

CHAPTER 44B

**MANUAL OF STANDARDS FOR
COMMUNITY CARE RESIDENCES**

Authority

N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4.

Source and Effective Date

R.2013 d.062, effective March 19, 2013.
See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Chapter Expiration Date

Chapter 44B, Manual of Standards for Community Care Residences, expires on March 19, 2020.

Chapter Historical Note

Chapter 44B, Manual of Standards for the Licensing and Regulation of Adult Foster Homes, Skill Development Homes and Supervised Apartments for the Developmentally Disabled, was adopted as R.1980 d.157, effective April 17, 1980. See: 11 N.J.R. 505(c), 12 N.J.R. 278(e).

Chapter 44B, Manual of Standards for the Licensing and Regulation of Adult Foster Homes, Skill Development Homes and Supervised Apartments for the Developmentally Disabled, was repealed, and Chapter 44B, Manual of Standards for Skill Development Homes, Family Care Homes and Family-Based Respite Care Homes, was adopted as new rules by R.1985 d.181, effective April 15, 1985. See: 17 N.J.R. 359(b), 17 N.J.R. 958(a).

Pursuant to Executive Order No. 66(1978), Chapter 44B, Manual of Standards for Skill Development Homes, Family Care Homes and Family-Based Respite Care Homes, expired on April 15, 1990.

Chapter 44B, Manual of Standards for Community Care Residences, was adopted as new rules by R.1990 d.359, effective July 16, 1990. See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Pursuant to Executive Order No. 66(1978), Chapter 44B, Manual of Standards for Community Care Residences, expired on July 16, 1995.

Chapter 44B, Manual of Standards for Community Care Residences, was adopted as new rules by R.1995, d.530, effective October 2, 1995. See: 27 N.J.R. 2365(a), 27 N.J.R. 3793(a).

Pursuant to Executive Order No. 66(1978), Chapter 44B, Manual of Standards for Community Care Residences, expired on October 2, 2000.

Chapter 44B, Manual of Standards for Community Care Residences, was adopted as new rules by R.2001 d.50, effective February 5, 2001. See: 32 N.J.R. 3529(a), 33 N.J.R. 554(c).

Chapter 44B, Manual of Standards for Community Care Residences, was readopted as R.2006 d.171, effective April 13, 2006. See: 37 N.J.R. 4849(a), 38 N.J.R. 2158(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 44B, Manual of Standards for Community Care Residences, was scheduled to expire on October 10, 2011. See: 43 N.J.R. 950(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 44B, Manual of Standards for Community Care Residences, was scheduled to expire on October 10, 2013. See: 43 N.J.R. 1203(a).

Chapter 44B, Manual of Standards for Community Care Residences, was readopted as R.2013 d.062, effective March 19, 2013. As a part of R.2013 d.062, Subchapter 2, Administrative Policies and Practices, was renamed Management of the Residence; and Subchapter 2A, Records, was adopted as new rules, effective April 15, 2013. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

10:44B-1.1 Purpose and scope

The purpose of this chapter is to provide minimum standards that protect the health, safety, welfare and rights of individuals with developmental disabilities and persons with traumatic brain injuries residing in community care residences. If all persons living in a community care residence, except the licensee and members of the licensee's family, are persons with a developmental disability or are persons who have sustained a traumatic brain injury, and if all such persons do not require personal guidance, as determined by the interdisciplinary team (IDT), licensure is available on a voluntary basis to New Jersey residents in accordance with the expressed preferences of the persons' with a developmental disability and/or traumatic brain injury or their legal guardian.

New Rule, R.1990 d.359, effective July 16, 1990.
 See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).
 Amended by R.2013 d.062, effective April 15, 2013.
 See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).
 Rewrote the section.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 386) adopted, which found that, although licensed adult care provider was not directly responsible for burns suffered by a resident under her care, the provider had ample reason to be alerted to possible injury, but did not see fit to examine the resident, resulting in a failure to timely treat the burns; the provider's conduct was such that she failed to provide and maintain proper and sufficient health care, and/or adult supervision for her residents and her license to operate a Community Care Residence was properly revoked. *Dep't of Human Services v. White-Bryant*, OAL Dkt. No. HSL 04241-07, 2008 N.J. AGEN LEXIS 1242, Final Decision (July 15, 2008).

10:44B-1.2 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect and to this end the provisions of this chapter are severable.

New Rule, R.1990 d.359, effective July 16, 1990.
 See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

10:44B-1.3 Definitions

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

“Abuse” means an act or omission of an act that will deprive an individual of his or her rights, which may include but are not limited, physical abuse, sexual abuse, and/or verbal abuse, psychological abuse, or mistreatment.

“Advocate” means a public or private officer, agency, or organization designated by State legislation, the State plan, or the Governor to represent the interests of individuals with developmental disabilities or persons with traumatic brain injuries to speak on behalf of such individuals.

“Age appropriateness” means that aspect of normalization which reinforces recognition of an individual as a person of a certain chronological age.

“Alternate” means a person 18 years of age or older who has been selected and identified by the licensee to the licensing agency and the placing and/or development agency and who accepts the responsibility to provide care and supervision for individuals who require supervision.

“Applicant” means a person age 18 or older who satisfactorily initiates and completes the application process in order to obtain a license to operate a community care residence.

“Barrier-free design” means any design in the residence necessary to accommodate individuals with physical disabilities which include, but are not limited to: ramps, handrails in

bathroom areas, corridors or doorways, or rooms and doorways with space enough to accommodate individuals in wheelchairs.

“Boarder” means any person residing in the home who is not a member of the family, who is not developmentally disabled and who receives room, board and personal guidance.

“Capacity” means the maximum number of individuals, including boarders, who may be accommodated in the home, other than family members, at any time under the terms of the home's license.

“Case manager” means an employee of the Division or of a contracted agency who coordinates the implementation of programs, supports, and/or services to facilitate the achievement of the outcomes, goals, and/or objectives identified in the service plan. A case manager provides assistance to the individual in gaining access to needed State plan services, medical, social, educational, and other services, regardless of the funding source for the services. Activities of the case manager may include assessment, service/support planning, arrangement of services, coordination of service providers, and/or monitoring and overseeing the provision of services.

“Census” means the number of individuals or boarders currently residing in the residence. The census of the home shall count towards the capacity of the home.

“Central Registry” means the Central Registry of Offenders Against Individuals with Developmental Disabilities enacted pursuant to N.J.S.A. 30:6D-77 and N.J.A.C. 10:44D.

“Chores” means those duties which are normally performed by members of a household as a matter of routine.

“Close” means a final licensing action by the Department in which an applicant or a licensee is prohibited from operating a community care residence for individuals with developmental disabilities or persons with traumatic brain injuries.

“Community care residence” means a private house or apartment in which a person 18 years or older or family contracts with the Department to provide individuals with developmental disabilities or persons with traumatic brain injury with care and a level of training and supervision that is based upon the documented needs and wishes of the individuals placed in the residence.

“Community residence for the developmentally disabled” means any community residential facility housing up to 16 individuals with a developmental disability that also provides food, shelter, personal guidance, and/or training for individuals with a developmental disability who require assistance, temporarily or permanently, in order to live independently in the community. Such residences shall not be considered health care facilities within the meaning of the “Health Care Facilities Planning Act,” P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.) and shall include, but not be limited to, group homes,

halfway houses, supervised apartment living arrangements, hostels, and community care residences (formerly skill development homes, family care homes, and respite homes).

“Community Services” means a component of the Division of Developmental Disabilities that provides housing and supportive services, work and training programs to individuals with developmental disabilities and traumatic brain injuries who are residing in the community.

