and integration with the community, under such supervision as required, to not more than 15 persons with head injuries, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, supervised apartment living arrangements, and hostels. Such residences shall not be located on the grounds or immediately adjacent to public institutions serving a similar population. Such a residence shall not be considered a health care facility within the meaning of the “Health Care Facilities Planning Act,” P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.).

...
 “Direct support professional” means any licensee and any full time, part time, temporary employment services, or contract employee at a community residence for persons with head injuries present in the living or program area who work directly with the person served. For the purpose of this definition, this term does not include housekeepers, food service workers, maintenance workers, clerical staff, or volunteers.

...
 “Eviction” means the legal process of officially removing a tenant from the premises.

...
 “Full license” means the authorization to operate based upon substantial compliance with this chapter. A full license shall be effective for up to one year.

...
 “Group homes” means living arrangements operated in residences leased or owned by the licensee, which provide the opportunity for persons served to live together in a home, sharing in chores and the overall management of the residence. Staff in a group home provide supervision, training, and/or assistance in a variety of forms and intensity as required to assist the persons served as they move toward independence and integration with the community.

...
 “Individual treatment plan” (ITP) means a written plan of intervention and action developed by the transdisciplinary team in a person-centered planning process. It describes the methodologies, strategies, and programs that will be employed and monitored to provide habilitation or rehabilitation to enable persons served to acquire or restore functional skills to the highest possible level of performance, within a reasonable time period. The ITP shall also document barriers to implementation and goal achievement. The ITP shall be reviewed and modified on a regular and as-needed basis, but no less than annually. For a person who makes only specific services requests, the ITP is a service plan that addresses only those specific requests. The ITP may be appealed in accordance with licensee procedure.

...
 “Negative licensing action” means an action, which imposes a restriction on a licensee and may include suspension of admissions, issuance of a provisional license, a reduction in the licensed capacity, a denial of the license, a non-renewal of the license, a suspension of the license, or a revocation of the license.

...
 “Personal guidance” means the assistance provided to a person with head injury in activities of daily living and/or personal care because he or she routinely requires help completing such activities of daily living

and/or cannot direct someone to complete such activities when physical disabilities prevent self-completion; or there is a documented health or mental health problem requiring supervision of the person for the protection of the person or others.

...
 “Program description” means a document submitted to obtain a license from the Department. A program description includes a detailed description of services provided to persons with head injuries and staff coverage, and is reviewed as part of the licensing inspection process. The program description shall be amended to reflect major changes in the provision of services.

...
 “Provisional license” is a negative licensing action issued to prompt corrective actions in existing community residences. A provisional license shall be effective for less than one year.

...
 “Roommate” means the person with whom one shares a bedroom.

...
 “Supervised apartments” means apartments that are occupied by persons served and leased or owned by the licensee. Staff provide supervision, guidance, and training, as needed, in activities of daily living as defined by the needs and targeted future goals of the person served, in accordance with the requirements of this chapter. Up to four persons served may reside in a single apartment.

...
 “Transdisciplinary Team” (TDT) means a group that shall be comprised of the person served and all personnel directly involved in the person-centered planning process of defining the person’s capabilities and needs, in refining and meeting all of the person’s goals and objectives, and in the provision of care or supervision. The team shall also include, as needed, other significant persons such as employers and those disciplines and persons involved in the provision of care or supervision. Team membership shall represent a variety of disciplines, to the extent possible. The team members shall share their knowledge and expertise in order to facilitate the assessment, planning, and implementation of the person’s program. There shall be interaction and integration among the team members to ensure that the achievement of the individual’s goals is facilitated. Family members, peers, and advocates shall participate at the discretion of the person served or his or her legal guardian.

10:44C-1.4 Application for a license

(a) (No change.)

(b) No community agency licensed by the Department shall pay, or contract, for any agency head until the Department has determined that no criminal history record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police, that would disqualify the community agency head from such employment, pursuant to N.J.S.A. 30:6D-63 through 69 (criminal history background checks).

1. No prospective community agency employee or community agency head who refuses to consent to, or cooperate in, securing of a criminal history record background check shall be considered for employment or licensure.

2. (No change.)

3. When the agency head is not the owner or licensee, the owner(s) or licensee shall also comply with a criminal history background check.

