

CHAPTER 37A

**COMMUNITY RESIDENCES FOR
MENTALLY ILL ADULTS**

Authority

N.J.S.A. 30:11B-4.

Source and Effective Date

R.1999 d.203, effective June 4, 1999.
See: 31 N.J.R. 1179(a), 31 N.J.R. 1805(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 37A, Community Residences for Mentally Ill Adults, expires on December 1, 2004. See: 36 N.J.R. 3248(a).

Chapter Historical Note

Chapter 37A, Community Residences for Mentally Ill Adults, was adopted as R.1994 d.292, effective June 6, 1994. See: 25 N.J.R. 2672(a), 26 N.J.R. 2271(b).

Pursuant to Executive Order No. 66(1978), Chapter 37A, Community Residences for Mentally Ill Adults, was readopted as R.1999 d.203, effective June 4, 1999. See: Source and Effective Date. See, also, section annotations.

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Case Notes

Although the Court understood Plaintiff's claim that New Jersey law did not require community residences to provide for the safety of the surrounding community, standards of care for mentally ill residents must be understood, by extension, to provide some degree of community safety by offering at least a basic level of care focused on successful community integration. *Township of West Orange v. Whitman*, 8 F.Supp.2d 408 (D.N.J. 1998).

SUBCHAPTER 1. GENERAL PROVISIONS

10:37A-1.1 Scope and purpose

(a) Provider agencies (PA) operating community residences for adults with mental illness shall comply with the physical and program standards contained within this subchapter. These residences include group homes serving a maximum of 15 persons, PA supportive housing residences with a purchase of service contract with the Division or supportive housing residences formally owned or leased by an organized entity with an affiliation agreement with a PA, PA apartments, and family care homes serving five or fewer persons with a services agreement with the PA. These residences shall be approved for a purchase of service contract pursuant to this chapter and Department contract rules, including N.J.A.C. 10:4, and shall not be considered health care facilities within the meaning of N.J.S.A. 26:2H-1 et seq.

(b) The PAs shall provide a residential care program to all enrolled consumer residents. Such a program shall consist of the services described in this chapter and shall be provided in facilities owned or leased by the PA or in a supportive housing residence, or through services agreements with private operators.

(c) The major goal of the community residence program for mentally ill adults shall be to support and encourage the development of life skills required to sustain successful living within the community. Residential housing and services shall be organized around the principle of consumer resident responsibility and participation.

(d) The residential care program shall have a rehabilitation focus designed to develop and improve skills necessary for successful community integration. Programming shall focus on empowering the consumer resident's use of generic community supports to meet physical, psychological and social needs as a means to promote an improved quality of life and emotional well-being. Consumer residents shall live in the most normalized, least restrictive environment possible to promote individual growth and safety.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Rewrote (a); in (b), inserted "or in a supportive housing residence" preceding "or through services"; substituted references to consumer residents for references to clients throughout.

10:37A-1.2 Definitions

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

"Affiliation agreement" means a written agreement between the owner of any residence (who is not directly contracted by the Division to provide services) and any PA contracted to provide supportive housing services. The agreement outlines the provision of mental health services to the residents as well as who will maintain the license of the residence.

"Assessment and evaluation" means activities that will analyze an individual consumer resident's desires, functioning, strengths, needs and environment to determine appropriate interventions. An opportunity will be given for the consumer resident to provide a self-assessment and for any family member or significant other of the consumer resident's choice to provide an assessment of the consumer resident as well.

"Community residence for the mentally ill" (residence) means any community residential facility approved by the Division which provides food, shelter, and personal guidance under such supervision as required, to not more than 15 mentally ill persons who require assistance, temporarily or permanently, in order to live independently in the community. Community residences for the mentally ill have an approved purchase of service contract pursuant to the Department's contract rules and this chapter. These residences are not considered health care facilities, within the meaning of the "Home Care Facilities Planning Act," P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.) and include, but are not limited to, group homes, supervised apartment living arrangements, family care homes and hostels.

"Comprehensive service plan" (CSP) means the periodic formulation of goals, objectives, and interventions for residential services based on a functional assessment which shall include treatment recommendations and may include: psychological, medical, developmental, family, educational, social, cultural, environmental, recreational and vocational components.

"Consumer resident" means a person diagnosed with a mental illness who is a resident of a community residence for mentally ill adults.

“Consumer resident service agreement” means a written agreement between the PA and consumer resident which includes responsibilities of both the PA and the consumer resident.

