

CHAPTER 42A

LIFE-THREATENING EMERGENCIES

Authority

N.J.S.A. 30:6D-5.1 et seq., specifically 30:6D-5.6.

Source and Effective Date

R.2005 d.250, effective August 1, 2005
See: 37 N.J.R. 430(a), 37 N.J.R. 2875(a)

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 42A, Life-Threatening Emergencies, expires on January 28, 2011. See: 42 N.J.R. 1964(a).

Chapter Historical Note

Chapter 42A, Life-Threatening Emergencies, was adopted as R.2005 d.250, effective August 1, 2005. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

10:42A-1.1 Purpose

Staff at a facility for persons with developmental disabilities or traumatic brain injury are required to call the 911 emergency telephone service in life-threatening emergencies. The purpose of this chapter is to provide guidelines for facilities in such instances.

10:42A-1.2 Scope

This chapter applies to facilities for persons with developmental disabilities and traumatic brain injury.

10:42A-1.3 Definitions

For the purpose of this chapter, the following terms shall have the meaning defined herein:

“Chief executive officer” (CEO) means the person having administrative authority over, and responsibility for, a State-operated developmental center or private licensed facility for the developmentally disabled under N.J.A.C. 10:47, Stan-

dards for Private Licensed Facilities for Persons with Developmental Disabilities.

“Commissioner” means the Commissioner of the Department of Human Services.

“Contested matter” means an adversarial proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. (N.J.S.A. 52:148-2(b); N.J.A.C. 1:1)

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

“Department” means the Department of Human Services.

“Director” means the Director of the Division of Developmental Disabilities.

“Division” means the Division of Developmental Disabilities.

“Do Not Resuscitate Order” or “DNR Order” means a physician’s written order not to attempt cardiopulmonary resuscitation in a hospital or out-of-hospital situation in the event the person suffers cardiac or respiratory arrest.

“Executive director” means the individual with administrative authority over a residential program licensed in accordance with N.J.A.C. 10:44A, Standards for Community Residences for Individuals with Developmental Disabilities, N.J.A.C. 10:44C, Standards for Community Residences for Persons with Head Injuries, and N.J.A.C. 10:47, Standards for Private Licensed Facilities for Persons with Developmental Disabilities, or agency under contract with or regulated by the Division.

“Facility” means a facility for persons with developmental disabilities or a facility for persons with traumatic brain injury.

“Facility for persons with developmental disabilities” means a facility operated by the Division including developmental centers, under contract with the Division or licensed under N.J.A.C. 10:44A, Standards for Community Residences for Individuals with Developmental Disabilities, N.J.A.C. 10:44B, Standards for Community Residences for Individuals with Developmental Disabilities (Community Care Residences), or N.J.A.C. 10:47, Standards for Private Licensed Facilities for Persons with Developmental Disabilities, or program under contract with or regulated by the Division.

“Facility for persons with traumatic brain injury” means a facility for persons with traumatic brain injury that is licensed under N.J.A.C. 10:44C, Standards for Community Residences for Persons with Head Injuries, or under contract with the Department.

“Life-threatening emergency” means a situation in which a prudent person could reasonably believe that immediate intervention is necessary to protect the life of a person receiving services at a facility for persons with developmental disabilities or traumatic brain injury or to protect the lives of other persons at the facility or agency, from an immediate threat or actual occurrence of a potentially fatal injury, impairment to bodily functions or dysfunction of a bodily organ or part. Some examples of life-threatening emergencies are listed at N.J.A.C. 10:42A-2.2.

“Medical professional” means a physician, physician’s assistant, advanced practice nurse or registered nurse.

“911 call” means a telephone call to the emergency 911 system.

“Office of Administrative Law” (OAL) means an independent unit assigned to the Department of Treasury, which has the authority to hear contested matters.

“Staff” means any licensee and any full time, part time, temporary employment services or contract employee at a facility for persons with developmental disabilities or traumatic brain injury present in the living or program area who work directly with the person served. For the purpose of this rule, this term does not include housekeepers, food service workers, maintenance workers, clerical staff or volunteers.