“Confidentiality” means maintaining records of individuals in a secure manner pursuant to State and Federal law so that no unauthorized persons have access to the contents therein.

“Danielle’s Law” means N.J.S.A. 30:6D-5.1 and the rules promulgated thereunder, N.J.A.C. 10:42A, which requires any person working with individuals with developmental disabilities or traumatic brain injury at a community care residence or other facility for persons with developmental disabilities or persons with traumatic brain injuries to call 911 in the event of a life-threatening emergency.

“Day activities” means an organized schedule for an individual or program of education, habilitation, and/or rehabilitation, engaged in by that individual or said individual’s employment in the community.

“Department” means the Department of Human Services.

“Development agency” means an agency, under contract with the Department, which recruits, trains, and supports licensees that operate community care residences.

“Developmental disability” means a severe, chronic disability of a person, which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and/or expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of life-long or extended duration and are individually planned and coordinated.

“Division” means the Division of Developmental Disabilities, within the Department.

“Domicile” means the permanent, established residence of the applicant or licensee.

“Exploitation” means any willful, unjust, or improper use of an individual or their resources for the benefit, profit, or

advantage of another and/or condoning and/or encouraging the exploitation of said individual by another person. Examples of exploitation include, but are not limited to, appropriating, borrowing, or taking without authorization, personal property/funds belonging to the individual or requiring the latter to perform functions or activities that are normally conducted by persons employed by or contracted with the Division or other agencies, or the performance of which are done solely for the convenience of others.

“Falsification” means intentionally making a record or a document false, giving a false appearance to a record or a document, or making a false statement.

“Family” means the licensee’s spouse, siblings, parents, stepparents, children, stepchildren, adopted children, grandchildren, great-grandchildren, grandparents, cousins, nephews, nieces, aunts, uncles, civil union partners, and domestic partners.

“Firearm” means any firearm as defined in N.J.A.C. 13:54-1.2.

“Goal” means a written statement of attainable, measurable, behavioral or service objectives with an outcome that is expected to be achieved partially or completely within the year the service plan is in effect. Goals must be related to the personal outcomes desired by the individual.

“Guardian” means a person or agency appointed by a court of competent jurisdiction or otherwise legally authorized and responsible to act on behalf of a minor or incapacitated adult to assure provision for the health, safety, and welfare of the individual and to protect his or her rights.

“Habilitation” means services designed to assist individuals with developmental disabilities in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to function successfully in residential-, day-program-, and other-community-based settings. Habilitation services are long-term supports usually provided to individuals with developmental disabilities that are distinguished from rehabilitation services in terms of length of treatment, goals of treatment, and recipient of treatment.

“Individual” means a person with developmental disabilities or a person with traumatic brain injury residing in a licensed community residence and who receives services from the Department. “Individual with developmental disabilities” or “individual with traumatic brain injury” will be used as necessary to distinguish between such persons and others, such as staff of the agency or staff of the Division or the Department.

“Interdisciplinary team” (IDT) means a group that shall minimally consist of the individual receiving services, the plan coordinator, the legal guardian, and/or the Division case manager. IDT members may include the parents or family member at the preference of the individual or guardian. In addition, IDT members may include: advocates and friends,

those persons who work most directly with the individual, and professionals and representatives of service areas, who are relevant to the identification of the individual's needs and preferences and the design and evaluation of programs to meet them.

"License" means the authorization issued by the Department for a period of up to one year to operate a community residence providing services to individuals with developmental disabilities or traumatic brain injuries. A license can be denied, revoked, suspended, or can be placed on provisional status by the Department for violations of minimum standards promulgated herein.

"Licensee" means one or more adults, age 18 or older, otherwise known as providers, responsible for the overall operation of the community care residence and who are named on the license.

"Licensing agency" means Developmental Disabilities Licensing, within the Office of Program Integrity and Accountability, within the Department of Human Services.

"Medication" means all medications, medicated creams, vitamins, treatments, and supplements prescribed by a physician.

"Negative licensing sanction" means an action taken, which imposes a restriction on a licensee and includes, but is not limited to: suspension of admissions into the residence, issuance of a provisional license, reduction in the licensed capacity of the residence, reduction in the licensure term of the residence, non-renewal of the license, suspension of the license, or revocation of the license.

"Neglect" means the failure of any person responsible for the welfare of an individual to provide the needed supports and services to ensure the health, safety, and welfare of the individual. These supports and services may or may not be defined in a plan of care for the individual, or otherwise required by law or rule. Neglect includes acts that are intentional, unintentional, or careless, regardless of the incidence of harm inflicted on the individual. Examples include, but are not limited to, the failure to provide needed care such as shelter, food, clothing, supervision, attention to personal hygiene, medical care, and protection from health and safety hazards.

"Non-compliance" means that an applicant or licensee has not complied with this chapter.

"Occupant" means any person residing in the residence who is not an individual or boarder requiring care from the licensee.

"Pattern of non-compliance" means a pattern of recurrences of licensing violations over time.

"Person" means a human being, as opposed to a corporation (an "artificial" or "legal" person).

"Personal guidance" means the assistance provided to an individual or boarder in activities of daily living because he or she routinely requires assistance in completing these activities; and/or cannot direct someone to complete such activities when physical handicaps prevent self-completion; or there is a documented health or mental health problem requiring supervision of the person for the protection of the individual or others. In the absence of a court determination, the IDT shall determine the need for personal guidance for each individual.

"Physical abuse" means a physical act directed at an individual of a type that may cause, or actually causes, pain, injury, anguish, and/or suffering. Such acts include, but are not limited to: restraining, kicking, pinching, biting, punching, slapping, hitting, pushing, and/or striking with a thrown or held object.

"Placing agency" means the entity or authority that is responsible for the placement of and payment for an individual in a community care residence.

"Plan of correction" (POC) means the written response from the licensee to the licensing agency addressing identified non-compliance.

"Plan coordinator" means a person designated to coordinate the development of the individual's service plan.

"Provisional license" means that authorization to operate issued to new homes or used to prompt corrective actions in existing homes. A provisional license shall be for less than 12 months.

"Respite care program" means the provision of room, board and personal guidance services, on a temporary basis not to exceed 30 days, in a licensed community care residence.

"Service plan" means a written individualized habilitation plan consistent with the requirements of N.J.S.A. 30:6D-10 through 12, developed with the individual and/or his or her legal guardian and the IDT. It is an outcome-based planning tool that, at a minimum, identifies each individualized program, support, and/or service requested by and provided to the individual, for which the individual demonstrates a need. It identifies the person and/or agency responsible for its implementation. The complexity of the service plan will vary according to the individual's interests, preferences, and needs. The service plan format must be Division-approved and can include, but shall not be limited to: individual habilitation plan (IHP); essential lifestyle plan (ELP); or individual service plan (ISP).

"Sexual abuse" means any act of a sexual nature, which may include, but is not limited to: acts of lewdness, touching, or contact with private body areas for the purpose of sexual arousal, gratification, sexual molestation, sexual exploitation, or sexual penetration by a person with an individual with a developmental disability, which is non-consensual or for

which the developmentally disabled person lacks the capacity to consent, by one or more parties. Any form of sexual contact or activity between a licensee or service provider and an individual with a developmental disability, absent marriage, domestic partnership, or civil union, is sexual abuse, regardless of whether the individual with a developmental disability gives consent or the service provider is on or off duty.

“Skill development program” means care and training conducted in accordance with a service plan and overseen by the case manager, provided in a private home or apartment to developmentally disabled persons by an adult person or family under contract with the Department as a community care residence.

