

- 2. (No change.)
 - (h) (No change.)
 - [i] Male and female individuals shall not share the same licensed bedroom unless there is documentation in each of the individuals' service plans that this arrangement has been requested by both individuals and approved by their IDTs.]
 - (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 [and licensing] 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[, development,] and [licensing agencies] **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
Proposed 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
Proposed Repeal: N.J.A.C. 10:44C-1.5

Authorized By: Sarah Adelman, Commissioner, Department of Human Services.
 Authority: N.J.S.A. 30:11B-1 et seq., specifically N.J.S.A. 30:11B-4.
 Calendar Reference: See the Summary below for an explanation of exception to the calendar requirement.
 Proposal Number: PRN 2022-085.

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
Doug.swan@dhs.nj.gov

The agency proposal follows:

Summary

The Department of Human Services (Department) is proposing amendments to comply with the Department's Fee-for-Service initiative, the Centers for Medicare and Medicaid Services' guidelines for funding Home and Community Based Services (42 CFR 441.300 et seq.), and Stephen Komninos' Law, P.L. 2017 c. 238. The rules constitute the minimum requirements for community residences, also known as group homes or supervised apartments, for persons with head injuries (traumatic brain injuries) that are licensed by the Department. The purpose of the proposed amendments is to protect the health, safety, welfare, and human rights of persons who reside in these residences, and to allow such

individuals to develop their fullest potential in an environment that is normalized and supportive. The proposed amendments provide for individualized delivery of services to persons served, the establishment and maintenance of a safe environment, the support and encouragement to undertake dignified risk, and the delineation of personal rights to protect them.

The proposed amendments are necessary to implement the Department's statutory mandate to license community residences for persons with traumatic brain injuries. The Department has reviewed the proposed amendments and has determined that they are necessary, adequate, reasonable, efficient, understandable, and responsive to the purposes for which they were promulgated.

A summary of the proposed amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

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

Proposed amendments at N.J.A.C. 10:44C-1.1 clarify the scope of the chapter by removing the terms "supported living programs" because this type of service will not be offered in the future in a licensed setting and add a clarifying explanation for "community care residences."

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

The following describes the proposed additions, deletions, and changes to terms that are, or have been, referenced throughout the chapter.

The proposed amendment to the definition for the term "abuse" removes the examples, which might be interpreted as limiting the reportable instances of abuse to those enumerated as examples. A more general definition of abuse will encourage the required reporting of incidents, which can then be reviewed and classified, accordingly. "Advanced practice nurse" is amended to clarify that advanced practice nurses can order certain medications, treatments, and devices. Definitions for "community agency" and "community agency head" are proposed to define an agency licensed by the Department to provide services to individuals with head injuries (traumatic brain injuries) and define the person who is responsible for the overall operations of the agency. The definition for "community residence for persons with head injuries" is amended to include "integration with the community" to require the residential facility to provide persons receiving services the ability to engage with the community. The definition was also revised to specify that such facilities cannot be located on, or adjacent to, public institutions serving a similar population, as required at 42 CFR 441.301 et seq. "Conditional license" is deleted and replaced with the term "provisional license," which is similarly defined.

The term "direct service staff" is being replaced with "direct support professional" and the definition clarifies that it pertains to community residences for persons with head injuries. The term "eviction" is added and defined as a legal process by which a tenant/resident can be removed from the premises. The definition for "full license" is being amended to be effective for up to one year, rather than two years, to update the definition to be consistent with current Department practices. The definition of "group homes" is amended to include "integration with the community" as a necessary component of the services provided, as required at 42 CFR 441.301. The definition of "Individual Treatment Plan" is amended to include "in a person-centered planning process," as required at 42 CFR 441.301. The term "initial license" is deleted because it is no longer used. If an applicant is in substantial compliance with this chapter, a full license will be issued. The term "licensing agency" is being deleted, to be consistent with organizational changes within the Office of Program Integrity and Accountability (OPIA), specifically, that the functions of Developmental Disabilities Licensing are now within the OPIA-Office of Licensing. The definition of "negative licensing action" is amended to replace the word "conditional" with the word "provisional" to be consistent with current Department terminology. The definition for "personal guidance" is being amended to update the terminology used by replacing "handicaps" with "disabilities."

The definition for the term "program description" is being amended to remove the reference to the provision of Department funding because decisions regarding Department funding are not contingent upon the review of the program description. The term "provisional license" is added to replace references to "conditional licenses" throughout the

chapter but maintain the definition that it is a negative licensing action and requires a licensee to take corrective action in order to continue to provide services. The term “roommate” is added because persons receiving services have the right to choose their roommate. The term “supervised apartments” is amended to specify that up to four persons served may reside in a single apartment. The definition “Transdisciplinary Team” (TDT) is amended to specify that the team must use a person-centered planning process to assess capabilities, needs, goals, and objectives of the person being served.

