

1. The written statement shall include the date of inspection, and shall indicate that circuits are not overloaded, that all wiring and permanent fixtures are in safe condition, and that all portable electrical appliances, including lamps, are Underwriters Laboratories (U.L.) approved; and

2. The written statement shall be available for review by the Department during survey.

8:37-7.5 Ventilation

(a) Means of ventilation by either easily operable windows or by mechanical ventilation shall be provided for in every habitable room and in every bathroom and water closet compartment in accordance with the Uniform Construction Code, N.J.A.C. 5:23.

1. Windows shall have an openable area of no more than six inches.

8:37-7.6 Heating and air conditioning

(a) The heating and air conditioning system shall be adequate to maintain the required temperature in all areas used by residents. Residents may have individually controlled thermostats in residential units in order to maintain temperatures at their own comfort level.

1. During the heating season, the temperature in the facility shall be kept at a minimum of 72 degrees Fahrenheit (22 degrees Celsius) during the day ("day" means the time between sunrise and sunset) and 68 degrees Fahrenheit (20 degrees Celsius) at night, when residents are in the facility.

2. Neither the facility nor its residents shall utilize portable heaters.

3. During warm weather conditions, the temperature within the facility shall not exceed 82 degrees Fahrenheit.

i. The facility shall provide for and operate adequate ventilation in all areas used by residents.

ii. All areas of the facility used by residents shall be equipped with air conditioning and the air conditioning shall be operated, so that the temperature in these areas does not exceed 82 degrees Fahrenheit.

4. Residents who can regulate temperature controls in their residential units may, by choice, exceed 82 degrees Fahrenheit.

(b) Filters for heaters and air conditioners shall be provided as needed and maintained in accordance with manufacturer's specifications.

8:37-7.9 Control of access

(a) Every exterior door shall be equipped with a lock.

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

(e) Every entrance door to a rooming unit in every dementia care home shall be equipped with a lock. Each such door shall also be equipped with a viewing device.

1. (No change.)

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

8:37-7.12 Living and dining rooms

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

(c) Dining rooms shall be of sufficient size and properly equipped to provide comfortable seating for the facility's maximum licensed resident capacity at any one time.

SUBCHAPTER 8. RESIDENT RECORDS

8:37-8.1 Resident records

(a) It shall be the duty of each licensee to maintain an orderly file with respect to each resident containing at least the following information:

1.-12. (No change.)

13. A record of all property of the resident entrusted to the licensee, including, in the case of any resident receiving financial services, a ledger as required pursuant to N.J.A.C. 8:37-2.7; and

14. (No change.)

(b) (No change.)

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Life-Threatening Emergencies

Readoption with Amendments: N.J.A.C. 10:42A

Adopted Repeal: N.J.A.C. 10:42A-2.2

Proposed: February 21, 2017, at 49 N.J.R. 314(a).

Adopted: November 1, 2017, by Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Filed: November 17, 2017, as R.2017 d.236, **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. 30:6D-5.1 et seq., specifically 30:6D-5.6.

Effective Dates: November 17, 2017, Readoption;

December 18, 2017, Amendments and Repeal.

Expiration Date: November 17, 2024.

Summary of Public Comments and Agency Responses:

The following is a summary of the comments received from the public and the Division of Developmental Disabilities' (Division) responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1. Thomas Baffuto, Executive Director, Arc of New Jersey
2. Jeanne Kerwin, D.MH, Manager, Palliative Care and Bioethics, Atlantic Health Systems, and Rashmi Kaura, M.D., Medical Director, Overlook Medical Center
3. Susan Saidel, Legal Director, Disability Rights New Jersey
4. Chrissy Buteas, Home Care and Hospice Association of New Jersey, Inc.
5. Diana MTK Autin, Executive Co-Director, Statewide Parent Advocacy Network (SPAN) and Lauren Agoratus, M.A.-parent, NJ Coordinator- Family Voices @ SPAN

COMMENT: The commenter expressed gratitude for the Division's readoption of these rules with amendments, believing they will be an improvement for the individuals served and the community provider organizations who deliver the services. The commenter agrees with the refocus on the prudent person standard for the determination of "life-threatening emergencies" and applauds the revisions, which permit an individual served by the Division to obtain a physician's order describing when 911 need not be called because the person's chronic seizure activity is not life-threatening. (1)

RESPONSE: The Division appreciates the commenter's support.