“Substantial non-compliance” means that a licensee’s failure to meet licensing requirements directly endangers the health, safety, or welfare of an individual or individuals, when the unmet requirements exist in significant number; when the degree of the condition(s) is severe; when one or more requirements have been left unmet with great frequency; and/or when the terms of the license have been violated.

“Special Response Unit” or “SRU” means that component of the Department responsible for investigating allegations of serious abuse, neglect, and exploitation, as well as alleged violations of Danielle’s Law in community programs licensed and/or regulated by the Department or contracted by the Division.

“Terms of the license” means the capacity of the licensed venue, the named licensee(s), the Vendor Identification Number (VID #), the licensee’s address, and the dates during which the license is effective.

“Traumatic brain injury” means an acquired injury to the brain, but does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma, but may include brain injuries caused by anoxia due to trauma.

“Uniform Construction Code” refers to the statutory provisions contained in N.J.S.A. 52:27D-119 et seq. and its regulatory scheme contained in N.J.A.C. 5:23.

“Unusual incident” means an occurrence involving the care, supervision, or actions of an individual that is adverse in nature or has the potential to have an adverse impact on the health, safety, and the welfare of the individual or others. Unusual incidents shall include, but are not limited to: abuse, neglect, assault, contraband, criminal activity, Danielle’s Law violations, death, exploitation, injury, medical incidents, unauthorized restraint use, violation of rights, sexual assault or contact, suicide attempt, elopement (criminal or non-criminal status), and operational breakdown.

“Variance” means recognition that the licensee has complied with the intent of a standard in a Department-approved alternative manner, which is requested in writing by the licensee and granted in writing by the licensing agency.

“Verbal abuse, psychological abuse, or mistreatment” means any verbal or non-verbal acts, conditions, or omission of acts or conditions that may have or have had a negative impact on an individual and/or may inflict or have inflicted emotional harm, mental distress, fear, and/or humiliation, intimidation, degradation, or is demeaning to a person with a developmental disability. The latter types of abuse or mistreatment include, but are not limited to: teasing, cursing, yelling, name-calling, bullying, and utterances of racial slurs, threats, intimidating gestures, and verbal assault.

“Waiver” means the temporary suspension of a standard, which is requested in writing by the licensee and is granted in writing by the licensing agency.

“Willful non-compliance” exists when the applicant or licensee has knowledge of conditions that are in violation of licensing rules and/or terms of the license, has been advised of the consequences of not achieving compliance, and has not achieved compliance after being given an adequate opportunity to do so.

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Recodified from N.J.A.C. 10:44B-1.1.

Revised and added definitions throughout section.

Amended by R.2004 d.404, effective November 1, 2004.

See: 36 N.J.R. 2589(a), 36 N.J.R. 4961(a).

In “Individual”, added “or the Department” at the end; rewrote “Licensing agency”; in “Variance” substituted “Department-approved” for “Division-approved”.

Amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Rewrote definitions “Abuse”, “Advocate”, “Case manager”, “Community care residence”, “Community residence for the developmentally disabled”, “Community Services”, “Developmental disability”, “Exploitation”, “Individual”, “License”, “Licensee”, “Licensing agency”, “Negative licensing sanction”, “Neglect”, “Pattern of non-compliance”, “Personal guidance”, “Skill development program”, “Substantial non-compliance”, “Variance”, “Waiver” and “Willful non-compliance”; deleted definitions “Autism”, “Cerebral Palsy”, “Epilepsy”, “Family care program”, “Immediate family”, “Interdisciplinary team”, “Individual Habilitation Plan”, “Natural person” and “Private placement”; and added definitions “Alternate”, “Applicant”, “Barrier-free design”, “Census”, “Central Registry”, “Close”, “Confidentiality”, “Danielle’s Law”, “Day activities”, “Development agency”, “Division”, “Domicile”, “Falsification”, “Family”, “Firearm”, “Goal”, “Guardian”, “Habilitation”, “Interdisciplinary team”, “Medication”, “Non-compliance”, “Occupant”, “Person”, “Physical abuse”, “Placing agency”, “Plan of correction”, “Plan coordinator”, “Service plan”, “Sexual abuse”, “Special Response Unit” or ‘SRU’”, “Terms of the license”, “Traumatic brain injury”, “Uniform Construction Code”, “Unusual incident” and “Verbal abuse, psychological abuse, or mistreatment”.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 386) adopted, which found that, although licensed adult care provider was not directly responsible for burns suffered by a resident under her care, the provider had ample reason to be alerted to possible injury, but did not see fit to examine the resident, resulting in a failure to timely treat the burns; the provider’s conduct was such that she failed to provide and maintain proper and sufficient health care, and/or adult supervision for her residents and her license to operate a Community Care Residence was properly revoked. Dep’t of Human Services v. White-Bryant, OAL Dkt. No. HSL 04241-07, 2008 N.J. AGEN LEXIS 1242, Final Decision (July 15, 2008).

Revocation of respondent’s license to operate a Community Care Residence on grounds of respondent’s abuse of resident was warranted where respondent was not acting in self-defense and the respondent’s back-handed face-slap was an inappropriate response to the resident’s

action of pushing, Div. of Developmental Disabilities v. Minnix, OAL Dkt. No. HDD 10343-04, 2007 N.J. AGEN LEXIS 925, Final Decision (January 8, 2008).

In addition to the misuse of extension cords, Community Care Residence licensee's failure to notify the Division of Developmental Disabilities that she was caring for persons in her home other than DDD clients further put the DDD clients at risk; the licensee attempted to additionally run a day care center in the home, adding further people to her charge, when her DDD license only provided for 3 DDD clients in the home, and the licensee failed to advise the DDD inspector in March 2004 or earlier that she had registered with the Division of Youth and Family Services as a family day care provider. Div. of Developmental Disabilities v. Cruz, OAL Dkt. No. HDD 777-2005S, 2007 N.J. AGEN LEXIS 524, Final Decision (June 22, 2007).

Findings in an initial decision that revocation of a license to operate a community care residence was not warranted were reversed and rejected, and the decision of the Division of Developmental Disabilities to revoke the license was affirmed because the licensee's decision to deprive developmentally disabled residents access to a refrigerator by placing a lock on it infringed the residents' rights to have free use of the living area as required by N.J.A.C. 10:44B-3.1(f), and constituted abuse by deprivation of food under N.J.A.C. 10:44B-2.1(f). Further when the licensee was issued a provisional license, rather than a full license, by Developmental Disabilities Licensing, he was asked to correct certain conditions, including the lock on the refrigerator, pursuant to N.J.A.C. 10:44B, but failed to do so. The licensee could have addressed his concerns about one resident's weight problem and refrigerator raids by seeking development of an Individual Habitation Plan pursuant to N.J.A.C. 10:44b-1.3. In re Solomon v. Div. of Developmental Disabilities, OAL Dkt. No. HDD2676-05, 2006 N.J. AGEN LEXIS 1173, Final Decision (September 13, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 345) adopted, which concluded that revocation of Community Care Residence license was proper where credible evidence showed that the licensee had taped shut the mouth of a resident, a developmentally disabled man who was hydrocephalic and had an enlarged head; given that the resident had a cold, the tape could have impaired his ability to breathe, and removing the tape could have caused damage to his lips or the skin around his mouth. Div. of Developmental Disabilities v. Howell, OAL Dkt. No. HDD 4074-05, 2006 N.J. AGEN LEXIS 390, Final Decision (June 7, 2006).

