

that language”), 5.2(a)10 (hospitals to make available written statement of patients’ rights under New Jersey law to refuse medical care and to formulate advance directives “in any language which is spoken as the primary language by more than 10 percent of the population of the hospital’s service area), 17A.3(h) (hospitals to translate into a language other than English, and post, the results of patients-to-staff counts and ratios if the other language “is the exclusive language spoken by at least 10 percent of a general hospital’s patients”), and 19.2(a)10ii (hospitals that provide obstetrics services to develop and distribute printed materials about infant feeding to prenatal patients in “all languages spoken exclusively by at least 10 percent of the hospital community”).

Based on the foregoing, the Department agrees with the commenter’s assertion that requiring the prevalence of a language other than English being spoken among at least 10 percent of a hospital’s service area, as a precondition to that hospital’s obligation to post a translated IHCA Program notice, is a reasonable and generally accepted minimum standard to warrant the provision of information in that language, and in English. Therefore, for these reasons, and the reasons that the commenter identifies, the Department will make a non-substantial change on adoption at proposed new N.J.A.C. 8:43G-5.6(b) to require a general hospital to post the IHCA Program notice in a language other than English (provided the Department of Banking and Insurance has made available a translated form of the notice in that language) if at least 10 percent of the population in a hospital’s service area speak the other language.

The change does not require additional notice and comment pursuant to N.J.A.C. 1:30-6.3. The change reduces the burden of the rule on the regulated community of hospitals. The change enhances the effectiveness of the rule in protecting the public. It increases the likelihood that patients and their families, from hospital service areas in which languages other than English obtain a minimal level of prevalence, will observe IHCA Program notices and other postings of relevance to them, rather than be overwhelmed by the posting of many notices in many languages that are not commonly spoken in their respective communities.

Federal Standards Statement

The Department is not adopting the amendment and new rule under the authority of, or to implement, comply with, or participate in, any program established under, Federal law or a State law that incorporates or refers to any Federal law, standard, or requirement. The Department is adopting the amendment and new rule under the authority of N.J.S.A. 26:2H-12 and 26:2S-14.3. Therefore, a Federal standards analysis is not required.

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

8:43G-5.2 Administrative and hospital-wide policies and procedures

(a) A hospital shall establish and implement written policies, procedures, and bylaws that it reviews at least once every three years and revises more frequently as needed, including at least:

1.-10. (No change.)

11. Procedures for referral of patients requesting assistance in executing an advance directive or additional information to either staff or community resource persons that can promptly advise and/or assist the patient during the inpatient stay;

12. Policies to ensure application of the hospital’s procedures for advance directives to patients who are receiving emergency room care for an urgent life-threatening situation; and

13. Policies and procedures to ensure that appropriate hospital staff, including direct care providers, staff that are concerned with billing for hospital services or providing financial counseling to patients, and staff otherwise engaged in providing patient advocacy are made aware of the Independent Health Care Appeals Program established pursuant to N.J.S.A. 26:2S-11, and are able to provide information to patients and their family members, or other persons on the patient’s behalf, about how to contact the Independent Health Care Appeals Program.

(b)-(l) (No change.)

8:43G-5.6 Independent Health Care Appeals Program notice; posting

(a) A general hospital shall post, in a conspicuous place in each of its waiting rooms for members of the general public, the notice about the Independent Health Care Appeals Program (IHCA notice) entitled, “An Explanation of an Individual’s Right to Appeal Health Insurance Determinations,” in the form that the Department of Banking and Insurance promulgates pursuant to N.J.S.A. 26:2S-14.2 at N.J.A.C. 11:24A-5.3 and 11:24A-5 Appendix, and posts to its website at <http://www.dobi.nj.gov/ihcapppeals>.

(b) If the Department of Banking and Insurance makes available the IHCA notice in a format translated into ***a* language*[s]*** other than English, ***and at least 10 percent of the population in* a general ***hospital’s service area speak that other language, the general* hospital shall post the translated version*[s]* ***of the IHCA notice in the other language*****, in addition to the version in English, in accordance with (a) above.**

HUMAN SERVICES

(a)

OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY

Community Care Residences

Tara’s Law

Manual of Standards for Community Care Residences

Adopted Amendments: N.J.A.C. 10:44B-1.3, 1.5, 1.6, 2.1, 3.2, and 4.1

Proposed: April 4, 2016, at 48 N.J.R. 544(a).