COMMENT: The commenter asked the Division to clarify the proposed amendment providing that circumstances arising from a terminal condition for which the person is receiving end-of-life care shall not be considered a life-threatening emergency. The commenter believes that any conditions that develop would likely be related to the terminal condition. (1)

RESPONSE: The Division thanks the commenter for its comment, but notes that if some unexpected emergency, such as extreme bleeding due to an injury unrelated to the terminal condition were to occur, staff would be required to call 911, if that emergency was life-threatening. The Division believes that if such an unexpected emergency were to occur, a prudent person would be aware that the situation is unrelated to the terminal condition.

COMMENT: For individuals receiving end-of-life hospice care, a commenter requests that the rules require the hospice team to be called for circumstances arising from end-of-life issues, and that for those clients not receiving hospice care, but who have Do Not Resuscitate (DNR) or Practitioner's Order for Life Sustaining Treatment (POLST) orders, 911 should be called and the DNR or POLST presented to the responding emergency personnel. The commenter's rationale is that for individuals not receiving hospice care, it may be appropriate to call 911. (2)

RESPONSE: The Division appreciates commenter's remarks. The Division notes, however, that the rules require 911 to be called when a

person has a DNR or POLST order, and that the order is to be provided to the emergency staff responding to the 911 call. The exception provided by the rules applies when the individual is receiving hospice care. Therefore, the rules require 911 to be called for those not receiving hospice care. It would be beyond the scope of the enabling legislation to require a call to the hospice care team within this chapter.

COMMENT: The commenters recommended that the Division omit reference to the term “palliative” within the proposed language relating to terminal conditions. The commenters noted that palliative care can be provided to individuals who are not at the end of life and expressed concern that inclusion of the term within the rule could create confusion. (2, 3, and 4)

RESPONSE: The Division understands the concern expressed by the commenters and will delete reference to the term “palliative care” at N.J.A.C. 10:42A-2.1(d).

COMMENT: The commenter recommended adding “intractable pain or discomfort” to the definition of “life-threatening emergency,” stating that severe, unremitting pain may be a symptom of organ dysfunction or other potentially fatal occurrence. (2)

RESPONSE: The Division is unable to change the definition of “life-threatening emergency,” because this definition is set forth in the enabling legislation. The Division notes, however, that if an individual were demonstrating the existence of severe, unremitting pain, this would be a factor in the whether a prudent person should believe that a life-threatening emergency exists.

COMMENT: A commenter supports the proposed amendments that address the previous confusion regarding whether direct care staff must call 911 for life-threatening emergencies. This commenter also supports the recognition in the rules of POLST and the provision that eliminates the requirement that staff call 911 when a person’s medical practitioner determines the individual’s chronic seizure activity is not life-threatening. (3)

RESPONSE: The Division appreciates the commenter’s support.

COMMENT: The commenters strongly endorse the readoption with amendments, but in particular support the provision that would not require care providers to contact 911 when an individual, under hospice care, experiences a life-threatening circumstance arising from a terminal condition. (4 and 5)

RESPONSE: The Division appreciates the commenters’ support.

COMMENT: The commenter agrees with the amendment to expand the definition of “under contract” to clarify that the rules apply to service providers whether the provider is funded under a traditional contract or not. (5)

RESPONSE: The Division appreciates the commenter’s support.

COMMENT: The commenter agrees with the Division’s reemphasis of the prudent person standard applicable to the definition of “life-threatening emergencies,” but objects to the deletion of a provision that requires staff to call 911 when he or she is unsure if a medical condition is a “life-threatening emergency.” (5)

RESPONSE: The Division appreciates the commenter’s support for a reemphasis of the prudent person standard and notes that the deletion of language requiring staff to call when he or she is unsure whether a life-threatening emergency exists is designed to reinforce that standard. Reemphasis on the prudent person standard will avoid confusion and unnecessary emergency room visits for individuals with developmental disabilities.