(c) An application for licensure as an operator of a community residence for persons with head injuries shall be submitted to the Office of Licensing.

1. The application shall be composed of the following:

i. Identification of all owners that comprise the licensee;
 ii. A table of organization including titles, which shows reporting structure;

iii. Curriculum vitae for the applicant and executive leadership;

iv. Documentation of applicant’s history of service provision to persons with head injuries for a minimum of 24 months, including survey or audit results and plans of correction;

v. A description of the applicant's or executive leadership's experience in providing services to persons with head injuries that demonstrates compliance with N.J.A.C. 10:44C-2.5(a)1 and 2;

vi.-vii. (No change.)

viii. At least three professional references each, for the applicant and executive leadership;

ix. A record of penalties or fines assessed against the program(s) and its ownership relative to the operation of the program(s) by any national, state, county, or local agency or court of competent jurisdiction, survey results, and plans of correction, if any, resulting from accrediting authorities, that may reasonably be considered relevant to the safety of persons served in a program and the community in which it is located; and

x. An independent examination of the applicant's financial status, obtained from a certified public accountant, for the two most recent fiscal years, with the management letters.

(d) An application shall be considered complete when the application is filled out in its entirety and all requested information on the application has been provided, and compliance with (b) above, for the community agency head, has been determined.

1. If all required elements are not received within 45 days of the initial submission, the application may be denied, and the applicant shall be prohibited from re-applying for six months, unless the Department allows such resubmission for good cause. After the six-month period has elapsed, the applicant may submit to the Department a new application for licensure.

Recodify existing (d)-(g) as (e)-(h) (No change in text.)

(i)-(m) (No change.)

(n) Each community residence for persons with head injuries shall be subject to an annual on-site inspection by the Office of Licensing.

(o) Upon approval of the completed application, an applicant shall submit a procedure manual to the Office of Licensing, which shall be approved upon determination that it meets the requirements at N.J.A.C. 10:44C-2.2.

(p) Upon approval of the manual, the applicant shall submit job descriptions for each position included on the table of organization in the procedure manual, and which comply with the requirements set forth in this chapter, for review and approval.

(q) A program description shall be submitted to the Office of Licensing in the approved format for each proposed community residence.

10:44C-1.5 Requirements for initial licensure

(a) Upon approval of the program description, and upon approval of the licensee's policy and procedure manual, the Office of Licensing shall conduct an on-site initial inspection of the residence to determine that it will adequately provide for the health, safety, and welfare of the persons served.

(b) Prior to the issuance of an initial license, the following, at a minimum, shall be available:

1. Documentation which demonstrates compliance with all certificate of occupancy (CO), certificate of continued occupancy, temporary certificate of occupancy, or certificate of habitability requirements.

i. If the local enforcing authority does not have a process for issuing such a certificate, documentation of such shall be obtained.

2. Documentation of any required inspection by the fire official and registration with the Department of Community Affairs:

Recodify existing 2.-5. as 3.-6. (No change in text.)

7. Documentation from a licensed testing entity that any septic system is functioning adequately;

Recodify existing 6.-9. as 8.-11. (No change in text.)

(c) (No change.)

(d) The Department shall issue a full license, which is not transferable to any other person, corporation, agency, or address, effective from the date of the on-site inspection, upon compliance with (a) and (b) above.

1. (No change.)

(e)-(g) (No change.)

(h) Once issued, a license shall not be assignable or transferable, and shall be immediately void if the program ceases to operate, relocates, or its ownership changes.

10:44C-1.6 Renewal of a license

(a) Full licenses shall remain in effect, unless otherwise specified by the Office of Licensing by the issuance of a provisional license, a non-

renewal of license, suspension of license, or revocation of license. The renewal of a license shall be based upon the results of a re-inspection of the residence.

1. As applicable, the Office of Licensing shall provide an authorization to operate upon the request of the licensee, under exigent circumstances.

10:44C-1.7 Plan of correction

(a) The licensee shall submit a plan of correction regarding deficiencies cited in the inspection report within 30 days or, in accordance with a shorter time frame as established by the Office of Licensing.

1. A shorter time frame shall be established by the Office of Licensing in those instances where prompt remediation of a deficiency is required in order to protect the health, safety, welfare, and rights of persons served.