Adopted: January 13, 2017, by Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Filed: February 15, 2017, as R.2017 d.043, **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 and P.L. 2012, c. 69.

Effective Date: March 20, 2017.

Expiration Date: March 19, 2020.

Summary of Public Comment and Agency Response:

COMMENT: The Department received a comment from Thomas Baffuto, the Executive Director of the Arc of New Jersey. Mr. Baffuto expressed support for the change in the provisional license period from six months to three months, the requirement that licensees attend continuing education classes annually, and the setting of the “egregious amount” for inappropriate payment or disbursement equal to the Central Registry amount of \$100.00.

RESPONSE: The Department is grateful for the support of these programs and will make no changes to the proposal.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt, or amend any State rule that exceeds any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The adopted amendments are not promulgated under the authority of or in order to implement, comply with, or participate in any program established under Federal law or a State statute that incorporates or refers to Federal law, standards, or requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), do not require a Federal standards analysis for the adopted amendments.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:44B-1.3 Definitions

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

...
 “Authorized family member” means a relative of the individual with a developmental disability authorized by the individual’s guardian or by the individual, if the individual is his or her own guardian, to receive information pursuant to P.L. 2012, c. 69.

...
 “Commissioner” means the Commissioner of the Department of Human Services.

...
 “Department” means the Department of Human Services.

...
 “Office of Auditing” means the unit of the Department of Human Services responsible for performing audits and reporting on findings within generally accepted auditing standards, government auditing standards, or both, and/or Federal and State laws.

“Office of Licensing” or “Office” means the licensing unit of the Department of Human Services for programs in the Division of Developmental Disabilities.

10:44B-1.5 Licenses and inspection

(a) (No change.)

(b) An initial provisional license shall be issued if the applicant has demonstrated that he or she has sufficient knowledge of the duties required of a licensed provider and if the inspection provides reasonable assurance that the home will be operated in the manner required by the standards.

1. The initial provisional license shall permit a licensee to operate for a three-month period in which he or she shall demonstrate his or her ability to comply with the applicable provisions of this chapter.

2.-3. (No change.)

(c) The residence shall be subject to inspection by the licensing agency at least annually, and at any other time as deemed necessary, without prior notice and without limitation, to allow for inquiry into the records, equipment, safety, sanitary conditions, accommodations, and management of the individuals and the residence.

1. If, as a result of an annual inspection, a licensee is required to provide a plan of correction and that plan has not been successfully implemented within 30 days of the date that the licensee submitted the plan to the Office of Licensing, the individual(s) shall be removed from the residence, if the licensee’s failure to implement the plan of correction could potentially threaten the health and well-being of the individual. If the health, safety, or well-being of an individual is immediately threatened because of a licensee’s noncompliance with the standards, the individual shall be removed from the residence, and the licensee shall be subject to negative licensing action.

2. The Department shall impose a penalty in an amount of \$350.00 per day on the licensee for two or more failures to implement a required plan of correction developed in response to an annual licensing inspection.

3. If two or more failures to implement a required plan of correction developed in response to an annual licensing inspection endangers the health and well-being of an individual, the Office of Licensing, may, upon notice and after hearing, revoke the license.

(d)-(f) (No change.)

(g) The Office of Licensing shall annually conduct routine unannounced visits of 10 percent of community care residences Statewide. These visits shall include a review of financial records, including receipts for purchases and disbursement.

Recodify existing (g)-(j) as (h)-(k) (No change in text.)

10:44B-1.6 Options on non-compliance with standard

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

(f) Any licensee whose license has been suspended, revoked, or non-renewed, or who has had any intermediate sanctions invoked against him or her, has the right to appeal such negative licensing action pursuant to N.J.A.C. 10:48. Before taking negative licensing action, the Department

shall give notice to a licensee personally or by mail to the last known address of the licensee, with return receipt requested. The notice shall afford the licensee the opportunity to be heard and to contest the Department’s action. The hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 2. MANAGEMENT OF THE RESIDENCE

10:44B-2.1 Licensee requirements

(a) The licensee shall have overall responsibility for the individuals and boarders in the residence.