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

N.J.A.C. 10:44C-1.4(b) is replaced to clarify the requirement for criminal history background checks of community residence agency heads, with the Department determining the results as qualifying or disqualified. Paragraph (b)1 is replaced to specify that community agency heads and employees will not be considered for employment if they refuse to complete a criminal history background check. New paragraph (b)3 specifies that if the agency head is not the owner or licensee, the owner or licensee must also comply with a criminal history background check. Proposed amendments at subsection (c) provide additional details for the individual requirements included in an application for licensure, such as: identification of all owners that comprise the licensee; requiring job titles in organization charts that show the reporting structure; applicants and executive leadership must demonstrate compliance with N.J.A.C. 10:44C-2.5(a)1 and 2; and clarifying that the references submitted for applicants and executive leadership must be professional references. New requirements are being proposed for agencies applying for licensure to provide documentation of the entity’s service history for persons with traumatic brain injuries for a minimum of 24 months. The history of service must include any records of penalties, fines, survey results, and/or plans of correction from accrediting authorities or a court of competent jurisdiction, as well as an independent examination of the organization’s financial status. Existing paragraphs (c)2 and 3 are proposed for deletion.

Proposed new N.J.A.C. 10:44C-1.4(d) defines a completed application and sets a 45-day time period in which all application elements must be received. If the application is incomplete 45 days after the initial submission, the application may be denied and be subject to a six-month period before the applicant can re-apply. Existing subsection (h), which required the organization to make the approved program description available to persons with head injuries, their guardians, family members, and advocates, is proposed for deletion. Proposed new subsection (n) requires annual on-site inspections for community residences. The rulemaking also adds new subsections (o), (p), and (q). Subsection (o) incorporates the language from existing N.J.A.C. 10:44C-1.5 with amendments requiring the submission of a procedure manual to the Office of Licensing, upon approval of the completed application, for review and approval, in accordance with N.J.A.C. 10:44C-2.2. New subsection (p) requires the submission of job descriptions for positions in the table of organization for review and approval, in a specific format. New subsection (q) requires the submission of the organization’s program description and approval by the Office of Licensing.

N.J.A.C. 10:44C-1.5 Procedure Manual

This section is proposed for repeal. Portions of this section have been proposed for inclusion at N.J.A.C. 10:44C-1.4.

N.J.A.C. 10:44C-1.5 Requirements for Issuance of an Initial License

At recodified N.J.A.C. 10:44C-1.5 the section heading is deleted and replaced with “requirements for initial licensure.” Subsection (a) adds the provision of health, safety, and welfare to the existing requirement for an on-site inspection to explain the purpose of the inspection. Paragraph (b)1 adds “certificate of continued occupancy, temporary certificate of occupancy (CO), or certificate of habitability” to the list of existing certificate of occupancy requirements that the licensee must have available. New subparagraph (b)1i adds the requirement where a local enforcing agency does not provide such certificates, that it shall be documented that the agency does not provide a CO certificate. New paragraph (b)2 retains the language deleted from paragraph (b)1, which requires documentation of inspection by the fire official and registration with the Department of Community Affairs. Proposed new paragraph (b)7

requires documentation from a licensed testing entity that the septic system is functioning adequately.

The proposed amendment at subsection (d) replaces the term “initial license” with the term “full license.” New subsection (h) is proposed to specify that, 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.

N.J.A.C. 10:44C-1.7 Renewal of a License

Subsection (a) includes an amendment to specify that renewal of the license must be based upon the results of a re-inspection. Existing paragraph (a)1 is proposed for deletion and replacement to specify that, as applicable, an authorization to operate shall be granted by the Office of Licensing, upon request, under exigent circumstances. Subsections (b), (c), and (d) are proposed for deletion and inclusion at new N.J.A.C. 10:44C-1.7, as explained below.

N.J.A.C. 10:44C-1.7 Plan of Correction

New N.J.A.C. 10:44C-1.7 incorporates text at existing N.J.A.C. 10:44C-1.6. Subsection (a) is relocated from N.J.A.C. 10:44C-1.6(a)1 without amendment and requires the submission of a plan of correction within 30 days of receiving the deficiencies cited in the re-inspection report. New paragraph (a)1 is relocated from existing N.J.A.C. 10:44C-1.6(a)2 giving the Office of Licensing discretion to allow for a shorter time frame when necessary to protect the health, safety, and welfare of the individuals receiving services. New N.J.A.C. 10:44C-1.7(b) concerns the follow-up of a plan of correction including on-site review for deficiencies. New paragraph (b)1 is relocated from N.J.A.C. 10:44C-1.6(b) and clarifies that the Office of Licensing will conduct unannounced on-site visits to verify that deficiencies that posed a risk to life and safety of the residents were corrected. New subparagraph (b)1i allows for a second plan of correction or negative licensing action if continuing or new deficiencies indicate substantial or willful noncompliance. New paragraph (b)2 incorporates the current text of N.J.A.C. 10:44C-1.6(c), to address the submission of a second plan of correction when required by the Office of Licensing. Proposed new N.J.A.C. 10:44C-1.7(c) incorporates text from existing N.J.A.C. 10:44C-1.6(d) and addresses the Office of Licensing’s discretion to conduct an on-site inspection to ensure that corrective action was taken, the requirements of on-site inspection findings, as well as what happens if there are continuing deficiencies.

New subsection (d) sets forth guidance for when the Office of Licensing requires a licensee to submit an action plan when process or systemic problems are identified and to provide the plan’s implementation results.

N.J.A.C. 10:44C-1.8 Denial, Revocation, Non-Renewal, or Suspension of a License

The section heading is revised to “negative licensing action.” Subsection (a) is proposed for deletion and replacement to revise the list of negative licensing actions the Office of Licensing may take against a licensee.

Paragraph (b)1 is proposed for amendment to state that Office of Licensing may refuse to reinstate a license, based upon falsification, willful noncompliance, or any of the other existing negative licensing actions.