“Crisis intervention counseling” means an attempt to facilitate crisis stabilization through the use of specific, time-limited counseling techniques. Crisis intervention counseling focuses on the present, providing pragmatic solutions to identified problems.

“Crisis intervention services” means the implementation of the PA’s written emergency policies and procedures focusing primarily on consumer resident and staff safety. Examples include provision of residential counseling, behavior management techniques, and request for outside assistance. Behavioral management techniques exclude physical and chemical restraint, aversive conditioning and punishment. Crisis intervention services can be documented via crisis reports, for example, and can be supported by such policies which reflect adequate responses to emergent situations.

“Department” means the Department of Human Services.

“Division” means the Division of Mental Health Services, within the Department of Human Services.

“Education” means instruction for consumer residents in basic skills, including academics, and increasing learning capabilities, in the areas of psychoeducation and health.

“Family care home” means a private home or apartment in which an individual resides and provides services to as many as five consumer residents who also reside in the home. The PA provides mental health services to the consumer resident and consultation to this individual, based on a services agreement.

“Group home” means any leased or owned single family residence or any single structure containing three or more dwelling units, all of which are utilized for the provision of residential care services wherein staff reside or are stationed either onsite or in close proximity and for which a contract exists with the Division. “Group homes” do not include family care homes, supportive housing residences or apartment facilities where individuals may receive regular or periodic staff supervision and/or visits, except where such apartment facilities include those contained in a structure of three or more units and all units are operated under contract with the Division.

“Individual services coordination” means those staff activities which are aimed at linking the consumer resident to the mental health and social service system and the arranging of the provision of appropriate services. Coordination activities include intake and referral, admission and acceptance, placement, termination and follow-up, individual services

planning and treatment reviews, advocacy with non-mental health systems, and documentation of services provided.

“Initial service plan” means the initial formulation of goal(s) and interventions, based on initial assessments, which serve as a focus for staff and consumer resident activities.

“Life experience” means functioning in non-employment roles, such as a homemaker, whose requirements are comparable to those of a residential counselor.

“Other life support services” means activities that provide basic personal support which are provided to maintain successful community living whenever possible. These services include, but are not limited to, providing transportation, providing prepared meals and performing household tasks, providing clothing, relocating client belongings, and providing direct assistance in securing household furnishings, utilities and other needed building services.

“Provider agency” (PA) means a public or private organization which has a mental health contract with the Division and has been licensed to provide residential services to individuals 18 years of age and older.

“PA apartment” means an apartment owned or leased by the PA in which clients reside and receive the services described in this subchapter.

“Recreation” means social or recreational activities of a relaxing or entertaining nature designed to promote the ability to socialize and manage leisure time.

“Residential counseling” means verbal interventions provided to consumer residents and families to assist the consumer resident in accessing and utilizing all planned or needed services. It may include problem-solving, advice, encouragement and emotional support to enhance stability in the living arrangement.

“Services agreement” means an agreement between a PA and another agency or service provider which describes the program or service provided to consumer residents in the community residence, including responsibilities for both the PA and the provider of the program or service. Only the governing body (or its official designee) of the PA makes such agreements with service or program providers.

“Supportive housing residence” means any unit of dwelling space owned or leased by a PA (or organized entity with an Affiliation Agreement with a PA) in which three or more individuals reside and whose occupancy is based on a diagnosis of serious mental illness and for which the consumer resident signs a lease and receives mental health supportive services from the PA. As opposed to the PA, the consumer resident is responsible for mortgage/lease payments, safety, cleanliness, property protection, etc. and bears the responsibility for those aspects of residential living. The consumer

resident has the key to the home and has control over access to it. No lease shall contain the provision of mandatory mental health program participation as a requirement for the consumer resident.

“Support services” means services which include, at a minimum, providing or assisting a resident to maintain living environments which are safe, secure, and clean and in compliance with this chapter. These services may include, but are not limited to, providing transportation, assistance in preparing meals and performing household tasks, providing clothing, relocating consumer resident belongings, and providing direct assistance in securing household furnishings, utilities and other needed building services.

“Training in daily living skills” means activities designed to develop and maintain the knowledge, behaviors, skills and attitudes needed to improve or maintain quality of life, for example, budget management and housekeeping skills training.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
Rewrote the section.