(b) Following receipt of the plan of correction, the Office of Licensing shall conduct an unannounced on-site review to verify the corrective action taken for all deficiencies that pose a risk to the life and safety of the residents.

1. Following an on-site review, the findings of the Office of Licensing regarding the licensee's plan of correction shall be provided to the licensee. These findings shall indicate whether each deficiency is corrected, partially corrected, or not corrected, or whether further review is required by the Office of Licensing.

i. Should there be continuing deficiencies, or if new deficiencies are noted that document substantial or willful noncompliance, the findings shall indicate that a second plan of correction is required or that the Office of Licensing may impose a negative licensing action.

2. If a second plan of correction is required by the Office of Licensing, the licensee shall submit the plan of correction within the time frame specified by the Office of Licensing.

(c) Following receipt of the second plan of correction, the Office of Licensing may conduct an on-site review to verify the corrective action taken.

1. Subsequent to an on-site review, the findings of the Office of Licensing regarding the licensee's second plan of correction shall be provided to the licensee. These findings shall indicate whether or not each deficiency is corrected.

i. Should there be continuing deficiencies that the licensee has stated in the plan of correction had been corrected, or if other deficiencies are noted that jeopardize the health, safety, welfare, and rights of the persons served, or which document substantial or willful noncompliance, the Office of Licensing shall impose a negative licensing action.

(d) The Office of Licensing may, when process or systemic problems are identified, require the licensee to submit an action plan and results of the implementation of the action plan, as required at N.J.A.C. 10:44C-2.2(b)23v.

10:44C-1.8 Negative licensing action

(a) The Office of Licensing may suspend admissions to a residence, reduce the capacity of a residence, deny a license, issue a provisional license, suspend a license, refuse to renew a license, or revoke a license for substantial or willful noncompliance.

(b) If the Office of Licensing denies, revokes, or refuses to renew a license, the licensee shall be prohibited from re-applying for a license for one year from the date of license revocation or non-renewal. After the one-year period has elapsed, the licensee may submit to the Office of Licensing a new application for a license.

1. When a negative licensing action is based upon falsification, willful noncompliance, criminal activity by the applicant, licensee or executive leadership, or when persons have suffered physical injury or emotional harm or distress due to the applicant's, licensee's, or executive leadership's actions or failure to act, the Department may refuse to reinstate any license and/or accept any subsequent application.

(c)-(e) (No change.)

10:44C-1.9 Administrative hearings

(a)-(b) (No change.)

(c) If it is determined that the occupants of a residence are at risk, the Department shall take necessary action to assure that the risk is eliminated, including, but not limited to:

1. Removing the persons served from the residence;

2. Placing staff approved by the Department at the residence to ensure the safety of the persons served; or

3. The appointment of an independent monitor by the Department, paid for by the licensee.

10:44C-1.12 Voluntary closure

(a) A licensee operating a community residence for persons with head injuries governed by this chapter shall give at least 60 days written notice to the Office of Licensing of any planned closure.

1. (No change.)

SUBCHAPTER 2. ORGANIZATION AND ADMINISTRATION

10:44C-2.1 General requirements

(a) The purposes of the licensee's organization and a description of the services that it provides shall be made available to persons served, parents, guardians, advocates, and the general public. This information shall describe, in general terms, who is served, the services provided, and the goals of the licensee's organization.

(b) The licensee shall keep the following on file:

1.-3. (No change.)

4. Copies of all current licenses.

i. A copy of the current license shall also be kept on file in each residence;

5.-7. (No change.)

(c) (No change.)

(d) A licensee having for-profit status shall have a board of directors that meets the following criteria:

1. Procedures for the orientation of new members to the operations of the organization;

2. Policies to guard against the development of a conflict of interest between a member of the board and the organization;

3. An explanation of the board's committee structure, if any, including such subordinate groups, as may be employed to carry out the board's responsibilities;

4. Documentation that board meetings are held at least three times a year.

i. Minutes shall be kept of each meeting and shall be available for review; and

5. Provisions to assure the inclusion of persons served on the board.

(e) A licensee having for-profit status without a board of directors shall institute and maintain such a board, in accordance with (d)1 through 5 above by *[(12 months from the effective date of this rulemaking)]* ***January 3, 2024***.

(f)-(i) (No change.)