N.J.A.C. 10:44C-1.9 Administrative Hearings

Proposed new paragraph (c)3 adds the appointment of an independent monitor, paid for by the licensee, to the list of actions that may be taken during the administrative hearing process, where the occupants of a residence are at risk.

N.J.A.C. 10:44C-1.12 Voluntary Closure

The proposed amendment specifies that the 60-day notice given by licensees of a planned closure must be in writing.

SUBCHAPTER 2. ORGANIZATION AND ADMINISTRATION

N.J.A.C. 10:44C-2.1 General requirements

At subsection (a), the proposed amendment deletes the term “document” and replaces it with “information” to allow the organization to provide its purpose and description of services available electronically.

New subparagraph (b)4i is proposed to state that the licensee keep the current license on file in the residence. A proposed amendment at subsection (d) requires for-profit licensees to have a board of directors that meet the criteria at existing paragraphs (e)1 through 5, which are relocated to paragraphs (d)1 through 5. Proposed new subsection (e) requires for-profit licensees to comply with paragraphs (d)1 through 5 within 12 months of the effective date of this rulemaking. Existing subsection (j) is proposed for deletion and replacement to require a current list of membership for the board of directors or board of trustees with specific information and requires a change of board membership or agency head be reported immediately to the Office of Licensing.

N.J.A.C. 10:44C-2.2 Development and Maintenance of Procedure Manual

Subparagraph (b)3i is proposed to clarify that the members referenced in the text regarding orientation procedures for the operations of the organization refer to new board members. Proposed new subparagraph (b)4i to address emergency procedures that may not require an evacuation. Subparagraph (b)7ii is proposed for amendment to include Department policy to the list requiring a written statement regarding the obligation to report each allegation when reporting unusual incidents. Paragraph (b)10 is amended to reflect a change to the New Employee Orientation Checklist at N.J.A.C. 10:44C-2.6(a)1 through 7, which is recodified in this rulemaking to N.J.A.C. 10:44C-2.6(a)1 through 8. Paragraph (b)14 is amended to better define and streamline the internal communication log. Paragraph (b)18 is amended to add a cross-reference for psychotropic medication that incorporates compliance requirements by reference. Existing paragraph (b)19 is relocated as new paragraph (b)23, as discussed below. Proposed new paragraph (b)19 is added to include drug testing of employees as required by Stephen Komminos' Law (N.J.S.A. 30:6D-9.5 and 9.6). New paragraph (b)20 requires written procedures to include the exchange of contact information for parents, family members actively involved in the welfare of an individual receiving services, and guardians who would like to participate. Paragraph (b)21 is being added to require licensees to ensure that there are no employees in the organization who are on the Child Abuse Registry. Paragraph (b)22 is a new provision to require licensees to submit procedures to address the use of surveillance cameras in common areas of the residences. Recodified paragraph (b)23 is amended to revise subparagraph (b)23v to update the codification.

N.J.A.C. 10:44C-2.4 Personnel

Paragraphs (a)1 through 3 are proposed for deletion because the criminal background check requirements are now incorporated into new subsection (b). Subsection (c) is proposed for deletion and replacement to remove text regarding criminal background checks and add text to require drug testing of employees, in accordance with Stephen Komminos' Law. Subsection (d) is relocated from subsection (b) and adds new subparagraph (d)2iv to disallow references from an applicant's family members. Subparagraph (d)3vi requires adding criminal background checks and drug testing to the job description.

The proposed amendments revise the minimum requirement for personnel records at recodified paragraph (h)6 to add the results for drug testing to the requirement for results of criminal background checks.

N.J.A.C. 10:44C-2.5 Minimum Staff Qualifications

The proposed revisions at subsection (f), (g), and (h) replace the term "service staff" with "support professional" to be consistent with current terminology.

N.J.A.C. 10:44C-2.6 Orientation

Subsection (a) includes a proposed revision to substitute the term "staff" replacing it with "direct support professionals." Paragraph (a)4 is amended to include emergency coverage and on-call procedures, as examples of emergency protocols that must be included in the entity's procedure manual and deletes references to including procedures for life-threatening emergencies. Paragraph (a)6 is amended to include a reference to drug testing as a component of job descriptions and personnel policies. Paragraph (a)7 is proposed for deletion and replacement to require a life threatening emergencies training for new staff during orientation. New paragraph (a)8 is proposed to require training regarding Stephen Komminos' Law during orientation.

N.J.A.C. 10:44C-2.7 Staff Training

Subsection (a) is amended to mandate basic staff training be completed within 90 days, rather than 120 days. The proposed amendment at paragraph (a)4 opens up the options for receiving first aid training from not just the American Red Cross, but to include any entity that meet the standards of Emergency Cardiovascular Care. Paragraph (a)5 similarly includes a proposed amendment to require the cardio-pulmonary resuscitation training meet the current Emergency Cardiovascular Care standard. Subparagraph (c)2i is added to specify that persons who work with individuals served that require mobility assistance, shall receive specific training in those adaptive techniques. Subsection (d) is amended to mandate the completion of staff training in specialized programs for staff who work with persons who have specialized needs within 90 days, rather than 120 days.

N.J.A.C. 10:44C-2.8 Staff Coverage

The proposed amendments paragraph (c) to delete paragraphs (c)1 and 2, to be consistent with Department practices and streamline the staff scheduling information that is required to be included the program description. Subparagraph (f)1i is added to clarify that staff of a temporary employment agency shall not be "in-charge" without the completion of training required at N.J.A.C. 10:44C-2.7 and the licensee's assumption of risk and liability for that employee's actions in a written policy. The rulemaking updates the cross-reference at subsection (h) to reference the specialized training requirements at N.J.A.C. 10:44C-2.7(c)1, 2, 3, and 4.