Case Notes

Staffing at group home for mentally ill adults, which staffing provided for on-site staffing a minimum of one hour per week but contemplated that staff typically would be on-site providing services three to four hours per week, met requirements of rule requiring that group home for mentally ill adults have staff that reside or are stationed either on-site or in immediate close proximity, where home contained persons who required no more than four hours of supervision weekly. Borough of Merchantville v. State Department of Human Resources, Division of Mental Health Services, 325 N.J.Super. 258, 738 A.2d 981 (N.J.Super.A.D. 1999).

SUBCHAPTER 2. LICENSING, SITE REVIEW AND WAIVERS

10:37A-2.1 Initial licensing process

(a) All inquiries related to licensure of community residences shall be made to:

New Jersey Division of Mental Health Services
Bureau of Licensing and Inspections
PO Box 727
Trenton, NJ 08625-0727

(b) To become a licensed PA, an agency shall:

1. Demonstrate the intent and ability to operate a residence in accordance with this chapter;
2. Be a mental health services provider with a service contract with the Division. Such a service contract shall include provisions for the operation of community residences; and

3. Pay the fee(s) required by N.J.A.C. 10:37A-2.2.

(c) The PA shall be in compliance with this chapter.

(d) The PA shall apply for licensure to the Division. Applications shall indicate the type or types of community residences intended, the specific geographic location in which the residences would be located, and the number of residents to be served. Such application shall be made to the Division at the address in (a) above.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
Amended by R.2004 d.91, effective March 1, 2004.
See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).
In (b), added 3; in (d), deleted the last sentence.

10:37A-2.2 Licensure fees

(a) Group homes, apartments, and family care providers applying for a new license shall pay an initial application fee of \$575.00. Supportive housing residence providers shall pay an initial application fee of \$100.00. PAs are not required to pay a separate initial application fee for programs for which they are licensed under N.J.A.C. 10:37-10 as of July 1, 2003.

(b) On an annual basis, the PA shall submit with its application for renewed licensure the fee(s) listed at (c) below, to the Division at the address listed at N.J.A.C. 10:37A-2.1(a). Checks shall be made payable to the “State of New Jersey.” No license shall be issued where payment of this fee has not been received in full by the Division. Failure to pay the fees applicable to an existing license shall result in revocation of that license.

(c) PAs applying for renewed licensure shall pay the following annual licensure renewal fees:

1. For group homes (GH):
 - i. For the first GH license \$575.00
 - ii. For each additional GH license \$287.50
2. For apartment (APT) or family care (FC) license:
 - i. For the first APT or FC license \$575.00
 - ii. For each additional APT or FC license \$287.50
3. For each supportive housing residence (SHR) \$100.00

(d) If the Fiscal Year 2004 anniversary of the expiration date of a license falls before, on, or within 30 days after March 1, 2004 and the fee is not waived pursuant to N.J.A.C. 10:37-10.4(e), any initial fee and the Fiscal Year 2004 renewal fee shall be paid by March 31, 2004. Any other initial application fee, waiver request, or renewal fee shall be paid 30 days before the anniversary date for the remainder of FY 2004 and in each successive year.

New Rule, R.2004 d.91, effective March 1, 2004.
See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).
Former N.J.A.C. 10:37A-2.2, Licensing of group homes, recodified to N.J.A.C. 10:37A-2.3.

10:37A-2.3 Licensing of group homes

(a) The Division shall inspect any proposed group home site, and shall review all program operations or descriptions for compliance with the provisions of this chapter.

(b) The Division shall notify the PA in writing of any violations.

(c) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(d) A license shall be issued once intent and capability to comply with all program requirements is demonstrated, inspections are satisfactory, life hazard registration is initiated and there is reasonable assurance that the residence shall be operated in a manner required by this chapter.

(e) The license shall be issued by the Department through the Division.

(f) The license shall be limited to a specifically identified facility, issued for a period of one year, and shall indicate the maximum number of persons to be served within that facility.

(g) The license shall be available on the agency's premises, for review by the Division, or any interested members of the public, during normal business hours.

Recodified from N.J.A.C. 10:37A-2.2 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.3, Licensing PA apartments, recodified to N.J.A.C. 10:37A-2.4.

10:37A-2.4 Licensing PA apartments

(a) The Division may inspect any proposed apartment site(s), and review all program operations or descriptions for compliance with the provisions of this subchapter.

(b) The Division shall notify the PA in writing of any and all violations.

