

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Planned Real Estate Development Full Disclosure Act Regulations

Proposed Amendments: N.J.A.C. 5:26-8.9, 8.11, 8.12, and 8.13

Authorized By: Lieutenant Governor Sheila Y. Oliver,
Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 45:22A-21.

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

Proposal Number: PRN 2022-087.

Submit written comments by August 20, 2022, to:

Geraldine Callahan
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625
Fax No. (609) 984-6696
geraldine.callahan@dca.nj.gov

The agency proposal follows:

Summary

On October 1, 2021, the Department of Community Affairs (Department) received a petition for rulemaking from the Community Associations Institute—New Jersey Chapter, Inc. (CAI), seeking amendments to, and repeal of, rules at N.J.A.C. 5:26-8, Community Associations. A notice of action on petition for rulemaking was published in the New Jersey Register on March 7, 2022, at 54 N.J.R. 452(a).

Pursuant to the notice of action, the Department is undertaking this rulemaking to update the Planned Real Estate Development Full Disclosure Act Regulations (PRED) to implement certain amendments, as follows:

1. At N.J.A.C. 5:26-8.9(h)2, amendments recognize that public tallying is not possible when an association utilizes electronic voting. The requirements maintain that the results of the electronic election be open to inspection consistent with the requirements for physical ballots.

2. At N.J.A.C. 5:26-8.9(j), amendments clarify that members serving on the executive board of a master or umbrella association must also serve on the executive board of the independent association. This is consistent with the requirements set forth at P.L. 2017, c. 106, which amended the Planned Real Estate Full Disclosure Act, to enhance election rights and participation in common interest communities.

3. At N.J.A.C. 5:26-8.9(l)iv, amendments are proposed for consistency with P.L. 2017, c. 106, by requiring that, unless prohibited by

the bylaws of the association, for associations with 50 or more units, the notice of election must include a proxy and an absentee ballot.

4. At N.J.A.C. 5:26-8.9(l)v, amendments allow associations that provide for more than five days prior to an election for a resident to rectify their standing to continue to do so.

5. At N.J.A.C. 5:26-8.11(c)3, amendments clarify that the executive board may appoint a member to the board to fill a vacancy created by resignation, death, or failure to maintain qualification to be an executive board member.

6. At N.J.A.C. 5:26-8.11(d), amendments clarify that the submission of a petition signed by a minimum of 51 percent of the association members removes a board member.

7. At N.J.A.C. 5:26-8.12(b)3, amendments exempt cancelled meetings from the requirement to notify residents of a change in the open meeting schedule seven days prior to the scheduled date.

8. At N.J.A.C. 5:26-8.12(f)6, amendments change the requirement for electronically recorded meetings by stating that the electronic version of the meeting need only be available to association members for 30 days from the date the written minutes are approved. This is intended to ensure transparency until such time as the minutes are available without requiring an indefinite retention of electronic meeting records once the minutes have been approved.

9. At N.J.A.C. 5:26-8.13(b), amendments revise the requirements to record bylaw amendments with the county clerk's office. Specifically, the amendments state that associations that are not required to file with the county clerk's office are not required to record its bylaws in the county clerk's office. Instead, these associations must provide a full set of all validly adopted bylaws and any amendments to owners at the time of closing. The section is further amended for clarity to ensure that all associations maintain a copy of the bylaws that shall be available to any owner or designee, upon request.

10. At N.J.A.C. 5:26-8.13(g), amendments are made throughout to include "or annual meeting" in each instance where "special meetings" are referenced. This is done for clarity and consistency with P.L. 2017, c. 106.

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

Social Impact

As the proposed amendments improve Subchapter 8 of the PRED regulations by aligning with the statute and clarifying current requirements, they are expected to have a positive social impact for all residents of common interest communities.

Economic Impact

These proposed amendments are not expected to have any major economic impact. The majority of these changes are made for clarity or consistency.

Federal Standards Statement

No Federal standards analysis is required because the proposed amendments are not being proposed under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or any State statute that incorporates or refers to any Federal law, standard, or requirement.

Jobs Impact

The proposed amendments are not expected to have an impact on the generation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would impact the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments would clarify the rights of residents living in community associations. The intent of this rulemaking is to provide residents with access to fair and open elections in the association. As community associations are not considered to be a type of business, no regulatory flexibility analysis is required for this rulemaking.

Housing Affordability Impact Analysis

It is not expected that the proposed amendments, which clarify the requirements for elections in common interest communities, will have any impact on the affordability of, or average costs associated with housing.

Smart Growth Development Impact Analysis

It is not expected that the proposed amendments will have any impact upon housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed amendments concern clarifying the requirements for elections in common interest communities.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 8. COMMUNITY ASSOCIATIONS.

5:26-8.9 Executive board elections

(a)-(g) (No change.)

(h) The association shall verify the eligibility of the voters and count the ballots in a non-fraudulent and verifiable way.