N.J.A.C. 10:44C-2.9 Records: Persons Served

Paragraph (d)10 is amended to include a more detailed list of examples for resident's valuable personal possessions that must be inventoried.

N.J.A.C. 10:44C-2.10 Funds and Financial Records: Persons Served

Subsection (f) is amended to increase the amount of an individual's personal funds that shall be placed in interest bearing accounts from an excess of \$100.00 to \$200.00. Paragraph (f)2, similarly, includes an increase in the amount of a person's funds from \$100.00 to \$200.00 that may be readily accessible in non-interest bearing accounts or a petty cash fund.

SUBCHAPTER 3. ADVOCACY AND RIGHTS

N.J.A.C. 10:44C-3.2 Rules Governing a Residence

Subsection (a) is amended to clarify that licensees may establish reasonable rules governing residents' smoking and pets but deletes the reference to establishing rules concerning visitors because residents are allowed to have visitors when they choose, as required pursuant to 42 CFR 441.301. Paragraph (a)1 requires that the rules established by the licensee must be commensurate with the abilities and rights of the individuals receiving services and must, at a minimum, conform to N.J.A.C. 10:44C-3.4(b), as required pursuant to 42 CFR 441.301.

N.J.A.C. 10:44C-3.3 Self-Advocacy

Subsection (a) is amended to require licensees to identify residents who wish to participate in house meetings, as required pursuant to 42 CFR 441.301. Proposed paragraph (a)1 is added to require residents who wish to participate in house meetings be included in the meeting process, scheduling, and agenda with the assistance of staff, as much as possible, as required pursuant to 42 CFR 441.301. Subsection (d) is proposed for deletion because the proposed amendments at subsection (a) address the requirement to include residents who want to participate in house meetings.

N.J.A.C. 10:44C-3.4 Enumeration of Rights

Subsection (b) is proposed for amendment, in accordance with 42 CFR 441.301, to add "unless otherwise determined by a documented person-centered planning process" to the enumeration of the rights and freedom to be afforded residents. Paragraph (b)2 adds "dignity" and "freedom from coercion" to the existing terms of "privacy" and "respect." Paragraph (b)8 is amended to allow residents to make or receive private telephone calls at any time. Paragraph (b)9 adds that residents must have access to food at any time. Paragraph (b)11 is amended to allow residents to have visitors at any time. Paragraph (b)12 is amended to require that the work individuals engage in must be competitive integrated employment. The

proposed amendment at (b)23 revises the requirement that individuals must be free from physical restraint to add that the individual must be free from isolation. New paragraph (b)25 permits residents to choose the time in which they rise and retire. New paragraph (b)26 allows individuals to participate in the selection of their roommate. Proposed new paragraph (b)27 provides that residents must be afforded the right to have access to information about and to participate in activities in the greater community.

N.J.A.C. 10:44C-3.6 Restriction or Modification of Rights

Proposed amendments at paragraph (a)1 require that any restriction or modification of an individual's rights must be reviewed and approved by the TDT using a person-centered planning process, as required pursuant to 42 CFR 441.301.

SUBCHAPTER 4. SERVICE DELIVERY/REHABILITATION/HABILITATION

N.J.A.C. 10:44C-4.1 Pre-Admission and Admission

Proposed new paragraph (a)8 is added to require the licensee to have written criteria affording all residents the right to choose a roommate, as required pursuant to 42 CFR 441.301. New subsection (e) is proposed to require a written lease for residents that meets New Jersey landlord and tenant law requirements and is comparable to other leases in the State, as required pursuant to 42 CFR 441.301. Paragraph (e)1 was also added to require a consumer residency agreement, in the absence of a formal lease, that will include the same protections afforded in a formal lease. The consumer residency agreement will specifically provide consumer protections including addressing eviction processes and appeal rights, as required pursuant to 42 CFR 441.301.

N.J.A.C. 10:44C-4.2 Individual Treatment Plan (ITP)

Subsection (b) is proposed for amendment to require that the specified evaluations be obtained within 45 days, rather than the existing 30 days, to give the clinical team time to address or develop an ITP that covers all that the initial assessment may uncover and gives more time for the program to coordinate other services. The requirement for annual inspections, thereafter, is deleted and relocated as new N.J.A.C. 10:44C-4.3(g), which requires the TDT to meet at least annually to review and update the ITP. Subsection (e) is amended to propose clarification that goals and objectives must use measurable and observable terms and that progress is to be reported monthly. The current examples of characteristics listed at paragraphs (e)1 through 8 are proposed for deletion to give the TDT a broader ability to develop goals while including the desires/needs of the person served.

N.J.A.C. 10:44C-4.3 Monitoring and Review of Individual Treatment Plans

Existing subsection (b) is proposed for deletion because it is redundant with the general criteria at subsection (a). Proposed new subsection (f) is added to incorporate the requirement for the TDT to meet at least annually to review and update the ITP.

N.J.A.C. 10:44C-4.4 Transfer or Discharge

The amendment proposed at paragraph (a)1 updates the cross-reference.