(c) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(d) A license shall be issued once intent and capability to comply with all program requirements is demonstrated, inspections, if any, are satisfactory and there is reasonable assurance that the apartment(s) shall be operated in a manner required by this chapter.

(e) The license shall be issued by the Department through the Division.

(f) The license shall be issued to the PA for a specific number of apartment spaces within a defined geographic area for a period of one year. The PA shall have the right

to relocate apartment spaces within the defined geographic area, as needed. The new facilities shall comply with all requirements of this chapter. The PA shall notify the Bureau of Licensing and Inspections, at the address noted in N.J.A.C. 10:37-2.1(a) of any new/relocated apartments.

(g) The license shall be available on the agency's premises for review by the Division, and any members of the public, during normal business hours.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (f), added last sentence beginning with "The PA shall notify".

Recodified from N.J.A.C. 10:37A-2.3 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.4, Licensing family care homes, recodified to N.J.A.C. 10:37A-2.5.

10:37A-2.5 Licensing family care homes

(a) The PA shall develop a written services agreement with the individual who operates the family care home.

(b) The content of the services agreement between the PA and the individual who operates the family care home shall have been approved by the Division, based upon individual consumer resident needs and this chapter.

(c) The Division may inspect any proposed family care home and review all program operations for compliance with the provisions of this chapter. The PA shall notify the Bureau of Licensing and Inspections, at the address noted in N.J.A.C. 10:37-2.1(a), of any proposed family care home.

(d) The Division shall notify the PA in writing of any violations.

(e) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(f) A license shall be issued once intent to comply with all program requirements is demonstrated, inspections, if any, are satisfactory and there is reasonable assurance that the family care home(s) shall be operated in a manner required by this chapter.

(g) The license shall be issued by the Department through the Division.

(h) The license shall be issued to the PA for a period of one year and shall be limited to a defined number of family care homes within a defined geographic area and shall indicate the maximum number of persons to be served. No family care home shall serve more than five consumer residents at any one time.

(i) The license shall be available on the PA's premises for review by the Division, and any members of the public, during normal business hours.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (b) and (h), substituted references to consumer residents for references to clients; in (c), added last sentence beginning with "The PA shall notify".

Recodified from N.J.A.C. 10:37A-2.4 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.5, Licensing supportive housing residences, recodified to N.J.A.C. 10:37A-2.6.

10:37A-2.6 Licensing supportive housing residences

(a) The Division may inspect any proposed supportive housing site and review all program operations for compliance with the provisions of this chapter.

(b) The Division shall notify the PA in writing of any violations.

(c) Inspections of supportive housing residences to be licensed will be in accordance with provisions contained in N.J.A.C. 10:37A-6.1 through 6.12 unless specifically excluded.

(d) Licenses shall be issued once intent and capability to comply with all program requirements is demonstrated, inspections, if any, are satisfactory and there is reasonable assurance that the supportive housing residence shall be operated in a manner required by this chapter.

(e) All licensed supportive housing residences shall be evaluated on site annually by the Bureau of Licensing and Inspections (BLI), and at the discretion of the Division, as needed.

(f) The license shall be issued by the Department through the Division to the PA for one year.

(g) The license shall be available on the PA's premises for review during normally scheduled business hours.

(h) Should all occupants of the supportive housing residence refuse or not receive services for a period of 90 days, the PA shall notify the Division's Bureau of Licensing and Inspections at which time the license will be terminated.

New Rule, R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Former N.J.A.C. 10:37A-2.5, Provisional license, recodified to N.J.A.C. 10:37A-2.6.

Recodified from N.J.A.C. 10:37A-2.5 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.6, Provisional license, recodified to N.J.A.C. 10:37A-2.7.

10:37A-2.7 Provisional license

(a) A provisional license may be issued by the Department to a prospective PA which expresses interest in operating a residence, indicates in writing an intent to comply with the guidelines contained in this chapter, and who applies to the Division for such provisional licensing. The application shall indicate the type or types of residences desired, the specific geographical areas in which residences would be located, and the number of residents to be served.

(b) The Division shall review the application of the prospective PA, assess the fiscal, programmatic, and administrative capabilities of the PA, and determine whether a provisional license shall be issued. A provisional licensee shall be subject to the application fee requirements of N.J.A.C. 10:37A-2.2.

(c) The provisional license shall authorize a PA to secure a facility or facilities in which to provide services.

(d) A provisional license shall not authorize a PA to provide services to consumer residents.