(j) A list of the current members of the board of trustees or board of directors, to include names, addresses, and occupations, shall be available for review. Any change to the members of the board of trustees, board of directors, or agency head shall be immediately reported to the Office of Licensing.

(k)-(m) (No change.)

10:44C-2.2 Development and maintenance of procedure manual

(a) (No change.)

(b) The licensee shall maintain a procedure manual containing the following documents and/or procedures:

1.-2. (No change.)

3. Administrative policies and procedures identified at N.J.A.C.

10:44C-2.1 including:

i. Procedures for the orientation of new board members to the operations of the organization;

ii.-iv. (No change.)

4. A procedure for implementing a plan to deal with major emergencies requiring evacuation from the residence, including, but not limited to, a fire or a gas leak.

i. The procedure shall also address emergencies where evacuation may not be required, such as when the indoor air temperature is below 68 degrees Fahrenheit or above 82 degrees Fahrenheit for four consecutive hours;

5.-6. (No change.)

7. A procedure for reporting all unusual incidents including, but not limited to:

i. (No change.)

ii. A written statement regarding the obligation to report each allegation as required pursuant to N.J.S.A. 9:6-8.10 and 52:27G-1 et seq., and Department policy;

8.-9. (No change.)

10. A New Employee Orientation Checklist, which shall include, at a minimum, all requirements at N.J.A.C. 10:44C-2.6(a)1 through 8.

11.-13. (No change.)

14. A procedure for an internal communication log to document only critical information and the necessary follow-up action taken, which shall be dated and shall include the full name and title of the person making the entry.

15.-17. (No change.)

18. A written policy governing the use of psychotropic medication that complies with the requirements at N.J.A.C. 10:44C-5.3;

19. A procedure for assuring compliance with the requirements for testing employees for controlled dangerous substances, as set forth at N.J.S.A. 30:6D-9.5 and 9.6;

20. Written procedures for the exchange of contact information of parents, family members who are actively involved in ensuring the person's welfare, or guardians, as applicable, as set forth at N.J.S.A. 30:6D-9.5 and 9.6;

21. A procedure for assuring that no employee is included on the Department of Children and Families' child abuse registry, as set forth pursuant to N.J.S.A. 30:6D-73 et seq., and 9:6-8.10f;

22. A procedure to address the use of surveillance cameras in the common areas of the residences, if applicable; and

23. A continuous quality improvement system to identify opportunities to improve services and/or supports and to resolve identified problems. The system shall include, at a minimum:

i. A written plan to identify how data is collected, analyzed, and utilized to determine patterns that identify process or systemic problems requiring further in-depth review;

ii. Input from a variety of sources, including persons served, family members, and others;

iii.-iv. (No change.)

v. An action plan based upon an analysis at (b)23i through iv above.

10:44C-2.4 Personnel

(a) Personnel practices shall comply with all applicable Federal, State, and local laws, ordinances, rules, and regulations pertaining to employment, including civil rights, retirement plans, or social security, minimum wages, hours, and worker's compensation.

(b) The licensee shall ensure that no applicant or employee comes into direct contact with persons served until they have been fingerprinted and determined by the Department of Human Services to be not disqualified, in accordance with N.J.S.A. 30:6D-63 through 69 (criminal history background checks).

1. A licensee shall not employ any person who has been adjudged civilly or criminally liable for abuse of a person served by the Department or placed in a community residence regulated pursuant to this chapter.

2. Criminal history record background checks shall be conducted at least once every two years for a community agency's head and its employees.

3. Any individual who is required to undergo a criminal history record background check and refuses to consent to, or cooperate in, the securing of a criminal history record background check, shall be immediately removed from the person's position and the person's employment shall be terminated.

(c) All employees who may come into contact with persons served shall be subject to and comply with the requirements for drug testing for controlled dangerous substances, in accordance with N.J.S.A. 30:6D-9.5 and 9.6.

(d) Prior to hiring any staff member or utilizing a volunteer who provides services to persons served on a planned basis, the licensee shall secure and maintain:

1. A signed application for employment from each applicant, indicating the applicant's name, address, and telephone number, education, and disclosure of the presence or absence of criminal convictions.