10:44B-1.4 Application for community care licensure

(a) All initial inquiries for a license to operate a community care residence shall be made to the appropriate regional office of the Division or development agency. Current regional offices addresses and telephone numbers may be found by visiting the Department's website at www.state.nj.us/humanservices. Regional offices cover the following counties:

Regional Office:	Counties of Jurisdiction:
Northern Regional Office	Sussex, Morris, Warren, Passaic, Bergen, Hudson
Upper Central Regional Office	Essex, Somerset, Union
Lower Central Regional Office	Middlesex, Monmouth, Mercer, Ocean, Hunterdon
Southern Regional Office	Camden, Atlantic, Gloucester, Cumberland, Salem, Cape May, Burlington

(b) Only persons who have a domicile in the State of New Jersey are eligible to apply for licensure as a community care residence. The residence proposed for licensure shall be the applicant's primary domicile.

(c) All applicants shall complete an initial application, which shall include the applicant's original signature and date.

1. The applicant shall provide a current official photo identification, such as a valid driver's license, employment identification, motor vehicle identification card, passport, or any other form of official documentation.

2. If the applicant is not a citizen of the United States, he or she shall provide an alien registration card or United States Citizenship and Immigration Service documentation as evidence of legal residency and approval to work in the United States.

(d) The applicant shall provide the Division's or development agency's approved medical examination form, current within one year, which has been completed and signed by the applicant's physician or nurse practitioner confirming that the applicant is physically, mentally, and emotionally capable of providing care to individuals.

1. The applicant may be required to demonstrate to the development or placing agency, his or her ability to provide any physical assistance that may be required by individuals.

(e) The applicant and all occupants of the household 18 years of age or older shall participate in the interview process.

(f) The regional office or development agency representative shall conduct a visit to the home during the application process (Home Study) to ascertain that it meets licensure requirements. The regional office or development agency shall make recommendations regarding the capacity of the home during the application process.

1. The applicant shall provide a copy of a certificate of occupancy, if required by local ordinances, during the application process.

(g) The applicant and all occupants of the household who are 18 years of age or older shall be fingerprinted through the appropriate regional office or development agency.

(h) Except as otherwise provided in the Rehabilitated Offenders Act, N.J.S.A. 2A:168A-1 et seq., no license shall be issued to any person when that person, or any occupant of the household 18 years of age or older, at any time has been convicted of any of the following offenses:

1. Crimes against a person or persons, including, but not limited to:

- i. Murder;
- ii. Manslaughter;
- iii. Death by auto;
- iv. Simple assault;
- v. Aggravated assault;
- vi. Recklessly endangering another person;
- vii. Terroristic threats;

- viii. Kidnapping;
- ix. Interference with custody of children;
- x. Sexual assault;
- xi. Criminal sexual contact;
- xii. Lewdness; or
- xiii. Robbery;

2. Any crime against children or incompetents as set forth in N.J.S.A. 2C:24-1 et seq., including, but not limited to:

- i. Endangering the welfare of a child; or
- ii. Endangering the welfare of an incompetent person;

3. A crime or offense involving the manufacture, transportation, sale, possession, or habitual use of a controlled dangerous substance, as defined in N.J.S.A. 24:21-1 et seq.;

4. Financial crimes, such as fraud, theft, bribery, embezzlement, forgery, counterfeiting, identity theft, or burglary;

5. Conduct committed in any other state or jurisdiction, which, if committed in New Jersey, would constitute any of the crimes described in (h)1, 2, or 3 above; or

6. Any other civil or criminal action similar to (h)1 through 5 above.

(i) Upon submission by the person or occupant of the nature and seriousness of the crime; the circumstances under which the crime occurred; the date of the crime; the age of the person when the crime was committed; whether the crime was an isolated or repeated incident; the social conditions that may have contributed to the crime; any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in a correctional work-release program, or the recommendation of persons who have or have had the applicant under their supervision; and/or evidence of a pardon or of the expungement of a criminal conviction, pursuant to N.J.S.A. 2A:164-28, or of a certificate of the Federal or State parole board, or of the Chief Probation Officer of a United States District Court or of a county who has supervised the occupant's probation, that the occupant has achieved a degree of rehabilitation such that their licensure would not be incompatible with the welfare of individuals, the Department may issue a license to a person with a criminal record, or may allow a person to operate a community care residence with occupants with a criminal record.

(j) No license shall be issued when the name of the applicant or the name of any occupant of the applicant's home appear on the Central Registry.

(k) The applicant shall, at a minimum, provide three professional/personal references.

(l) Applicants shall attend and successfully complete a training and orientation program conducted and/or approved by the Division.

1. The orientation and training program, and any subsequent modifications, shall be jointly reviewed and approved by the Division and the licensing agency.

2. The orientation and training program conducted by any development agency other than the Division shall be re-evaluated every two years by the Division.

(m) The applicant shall read, write, speak, and understand English in a manner sufficient to provide care, support, and supervision to individuals, and to comply with licensing standards.

(n) Falsification of any information during the application process shall be sufficient cause to terminate the application.

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Recodified from N.J.A.C. 10:44B-1.2.

Revised designations for "Metropolitan Regional" and "Central Regional" offices to "Upper Central Regional" and "Lower Central Regional" offices.

Amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Rewrote the section.

10:44B-1.5 Licenses and inspection

(a) Upon receipt of, and approval by, the licensing agency of the application package, which demonstrates compliance with N.J.A.C. 10:44B-1.4(c) through (l), an initial inspection shall be arranged by the licensing agency.

1. The applicant or licensee shall be interviewed by the licensing agency during the inspection to ascertain his or her understanding of the duties of a licensed provider.

2. The physical conditions of the home shall be subject to inspection and full access to all areas of the home and property shall be granted by the applicant or licensee to the licensing representative.

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

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

2. The initial capacity of the home shall not exceed two individuals.

3. No individual shall be placed in any residence before an initial inspection is conducted and the residence is approved for licensure.

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

(d) After each inspection, the licensee shall be provided with a copy of the inspection report. At the discretion of the licensing agency, it shall be the obligation of the licensee to provide a plan of correction.

1. Unless a plan for earlier correction is required, the plan of correction shall be provided within 30 days of the issuance of the report.

2. The licensing agency may conduct unannounced inspections to verify that deficiencies of a significant nature have been corrected.

3. Correction of all deficiencies shall be verified at the time of the next inspection.

4. Failure to make such corrections or failure to submit the plan of correction within the required time frame shall be considered grounds for action against the licensee.

(e) The license shall be issued by the Department only to a person or persons and is not transferable to any other person or address. All licenses remain the property of the Department and shall be returned upon termination.

(f) The license shall be kept on the premises at all times and shall be made available upon request.

(g) The license shall specify the total bed capacity of the home, excluding family members. The licensee shall at no time exceed the licensed bed capacity of the residence.

(h) The community care residence shall be the licensee's primary domicile.

(i) No licensee shall operate more than one community care residence.

(j) Waivers or variances of specific standards may be granted at the discretion of the Department, provided that:

1. Strict enforcement of the rule would result in unreasonable hardship on the residence;

2. The waiver or variance is not simply for the convenience of the licensee or other occupants of the home;

3. The waiver or variance is in accordance with the particular needs of an individual(s);

i. The waiver or variance does not adversely affect the health, safety, welfare, or rights of any individual.

ii. Verification that the waiver or variance comports with the individual needs of the person(s) residing in the residence may be requested from the case manager by the licensing agency; and

4. The waiver is requested in writing by the licensee complete with substantial detail justifying the request.

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Recodified from N.J.A.C. 10:44B-1.3.

Stylistic changes throughout.

In (c): added "maximum" to six-month period.

In (f): deleted language setting license fee.

Amended by R.2004 d.404, effective November 1, 2004.

See: 36 N.J.R. 2589(a), 36 N.J.R. 4961(a).

In (a), amended the address; in (l) and (m), substituted "Department" for "Division of Developmental Disabilities".

Amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Rewrote the section.

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 34) accepted, which concluded that revocation of license to operate a Community Care Residence (CCR) on grounds of failure to allow access to the residence was warranted where substantial evidence showed that the licensee exhibited a pattern of failing to cooperate with the Division of Developmental Disabilities staff as concerned the required CCR monthly home visits. In 2002 only five monthly home visits were conducted and in 2003 only four visits were conducted despite the DDD staff's attempts every month to arrange for the visits, and the licensee did not return telephone calls, cancelled appointments, or was not home for scheduled appointments. *Thomas v. Div. of Developmental Disabilities*, OAL Dkt. No. HDD 4537-04 and HDD 8641-04 (Consolidated), 2007 N.J. AGEN LEXIS 105, Final Decision (February 28, 2007).

Revocation of Community Care Residence (CCR) license was proper as licensee's deprivation of access to the refrigerator by his developmentally disabled residents, ostensibly in an effort to modify one resident's weight problem and his behavior of raiding the refrigerator, was a deprivation of their rights as well as abuse, notwithstanding that there was no rule specifically prohibiting a lock on a refrigerator; the residents were entitled to broadly exercise their individual rights, which were not to be curtailed based on their diagnoses, nor without due process, and no house rule could infringe on those rights since the residents were specifically entitled to free access to all living areas of the home, including the kitchen and the shared refrigerator. *Solomon v. Div. of Developmental Disabilities*, OAL Dkt. No. HDD 2676-05, 2006 N.J. AGEN LEXIS 950, Final Decision (September 13, 2006).

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

(a) The Department may revoke a license whenever the licensee shall be found to be violating any State or Federal law pertaining to community care residences, or whenever such residence shall fail to comply with the minimum standards established by the Department. The Department may suspend the license, pending the outcome of an inspection, investigation, or inquiry by the Department, when an allegation is received that may affect the health, safety, and/or welfare of an individual(s).

(b) If any inspection, investigation, or inquiry by the Department reveals substantial non-compliance or willful non-compliance with the rules contained in this chapter, or if any non-compliance represents a threat to the health, safety, or rights of the individuals or boarders, licensure may be denied or revoked, following 30-day notice to the provider of such intent. Any subsequent application may be denied.

(c) In cases of non-compliance where licensure denial or revocation may be deemed by the Department to be too harsh an action, intermediate sanctions may be invoked following 30-day notice to the licensee of such intent. These include removal of individuals from the residence, imposition of a

suspension of admissions to the home, reduction of capacity, or licensure term of the residence.

(d) Falsification of any information contained in the application or provided during any inspection, investigation, or inquiry shall be sufficient grounds for licensure denial, suspension, revocation, or non-renewal.

(e) Failure of an applicant or licensee to cooperate and/or provide necessary information in connection with an inspection, investigation, or inquiry by representatives of the Department shall be considered sufficient grounds for licensure denial, suspension, revocation, or non-renewal.

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

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Recodified from N.J.A.C. 10:44B-1.4.

Stylistic changes.

Amended by R.2004 d.404, effective November 1, 2004.

See: 36 N.J.R. 2589(a), 36 N.J.R. 4961(a).

In (c), substituted "Department" for "Division of Developmental Disabilities".

Amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Rewrote the section.

SUBCHAPTER 2. MANAGEMENT OF THE RESIDENCE

10:44B-2.1 Licensee requirements

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

1. Except as otherwise provided in the Rehabilitated Offenders Act, N.J.S.A. 2A:168A-1 et seq., no license will be issued to any person in whose home or community care residence there is found to be any occupant who has been convicted of any offenses listed at N.J.A.C. 10:44B-1.4(h)1 through 5.

2. The licensee shall read, write, speak, and understand English in a manner sufficient to provide care, support, and supervision to individuals, and to comply with the licensing requirements.

3. The licensee and members of the licensee's family participating in individual care shall be of sound physical and emotional health.

i. Annually, the licensee shall have his or her physician or nurse practitioner complete, sign, and date the Division's or development agency's required medical form, attesting that the licensee is capable of performing his or her duties and is able to provide care to the individuals placed in the residence. The form shall also identify any physical, emotional, or mental limitations of the licensee. The Department, at its discretion, may require additional physical, and/or psychological examinations of the licensee to be provided by the licensee

should any evidence of physical, emotional, or mental limitations of the licensee occur between annual attestations.

ii. The Department may require the licensee to demonstrate the ability to provide any physical assistance that may be required by an individual who is placed in the licensee's residence.

(b) The licensee shall assure that any occupant of the household 18 years of age or older, residing in the home or visiting in the home for a period of 30 days or longer, is fingerprinted through the Division or development agency. At the discretion of the placing, development, or licensing agency, fingerprinting of other persons regularly visiting the home may be required.

(c) No license shall be issued for a community care residence in which the licensee or any occupant has been adjudged civilly or criminally liable for abuse, neglect, or exploitation of another person, or whose name appears on the Central Registry.

(d) The licensee shall not enter into a contract with another person or entity to provide supervision, care, or habilitation of individuals for which the licensee has contracted and is receiving payment from the placing agency, unless such contract is specifically approved in writing by the placing and/or development agency and the need for these services is clearly identified in the service plan.

(e) The licensee shall not deny access to any part of a community care residence to any person(s) with proper identification and statutory authority to protect the rights of, and advocate on behalf of, the individuals placed in the residence. Such persons include, but are not limited to, the case manager, legal guardian, guardianship worker, representatives of the licensing agency, the Department, the Division, the placing agency, the developing agency, and the Special Response Unit.

(f) The licensee shall be required to successfully complete all courses of instruction that are required or deemed necessary by the placing and/or licensing agency.

(g) Any licensee who receives or applies for public assistance shall document in writing to the licensing agency that he or she has notified the county welfare agency or board of social services that they are a licensed community care provider with the Department and the allowable rates for reimbursement as a community care provider.

(h) No licensee shall serve as an alternate while his or her license is suspended or revoked.

(i) Physical abuse; verbal abuse, psychological abuse, or mistreatment; sexual abuse; neglect; exploitation; corporal punishment; physical discipline; violation of the rights, isolation, or the use of unapproved aversive stimuli; or mechanical or physical restraint shall be prohibited.

1. Substantiation of such mistreatment of any individual by the licensee shall be sufficient cause for immediate licensure revocation.

2. The licensee shall not direct or allow individuals to discipline, assist in fire drill evacuation, train, supervise, or in any way care for other individuals, occupants, family members, children, or others requiring care.

(j) No licensee, or his or her relative, or any household member shall be the legal guardian, representative payee, or beneficiary of an insurance policy for, or reap financial or personal gain from, any individual receiving services.

(k) The licensee's work activities, interests, and/or volunteer work shall not interfere with the individuals' care and habilitation.

(l) The licensee shall participate as a member of the IDT in annual service plan meetings of the individuals residing in his or her home.

(m) The licensee shall not accept any remuneration from the individual's family for services rendered.

Amended by R.1990 d.359, effective July 16, 1990.
See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Added (d)2i-iv and (e); recodified (e)-(k) as (f)-(l), added (f)3iii and (h)4; and in (i), inserted "unapproved" to describe mechanical restraints or isolation.

Amended by R.2013 d.062, effective April 15, 2013.
See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Rewrote the section.