SUBCHAPTER 2. REPORTING REQUIREMENTS

10:42A-2.1 General standards

(a) All staff shall be responsible to immediately call 911 in the event of a life-threatening emergency except as provided in (b) below.

(b) A staff member need not call 911 if the staff member is certain that another staff member has already called 911 about the life-threatening emergency.

(c) If a staff member is unsure whether a medical condition such as an elevated temperature, seizure or other condition has become a life-threatening emergency, he or she shall call 911.

(d) When only one staff member is present when a life-threatening emergency occurs that staff member shall call 911 and, if he or she is trained to provide immediate assistance, the staff member shall provide assistance.

(e) When the person suffering the life-threatening emergency has a DNR Order in effect, existence of a DNR Order does not relieve the staff member from the requirement to call 911. Staff shall call 911 if there is a life-threatening emergency related to the person’s terminal condition but provide a copy of the DNR Order to emergency staff responding to the 911 call.

(f) The 911 call shall include:

1. The address and/or location of the emergency;
2. The telephone number where the emergency is located;
3. A brief description of the problem including whether the person(s) is conscious and, or breathing; and
4. The name of staff member calling 911.

(g) Once the call has been made, the staff member shall stay on the line to respond to questions from the 911 operator.

(h) Each facility covered by these rules, except those facilities licensed under N.J.A.C. 10:44B, Standards for Community Care Residences for the Developmentally Disabled, shall:

1. By August 31, 2005, submit to Department for approval, a procedure to require that a 911 call immediately be made in the event of a life-threatening emergency. That procedure shall cover all facilities licensed by the Department or under contract with the Division;
2. Train all staff members in such procedures;
3. Unless such procedures are disapproved by the Department, by September 30, 2005, submit to the Department a certification by the chief executive officer (CEO) or executive director that all staff have been trained in its procedure; and
4. If a Department notifies a facility that its procedure requires modification, within 30 days of receipt of such notification, the facility shall submit the modification to the Department and, within 60 days of receipt of such notification, the facility shall submit to the Department a certification by the chief executive officer (CEO) or executive director that all staff have been trained in the modified procedure.

(i) By September 30, 2005, all individuals licensed under N.J.A.C. 10:44B, Standards for Community Care Residences for Individuals with Developmental Disabilities, shall be trained by the Department in the requirements of these rules.

(j) After the initial certification of training under (h) above, each facility shall submit an annual certification by the CEO or Executive Director that all staff have been trained in the procedures to call 911 as follows:

1. For facilities licensed under N.J.A.C. 10:44A, Standards for Community Residences for Individuals with Developmental Disabilities, N.J.A.C. 10:44C, Standards for Community Residences for Persons with Head Injuries, or N.J.A.C. 10:47, Standards for Private Licensed Facilities for Persons with Developmental Disabilities, the certification shall be submitted for review at the time of the annual licensing inspection. Licensing staff shall be responsible to review the training records at the time of the annual inspection. The certification shall cover all facilities licensed by the Department or under contract with the Division;

2. For developmental centers, the certification shall be provided to the Director annually by August 1. The Office of Quality Management within the Division shall be responsible to monitor the training; and

3. For facilities that are not licensed but are under contract with the Division, the certification shall be provided to the Director at the time of the renewal of the contract. The Office of Quality Management within the Division shall be responsible to monitor the training.

(k) Procedures for calling 911 and reporting life-threatening emergencies shall be incorporated into the standard training curriculum for the facility.

(l) For individuals licensed under N.J.A.C. 10:44B, Standards for Community Residences for Individuals with Developmental Disabilities, documentation of completion of training shall be provided to the Department at the time of the annual licensing inspection.

(m) The facility shall keep a record of every 911 call and every failure to make a 911 call in the event of a life-threatening emergency.

(n) Every 911 call and every failure to make a 911 call in the event of a life-threatening emergency shall be reported to the Department as an unusual incident and the facility shall maintain a record of all such calls and failures to make such a call.

10:42A-2.2 Life-threatening emergencies

(a) When a life-threatening emergency is detected, a 911 call shall be made immediately. If a staff member is not certain if the situation is a life-threatening emergency, then a 911 call shall be made immediately. Examples of life-threatening emergency shall include, but not be limited to:

1. Unconsciousness;
2. Persistent chest pain or discomfort;
3. Not breathing or having trouble breathing;
4. No signs of circulation;
5. Severe bleeding; or

6. Seizures that are unusual, prolonged or multiple, last more than five minutes, result in injury or occur in someone who is pregnant or diabetic.