COMMENT: The commenter agrees with the proposed amendment that continues to require staff to call 911 during a life-threatening emergency when the individual possesses a POLST or DNR and provides an exception for circumstances arising from a terminal condition for which a person is receiving hospice care. (5)

RESPONSE: The Division appreciates the commenter’s support.

COMMENT: The commenter recommended that the Division retain the provision that directs staff to consider all unusual, prolonged, or multiple seizures as a life-threatening emergency. (5)

RESPONSE: The inclusion of this example in the existing rule has led to confusion in the community and unnecessary 911 calls for some individuals who experience seizure activity. For individuals who experience chronic seizure disorders, the amendments will allow a

doctor to provide a standing order describing circumstances where the seizures are not life-threatening.

COMMENT: The commenter supported the amendment that requires all care provider facilities to provide training related to these rules through the curriculum developed by the Division. However, the commenter disagreed with the amendment that replaces the facilities’ duty to submit annual certifications of this training with the requirement that the facility provide the same to the Department of Human Services or Division upon request. (5)

RESPONSE: This amendment makes clear that all staff must continue to be trained and that facilities must maintain the documentation of the training at all times. The documentation must be available for production during licensing inspection, audits, or as requested. The Division believes that requiring the documentation to be maintained at all times and available upon request provides more effective oversight.

COMMENT: The commenter supports the amendment that permits the Assistant Commissioner discretion to seek further investigation before rendering a decision regarding alleged Danielle’s Law violations. (5)

RESPONSE: The Division appreciates the commenter’s support.

Federal Standards Statement

The rules readopted with amendments are not subject to any Federal requirements or standards. Pursuant to State law, the rules readopted with amendments require staff working with persons with developmental disabilities or traumatic brain injury to dial 911 in the event of a life-threatening emergency. Therefore, a Federal standards analysis is not required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:42A.

Full text of the adopted amendments follows (deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

10:42A-1.3 Definitions

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

“Assistant Commissioner” means the Assistant Commissioner of the Division of Developmental Disabilities.

...

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

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

...

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

...

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

...

“Under contract” means a provider under a written agreement with the Division or a provider approved by the Division to provide disability

services to individuals who are eligible to receive services from the Division.

SUBCHAPTER 2. REPORTING REQUIREMENTS

10:42A-2.1 General standards

(a) All staff shall be responsible to call 911 in a situation in which a prudent person could reasonably believe that immediate intervention is necessary to protect the life of a person receiving services at a facility for persons with developmental disabilities or traumatic brain injury, or to protect the lives of other persons at the facility or agency, from an immediate threat or actual occurrence of a potentially fatal injury, impairment to bodily functions, or dysfunction of a bodily organ or part, except as provided in (b) below.

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

(d) When the person suffering the life-threatening emergency has a DNR Order or POLST in effect, existence of the DNR Order or POLST does not relieve the staff member from the requirement to call 911. Staff shall call 911 if there is a life-threatening emergency but provide a copy of the DNR Order or POLST to emergency staff responding to the 911 call. Circumstances arising from a terminal condition for which a person is receiving hospice *[or palliative]* care shall not be considered a life-threatening emergency.

(e) If a person experiences chronic seizure activity, that person's licensed medical practitioner, who is not employed by the facility where the person resides, may provide a prescription or standing order to the facility defining when 911 should not be called because the person's seizure activity is not a life-threatening emergency.

- (f)-(g) (No change.)

(h) Each facility covered by this chapter, except those facilities licensed under N.J.A.C. 10:44B, Standards for Community Care Residences for the Developmentally Disabled, shall provide training in life-threatening emergencies to all staff members through curriculum developed by the Division. Facilities licensed under N.J.A.C. 10:44B shall be trained by the Division.

(i) Each facility covered by this chapter shall maintain documentation of completion of staff training and provide it to the Department or Division upon request.