Case Notes

Revocation of a license to operate a community care residence (CCR) pursuant to N.J.A.C. 10:44B-2.1(f) was not warranted. The administrative law judge found that revocation was too harsh a penalty in a situation where the complaining relative of a resident had a seemingly antagonistic relationship with the provider; the resident had never before complained about the provider, and in fact had expressed a desire to continue living with her not long before the complaint was made; the context in which allegedly "abusive" terms were used was disputed; and an arrangement that the Division of Developmental Disabilities suddenly determined was "exploitation" had been known to resident's caseworker all along and not disapproved of. Further, the provider had been a licensed CCR provider for almost 20 years without any substantiated allegations of mistreatment. Office of Dev. Disabilities Licensing v. Helen Gordon, OAL DKT. No. HSL 13409-12, 2014 N.J. AGEN LEXIS 509, Initial Decision (August 22, 2014).

Administrative Law Judge concluded that the conduct of a licensee who operated a licensed community care residence (CCR) in connection with a confrontation between the licensee and a developmentally disabled resident was not verbal abuse or neglect within the meaning of the version of N.J.A.C. 10:44B-2.1 that was in effect on the relevant date. Specifically, the licensee's statements reflected a need for a change in placement that both the licensee and the resident had already acknowledged. Dep't of Human Servs. Office of Licensing v. Wilkins, OAL Dkt. No. HSL 15474-12, 2013 N.J. AGEN LEXIS 255, Initial Decision (September 20, 2013).

Revocation of respondent's license to operate a Community Care Residence on grounds of respondent's abuse of resident was warranted where respondent was not acting in self-defense and the respondent's back-handed face-slap was an inappropriate response to the resident's action of pushing. Div. of Developmental Disabilities v. Minnix, OAL Dkt. No. HDD 10343-04, 2007 N.J. AGEN LEXIS 925, Final Decision (January 8, 2008).

Revocation of license to operate a Community Care Residence on grounds of the licensee's creation of a hazardous condition in violation of N.J.A.C. 10:44B-6.1 by the overuse of extension cords which resulted in one client's death in an ensuing fire, was warranted since the licensee had an obligation to maintain her home free from hazards to the health, safety, and welfare of the individuals placed in her care, which included

the responsibility to ensure that extension cords were not being used improperly in the house in accordance with N.J.A.C. 10:44B-6.3(g)(1); the licensee's improper use of an extension cord at the fire location, which was consistent with the gross misuse of extension cords throughout the house, created an unsafe living environment amounting to "neglect." Div. of Developmental Disabilities v. Cruz, OAL Dkt. No. HDD 777-2005S, 2007 N.J. AGEN LEXIS 524, Final Decision (June 22, 2007).

Developmental Disabilities Licensing failed to carry its burden of persuasion of proof by a preponderance of the competent and credible evidence regarding the allegation that a Community Care Residence licensee had abused a resident where the evidence showed that the resident suffered an injury to his ear sometime after he left an adult activity center and prior to his return there the next morning, during which time the resident rode the bus to the licensee's home, remained there overnight, walked to the bus stop, and rode the bus back to the center, and the licensee adamantly denied that she injured the resident. Div. of Developmental Disabilities v. Hagans, OAL Dkt. No. HDD 2675-05, 2007 N.J. AGEN LEXIS 184, Initial Decision (April 10, 2007).

Contrary to a finding by an administrative law judge reversing the revocation of the license of a Community Care Residence provider based upon abuse, the Division of Developmental Disabilities concluded that the revocation was appropriate per N.J.A.C. 10:44B-2.1(f)(1). The provider's back-handed face slap of a resident was an inappropriate response to the resident's pushing. According to her own testimony, the provider was unharmed and unafraid, and she was not afraid that the other residents would be harmed. Div. of Developmental Disabilities v. Shirley Minnix, OAL DKT. No. HDD10343-04, 2007 N.J. AGEN LEXIS 1288, Final Decision (January 8, 2007).

Findings in an initial decision that revocation of a license to operate a community care residence was not warranted were reversed and rejected, and the decision of the Division of Developmental Disabilities to revoke the license was affirmed because the licensee's decision to deprive developmentally disabled residents access to a refrigerator by placing a lock on it infringing the residents' rights to have free use of the living area as required by N.J.A.C. 10:44B-3.1(f), and constituted abuse by deprivation of food under N.J.A.C. 10:44B-2.1(f). Further when the licensee was issued a provisional license, rather than a full license, by Developmental Disabilities Licensing, he was asked to correct certain conditions, including the lock on the refrigerator, pursuant to N.J.A.C. 10:44B, but failed to do so. The licensee could have addressed his concerns about one resident's weight problem and refrigerator raids by seeking development of an Individual Habitation Plan pursuant to N.J.A.C. 10:44B-1.3. In re Solomon v. Div. of Developmental Disabilities, OAL Dkt. No. HDD2676-05, 2006 N.J. AGEN LEXIS 1173, Final Decision (September 13, 2006).

Revocation of Community Care Residence license was proper as licensee's deprivation of access to the refrigerator by his developmentally disabled residents, ostensibly in an effort to modify one resident's weight problem and his behavior of raiding the refrigerator, was a deprivation of their rights as well as abuse, notwithstanding that there was no rule specifically prohibiting a lock on a refrigerator; the residents were entitled to broadly exercise their individual rights, which were not to be curtailed based on their diagnoses, nor without due process, and no house rule could infringe on those rights since the residents were specifically entitled to free access to all living areas of the home, including the kitchen and the shared refrigerator. Solomon v. Div. of Developmental Disabilities, OAL Dkt. No. HDD 2676-05, 2006 N.J. AGEN LEXIS 950, Final Decision (September 13, 2006).

Adopting Initial Decision's conclusion that revocation of Community Care Residence license for leaving residents unsupervised by licensed personnel was proper where evidence was uncontroverted that the licensee did not notify the Division of Development Disabilities of his need to attend a funeral in Baltimore and instead of calling in his designated alternate, he simply utilized his unlicensed father for several days (adopting in part, and rejecting in part 2006 N.J. AGEN LEXIS 179). Solomon v. Div. of Developmental Disabilities, OAL Dkt. No. HDD 2676-05, 2006 N.J. AGEN LEXIS 950, Final Decision (September 13, 2006).

(k) Individuals shall be treated in an age appropriate manner with regard to communication, dress, activities, personal possessions, or any other aspect of daily living, taking into consideration the individual's personal preferences.

Amended by R.1990 d.359, effective July 16, 1990.
See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

In (b): added phrase regarding infringement of rights.
Stylistic changes throughout.

Amended by R.2013 d.062, effective April 15, 2013.
See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Section was "Individual right and responsibilities". In the introductory paragraph of (a), substituted "or" for ", nor"; deleted former (b) through (j); recodified former (m) as (b); rewrote (b); and added new (c) through (k).

Case Notes

Developmental Disabilities Licensing failed to carry its burden of persuasion of proof by a preponderance of the competent and credible evidence regarding the allegation that a Community Care Residence licensee violated a resident's individual rights where the evidence showed that the resident had a habit of collecting and hoarding large amounts of paper, the resident would not voluntarily discard any of the paper, his collection created storage problems, and the licensee required the resident to empty the papers from the pillowcase where he stored them, then tear up and discard the older collection in order to retain papers he had more recently accumulated; punishment of the licensee was inappropriate merely because she sought to prevent her home from taking on the appearance of a trash recycling station. Div. of Developmental Disabilities v. Hagans, OAL Dkt. No. HDD 2675-05, 2007 N.J. AGEN LEXIS 184, Initial Decision (April 10, 2007).