1.-3. (No change.)

4. The licensee shall provide a copy of the physician’s statement and a completed medical form to the Department within 10 business days of receipt. If the licensee fails to provide the physician’s statement and medical form, the Commissioner shall have the authority to take one or more of the following actions:

i. Stop any payments to the licensee;

ii. Seek recovery of any payments to the licensee from the date that the statement and form were due; and

iii. Not resume payment until such time as the licensee submits the statement and form.

5. If the licensee is unable to demonstrate that he or she is physically and mentally capable of performing the job duties of a licensee as required by (a)3i above, the Office of Licensing shall take negative licensing action against the licensee.

(b)-(e) (No change.)

(f) The licensee shall be required to successfully complete all courses of instruction that are required or deemed necessary by the placing and/or licensing agency. A licensee shall annually attend a continuing education program conducted or approved by the Department. Within 120 days of the initial placement of a service recipient in the community care residence, the licensee shall successfully complete American Red Cross Standard First Aid Training (and maintain a valid certificate on file) and Cardiopulmonary Resuscitation Training (and maintain a valid certificate on file). Current licensees shall successfully complete American Red Cross Standard First Aid Training and Cardiopulmonary Resuscitation Training by *(365 days after the effective date of this amendment)]* **March 20, 2018***.

(g)-(m) (No change.)

(n) The licensee shall annually take a two-week leave from providing services to an individual with a developmental disability residing in a community care residence, during which time an alternate shall provide care or training, or both, to the individual with a developmental disability.

SUBCHAPTER 3. CARE OF THE INDIVIDUAL

10:44B-3.2 Personal funds

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

(i) Licensees shall cooperate with reviews conducted by the Department by making the financial records available to the Office of Auditing, the case manager, the case manager’s supervisor, and any representative so authorized by the Department.

1. The Office of Auditing within the Office of Program Integrity and Accountability will select licensees at random and notify them of an audit with instructions on how to comply.

2. Each licensee selected for an audit under (i)1 above shall provide original documentation for review, including, but not limited to: client account records, Personal Needs Account summary sheet, client bank statements, client banking systems balances, cash on hand amounts, and vendor receipts for the period requested.

3. The Office of Auditing will review the documents to ensure that service recipients’ funds are safe and protected, bank accounts and cash on hand records are complete and reconciled, purchases and disbursements reflect the specific needs of the individual service recipients, and that licensee and service recipient funds are not intermingled.

4. The Office of Auditing will report any evidence of an inappropriate purchase or disbursement consisting of an amount of money equaling \$100.00 or more to the Attorney General.

5. The Office of Auditing will report any evidence that a case manager was aware of an inappropriate purchase or disbursement consisting of an amount of money equaling \$100.00 or more and failed to document that fact or notify the case manager's supervisor to the Attorney General.

SUBCHAPTER 4. HABILITATION

10:44B-4.1 Service plan

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

(f) An agency or organization that causes a written, individualized habilitation plan to be developed for an individual with a developmental disability residing in a community care residence shall not include the Social Security number of the individual with a developmental disability on the plan.

(g) An agency or organization that violates the provisions of (f) above shall be subject to a penalty of \$250.00 for the first offense and \$500.00 for each subsequent offense. The penalty shall be sued for and collected in a summary proceeding by the Commissioner pursuant to the Penalty Enforcement Law of 1999, P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.).

CORRECTIONS

(a)

THE COMMISSIONER

Use of Body Imaging Scanning Equipment

Adopted Amendments: N.J.A.C. 10A:1-2.2, 10A:3-5.5, and 10A:31-1.3 and 8.8

Adopted New Rule: N.J.A.C. 10A:31-8.3

Proposed: October 3, 2016, at 48 N.J.R. 2026(a).

Adopted: February 21, 2017, by Gary M. Lanigan, Commissioner, Department of Corrections.

Filed: February 22, 2017, as R.2017 d.047, **without change**.

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 30:4-123.47C, 30:4-151, 2A:154-3 and 4, 2C:1-1 et seq., 2C:58-15, 10:5-3, 52:17B-169, and 52:27EE-26; and P.L. 2015, c. 213.