(e) The provisional license shall be issued for a time period not to exceed six months, and may be renewed in six month intervals by the Division if, in its judgment, the PA consistently made good faith efforts to establish the proposed residence(s).

(f) A PA issued a provisional license shall immediately make application for an annual renewable license under provisions specified in N.J.A.C. 10:37A-2.1 when facility(s) have been secured and services to residents are ready to be initiated.

Recodified from N.J.A.C. 10:37A-2.5 and amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (d), substituted "consumer residents" for "clients". Former N.J.A.C. 10:37A-2.6, Waiver of standards, recodified to N.J.A.C. 10:37A-2.7.

Recodified from N.J.A.C. 10:37A-2.6 and amended by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

In (b), rewrote the last sentence. Former N.J.A.C. 10:37A-2.7, Waiver of standards, recodified to N.J.A.C. 10:37A-2.8.

10:37A-2.8 Waiver of standards

(a) Requests for program waivers shall be made to the Division, in writing, with supporting information justifying the request.

(b) Waivers of specific program rules shall be considered, at the discretion of the Division, provided that one or more of the following conditions have been met:

1. Where strict enforcement of the rule would result in unreasonable hardship on the consumer resident;
2. The waiver addresses a particular need of a consumer resident(s) but does not adversely affect the health, safety, welfare, or rights of the consumer resident; or
3. There is a clear clinical or programmatic justification for such a waiver that will enhance a PA's effectiveness or efficiency without an adverse effect on any consumer resident's health, safety, welfare or rights.

Recodified from N.J.A.C. 10:37A-2.6 and amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (b), substituted references to consumer residents for references to clients throughout. Former N.J.A.C. 10:37A-2.7, License renewal, recodified to N.J.A.C. 10:37A-2.8.

Recodified from N.J.A.C. 10:37A-2.7 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.8, License renewal, recodified to N.J.A.C. 10:37A-2.9.

10:37A-2.9 License renewal

(a) The license shall be subject to an annual renewal.

(b) Determination of license renewal shall be based on the annual evaluation conducted by the Division's Bureau of Licensing and Inspections (BLI).

(c) The Division Director (or designee) shall make the determination of renewal.

(d) In the event that a license expires prior to the determination of renewal, the license shall remain in effect until such a determination is made.

(e) Unless the licensure renewal fee has been waived pursuant to N.J.A.C. 10:37-10.4(e), the PA shall submit a licensure renewal fee in accordance with the schedule delineated at N.J.A.C. 10:37A-2.2(c). Failure to pay any portion of a required fee shall result in denial of the application for renewal.

Recodified from N.J.A.C. 10:37A-2.7 by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Former N.J.A.C. 10:37A-2.8, Evaluation and monitoring, recodified to N.J.A.C. 10:37A-2.9.

Recodified from N.J.A.C. 10:37A-2.8 and amended by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.9, Evaluation and monitoring, recodified to N.J.A.C. 10:37A-2.10.

10:37A-2.10 Evaluation and monitoring

(a) The PA shall ensure, through its quality assurance program, that group homes, PA apartments, family care homes and supportive housing residences meet the program and facility's requirements for licensure under N.J.S.A. 30:11B-4. Quality assurance visits to ensure health and/or safety, and welfare standards shall be conducted quarterly, at a minimum. The Division will audit the process annually.

(b) All PA and residences shall be subject to site reviews in accordance with N.J.A.C. 10:37-10.

(c) All group homes shall be evaluated on site annually by the BLI, and at the discretion of the Division, as needed.

(d) All PA apartments shall be evaluated on site annually by the BLI, and at the discretion of the Division, as needed.

(e) All PA family care homes shall be evaluated annually by the BLI, and at the discretion of the Division, as needed.

(f) All licensed supportive housing residences shall be evaluated on-site annually by BLI, and at the discretion of the Division, as needed.

(g) A written report of program and facility evaluations, including all deficiencies and violations, shall be provided to the PA by the Division within 60 days from the date of the site review.

(h) No later than 40 days after receipt of the report, the PA shall provide written notice to the Division that specific violations have been corrected, or that actions have been taken to abate specific violations noted and that full correction is anticipated within the time frames noted in the report.

(i) For any violations cited by the Division as presenting an imminent threat to the health or safety of a consumer resident, the PA shall correct them or remove the threat created by such deficiencies immediately and shall provide written notice, within 48 hours, to the BLI that such action has been taken.