Findings in an initial decision that revocation of a license to operate a community care residence was not warranted were reversed and rejected, and the decision of the Division of Developmental Disabilities to revoke the license was affirmed because the licensee's decision to deprive developmentally disabled residents access to a refrigerator by placing a lock on it infringed the residents' rights to have free use of the living area as required by N.J.A.C. 10:44B-3.1(f), and constituted abuse by deprivation of food under N.J.A.C. 10:44B-2.1(f). Further when the licensee was issued a provisional license, rather than a full license, by Developmental Disabilities Licensing, he was asked to correct certain conditions, including the lock on the refrigerator, pursuant to N.J.A.C. 10:44B, but failed to do so. The licensee could have addressed his concerns about one resident's weight problem and refrigerator raids by seeking development of an Individual Habitation Plan pursuant to N.J.A.C. 10:44B-1.3. In re Solomon v. Div. of Developmental Disabilities, OAL Dkt. No. HDD2676-05, 2006 N.J. AGEN LEXIS 1173, Final Decision (September 13, 2006).

Revocation of Community Care Residence (CCR) license was proper as licensee's deprivation of access to the refrigerator by his developmentally disabled residents, ostensibly in an effort to modify one resident's weight problem and his behavior of raiding the refrigerator, was a deprivation of their rights as well as abuse, notwithstanding that there was no rule specifically prohibiting a lock on a refrigerator; the residents were entitled to broadly exercise their individual rights, which were not to be curtailed based on their diagnoses, nor without due process, and no house rule could infringe on those rights since the residents were specifically entitled to free access to all living areas of the home, including the kitchen and the shared refrigerator. Solomon v. Div. of Developmental Disabilities, OAL Dkt. No. HDD 2676-05, 2006 N.J. AGEN LEXIS 950, Final Decision (September 13, 2006).

10:44B-3.2 Personal funds

(a) The individual's personal funds shall be used solely for the individual.

(b) The licensee shall not commingle any individual's personal funds with those of the licensee or any other person or entity.

(c) There shall be no loans of finances, resources, or property from an individual to the licensee, licensee's family member, or any other individual or person.

(d) Unless otherwise determined by the IDT, an individual's personal funds in excess of \$100.00 shall be maintained in a separate bank account in the individual's name, accessible only by the individual and the licensee.

(e) When the individual has been determined by the IDT to be able to manage a specific amount of personal funds, and the amount is documented in the service plan, the licensee shall disburse such amounts to the individual accordingly. The licensee shall obtain the individual's signature for such personal funds disbursed to the individual.

(f) For all personal funds that the individual is not capable of managing on his or her own, the licensee shall maintain an accurate record of all transactions of the individual's personal funds on the placing agency's approved form. The record shall include:

1. All personal funds transactions, whether received, expended, or disbursed, including, but not limited to: wages; personal needs allowance (PNA); personal trust funds (PTF); private trust funds; monetary gifts; reimbursements and tax rebates, Maximus payments, payments of bills, and purchases; and personal funds disbursed to the individual;

2. The full date, amount, and a specific description of each transaction; and

3. Receipts related to all disbursements and expenditures. Receipts shall be either computer or register generated, or if not so provided by the vendor, legibly handwritten, containing the name, signature, location, and/or telephone number of the vendor or selling party.

(g) The licensee shall maintain all other documents related to the individual's finances, including, but not limited to, bank statements, bank passbooks, paycheck stubs, and income tax returns.

(h) The licensee shall not charge the individual for services or supplies that the licensee is obligated to provide by the licensing standards or by the provider agreement between the development and/or placing agency and the licensee.

1. The licensee shall not charge the individual for telephone usage other than long distance telephone calls or a separate private telephone number that is provided strictly for the individual's use.

2. The licensee shall not charge the individual for heating or cooling the residence or any portion thereof, electricity, hot and cold water, sewage, or gas for the car.

3. Charges to the individual for cable, satellite television, or cell phones shall be approved by the IDT, and included in the service plan, to be reviewed annually.

4. Grooming supplies, such as soap or other personal cleansing products, shampoo and conditioner, shaving

cream, toothpaste, washcloths, towels, facial tissues, and toilet tissue shall be available to the individual at the licensee's expense.

5. Individual toothbrushes, razors, hair combs, brushes, styling products, accessories, cosmetics and fragrances, deodorant, lotion, and feminine products shall be available to the individual at his or her own expense.

6. Snacks and drinks shall be available to the individual at the licensee's expense.

7. The licensee shall be responsible for the cost of meals purchased in the community when the individual dines with the licensee and/or the licensee's family. Exceptions shall be approved by the IDT, documented in the service plan and reviewed annually.

8. The licensee shall provide laundry services and supplies, including the use of the laundromat or wash and fold services, without additional charge to the individual.

9. Dry cleaning services may be provided and paid for at the individual's expense when approved by the IDT and documented in the service plan.

New Rule, R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Former N.J.A.C. 10:44B-3.2, Personal health, hygiene, and grooming, recodified to N.J.A.C. 10:44B-3.3.

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 34) accepted, which concluded that revocation of license to operate a Community Care Residence on grounds of failure to properly account for client funds and maintain financial records, resulting in more than \$5,000 of three clients' personal funds being unaccounted for, was warranted; substantial evidence showed that the licensee did not keep accurate records of purchases made with client funds, did not itemize expenses, and permitted substantial gaps in the documentation relative to receipts for alleged client expenditures, and that the licensee essentially exploited three clients by using their funds to her own advantage and profited by improperly charging those clients for supposed "household gifts" for the licensee and her family, or for items for which the licensee had already been compensated by the Division of Developmental Disabilities (decided under former N.J.A.C. 10:44B-2.3). *Thomas v. Div. of Developmental Disabilities*, OAL Dkt. No. HDD 4537-04 and HDD 8641-04 (Consolidated), 2007 N.J. AGEN LEXIS 105, Final Decision (February 28, 2007).

10:44B-3.3 Personal health, hygiene, and grooming

(a) Individuals shall be encouraged to exercise maximum independence in health, hygiene, and grooming practices.

(b) Within the residence, the licensee shall ensure that each individual has the opportunity for personal care, with assistance if necessary, to include:

1. A daily bath or shower;
2. Oral hygiene twice daily;
3. Opportunity to shave, as necessary;
4. Care of fingernails and toenails;
5. Cutting, styling, or grooming of hair, as necessary; and
6. Toileting.

(c) Hygiene and grooming articles shall be maintained separately from all medications, food, household cleaning supplies and chemicals and stored in a safe and sanitary manner either in the bathroom or in the individual's bedroom.

(d) Female individuals shall be assisted by the licensee as necessary in caring for personal feminine needs.

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Stylistic revision.

Recodified from N.J.A.C. 10:44B-3.2 and amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Rewrote the introductory paragraph of (b), (b)3, (b)4, (b)5 and (c); added (b)6; deleted former (d); recodified (e) as (d); and rewrote (d). Former N.J.A.C. 10:44B-3.3, Food, recodified to N.J.A.C. 10:44B-3.4.

10:44B-3.4 Food

(a) The licensee shall ensure that an individual is provided with three nutritionally balanced meals, varied in nature, and a sufficient amount of liquids for hydration, daily, either in the residence or in the community.

(b) There shall not be more than a 14-hour span between the evening meal and breakfast.

(c) Food, snacks, and liquids shall be readily accessible to individuals as desired, unless limitations have been deemed necessary by the individual's physician.

(d) Food shall be fresh, stored in a manner to keep it clean and safe for consumption. Food shall be discarded upon spoilage or upon the expiration date of the package.

(e) Individuals shall dine with the licensee's family on a regular basis, unless the individual expresses a desire to dine elsewhere, as approved by the IDT and the individual's guardian, and recorded in the service plan.

1. There shall be sufficient seating and room at the dining table to accommodate all occupants of the household so that they may dine together.

2. There shall be sufficient supply of eating utensils, plates, cups, etc., for all occupants of the household.

(f) If a medically prescribed diet is required, the menu planning and food preparation shall be consistent with the individual's medical and dietary needs.