SUBCHAPTER 5. HEALTH AND SAFETY

N.J.A.C. 10:44C-5.2 Prescription Medication

An amendment is proposed at subsection (g) to substitute the word "order" for the word "dosage."

N.J.A.C. 10:44-5.5 Food

Subsection (c) is amended to specify that access to food can only be limited by approval for a resident through a person-centered planning process that is documented in the resident's record, as required pursuant to 42 CFR 441.301.

Proposed new subsection (j) requires that the minimum amount of food to be kept in the residence is a three-day supply.

N.J.A.C. 10:44C-5.6 Clothing

Subsection (a) is amended to include gender identity as a guideline for appropriate clothing.

N.J.A.C. 10:44C-5.7 Vehicle Safety

Proposed subsection (c) is added to ensure that vehicles are available to provide transportation, as needed, and as desired by the persons served for community integration, as required pursuant to 42 CFR 441.301. Paragraph (c)1 is added to specify that vehicles used to transport individuals in wheelchairs must be accessible and include safety mechanisms maintained and utilized at all times, as required pursuant to 42 CFR 441.301.

SUBCHAPTER 6. FIRE SAFETY AND PHYSICAL ENVIRONMENT

N.J.A.C. 10:44C-6.1 Fire Safety

The proposed amendment at subsection (a) clarifies that the Bureau of Fire Code Enforcement-Life Hazard Use Registration Unit, in the Department of Community Affairs that all community residences must be registered with and that the residence will be subject to inspection, as required by the inspection schedule contained at N.J.S.A. 52:27D-192 et seq., rather than on an annual basis.

N.J.A.C. 10:44C-6.2 Emergency Evacuation Plans

Paragraph (a)1 is amended to specify the criteria for the development of an emergency evacuation plan, including evaluating each resident's ability to evacuate, in three minutes or less.

Subparagraphs (a)1i through vii list the risk factors that must be taken into consideration in developing the emergency evacuation plan and are proposed for replacement. Specifically, subparagraph (a)1i now includes the requirement for consideration of the individual's ability to solve problems. Subparagraph (a)1ii is amended to require consideration of an individual's general ability to respond or not respond when it is time to evacuate and if there are any behavioral factors that could impact the person's ability to evacuate. Subparagraph (a)1iii is amended to evaluate what medical factors, including physical and mobility factors, could affect the person's ability to evacuate. New paragraph (a)2 identifies the required elements of the emergency evacuation plan including: a building description, exit locations, points of safety that are designated meeting spots for the occupants, special needs of residents, as well as a single plan of prioritized and sequential actions that would be required to make sure that everyone in the building promptly evacuates within three minutes. Subsection (b) is proposed for amendment to clarify that the evacuation plan is for "emergencies."

N.J.A.C. 10:44C-6.3 Fire Drills

A proposed amendment at paragraph (a)1 increases the number of required fire drills to four per year that must be performed during hours in which the residents are normally sleeping. Paragraph (b)2 is proposed for amendment to require the location of the simulated fire be recorded in the documentation of each fire drill.

N.J.A.C. 10:44C-6.5 Fire Extinguishers

Subsection (b) is proposed for amendment to require carbon monoxide detectors, in addition to fire extinguishers and smoke detectors, that must be checked monthly. The subsection has also been amended to require the checks be documented and the records maintained.

N.J.A.C. 10:44C-6.6 General Home Requirements

Paragraph (a)1 has a proposed amendment to update the cross-reference for the Barrier Free Subcode and adds a description of the same.

N.J.A.C. 10:44C-6.9 Heat Sources

Subsection (b) is amended to correct the degrees in Celsius.

N.J.A.C. 10:44C-6.13 Bedrooms

Proposed amendments at subsection (i) specify that bedroom doors shall be equipped with a privacy lock that can be unlocked from the outside in an emergency (with only appropriate staff having access to the key), as required pursuant to 42 CFR 441.301 et seq. Bolts, bars, and other similar devices shall not be used on bedroom doors.

N.J.A.C. 10:44C-6.14 Bathrooms

Subsection (d) is amended to specify that bathroom doors shall be equipped with a privacy lock that can be unlocked from the outside in an emergency (with only appropriate staff having access to the key), as

required pursuant to 42 CFR 441.301 et seq. Bolts, bars, and other similar devices shall not be used on bathroom doors.

N.J.A.C. 10:44C-6.15 Kitchens

The proposed amendment at subsection (d) corrects the Celsius temperature. Subsection (e) is added to specify the minimum requirements for the types kitchen appliances that must be available in the residence.

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 and repeal will have a positive social impact on the approximately 341 adults with head injuries who currently live in community residences licensed by the Department of Human Services. There are approximately six agencies that operate approximately 54 community residences for persons with head injuries in New Jersey. Such residences will continue to be inspected by the Department to ensure their compliance with rules designed to promote the health, safety, and welfare of the individuals receiving services.

Economic Impact

The proposed amendments and repeal are expected to result in a minimal net increase in costs for licensees. For example, licensees will be obligated to purchase privacy locks, if they do not already have them, for bathrooms and bedrooms for compliance with the Federal Home and Community Based Services regulations. The amendments proposed impose no economic burden on the individuals who live in community residences, or on their families.

Federal Standards Statement

The requirements of the proposed 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.

Jobs Impact

The Department anticipates no impact, either positive or negative, on job creation due to the proposed amendments and repeal. There is no anticipated change in the number of individuals served living in residences controlled by the proposed amendments and repeal. The number of persons employed at a residence in order to maintain the service levels described in the proposed amendments and repeal is not expected to change. The proposed amendments and repeal will not result in the generation or loss of any jobs.