(j) Every 911 call and every failure to make a 911 call in the event of a life-threatening emergency shall be reported to the Department as an unusual incident and the facility shall maintain a copy of the unusual incident report.

SUBCHAPTER 3. MONITORING

10:42A-3.1 Enforcement

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

(d) The Assistant Commissioner shall determine whether a staff member has violated Danielle's Law, N.J.S.A. 30:6D-5.3. The Assistant Commissioner may ask the Department to conduct further investigation before rendering a decision.

- (e)-(p) (No change.)

(a)

**DIVISION OF DEVELOPMENTAL DISABILITIES
Placement**

**Readoption with Amendments: N.J.A.C. 10:46B
Adopted Repeal: N.J.A.C. 10:46B-3.4**

Proposed: August 21, 2017, at 49 N.J.R. 2695(a).
 Adopted: November 3, 2017, by Elizabeth Connolly, Acting
 Commissioner, Department of Human Services.
 Filed: November 17, 2017, as R.2017 d.238, **without change**.
 Authority: N.J.S.A. 30:4-25.4 and 30:4-165.2.
 Effective Dates: November 17, 2017, Readoption;
 December 18, 2017, Amendments and Repeal.

Expiration Date: November 17, 2024.

Summary of Public Comments and Agency Responses:

The Division of Developmental Disabilities (Division) received three comments from the public. A summary of the comments and the Division's responses follows:

COMMENT: Jean Arnone expressed her belief that "the excess capacity in our long-term care system should be used for placement of our more cognitively and behaviorally challenged adult DDD individuals."

RESPONSE: The Division notes that pursuant to Federal and State law, it seeks to ensure that individuals eligible for placement reside in the least restrictive setting that meets their individual needs.

COMMENT: William R. Testa, Executive Director, Arc Morris, asked the Division to reconsider excluding individuals served through the Medicaid fee-for-service system from the scope of the rules. The commenter believes that the Medicaid waiver does not address the intent of the current administrative rule and that the absence of clear written protocols will have a negative impact on stakeholders.

RESPONSE: The Division does not believe that excluding individuals served under fee-for-service from the scope of these rules will have a negative impact on stakeholders. The rules were developed to operate in a contract reimbursement system and do not take into account the individual choice available in a fee-for-service system. Individuals exercise their choice through the parameters provided for in the Medicaid waiver and the individual service planning process, as well as the Division's written policies and procedures governing the operation of Medicaid waivers, which provide clear written protocols. Therefore, the Division declines to make a change in response to the comment.

COMMENT: Valerie Sellers, CEO of the New Jersey Association of Community Providers, commented that the rules continue to refer to the Individual Habilitation Plan and Interdisciplinary Team instead of new terminology that has been identified.

RESPONSE: The Division notes that these terms are set forth in statute. Therefore, while the Division has utilized different terminology, these generic terms continue to be appropriate for use in the rules, and the Division will not make any changes in response to this comment.

Federal Standards Statement

The readopted rules and adopted amendments and repeal provide that services in residential placements are provided through a Medicaid waiver. A Medicaid waiver is authorized by the Federal Centers for Medicare and Medicaid Services (CMS) to allow states to provide services in the community that would otherwise require institutional care. The readopted rules and adopted amendments and repeal do not exceed Federal standards. Therefore, a Federal standards analysis is not required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:46B.

Full text of the adopted amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10:46B-1.2 Scope

The provisions of this chapter shall apply to all eligible individuals. The provisions of this chapter shall not apply to persons whose services are funded through the Medicaid fee-for-services model. Placement decisions for these individuals shall be made in accordance with Medicaid standards applicable to the relevant Medicaid waiver and as part of the development of the individual's service plan. Residential placement will be offered to individuals placed on the Division's Priority Waiting List, as described at N.J.A.C. 10:46C unless they meet the criteria of N.J.A.C. 10:46B-3.3, Emergencies, 4.2, Private institutions, or 4.3, Private out-of-State placements.

10:46B-1.3 Definitions

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

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