2. A minimum of two documented references.

i. The licensee shall check a minimum of the two most recent work references or, if not available, a minimum of two personal references.

ii. The licensee shall document all reference checks and maintain such reference checks in the applicant's personnel record.

iii. The staff person conducting the reference check shall sign and date the reference check.

iv. References from family members of the applicant shall not be accepted.

3. A current job description which, at a minimum, shall include the following:

i. A position statement that documents overall job responsibilities, including the requirement that the employee cooperate with the licensee and Department staff in any inspection or investigation;

ii. A list of specific duties;

iii. The minimum qualifications;

iv. The positions supervised, if applicable;

v. The reporting supervisor, who shall be a paid staff member; and

vi. The requirements for checks of criminal background and drug testing.

(e) Upon employment, the direct support professional shall submit a written statement from a licensed physician or advanced practice nurse indicating that he or she is in good health. Such statement shall be based on a medical examination conducted within the 12 months immediately preceding the direct support professional's starting date with the licensee.

(f) Within one year prior to or upon beginning work each direct support professional shall take a Mantoux tuberculin skin test with five tuberculin units (TU) of PPD tuberculin or an IGRA blood test.

1. The direct support professional member shall submit to the licensee written documentation of the results of any testing or certification.

2. If the direct support professional member has had a previous positive Mantoux tuberculin skin test, or if the Mantoux tuberculin skin test is significant (10 or more millimeters (mm) of induration), or if the IGRA blood test is positive, the staff member shall submit to the licensee a statement from his or her physician or advanced practice nurse certifying that he or she poses no threat of tuberculosis contagion before he or she is allowed to come in contact with persons served and other staff.

3. If the Mantoux tuberculin skin test is insignificant (zero to nine mm of induration), or the IGRA blood test is negative, no further testing shall be required.

i. The Office of Licensing or the licensee may, at any time, require a direct support professional to retake the Mantoux tuberculin skin test, if there is a reason to believe or suspect that the staff member may have contracted tuberculosis or if the State Department of Health recommends re-testing.

4. The licensee shall prohibit any direct support professional who fails to submit satisfactory results from a medical practitioner from having contact with persons served or other staff.

5. (No change.)

(g) The licensee shall maintain on file the following for all direct support professionals:

1.-2. (No change.)

(h) Personnel and other records shall contain, at a minimum:

1.-5. (No change.)

6. Results of the criminal background check and of any drug testing;

7.-8. (No change.)

10:44C-2.5 Minimum staff qualifications

(a)-(e) (No change.)

(f) Direct support professionals shall be at least 18 years of age and shall have a high school diploma or equivalent.

(g) Direct support professionals shall have the ability to communicate with the persons served with whom they are working.

(h) Direct support professionals shall be capable of providing any direct assistance required by persons served with whom they are working.

(i)-(k) (No change.)

10:44C-2.6 Orientation

(a) Prior to working with persons served, all direct support professionals shall receive an orientation to acquaint them with:

1.-3. (No change.)

4. Emergency procedures as identified in the procedure manual; for example, the emergency evacuation plan, the operation of the fire alarm system, emergency medical treatment, emergency coverage and on-call procedures, and the use of fire extinguishers;

5. (No change.)

6. The appropriate job description and the personnel policies of the organization, including its drug testing policies;

7. Training in life-threatening emergencies through a curriculum developed by the Division; and

8. Training pursuant to N.J.S.A. 30:6D-9.5 and 9.6.

(b) (No change.)

10:44C-2.7 Staff training

(a) Basic staff training programs shall either be offered by the Department, or provided or obtained by the licensee after obtaining approval from the Department, to ensure staff competency. Within 90 days of employment, each employee shall successfully complete training approved by the Office of Licensing that shall address, at a minimum:

1.-3. (No change.)

4. First Aid Training provided by a training entity that meets the current Emergency Cardiovascular Care (ECC) guidelines (and have a valid certificate on file); and

5. Cardio-pulmonary resuscitation training provided by a training entity that meets the current Emergency Cardiovascular Care (ECC) guidelines (and have a valid certificate on file).

(b) (No change.)

(c) Specialized training programs, identified as necessary during the application process or subsequently, shall include, but not be limited to:

1. (No change.)

2. Mobility procedures and the safe use of mobility devices, including those necessary for transport.

i. Persons who work with persons served who require assistance to use any other device or technique shall receive specific training in procedures and techniques for the use of such adaptive devices;

3.-4. (No change.)