Agriculture Industry Impact

The proposed amendments and repeal will not impact the agriculture industry.

Regulatory Flexibility Analysis

Some of the programs, facilities, and employers of record that receive State funding to provide services to individuals with head injuries may be considered small businesses pursuant to N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed amendments and repeal impose minimal recordkeeping, reporting, and compliance requirements (as described in the Summary above) and do not include any additional compliance requirements on small businesses. The current requirements that are already in place will remain in effect.

Housing Affordability Impact Analysis

The proposed amendments and repeal will have no impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the proposed amendments and repeal would evoke a change in the average costs associated with housing because the proposed amendments pertain to the Department's licensing program for community residences for individuals with head injuries.

Smart Growth Development Impact Analysis

The proposed amendments and repeal will have no impact on the number of housing units or the availability of affordable housing in this State and will have no effect on smart growth development in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan because the proposed amendments and repeal

pertain to the Department's licensing program for community residences for individuals with head injuries.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments and repeal will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles or adults 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 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 [or supported living programs].

(b) Group homes[,] **and** supervised apartments[, and supported living programs] designed specifically to meet the needs of individuals with developmental disabilities are licensed [under] **pursuant to** N.J.A.C. 10:44A.

(c) Community care residences [, living arrangements in which a Family Care or Skill Development program is provided in a private home or apartment,] **and owner-occupied living arrangements that are also community residences for individuals with developmental disabilities**, are licensed [under] **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. [Examples of abuse include, but are not limited to: physical acts causing pain, injury, anguish, or suffering such as kicking, pinching, biting, punching, slapping, hitting, pushing, dragging, or striking with a thrown or held object. Abuse may also include acts or attempted acts of lewdness, sexual contact, or sexual penetration; as well as verbal or psychological abuse or mistreatment inflicting emotional harm or mental distress; or invocation of fear, humiliation, intimidation, or degradation. Examples include, but are not limited to: bullying; ignoring need; verbal assault; use of racial or ethnic slurs; or intimidating gestures, such as shaking a fist at a person served (See N.J.S.A. 30:6D-73 et seq. and N.J.A.C 10:44D).]

...

“Advanced practice nurse,” also known as a nurse practitioner (see N.J.S.A. 45:11-46c), is defined [in] 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] **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, [and] 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] **P.L. 1971, c. 136** (N.J.S.A. 26:2H-1 et seq.).

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

...
 “Direct [service staff] **support professional**” means any licensee and any full time, part time, temporary employment services, or contract employee at a community residence for persons [served] **with head injuries** present in the living or program area who work directly with the person served. [“Direct service staff”] **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 [two] **one** year[s].

...
 “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.

...
 [“Initial license” means the first authorization to operate based upon substantial compliance with this chapter. An initial license shall be effective for up to six months.]

...
 [“Licensing agency” means Developmental Disabilities Licensing, within the Office of Licensing, Department of Human Services.]

...
 “Negative licensing action” means an action, which imposes a restriction on a licensee and may include suspension of admissions, issuance of a [conditional] **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 [handicaps] **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 [and/or funding] 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) Except as otherwise provided in the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A: 168A-1 et seq., no license shall be issued to any applicant or licensee who has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person, crimes involving a controlled dangerous substance or other like offenses.]

(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 license shall be issued to any applicant or licensee who has been convicted of a crime of moral turpitude.]

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. [A curriculum] **Curriculum vitae** for the applicant and executive leadership;

[iv. Documentation that the applicant meets the requirements of (b) above;]

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; [and

ix. The program description.

2. Licensees currently operating community residences for persons with head injuries in New Jersey shall be required only to provide any changes in (c)1 above, as part of the application process.

3. Applicants shall document on the application whether they will accept Division placements and/or seek Division funding.]

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.)

[h] The approved program description shall be available for review, as appropriate, by persons with head injuries, their guardians, their families and their advocates.]

(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 Procedure manual

Prior to opening an initial residence, an applicant shall submit a procedure manual, which meets the requirements of N.J.A.C. 10:44C-2.2, to the Office of Licensing for approval.]

10:44C-[1.6]1.5 [Issuance of an] Requirements for initial [license] 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[, including any required inspection by the Fire Official and registration with the Department of Community Affairs;].

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 [an initial] 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-[1.7]1.6 Renewal of a license

(a) [Upon reinspection, full] Full licenses shall [be effective for up to two years from the expiration date of the preceding license] remain in effect, unless otherwise specified by the Office of Licensing by the issuance of a [conditional] 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. The licensee shall submit a plan of correction regarding identified deficiencies cited in the reinspection report within 30 days or in accordance with a shorter time frame as established by the Office of Licensing.

2. 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 Department may conduct an on-site review to verify the corrective action taken.

1. Following an on-site review, the findings of the Department regarding the licensee's plan of correction shall be provided to the licensee. These findings shall indicate that each deficiency is corrected; partially corrected, not corrected, or 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.

(c) 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.

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

1. Subsequent to an on-site review, the findings of the Department 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 have been corrected, or if other deficiencies are noted which 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.]

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 [Denial, revocation, non-renewal, or suspension of a license] **Negative licensing action**

[(a) The Office of Licensing may deny, revoke, refuse to renew or suspend a license for substantial non-compliance or for willful non-compliance.]