1. (No change.)

2. All ballot tallying shall occur publicly, and the ballots shall be open to inspection by any member of the association for a period of 90 days from the date of the election.

i. Electronic voting undertaken pursuant to (h)4 below shall not require public tallying as results are immediately available. The results of the electronic election shall be made available for public review and shall be open to inspection by any member of the association for a period of 90 days from the date of the election.

3.-4. (No change.)

(i) (No change.)

(j) When independent associations with residential units share facilities or obligations that require them to be members of a master or umbrella association board to oversee those facilities or obligations, the members of the independent association shall, unless the independent associations' governing documents provide for such association to appoint a member to the master or umbrella association, elect representatives to the master or umbrella association in accordance with this section, **provided that the members of the executive board of the master or umbrella association also serve as executive members of the independent association's board.**

(k) (No change.)

(l) Associations with 50 or more units shall be governed by (a) through (j) above and by the following:

1. Any election meeting held by the executive board shall require both a notice calling for nominations and a notice of election.

i.-iii. (No change.)

iv. The election meeting notice shall contain a copy of the ballot.

(1) [If the bylaws permit,] **Unless prohibited by the bylaws of the association, the notice shall include a proxy ballot and an absentee ballot with instructions for returning the ballot. [If the bylaws provide for a proxy ballot, an absentee ballot shall also be included.]**

(2)-(6) (No change.)

v. A minimum of 30 days prior to the election, the association shall notify residents who are not in good standing. Such notice shall state the reason why the resident is not in good standing. The notice shall state that residents have the right to contest the board's determination by requesting Alternative Dispute Resolution. Residents shall be allowed to rectify their standing up until five business days prior to the election date, **unless the association allows for more time.**

5:26-8.11 Appointments, removals, and executive board vacancies

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

(c) In associations with 50 or more units, the board shall not appoint, and a designee shall not accept, an executive position through appointment, except as provided [in] **at** (c)3 below.

1.-2. (No change.)

3. This subsection shall not prevent the [association] **board** from filling a vacancy in the executive board created by resignation, death, or failure to maintain reasonable qualification to be an executive board member, including maintaining good standing, or following a vote in favor of removal open to all association members in accordance with the terms of the bylaws. Any executive board position that has been filled by an appointee in such instances shall be subject to election within a year following such appointment.

(d) Association members may [initiate removal of] **remove** a board member who was elected by the unit owners by submitting to the board a petition signed by **a minimum of** 51 percent of association members for removal of that board member.

1.-2. (No change.)

(e) (No change.)

5:26-8.12 Open meetings

(a) (No change.)

(b) The association shall hold an annual meeting. Within seven days following the annual association meeting, the association shall post, and maintain posted throughout the year, an open meeting schedule of the executive board.

1.-2. (No change.)

3. [Any] **Notwithstanding a meeting cancellation pursuant to (h) below, any** changes to the posted open meeting schedule shall be made at least seven days prior to the scheduled date and posted and maintained in the same manner as the original schedule.

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

(f) Minutes for the open sessions of meetings shall be taken for each meeting.

1.-5. (No change.)

6. If a meeting is recorded electronically, a written record shall be taken of the matters addressed and the matters voted on. Association members shall have access to the electronic recording **for 30 days from the date the written minutes are approved**, as well as the written record, including the right to make a copy of electronic or written records.

(g)-(h) (No change.)

5:26-8.13 Amendments to the bylaws

(a) (No change.)

(b) No amendments to the bylaws shall be effective until they are recorded in the same county Clerk's Office as the existing bylaws.

1. The amendments to the bylaws shall be recorded in the same county Clerk's Office as the existing bylaws in a timely manner. **The association shall maintain a record of the filing, which shall be available to any owner or designee of an owner, upon request.**

[2. In order to enforce the bylaws and any amendments thereto, any association that has not previously recorded its bylaws, shall record the

bylaws and any amendments in the Clerk’s Office of the county in which the property is located.

3. The association shall maintain a record of the filing, which shall be available to any owner, or designee, upon request.]

2. An association that is not required to file bylaws with the county clerk’s office shall not be required to record its bylaws in the county clerk’s office. Such an association shall provide a full set of all validly adopted bylaws and any amendments to owners at the time of closing, and a copy of the bylaws shall be available to any owner or designee of an owner upon request.

(c)-(f) (No change.)

(g) If an insufficient number of ballots or proxies are received at the special meeting **or annual meeting** to determine whether the proposed amendment has been approved or rejected, then the meeting shall be adjourned for 30 days or longer, as approved by the association membership.

1. (No change.)

2. The period between the original special meeting **or annual meeting** and the next special meeting for the amendments to the bylaws shall not be longer than 11 months from the date the notice of the meeting was sent.

3. If the proxies or ballots received prior to the extension date are valid under the bylaws, then they remain valid for the upcoming special meeting **or annual meeting**.