(d) All staff who work with persons served who have specialized needs shall receive training in such specialized training programs within 90 days of employment.

1. (No change.)

(e)-(g) (No change.)

10:44C-2.8 Staff coverage

(a)-(b) (No change.)

(c) A description of the staff coverage and the staff schedule shall be initially approved as part of the program description and reviewed at each inspection.

(d)-(e) (No change.)

(f) A written staff schedule, for at least a two-week period, shall be available for review at each residence. The staff member in-charge shall be designated on the schedule for each shift.

1. The licensee shall designate specific duties and responsibilities for the in-charge staff person.

i. No temporary employment agency staff shall at any time be designated or utilized as "in-charge" in the absence of completion of all training required pursuant to N.J.A.C. 10:44C-2.7, and a written policy stipulating the licensee's assumption of responsibility and liability of said employees' actions.

2. (No change.)

(g) (No change.)

(h) The licensee shall assure that, if all staff have not completed necessary specialized training, in accordance with N.J.A.C. 10:44C-2.7(c)1, 2, 3, and 4, each required specialized training for that site has been completed by at least one person on each shift.

(i) (No change.)

10:44C-2.9 Records: persons served

(a)-(c) (No change.)

(d) The record of each person served shall include:

1.-9. (No change.)

10. An inventory of valuable personal possessions, including, but not limited to: personal mementos, adaptive devices, eye glasses, hearing aids,

durable medical equipment, electronic equipment and accessories, jewelry, clothing, and personal furniture; and

11. (No change.)
- (e) (No change.)

10:44C-2.10 Funds and financial records: persons served

- (a)-(e) (No change.)

(f) If a person's funds are entrusted to an agency, moneys received by a person served in excess of \$200.00 shall be placed in an interest bearing account unless otherwise determined by the TDT.

1. (No change.)
2. The licensee may keep up to \$200.00 of a person's money in a non-interest bearing account or petty cash fund, to be readily available for current expenditures, providing it is kept for safekeeping in an account separate from all other funds for the residence.
 - i. (No change.)
 - (g)-(j) (No change.)

SUBCHAPTER 3. ADVOCACY AND RIGHTS

10:44C-3.2 Rules governing a residence

(a) The licensee may establish reasonable rules that govern the conduct of persons in their residences, including, but not limited to, rules regarding smoking and pets, provided:

1. The rules are commensurate with the abilities and rights of the persons served, at a minimum, as specified at N.J.A.C. 10:44C-3.4(b);
- 2.-4. (No change.)
- (b)-(d) (No change.)

10:44C-3.3 Self-advocacy

(a) The licensee shall identify persons served who want a personal advocate, who wish to participate in house meetings, or who wish to participate in a self-advocacy group.

1. Persons served who wish to participate in house meetings shall be included in the process, scheduling, and agenda as much as possible, with the assistance of staff.

- (b)-(c) (No change.)

10:44C-3.4 Enumeration of rights

- (a) (No change.)

(b) Each person served shall further be afforded the following rights and freedom while living in a community residence for persons with head injuries, unless otherwise determined by a documented person-centered planning process:

1. (No change.)
 2. Privacy, dignity, respect, and freedom from coercion;
 - 3.-7. (No change.)
 8. Make or receive private telephone calls at any time;
 9. Have a healthy diet and access to food at any time;
 10. (No change.)
 11. Have visitors of his or her choice at any time;
 12. Competitive integrated employment or work with pay that is a commensurate wage or otherwise appropriate for the type for work he or she does and how well he or she does it;
 - 13.-22. (No change.)
 23. Be free from isolation or physical restraint unless in an emergency;
 24. Be free from physical punishment, abuse, neglect, and exploitation;
 25. Be permitted to rise and retire at times of their choosing;
 26. Be permitted to have a choice in the selection of their roommate; and
 27. Have access to information about and be able to participate in activities in the greater community, scheduled and unscheduled.
- (c)-(d) (No change.)

10:44C-3.6 Restriction or modification of rights

(a) If the exercise of the rights of the person served is restricted or modified, the ITP shall document each restriction or modification.

1. No restriction or modification of rights shall be implemented until it is reviewed and approved by the TDT through a person-centered planning process.