(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; [or]
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 [document] **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 [agency may employ] **status shall have** a board of directors [provided it] **that** meets the [requirements contained in this chapter.] **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) When a board of directors is identified, there shall be:

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.

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).

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

[(j) The organization shall develop a policy that prohibits fee splitting with other agencies or persons as consideration for referral of the person served.]

(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 [by] **pursuant to N.J.S.A. 9:6-8.10[**, N.J.S.A.] [52-27G-1] **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 [7] **8.**

11.-13. (No change.)

14. A procedure for **an** internal communication [including, but not limited to, the following: i. A] 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. [; and ii. A staff communication log, 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;** [and]

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

[19.] **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 [which] **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 [of (b)19i] **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.

[1. The licensee shall assure that background checks are conducted for all employees who have direct contact with persons served by the agency, in accordance with N.J.A.C. 10:48A, Background Checks.

2. A licensee shall not employ any person who has been convicted of a crime of moral turpitude.

3. 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 by this chapter.

(b) 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 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;

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; and

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

(c) The licensee shall conduct a criminal background check for each applicant and each current staff member.

1. The licensee may employ the applicant or staff member for no more than six months pending the results of the criminal background check providing the applicant or staff member submits a sworn statement to the licensee attesting that he or she has not been convicted of any offenses enumerated in (a)1, 2, and 3 above.

2. The staff member shall be under direct supervision until such time as the results of the criminal background check are received and evaluated.]

(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.**

[(d)](e) Upon employment, **the direct [service staff] 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 [six] **12** months immediately preceding the direct [service staff's] **support professional's** starting date with the licensee.

[(e)](f) Within one year prior to or upon beginning work each direct [service staff member] **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 [service staff] **support professional** member shall submit to the licensee written documentation of the results of any testing or certification.

2. If the direct [service staff] **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 [service staff member] **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 [service staff member] **support professional** who fails to submit satisfactory results from a medical practitioner from having contact with persons served or other staff.

5. (No change.)

[(f)](g) The licensee shall maintain on file the following for all direct [service staff] **support professionals**:

1.-2. (No change.)

[(g)](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 [service staff] **support professionals** shall be at least 18 years of age and shall have a high school diploma or equivalent.

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

(h) Direct [service staff] **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 [staff] **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**[, and the procedure for life-threatening emergencies, that incorporates the provisions of N.J.A.C. 10:42A, Life-Threatening Emergencies (Danielle's Law)];

5. (No change.)

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

[7. The implementation of the licensee's emergency coverage and on-call procedures.]

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 [120] **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. [American Red Cross Standard] 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, [by the TDT,] 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 [120] **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[, and shall specify:].

[1. The on-site coverage; and

2. The emergency coverage and access procedures in instances where on-site coverage is not necessary.]

(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. [10:44A]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 [property] **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 \$[100.00]**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 \$[100.00]**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 [a particular] **their** residences, including, but not limited to, rules regarding smoking[,] **and** pets, [and visitors,] 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.)
- (d) The process of conducting house meetings shall include the person served as much as possible unless the TDT has determined otherwise. The scheduling of such meetings shall include the persons served living in the home. Staff shall assist the persons served with setting the schedules and agendas for house meetings. If the TDT has determined that the person served is unable to participate or if the person served chooses not to participate in house meetings this shall be noted in the ITP.]

10:44C-3.4 Enumeration of rights

- (a) (No change.)
- (b) Each person served shall further be afforded the following rights and freedom[s] 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,** [and] respect, **and freedom from coercion;**
 - 3.-7. (No change.)
 8. Make or receive private telephone calls [during set times, unless the person served has a personal telephone, in which private telephone calls shall not be restricted unless otherwise determined by the TDT] **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 [during set times] **at any time;**
 12. [Work] **Competitive integrated employment or work** with pay that is a commensurate wage or otherwise appropriate for the type [or] **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; [and]
 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 [in] **at** (b)1 through 11 below shall be obtained within [30] **45** days [and annually thereafter].

- 1.-11. (No change.)
- (c)-(d) (No change.)
- (e) The goals and objectives shall be written in [behavioral terms that have the following characteristics:
 1. Reflect short-term outcome (one year or less);
 2. Reflect a small step toward goal accomplishment;
 3. Target a single behavior;
 4. Are stated in measurable terms;
 5. Contain performance criteria;
 6. Include a statement of performance stability over time;
 7. Identify who is responsible for implementing a specific goal or objective; and
 8. The data collection methods to be used, including specific directions regarding:
 - i. What is to be measured;
 - ii. How it is to be measured;
 - iii. How frequently the behavior shall be measured; and
 - iv. How progress shall be reported for monthly review.] **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.)
- (b) A thorough, quality monthly review has at least three components:
 1. A review of specific progress data;

- 2. Observation of plan implementation; and
 - 3. A review of the entire plan.]
- 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)[9]**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 [dosage] **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. [Each prescribed] **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 [by the TDT] **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**, [on an annual basis,] 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 [served] **ability to evacuate the residence in three minutes or less**, according to the following risk factors:

[i. Mobility;

ii. Ability to problem-solve;

iii. Ability to evacuate;

iv. Compliance issues;

v. Medical factors;

vi. Behavioral factors; and

vii. The use of physical or mechanical restraint.]

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, [at least one] **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 [each person served at the onset of the drill] **the simulated fire;**

3.-5. (No change.)

(c)-(d) (No change.)