(h)-(j) (No change.)

HUMAN SERVICES

(a)

OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY

Community Residences for Individuals with Developmental Disabilities

Proposed Amendments: N.J.A.C. 10:44A-1.1, 1.3, 1.4, 1.9, 1.10, 1.11, 1.12, 2.1 through 2.6, 2.9, 2.10, 3, 4.1, 4.2, 5.1, 5.2, 5.3, 5.4, 5.5, 5.7, 5.8, 6.1 through 6.10, and 6.12 through 6.17

Proposed Repeals and New Rules: N.J.A.C. 10:44A-1.5, 1.6, 1.7, 1.8, 2.7, 2.8, 4.3, and 5.6

Proposed Repeal: N.J.A.C. 10:44A Appendix

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

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

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

Proposal Number: PRN 2022-083.

Submit comments in writing by August 20, 2022, to:

Douglas Swan
Office of Program Integrity and Accountability
Department of Human Services
PO Box 700
Trenton, New Jersey 08625-0700
Fax: (609) 341-2451
Email: doug.swan@dhs.nj.gov

The agency proposal follows.

Summary

The Department of Human Services (Department) is proposing amendments, repeals, and new rules to comply with the Department’s Fee-for-Service initiative, the Centers for Medicare and Medicaid Services’ guidelines for funding, Danielle’s Law, P.L. 2003, c. 191 (N.J.S.A. 30:6D-5.1—5.6), and Stephen Komninos’ Law, P.L. 2017, c. 238 (N.J.S.A. 30:6D-9.1 et seq., 30:6D-5.4, and 30:6D-74 et seq.). The notice of proposal constitutes the general physical and program requirements for community residences, also known as group homes,

supervised apartments, or supported living, which are licensed by the Department to serve individuals with developmental disabilities. The rules set minimum requirements in the areas of general provisions and licensing procedures, organization and administration, advocacy and rights, service delivery/habitation, health and safety, and fire safety and physical environment. This rulemaking is necessary to implement the Department’s statutory mandate to license community residences for individuals with developmental disabilities. The Department has reviewed the rulemaking and has determined that it is adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were promulgated. The Department will notify agencies and organizations representing the regulated community of this rulemaking.

Throughout the chapter, every reference to the “licensing agency” will be changed to the “Office of Licensing”, and “direct service staff” will be changed to “direct support professionals.”

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 10:44A-1.1 Purpose and Scope

This section defines the purpose and scope of the chapter. Amendments at subsection (b) are proposed to limit the scope of the section to residences that are provider-managed, as opposed to those that are considered own home settings and/or under the Supports Program. Proposed new subsection (d) is proposed to clarify that community residences for persons with head injuries are regulated under a separate chapter. Lastly, proposed recodified subsection (e) updates the terminology from “interdisciplinary team” to “planning team.”

N.J.A.C. 10:44A-1.3 Definitions

This section sets forth the meaning and uses of particular terms included in the chapter. Proposed updates to the definitions for abuse, application for licensure, case manager, community residence for the developmentally disabled, exploitation, group homes, interdisciplinary team, negative licensing action, neglect, person centered planning, personal guidance, private placement, program description, supervised apartments, and waiver are proposed in accordance with other rules and organizational changes, as discussed throughout this rulemaking. The following new definitions are being proposed to comport with statutory and organizational changes: advanced practice nurse, authorization to operate, behavior support plan, Central Registry, community agency, community agency head, critical information, direct support professional, eviction, governing authority, interferon gamma release assay (IGRA), Office of Investigations, Office of Licensing, personal funds, planning team, provider managed, roommate, service plan, and valuable personal possessions. The following terms are proposed for deletion: Annex A, community services, individual habilitation plan, licensing agency, mobile non-ambulatory individual, special response unit, and supported living.

N.J.A.C. 10:44A-1.4 Application for Licensure

This section sets out the Community Residence for Individuals with Developmental Disabilities application process for licensure. Proposed changes to subsection (a) delete the requirement for applications to be submitted to a regional office. Applicants will be directed to <http://www.nj.gov/humanservices/ddd/programs/sppp.html> for information regarding the submission of a combined license application to become a Medicaid/Division of Developmental Disabilities (“DDD” or “Division”) Approved Provider and an Attestation for Individual Supports Provider. Amendments at subsection (b) are proposed to include the requirement for criminal background checks of every community agency head and employee of an agency licensed by or applying to be licensed by the Department. The criminal history record will be reviewed against a list of disqualifying crimes. Proposed new paragraph (b)1 provides that a community agency head will not be considered for licensure or employment if the criminal history record background check is refused. New paragraph (b)2 requires owners and licensees who are not community agency heads to comply with criminal background check requirements. Proposed amendments at subsection (c) add the following requirements for applications to operate group homes or supervised apartment programs: identification of all owners, at least three professional references, submission of any previous licensing history of