- 2.-3. (No change.)
- (b)-(d) (No change.)

SUBCHAPTER 4. SERVICE DELIVERY/REHABILITATION/HABILITATION

10:44C-4.1 Pre-admission and admission

(a) The licensee shall have written criteria for admission to a particular program, including temporary (respite) placements. These criteria shall include, at a minimum:

- 1.-6. (No change.)
7. Fees charged by the licensee; and
8. A statement affording all persons served, the right to have a choice in the selection of their roommate.

- (b)-(d) (No change.)

(e) Upon admission, where applicable, a written lease agreement shall be signed by the person served, the guardian, as applicable, and the landlord, which shall provide the consumer with all the rights and responsibilities accorded by New Jersey tenant and landlord law and shall be comparable to leases for all other persons in the State.

1. In the absence of a formal lease agreement, a consumer residency agreement shall be signed by the consumer, and guardian, as applicable, that shall provide the consumer the same protections against unlawful evictions as would otherwise be provided by a signed lease agreement. This consumer residency agreement shall provide protections addressing eviction processes and appeals comparable to existing New Jersey landlord and tenant law and shall afford the same rights to appeal an eviction as all other persons in the State.

10:44C-4.2 Individual treatment plan (ITP)

- (a) (No change.)

(b) At service initiation, evaluations covering the areas at (b)1 through 11 below shall be obtained within 45 days.

- 1.-11. (No change.)
- (c)-(d) (No change.)
- (e) The goals and objectives shall be written in measurable and observable terms and progress reported monthly.
- (f) (No change.)

10:44C-4.3 Monitoring and review of Individual Treatment Plans

- (a) (No change.)

Recodify existing (c)-(f) as (b)-(e) (No change in text.)

- (f) The TDT shall meet at least annually to review and update the ITP.

10:44C-4.4 Transfer or discharge

(a) Should the licensee and the placing agency determine that a residence is no longer suitable or no longer meets the needs of a person served, the person shall not be maintained at that residence, provided substantive evidence is given to the person served and his or her guardian or advocate, as appropriate, and the placing agency.

1. The person and his or her legal guardian or advocate shall have the right to appeal the licensee's decision, in accordance with N.J.A.C. 10:44C-2.2(b)13.

- (b)-(d) (No change.)

SUBCHAPTER 5. HEALTH AND SAFETY

10:44C-5.2 Prescription medication

- (a)-(f) (No change.)

(g) Any new medication or change in medication order by the physician or advanced practice nurse, as well as new and discontinued prescriptions, shall be immediately noted on the current written medication record by staff consistent with the licensee's procedure.

- 1.-2. (No change.)
- (h) (No change.)
- (i) The licensee or designee shall supervise the use and storage of prescription medication, ensuring that:

- 1.-3. (No change.)

4. Prescribed medication for each person served shall be separated within the storage areas, as follows:

- i.-ii. (No change.)
- 5.-8. (No change.)
- (j)-(k) (No change.)

10:44C-5.5 Food

- (a)-(b) (No change.)
- (c) Food shall be readily accessible to persons served unless limitations have been approved through a person-centered planning process documented in the person's record.
- (d)-(i) (No change.)
- (j) At a minimum, there shall be at least a three-day supply of food at all times.

10:44C-5.6 Clothing

- (a) Each person served shall have an adequate supply of clean and well-fitting clothing appropriate to age, gender identity, individual needs and preferences, community standards, and season and weather conditions.
- (b)-(d) (No change.)

10:44C-5.7 Vehicle safety

- (a)-(b) (No change.)
- (c) An agency vehicle shall be available at all times to provide transportation for persons served, as needed, and desired for community integration.
 - 1. Vehicles used to transport persons served in wheelchairs shall be fully accessible and include all required safety mechanisms, which shall be maintained in working order and utilized at all times.

SUBCHAPTER 6. FIRE SAFETY AND PHYSICAL ENVIRONMENT

10:44C-6.1 Fire safety

- (a) Each community residence operated by the licensee shall be registered with the Department of Community Affairs (DCA), Bureau of Fire Code Enforcement, Life Hazard Use Registration Unit, as a life hazard use and shall be subject to inspection, as required by the inspection schedule contained in the uniform fire safety code, consistent with N.J.S.A. 52:27D-192 et seq., and the rules promulgated thereunder.
 - 1. (No change.)
 - (b)-(c) (No change.)