Effective Date: March 20, 2017.

Expiration Date: November 9, 2022, N.J.A.C. 10A:1; February 9, 2022, N.J.A.C. 10A:3; and January 21, 2018, N.J.A.C. 10A:31.

Summary of Public Comment and Agency Response:

Comments were received in a timely manner from Leslie Nelson, Edna Mahan Correctional Facility for Women.

COMMENT: The commenter objects to the amendments at N.J.A.C. 10A:3-5.5, stating the use of scanners may:

1. Emit radiation causing adverse health effects;
2. Violate Fourth Amendment prohibitions against unreasonable search and seizure and violate medical privacy laws as scanners will expose implants, prosthetic devices, and artificial joints; and
3. Run afoul of Prison Rape Elimination Act of 2003 (PREA) rules as there is no guarantee the officer operating the equipment will be of the same gender.

RESPONSE: The amendments are made as a result of, and in compliance with, the laws emanating from legislative action on P.L. 2015, c. 213, which required that the Commissioner adopt rules effectuating the purpose of the act. The seven points included in new N.J.A.C. 10A:3-5.5(c) cited by the commenter are derivatives of the State law that set forth when and why body imaging scanning equipment may be used. The comments submitted address concerns related to the potential adverse effects or impacts related to the use of scanning equipment not when and why this equipment may be used. Rules

pertaining to the use of scanning/testing devices have been included at N.J.A.C. 10A:3-5.5(a) and (b) for many years and are not the subject of this rulemaking, and, further, new subsection (c) does not add any new scanning requirements. Therefore, the comments submitted are outside the scope of this rulemaking.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rule are not subject to any Federal standards. P.L. 2015, c. 213, applies to the State and county correctional facilities and the use of body imaging scanning equipment.

Full text of the adoption follows:

CHAPTER 1

ADMINISTRATION, ORGANIZATION, AND MANAGEMENT

SUBCHAPTER 2. GENERAL PROVISIONS

10A:1-2.2 Definitions

The following words and terms, when used in N.J.A.C. 10A:1 through 10A:30, shall have the following meanings unless the context clearly indicates otherwise:

...

“Body imaging scanning equipment” means equipment that utilizes a low-dose conventional x-ray transmission to produce an anatomical image of the inmate capable of identifying external and internal contraband.

...

CHAPTER 3

SECURITY AND CONTROL

SUBCHAPTER 5. SEARCHES OF INMATES AND FACILITIES

10A:3-5.5 Use of scanning/testing devices

(a) Searches of inmates, areas, and objects by the use of scanning/testing devices may be done routinely and randomly, where necessary for security purposes. This may be, but is not limited to, a walk-through device or a handheld device that is passed over the fully clothed body of the inmate. A scanning/testing device may also be utilized in conjunction with a strip search or body cavity search.

(b) (No change.)

(c) Body imaging scanning equipment may be utilized for the purpose of searching inmates. The use of body imaging scanning equipment shall be limited to searches conducted in any of the following circumstances:

1. When an inmate enters or leaves the correctional facility;
2. Any time before or after an inmate is placed in close custody, prehearing restrictive housing, administrative segregation, protective custody, psychological observation, or suicide watch;
3. Any time before or after an inmate has a contact visit in which the inmate and a visitor are permitted physical contact with each other;
4. After an inmate has been in any area where the inmate has had access to dangerous or valuable items;
5. During a mass search of an inmate housing unit or inmate work area;
6. When a custody staff member with a rank of sergeant or above determines that there exists a reasonable suspicion that an inmate is carrying or concealing contraband on the inmate's person, or in the inmate's anal or vaginal cavity; or
7. When a custody staff member with a rank of sergeant or above determines that the search is reasonably necessary for safety and security.

(d) Notwithstanding the provisions of any other law to the contrary, the body image scanning equipment may be operated by an employee of a correctional facility or other law enforcement officer.

(e) Prior to operating body imaging scanning equipment, an employee or officer shall successfully complete a training course approved by the Police Training Commission pursuant to P.L. 1961, c. 56 (N.J.S.A. 52:17B-66 et seq.).