

RULE PROPOSALS

INTERESTED PERSONS

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

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

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

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES Standards for Private Licensed Facilities for Persons with Developmental Disabilities

Proposed Readoption: N.J.A.C. 10:47

Authorized By: Jennifer Velez, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12, 30:1-15, 30:1-15.1, and 30:6D-1 et seq., and Reorganization Plan 006-2005.

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

Proposal Number: PRN 2014-029.

Submit comments by May 2, 2014, to:

Douglas Swan
Administrative Practice Officer
Office of Program Integrity and Accountability
PO Box 700
Trenton, NJ 08625-0700

The agency proposal follows:

Summary

Chapter 47, formerly headed "Manual of Standards for Private Licensed Institutions for the Mentally Retarded," became effective August 1, 1975. Chapter 47 was repealed and replaced with new rules as "Manual of Standards for Private Licensed Facilities for the Mentally Retarded" and became effective November 4, 1985. In 1990, the rules were readopted without amendments. On October 16, 1995, Chapter 47 was readopted with substantial amendments and was headed "Manual of Standards for Private Licensed Facilities for the Developmentally Disabled." On September 17, 2001, Chapter 47 was readopted with minor amendments and was headed "Standards for Private Licensed Facilities for Persons with Developmental Disabilities." On January 30, 2007, Chapter 47 was readopted with substantive amendments, repeals, and new rules and remained headed "Standards for Private Licensed Facilities for Persons with Developmental Disabilities." Pursuant to N.J.S.A. 52:14B-5.1.b, N.J.A.C. 10:47 was scheduled to expire on January 30, 2014. As the Department of Human Services (Department) filed this notice of readoption with the Office of Administrative Law prior to January 30, 2014, the expiration date is extended 180 days to July 29, 2014, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The rules proposed for readoption constitute the general physical and program requirements for private licensed facilities for the developmentally disabled. Previously, these facilities had been inspected by the Division of Developmental Disabilities (within the Department of Human Services) and licensed by the State Department of Health and Senior Services (now named the Department of Health). Pursuant to

Reorganization Plan 006-2005, promulgated by Governor Richard J. Codey, which became effective on August 29, 2005, the responsibility for inspecting and licensing these facilities was assigned solely to the Department of Human Services (Department).

The rules still address all aspects of the facilities' operations, with the exceptions noted below. The purpose of the rules is to protect the health, safety, welfare, and human rights of the individuals who live in these residential facilities in the State of New Jersey. The term "individuals" is used in this chapter and in this notice of proposal to refer to individuals who reside in these facilities.

The Department has reviewed these rules and found them reasonable, necessary, and proper for the purpose for which they were promulgated. The Department recognizes that further rulemaking is necessary in order to capture, in this licensing chapter, the changes in policy and practice that have been developed and promulgated by the Department of Human Services since they were last amended. To that end, the Department is preparing further amendments to this rule. These amendments will be proposed in the near future.

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

Subchapter 1. General Provisions

N.J.A.C. 10:47-1.1 states that the purpose of Chapter 47 is to establish licensing requirements, promulgated by the Department of Human Services, for private licensed facilities for the developmentally disabled in New Jersey, and indicates that such licensing requirements are necessary in order to protect individuals with developmental disabilities that are placed in a private licensed facility, and to provide for overall improvement in the quality of life for individuals with developmental disabilities residing in private licensed facilities. N.J.A.C. 10:47-1.2 specifies definitions of terms used in the chapter.

Subchapter 2. Licensure

N.J.A.C. 10:47-2.1 specifies requirements for admissions to private facilities. N.J.A.C. 10:47-2.2 specifies requirements for surveys of facilities. N.J.A.C. 10:47-2.3 specifies requirements for licenses.

Subchapter 3. Administration

N.J.A.C. 10:47-3.1 specifies management and organizational standards. N.J.A.C. 10:47-3.2 specifies requirements for inspections. N.J.A.C. 10:47-3.3 specifies requirements for waivers. N.J.A.C. 10:47-3.4 specifies mission statement requirements. N.J.A.C. 10:47-3.5 specifies requirements regarding conflict of interest and the provision of goods and services. N.J.A.C. 10:47-3.6 specifies governing body requirements for non-proprietary facilities. N.J.A.C. 10:47-3.7 specifies governing body requirements for proprietary facilities. N.J.A.C. 10:47-3.8 specifies administrative procedures manual requirements. N.J.A.C. 10:47-3.9 includes the requirement for reporting exploitation of persons under the age of 18, as well as the abuse and neglect of such persons. N.J.A.C. 10:47-3.10 specifies requirements for reporting allegations of

abuse or neglect of individuals over 60 years of age. N.J.A.C. 10:47-3.11 specifies requirements for a quality assurance system. N.J.A.C. 10:47-3.12 specifies requirements for behavior management. N.J.A.C. 10:47-3.13 specifies requirements for admission policies. N.J.A.C. 10:47-3.14 specifies pre-admission requirements. N.J.A.C. 10:47-3.15 specifies requirements for individual records. N.J.A.C. 10:47-3.16 specifies discharge record requirements. N.J.A.C. 10:47-3.17 specifies requirements for maintenance of records. N.J.A.C. 10:47-3 Appendix is a table showing classification of incident categories.

Subchapter 4. Personnel and Staff Training

N.J.A.C. 10:47-4.1 specifies requirements for policies. N.J.A.C. 10:47-4.2 specifies requirements for personnel records. N.J.A.C. 10:47-4.3 specifies requirements for staff training. N.J.A.C. 10:47-4.4 specifies requirements for staff ratios. N.J.A.C. 10:47-4.5 specifies requirements for volunteer services.

