

HUMAN SERVICES

OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY

Community Care Residences

Tara's Law

Manual of Standards for Community Care Residences

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

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4 and P.L. 2012, c. 69.

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

Proposal Number: PRN 2016-043.

Submit comments in writing by June 3, 2016, to:

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The agency proposal follows:

Summary

The Department of Human Services (Department) is proposing amendments to N.J.A.C. 10:44B, Manual of Standards for Community Care Residences. This chapter constitutes the general physical and program requirements for community care residences, which are licensed

by the Department to serve individuals with developmental disabilities in private homes. The rules set minimum requirements in the areas of general provisions, management of the residence, records, care of the individual, habilitation, health services, and physical plant and safety. The rules are necessary to implement the Department's statutory mandate to license community care residences for individuals with developmental disabilities. The Department amended this chapter in 2013; however, the Department of Human Services is now proposing new amendments to N.J.A.C. 10:44B in order to effectuate recent legislation, Tara's Law, P.L. 2012, c. 69.

N.J.A.C. 10:44B-1.3, Definitions, is proposed for amendment to add definitions for "authorized family member," "Commissioner," "Department," "Office of Auditing," and "Office of Licensing" or "Office."

N.J.A.C. 10:44B-1.5(b)1 is proposed for amendment to change the initial provisional licensing from six months to three months. Provisions detailing procedures for a failure to implement a plan of correction that is developed pursuant to an annual inspection have been added as N.J.A.C. 10:44B-1.5(c)1, 2, and 3. Proposed new N.J.A.C. 10:44B-1.5(g) documents a statutory directive to perform unannounced visits and items to be reviewed during these visits.

N.J.A.C. 10:44B-1.6(f) is proposed for amendment to add a requirement that certain notices to providers be sent by return receipt requested mail and to state the right to a hearing and that the case will be conducted in accordance with the Administrative Procedure Act.

Proposed new N.J.A.C. 10:44B-2.1(a)4 and 5 are added giving detail of actions that may be imposed for failure to show compliance with the licensee's medical fitness requirements.

N.J.A.C. 10:44B-2.1(f) is proposed for amendment to include a requirement that a licensee shall attend a continuing education course annually and in order to offer the same protection to residents of community care residences that exist in community residences for

individuals with developmental disabilities (N.J.A.C. 10:44A), the Department is requiring American Red Cross Standard First Aid Training and Cardiopulmonary Resuscitation Training. Proposed new N.J.A.C. 10:44B-2.1(n) is added to document a requirement that a licensee shall annually take a two-week leave from providing services to an individual.

Proposed new N.J.A.C. 10:44B-3.2(i) is added to document the statutory requirement that the Office of Auditing review financial records. Also, the legislation's "egregious amount" for an inappropriate payment or disbursement that would necessitate a report to the Office of the Attorney General, is set at \$100.00. The \$100.00 amount was deemed appropriate and lends consistency, as it is the same amount that already triggers placement on the central registry (N.J.A.C. 10:44D), another chapter also an integral part of Tara's Law.

Proposed new N.J.A.C. 10:44B-4.1(f) and (g) are added to detail information that should be omitted from habilitation plans and the penalties for including that information.

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

Social Impact

The proposed amendments will have a positive social impact on the residents of community care residences for individuals with developmental disabilities. The proposed amendments are derived from legislative requirements designed to enhance the well-being of the persons served by these entities. The amendments ensure that the providers are medically capable of providing the requisite level of care for each individual and ensure that training is given to each provider to realize that level of care. Amendments are proposed to increase the security of the persons and the possessions of the individuals receiving services; there are

increases in the number of unannounced inspections and in the financial oversight of individuals' accounts. The proposed amendments serve to augment the general provisions, administrative policies and practices, care of the individual, habilitation, health services, and physical plant and safety already in place by promoting a higher level of care and services to the residents.

Economic Impact

The Department of Human Services believes that the proposed amendments will have no adverse economic impact upon participants in the community care residence program. The amendments will affect the nearly 1,000 individuals with developmental disabilities who receive services from community care residences. The amendments will have no significant economic impact. Some additional supplies, equipment, or costs are expected to be required for licensees of the Department as a result of the amendments. The costs of these requirements are necessary for the health and safety of the individuals that live in community care residences and most of the expenses have been considered in the payments made to the providers of services by funding from the Department.

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 proposed 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 proposed amendments.

Jobs Impact

The proposed amendments will not result in the generation or loss of any jobs.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

Community care residences that are licensed by the Department should not be considered small businesses, as defined in the Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., as they are private homes. However, if, for the purposes of the Act, the licensees are considered to be small businesses, then the following analysis applies. The proposed amendments do require reporting, recordkeeping, and other compliance requirements.

N.J.A.C. 10:44B-2.1 mandates that a licensee must have a medical examination affirming that their ability to provide services to the residents in the household. N.J.A.C. 10:44B-3.2 defines a new procedure for the auditing of residents' personal funds. N.J.A.C. 10:44B-4.1 mandates the removal of Social Security numbers from certain forms. The costs of these requirements are necessary for the health and safety of the individuals with developmental disabilities that reside in community care residences and are covered by the payments made to the providers of services by funding from the Department. The sponsors are paid by the Department to provide services and are generally compensated for their labor on behalf of consumers.

Housing Affordability Impact Analysis

The proposed amendments will have no impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the amendments would evoke a change in the average costs associated with housing because the rules pertain to the implementation of Tara's law.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth development. There is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to the implementation of Tara's Law.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [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 [six-month] **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).**

(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.).