(j) If the Division report identifies violations other than those presenting an imminent threat to the health and/or safety of a consumer resident, representatives from the Division, as part of their ongoing monitoring responsibilities, shall visit the specified facility or program and provide a report to the Division on progress toward remediation of deficiencies every 60 days until compliance is achieved.

(k) When the PA is cited for a physical violation and the maintenance is the responsibility of another party, there must be documented evidence that the PA has informed the building owner and his or her agent of the need to correct any deficiencies. If such deficiencies are not corrected, the PA shall take further action as appropriate.

Recodified from N.J.A.C. 10:37A-2.8 and amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), inserted "and supportive housing residences" preceding "meet the program"; inserted new (f) and recodified existing (f) through (j) as (g) through (k); in (g), substituted "60" for "90"; in (i) and (j), substituted "a consumer resident" for "clients" throughout. Former N.J.A.C. 10:37A-2.9, Appeal of the Division's findings, recodified to N.J.A.C. 10:37A-2.10.

Recodified from N.J.A.C. 10:37A-2.9 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.10, Appeal of the Division's findings, recodified to N.J.A.C. 10:37A-2.11.

10:37A-2.11 Appeal of the Division's findings

(a) The PA may appeal findings of the Division, pursuant to N.J.A.C. 10:37A-2.13. In the case of life-threatening violations, such appeal shall be conducted pursuant to N.J.A.C. 10:37A-2.14.

(b) The appeal of findings shall be directed to the Division Director or designee within 20 days of receipt of the written report of findings.

(c) A response to the appeal shall be provided within 20 days of its receipt.

Recodified from N.J.A.C. 10:37A-2.9 and amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), updated N.J.A.C. references. Former N.J.A.C. 10:37A-2.10, Administrative sanction, recodified to N.J.A.C. 10:37A-2.11.

Recodified from N.J.A.C. 10:37A-2.10 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.11, Administrative sanction, recodified to N.J.A.C. 10:37A-2.12.

10:37A-2.12 Administrative sanction

(a) In the event that the PA does not submit the written notice specified in N.J.A.C. 10:37A-2.9(g) by the required date, or if violations have not been abated within time frames specified in the report, the Division shall have the option of suspension of payments to which the PA may be entitled under any agreements with the Division, imposition of a moratorium on admissions to the facility, revocation of the current license to operate the facility, or non-renewal of the license to operate the facility.

(b) In the event that the Division requires the revocation or non-renewal of the license and the relocation of the consumer residents of the facility, a written order shall be directed to the PA's executive director or designee and to the President of the Board of Directors of the PA.

(c) Under the supervision of the Division, the PA shall be responsible for placement of consumer residents when an order to vacate the premises and the revocation of a license has been issued by the Division.

Recodified from N.J.A.C. 10:37A-2.10 and amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), updated N.J.A.C. reference; in (b) and (c), substituted "consumer residents" for "clients" throughout. Former N.J.A.C. 10:37A-2.11, Review of administrative sanctions, recodified to N.J.A.C. 10:37A-2.12.

Recodified from N.J.A.C. 10:37A-2.11 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.12, Review of administrative sanctions, recodified to N.J.A.C. 10:37A-2.13.

10:37A-2.13 Review of administrative sanctions

Where an administrative sanction exists and the PA denies the basis of the sanction, the PA may apply to the Division Director or designee for a review, which shall be afforded and a decision rendered by the Division Director or designee within five working days of the receipt of the written request for a review.

Recodified from N.J.A.C. 10:37A-2.11 by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Former N.J.A.C. 10:37A-2.12, Administrative hearing of appeal, recodified to N.J.A.C. 10:37A-2.13.

Recodified from N.J.A.C. 10:37A-2.12 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.13, Administrative hearing of appeal, recodified to N.J.A.C. 10:37A-2.14.

10:37A-2.14 Administrative hearing of appeal

If the PA chooses to appeal a decision made pursuant to the provisions of N.J.A.C. 10:37A-2.10, the PA may request an administrative hearing, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Recodified from N.J.A.C. 10:37A-2.12 and amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Updated N.J.A.C. reference. Former N.J.A.C. 10:37A-2.13, Emergency situation, recodified to N.J.A.C. 10:37A-2.14.

Recodified from N.J.A.C. 10:37A-2.13 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

Former N.J.A.C. 10:37A-2.14, Emergency situation, recodified to N.J.A.C. 10:37A-2.15.