1. The licensee shall demonstrate knowledge of the individual's medically prescribed diets.

(g) The licensee shall make a reasonable attempt to comply with food preferences and snacks requested by the individual, without charge to the individual.

(h) The licensee shall not withhold food, drinks, or snacks as a form of punishment.

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Stylistic revisions throughout.

Revised subsection (f) regarding family dining.

Added new subsection (h).

Recodified from N.J.A.C. 10:44B-3.3 and amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Rewrote the section. Former N.J.A.C. 10:44B-3.4, Clothing, recodified to N.J.A.C. 10:44B-3.5.

10:44B-3.5 Clothing

(a) Each individual shall have an adequate supply of clean and well-fitting clothing appropriate to age, gender, individual needs and preferences, community standards, season, and weather conditions.

1. Each individual shall have the opportunity to select and purchase his or her own clothing as independently as possible.

2. The licensee shall assist the individual in maintaining a neat appearance, in dressing appropriately for the season and weather conditions, and in using the individual's personal money to make clothing purchases.

(b) Individuals shall have unlimited access to their clothing, unless otherwise determined by the IDT and documented in the current service plan.

1. Clothing shall be stored neatly in the individual's bedroom. Out-of-season clothing may be stored in a place in the residence other than the individual's bedroom.

(c) An individual's clothing and undergarments shall be changed daily. Incontinence undergarments shall be utilized only as specified in writing by a physician or nurse practitioner and changed as needed.

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Stylistic revisions.

Recodified from N.J.A.C. 10:44B-3.4 and amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Rewrote the section.

SUBCHAPTER 4. HABILITATION

10:44B-4.1 Service plan

(a) A service plan shall be developed for each individual by the interdisciplinary team in accordance with N.J.S.A. 30:6D-10, 11, and 12 and shall be kept on file in the residence. Documentation of who participated in the plan shall be provided on the sign-in sheet page of the service plan. A current copy of the Individual Education Plan for individuals attending school shall be maintained in the individual's record. (These requirements do not apply to Respite Care Programs).

(b) The service plan shall include a clear statement regarding the individual's ability to remain unsupervised, the amount of money the individual can independently manage, and the individual's ability to self-medicate.

(c) Training received by an individual in the residence shall be consistent with the goals and objectives identified in the service plan. Changes to the service plan shall be approved by the IDT and documented in the service plan.

(d) Except in an emergency, a written plan shall be developed by the IDT at least 30 days prior to an individual's move into a new home.

(e) The service plan shall be reviewed and modified by the IDT not longer than 30 days subsequent to a move, discharge, and or transfer and shall include all necessary information.

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Revised (a) and (b) to specify details of habilitation plan.

Added new (d) and relettered old (d) as subsection (e).

Amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Section was "Individualized Habilitation Plan". Rewrote the section.

10:44B-4.2 Days activities

(a) Each individual shall be afforded an opportunity to participate in an organized program of education, habilitation, rehabilitation, or employment in the community.

1. Every individual between the ages of three and 21 years shall receive an appropriate education in accordance with Federal and State laws.

2. If an individual is age 60 years or older and attends a day activity or program, or employment, they may elect to retire; however, the licensee shall assist the individual to participate in age-appropriate activities outside the residence, as requested.

(b) The individual may assist with normal chores within the home in accordance with their abilities as assessed by the IDT.

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Revised (a) and added (a)3 regarding individuals over age 55.

Amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Section was "Day programs". In the introductory paragraph of (a), inserted "education," and "in the community"; in (a)1, substituted "21" for "22"; rewrote (a)2 and (b); and deleted (a)3.

SUBCHAPTER 5. HEALTH SERVICES

10:44B-5.1 General medical and health care

(a) Each individual shall have a personal, primary physician, nurse practitioner, or medical group.

(b) Each individual shall have an annual medical examination. Documentation of this examination shall be completed, signed, and dated by the physician or nurse practitioner on the placing agency approved medical form and maintained on file in the individual's record.

(c) A Mantoux Skin Test shall be administered annually to every individual. Documentation from the physician or nurse practitioner shall include their signature, the date, and the results of the Mantoux Skin Test, and shall be maintained in the individual's records.

1. If the Mantoux Skin Test for tuberculosis is negative, the test shall be repeated yearly, or immediately upon exposure to tuberculosis.

2. If the Mantoux Skin Test for tuberculosis is positive, certification by a physician or nurse practitioner that the individual is free of contagion shall be obtained yearly.

(d) For any individual who has not had a physical examination and Mantoux Skin Test within one year prior to placement, the licensee shall assure a medical examination and Mantoux are completed within three business days of the date of placement.

(e) Each individual shall have, at a minimum, an annual oral or dental examination.

1. Documentation from the dentist of this examination, signed and dated by the dentist, shall be kept on file at the residence.

2. In the event that the individual is edentulous, a physician or nurse practitioner may conduct the oral examination. Documentation of this examination and findings or treatment shall be provided by the physician or nurse practitioner conducting the exam.

(f) The licensee or alternate shall immediately call 9-1-1 in the event of a life-threatening emergency, in accordance with Danielle's Law.

(g) The licensee shall follow-up on all individual health needs, including, but not limited to: medical care, pharmaceutical, podiatrist, dental, and therapeutic or other health services. The licensee shall maintain documentation of all such follow-ups in the individual's file.

(h) The licensee shall have a first aid kit, which is maintained in a sanitary manner. There shall be no expired items. Medications shall not be maintained in the first aid kit. The first aid kit shall contain an adequate supply of the following items only:

1. Antiseptic;
2. Sterile rolled gauze bandage;
3. Sterile gauze pads or telfa pads;
4. First aid tape or surgical cloth tape;
5. Scissors;
6. Adhesive bandage (for example, band aids);
7. A standard or digital thermometer;
8. Disposable gloves (latex or non-latex);

9. Hot/cold pack; and

10. Tweezers.

(i) The licensee's religious or personal preferences shall not interfere with an individual receiving medical care as required by the individual's physician or nurse practitioner.

Amended by R.1990 d.359, effective July 16, 1990.

See: 22 N.J.R. 756(a), 22 N.J.R. 2164(b).

Added (c)1-3 and relettered old (c)-(f) as (d)-(g), with stylistic revisions.

Added "sterile" to describe first aid supplies and added (g)7.

Amended by R.2013 d.062, effective April 15, 2013.

See: 44 N.J.R. 2327(a), 45 N.J.R. 896(b).

Rewrote the section.

10:44B-5.2 Medication

(a) When an individual cannot administer his or her own medication due to intellectual or behavioral disabilities, as determined by the IDT and recorded in the service plan, the licensee or his or her alternate shall give it to the individual to take exactly as prescribed, and assure that the medication is taken.

1. The licensee shall maintain a medication administration record of all medications taken where assistance is required. The licensee shall complete the medication administration record as he or she was trained to do by the development agency. The medication record shall include:

- i. The signature of any persons administering medication followed by his or her initials;
- ii. The brand name and, if applicable, generic name of the medication;
- iii. The dosage;
- iv. The date and time of administration;
- v. A record of each dosage at the time it is administered, identified by the initials of the person administering the medication;
- vi. Documentation of the proper code for instances when a medication is not administered; and
- vii. A list of all known allergies.

2. Errors in medication documentation or administration shall be recorded on the medication record at the time of their occurrence.

3. Medications may be changed or discontinued only upon written documentation from the physician or nurse practitioner, which shall be maintained in the individual's file.

(b) Individuals who have the potential to be self-medicated shall be assessed by the IDT and the results of this assessment shall be recorded in the service plan and reviewed annually by the IDT.