SUBCHAPTER 3. MONITORING

10:42A-3.1 Enforcement

(a) The Department shall maintain a record of:

1. All reports received in which a 911 call was made in a life-threatening emergency;
2. All reports in which it is identified that a 911 call was not made in life-threatening emergencies; and
3. Any other instance in which the Department determines that a 911 call should have been made.

(b) The reports under (a) above shall not be considered public records under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(c) The Department shall conduct a review of all reports and instances under (a)2 and 3 above, and any complaints that a 911 call was not made, to determine whether there was a life-threatening emergency, whether a 911 call was made, or any other relevant facts. The Department shall report all findings to the Director. Reports containing aggregate data of all calls are considered government records and are subject to disclosure under Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(d) The Director shall determine whether a staff member has violated Danielle's Law, N.J.S.A. 30:6D-5.3.

(e) A staff member who violates N.J.S.A. 30:6D-5.3 shall be liable to a civil penalty of \$5,000 for the first offense, \$10,000 for the second offense and \$25,000 for the third and each subsequent offense.

(f) When the Director has determined that a staff member has violated N.J.S.A. 30:6D-5.3, the Division shall notify that staff member of this determination by certified mail (return receipt requested) or by personal service. A copy of that notice shall be sent to the chief executive officer or executive director of the facility. The notice of violation shall:

1. Identify the section of the statute or rule violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the penalty to be imposed; and
4. Advise the staff member of how the notice of violation may be appealed.

(g) If an appeal of the notice of violation is not requested, the notice of violation shall become the final decision of the

Department upon expiration of the 30-day period following the receipt thereof.

(h) A request for appeal shall be submitted in writing to the Director within 30 days of the date of receipt of the notice of violation and shall contain the information required below. This information shall be the basis of an initial pleading should the matter be transmitted to the Office of Administrative Law. If the required information is not provided, an appeal shall be denied and the notice of violation becomes the final decision of the Department upon receipt of notice of such denial. The request shall include:

1. The name, address and telephone number of appellant and any authorized representative;
2. A brief statement of the matter under appeal;
3. A list of potential witnesses; and
4. A statement as to whether the staff member agrees to the Department's holding the request for a reasonable period prior to referral to the Office of Administrative Law to allow for possible settlement of the dispute as provided by N.J.A.C. 1:1-8.1(b).

(i) If a request for an appeal meets the requirements set forth in (h) above and is timely submitted, this matter shall be considered a contested case and shall be referred to the Office of Administrative Law for a hearing, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(j) If the contested matter is not settled and the staff member has not agreed to the Department's holding the appeal request for a reasonable period prior to referral to the Office of Administrative Law for purposes of possible settlement of the dispute, the Director shall transmit the matter to

the Office of Administrative Law within 30 days of the receipt of the appeal.

(k) The Director shall notify the appellant that the matter has been transmitted to the Office of Administrative Law.

(l) An initial decision rendered by Office of Administrative Law shall be adopted, rejected or modified by the Commissioner within 45 days of its receipt (N.J.S.A. 52:14B-10(c)). The decision of the Commissioner constitutes the final decision of the Department.

(m) Upon issuance, the final decision of the Department shall be sent to the involved parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.

(n) The Commissioner shall take appropriate action on any final decision of the Department which may include a referral to the Attorney General to collect a civil penalty in a summary proceeding pursuant to the "Penalty Enforcement Act of 1999," P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.).

(o) The Department shall report to professional licensing boards for appropriate action any final decision of the agency that finds violations of N.J.S.A. 30:6D-5.3.

(p) The Department shall maintain a record of violations of N.J.S.A. 30:6D-5.3 and these rules which shall be included in the criteria that the Department considers in making a decision on whether to revoke or not renew the license of a facility licensed under N.J.A.C. 10:44A, 10:44B, 10:44C or 10:47 or whether to terminate or not renew a contract with a public or private agency, as applicable.