Subchapter 5. Protecting Individuals' Rights

N.J.A.C. 10:47-5.1 specifies general provisions. N.J.A.C. 10:47-5.2 specifies requirements for personal funds. N.J.A.C. 10:47-5.3 specifies requirements for clothing and personal possessions. N.J.A.C. 10:47-5.4 specifies requirements for privacy. N.J.A.C. 10:47-5.5 specifies requirements for personal hygiene.

Subchapter 6. Health Services

N.J.A.C. 10:47-6.1 specifies requirements for general medical and health care. N.J.A.C. 10:47-6.2 specifies requirements for primary care provider services. N.J.A.C. 10:47-6.3 specifies requirements for nursing services. N.J.A.C. 10:47-6.4 specifies requirements for dental services. N.J.A.C. 10:47-6.5 specifies requirements for pharmaceutical services. N.J.A.C. 10:47-6.6 specifies requirements for psychoactive medication. N.J.A.C. 10:47-6.7 specifies requirements for medical records. N.J.A.C. 10:47-6.8 specifies requirements for lead control.

Subchapter 7. Habilitation Services

N.J.A.C. 10:47-7.1 specifies Individual Habilitation Plan requirements. N.J.A.C. 10:47-7.2 specifies education requirements. N.J.A.C. 10:47-7.3 specifies requirements for adult training and vocational services. N.J.A.C. 10:47-7.4 specifies requirements for psychological services. N.J.A.C. 10:47-7.5 specifies behavior management procedure manual requirements. N.J.A.C. 10:47-7.6 specifies behavior management committee requirements. N.J.A.C. 10:47-7.7 specifies requirements for use of Level III techniques for behavior management. N.J.A.C. 10:47-7.8 specifies requirements for medical certification in cases of physical risk. N.J.A.C. 10:47-7.9 specifies requirements for emergency mechanical restraint. N.J.A.C. 10:47-7.10 specifies requirements for social services. N.J.A.C. 10:47-7.11 specifies requirements for rehabilitation services. N.J.A.C. 10:47-7.12 specifies requirements for adaptive equipment.

Subchapter 8. Dietary Services

N.J.A.C. 10:47-8.1 specifies requirements for dining environment. N.J.A.C. 10:47-8.2 specifies requirements for nutritional services. N.J.A.C. 10:47-8.3 specifies requirements for meal service. N.J.A.C. 10:47-8.4 specifies requirements for food service and menu planning. N.J.A.C. 10:47-8.5 specifies requirements for food sanitation.

Subchapter 9. Physical Environment

N.J.A.C. 10:47-9.1 specifies general requirements. N.J.A.C. 10:47-9.2 specifies requirements for bedrooms. N.J.A.C. 10:47-9.3 specifies requirements for bathrooms. N.J.A.C. 10:47-9.4 specifies requirements for laundry services.

Subchapter 10. Life Safety

N.J.A.C. 10:47-10.1 specifies requirements for fire safety. N.J.A.C. 10:47-10.2 specifies sanitation requirements. N.J.A.C. 10:47-10.3 specifies transportation requirements.

Social Impact

The rules proposed for re-adoption establish minimum standards to protect the rights of all individuals residing in private residential facilities for persons with developmental disabilities. Further, these rules clearly

set forth the requirements for care, treatment, and habilitation services that must be provided for each individual. By complying with these rules, the facilities will ensure that the individuals served will be provided the levels of care, treatment, habilitation, and supervision needed.

Economic Impact

The overall impact on the licensed facilities is derived from staffing, program, and facility costs required by the rules proposed for re-adoption. Since the facilities' methods of implementation of the standards imposed upon them vary, it is not possible to determine the specific cost of each requirement. The facilities are reimbursed for some, if not all, of their costs through fees charged to the various payors for services, such as parents, individuals, and government agencies.

Federal Standards Statement

There are no Federal requirements pertaining to private residential facilities. Therefore, no Federal standards analysis is required.

Jobs Impact

The rules proposed for re-adoption will not result in the generation or loss of any jobs.

Agriculture Industry Impact

The rules proposed for re-adoption will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for re-adoption affect small businesses, as they are defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. At present, the three facilities licensed under these rules are small businesses. These small businesses, however, regardless of size, should not be exempt from the rules due to the overriding concern for the health, safety, welfare, and the legal and civil rights of the developmentally disabled individuals living in private residential facilities. The facilities are required to comply with the standards described in the Summary above. The facilities licensed under these rules will not experience any change in their method of operation nor in the services that must be provided. The rules proposed for re-adoption mandate no specialized programming beyond that previously required. Also, there are no specific professional services required that would place any additional burdens on the facilities. Facilities are required to maintain certain records regarding the care, treatment, and training of individuals served by the facility, including, but not limited to, an individual habilitation plan, medical and nursing records, and staff training records. Facilities are also required to maintain records on the criminal background checks of employees and an annual summary relating to results of the facilities continuous quality assurance programs. Facilities are required to meet environmental health and safety standards. These standards are designed to protect the well-being of individuals who reside in these facilities. Also, facilities are required to provide habilitation services to all individuals, regardless of their level of functioning. No differentiation in requirements based upon the size of the business is necessary since each facility is required to provide a wide-range of services, protection, supervision, and a clean, safe environment.

Housing Affordability Impact Analysis

The rules proposed for re-adoption have no impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to the Department's mental health services licensing program for private facilities.

Smart Growth Development Impact Analysis

The rules proposed for re-adoption have an insignificant impact on smart growth. There is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to the Department's mental health licensing program for private facilities.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:47.