10:44C-6.2 Emergency evacuation plans

- (a) The licensee shall design an emergency evacuation plan for each residence, in accordance with the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., and the individual characteristics of the home.
 - 1. The plan shall be further developed by evaluating each person's ability to evacuate the residence in three minutes or less, according to the following risk factors:
 - i. The person's ability to solve problems;
 - ii. The person's compliance, including any behavioral factors that adversely affect the person's ability to evacuate; and
 - iii. Medical factors, including physical disabilities, which adversely affect the person's ability to evacuate.
 - 2. The plan shall incorporate the following elements:
 - i. A general description of the building;
 - ii. Identification of all exits that lead directly to the outside;
 - iii. Identification of the point(s) of safety, a designated meeting spot at which the occupants assemble after evacuating the premises;
 - iv. Any special needs that the service recipients have and the assistance that will be necessary to help them evacuate within three minutes, based upon the individual emergency evacuation assessments; and
 - v. A single plan of prioritized and sequential actions required to promptly evacuate everyone from the building within three minutes.
 - (b) The emergency evacuation plan shall be reviewed at least annually and revised:
 - 1.-3. (No change.)
 - (c)-(e) (No change.)

10:44C-6.3 Fire drills

- (a) Fire drills, supervised by staff, shall be performed at a minimum of once per month.
 - 1. Each shift shall perform at least four fire drills a year, four of which shall be during normal sleeping hours for the residents of the home.
 - 2.-4. (No change.)
 - (b) Written records shall be maintained, including the following information:

- 1. (No change.)
- 2. The location of the simulated fire;
- 3.-5. (No change.)
- (c)-(d) (No change.)

10:44C-6.5 Fire extinguishers

- (a) (No change.)
- (b) Fire extinguishers, battery-operated smoke detectors, and stand-alone carbon monoxide detectors shall be checked monthly by staff to ensure all extinguishers and smoke detectors are fully charged and operable, and documentation maintained.
 - 1. (No change.)
 - (c) (No change.)

10:44C-6.6 General home requirements

- (a) For residences housing persons served with physical disabilities, the licensee shall make accommodations to ensure maximum physical accessibility feasible for entrance to and movement within the residence based upon personal characteristics.
 - 1. Any necessary modifications shall conform to the requirements contained in the Barrier Free Subcode, N.J.A.C. 5:23-3.14(b)10, which includes the accessibility regulations (see N.J.A.C. 5:23-7.1 (Barrier Free Subcode)).
 - 2.-3. (No change.)
 - (b)-(k) (No change.)

10:44C-6.9 Heat sources

- (a) (No change.)
- (b) Every home shall have heating facilities that are properly installed, maintained in good and safe working condition, and capable of maintaining all habitable rooms at a temperature of 68 degrees Fahrenheit (20 degrees Celsius) when the outdoor temperature is zero degrees Fahrenheit (-18 degrees Celsius).
- (c) (No change.)

10:44C-6.13 Bedrooms

- (a)-(h) (No change.)
- (i) Every bedroom shall have an operable door for privacy, equipped with standard hardware that provides a privacy lock which can be readily opened from the outside in an emergency, and with only appropriate staff having access to the key, as needed. Hooks and eyes, bolts, bars, and other similar devices shall not be used on bedroom doors.

10:44C-6.14 Bathrooms

- (a)-(c) (No change.)
- (d) Bathroom doors shall be equipped with standard hardware which provides a privacy lock and which can be readily opened from the outside in an emergency and with only appropriate staff having access to the key, as needed. Hooks and eyes, bolts, bars, and other similar devices shall not be used on bathroom doors.

10:44C-6.15 Kitchens

- (a)-(c) (No change.)
- (d) Refrigeration and storage of food shall be provided at not more than 45 degrees Fahrenheit (four degrees Celsius). Freezer compartments shall operate at not more than zero degrees Fahrenheit (-18 degrees Celsius).
- (e) Kitchen appliances shall, at a minimum, include a refrigerator, freezer, (or refrigerator with a freezer compartment), an oven, and a cooktop maintained in good condition.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Readoption Administration

Readoption: N.J.A.C. 10:49

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