10:44C-6.5 Fire extinguishers

(a) (No change.)

(b) Fire extinguishers, [and] 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] **Barrier Free** Subcode, N.J.A.C. 5:23-[7]**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 ([18] **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 ([seven] **four** degrees Celsius). Freezer compartments shall operate at no 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.**

LABOR AND WORKFORCE DEVELOPMENT

(a)

DIVISION OF WAGE AND HOUR COMPLIANCE

Public Works Contractor Registration

Proposed Amendments: N.J.A.C. 12:62-1.2, 2.1, 2.2, 2.3, 2.4, and 2.6

Proposed New Rules: N.J.A.C. 12:62-2.7 and 2.8

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:11-56.57.

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

Proposal Number: PRN 2022-084.

Submit written comments by August 20, 2022, to:

David Fish, Executive Director
 Legal and Regulatory Services
 New Jersey Department of Labor and Workforce Development
 PO Box 110-13th Floor
 Trenton, New Jersey 08625-0110
 Email: david.fish@dol.nj.gov

The agency proposal follows:

Summary

The New Jersey Department of Labor and Workforce Development (Department) is proposing amendments at N.J.A.C. 12:62-1.2, 2.1, 2.2, 2.3, 2.4, and 2.6 and new rules at N.J.A.C. 12:62-2.7 and 2.8, in order to implement the following laws: P.L. 2019, c. 376; P.L. 2019, c. 518; P.L. 2021, c. 423; P.L. 2019, c. 44; and P.L. 2021, 253. Specifically, P.L. 2019,

c. 376, expanded the scope of the New Jersey Public Works Contractor Registration Act (PWCRA), N.J.S.A. 34:11-56.48 et seq., to cover not only contractors who enter contracts for the performance of “public work,” as that term is defined in the New Jersey Prevailing Wage Act (PWA), N.J.S.A. 34:11-56.25 et seq., but to also cover contractors who are required to pay its workers the prevailing wage rate “by any other provision of law.” As a result, the Department is proposing an amendment to the definition of the term “contractor” at N.J.A.C. 12:62-1.2, and an amendment at N.J.A.C. 12:62-2, which describes the registration requirement, so as to add the phrase, “or for which payment of the prevailing wage is required by any other provision of law.”

P.L. 2019, c. 518, added new definitions at N.J.S.A. 34:11-56.50 of the PWCRA for the terms, “apprenticeship agreement,” “apprenticeship cohort,” “apprenticeship committee,” “apprenticeable occupation,” “apprenticeship program,” “completion rate,” “sponsor,” and amended the existing statutory definition for the term “registered apprenticeship program.” As a result, the Department is proposing amendments at N.J.A.C. 12:62-1.2, which would add the above-listed new definitions from the PWCRA and amend the Department’s existing regulatory definition for the term “registered apprenticeship program” in a manner consistent with the PWCRA.

P.L. 2021, c. 423, amended the PWCRA to:

(1) Impose minimum requirements (within Section 6, at P.L. 2021, c. 423) upon registered apprenticeship programs exclusively for the purpose of their use by contractors registered to perform public work in New Jersey to comply with the apprenticeship requirement at N.J.S.A. 34:11-65.52(a)(6) (and not for the purpose of affecting the apprenticeship program’s registration status with the United States Department of Labor);

(2) Require that each registered apprenticeship program in which a contractor “participates” must meet the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7;

(3) Require each applicant, as a condition to being registered as a public works contractor, to certify that the registered apprenticeship program or programs in which it participates meet the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7;

(4) Delineate the sanctions that may be imposed by the Department against a contractor who is “participating in” a registered apprenticeship program that does not meet all of the requirements of section 6 at P.L. 2021, c. 423, and 29 CFR 29.3 through 29.7;

(5) Impose a continuing obligation on registered public works contractors between registration certificate renewal cycles to comply with each of the requirements at N.J.S.A. 34:11-56.52, including the requirement at N.J.S.A. 34:11-56.52(a)(6), that the contractor participate in a registered apprenticeship program for each craft that it employs in the performance of public work;

(6) Describe the circumstances under which a contractor who fails to comply with the requirements at N.J.S.A. 34:11-56.52 between registration certificate renewal cycles will suffer a revocation of its contractor registration certificate;

(7) Add to the existing list of causes for a disorderly persons offense, the willful making or causing to be made of a false, deceptive, or fraudulent statement on a public works contractor registration form;

(8) Impose a specific set of penalties for conviction of such a disorderly persons offense; and

(9) Increase the annual non-refundable public works contractor registration fee from \$300.00 to \$500.00, and the optional two-year non-refundable registration renewal fee from \$500.00 to \$750.00.

As a result of P.L. 2021, c. 423, the Department is proposing the following changes at N.J.A.C. 12:62:

(1) Proposed new N.J.A.C. 12:62-2.8, which would contain each of the requirements enumerated within Section 6 at P.L. 2021, c. 423, for registered apprenticeship programs in which contractors “participate” as a condition to being registered by the Department as a public works contractor pursuant to N.J.S.A. 34:11-56.52(a)(6);

(2) An amendment at N.J.A.C. 12:62-2.1, which would add two new requirements to the contractor registration application, namely: (i) a statement by the contractor that the registered apprenticeship program or programs in which it participates meet all of the requirements at N.J.A.C. 12:62-2.8 and 29 CFR 29.3 through 29.7; and (ii) a statement by the contractor that it is in possession of documentation that will be made