10:37A-2.15 Emergency situation

The Division, when it determines that the health, safety or welfare of the consumer residents warrant it, may immediately suspend the license of a PA, and take the necessary action to ensure the well-being of consumer residents. Any hearing provided in such cases shall be on an expedited basis.

Recodified from N.J.A.C. 10:37A-2.13 and amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Substituted "consumer residents" for "clients" throughout.

Recodified from N.J.A.C. 10:37-2.14 by R.2004 d.91, effective March 1, 2004.

See: 35 N.J.R. 4200(b), 36 N.J.R. 1203(a).

SUBCHAPTER 3. POLICIES AND PROCEDURES; CONFIDENTIALITY

10:37A-3.1 Written policies and procedures

(a) The PA shall develop and implement written policies and procedures to ensure that the service delivery system complies with applicable statutory and regulatory provisions governing community residences for the mentally ill.

1. The PA shall develop, maintain and revise, as is necessary, a program-oriented policy and procedures manual. Said manual shall be reviewed annually, as evidenced by dated signatures of the reviewer(s).

2. Policies and procedures shall promote the principles of normalization, age-appropriateness, consumer resident empowerment and least restriction, and shall be consistent with the PA's organizational structure and management philosophy.

3. The PA shall document that consumers and their families are consulted in the development and review of policies and procedures. Such documentation shall reflect that any suggestions so generated shall be seriously considered.

4. An up-to-date policy and procedure manual shall be located in a manner readily available to direct care staff at all times.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), substituted "consumer resident" for "client" in 2 and added 4.

10:37A-3.2 Confidentiality

(a) N.J.S.A. 30:4-24.3 states:

"All certificates, applications, records, and reports made pursuant to the provisions of this Title and directly or indirectly identifying any individual presently or formerly receiving services in a noncorrectional institution under this Title, or for whom services in a noncorrectional institution shall be sought under this act shall be kept confidential and shall not be disclosed by any person, except insofar as:

(1) the individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent; or

(2) disclosure may be necessary to carry out any of the provisions of this act or of article 9 of chapter 82 of Title 2A of the New Jersey Statutes (Section 2A:82-41); or

(3) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to a patient's current medical condition to any relative or friend or to the patient's personal physician or attorney if it appears that the information is to be used directly or indirectly for the benefit of the patient.

Nothing in this section shall preclude the professional staff of a community agency under contract with the Division of Mental Health and Hospitals in the Department of Human Services, or of a screening service, short-term care or psychiatric facility as those facilities are defined in section 2 of P.L. 1987, c.116 (C.30:4-27.2) from disclosing information that is relevant to a patient's current treatment to the staff of another such agency."

(b) The PA shall maintain compliance with the provisions of N.J.S.A. 30:4-24.3 cited in (a) above and the provisions regarding information in client records in N.J.A.C. 10:37-6.79.

SUBCHAPTER 4. CONSUMER RESIDENT SERVICES

10:37A-4.1 Population/admission priorities

(a) First priority for admissions into residences shall be given to persons with severe and persistent mental illness and in accordance with target populations, as defined in N.J.A.C. 10:37-5.2.

1. The PA shall have a clear written description of each level of service intensity provided, written inclusionary and exclusionary criteria for acceptance of consumer residents into the residential program, and written criteria specifying consumer resident characteristics for determining the level of service to be provided to individual consumer residents.

2. There shall be written procedures that describe how intakes and referrals are managed, to give priority to persons with severe and persistent mental illness, and in accordance with target populations, as defined in N.J.A.C. 10:37-5.2.

3. Pursuant to Title VI and VII of the Civil Rights Act of 1964 as amended and Section 504 of the Rehabilitation Act of 1973, discrimination in the provision of services, on the basis of race, sex, religion, national origin, age, or physical handicap in the provision of services is prohibited.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), deleted the second sentence in the introductory paragraph, inserted "written" preceding "description" and substituted references to consumer residents for references to clients in 1.

Case Notes

Statutes and regulation were invalid; they purported to make person acquitted of criminal charge by reason of insanity ineligible for admission without determination that the person would be dangerous to himself or to public if released to specific placement. Matter of Commitment of J.W., 288 N.J.Super. 197, 672 A.2d 199 (A.D.1996).

10:37A-4.2 Services to be provided

(a) Based upon the needs of the consumer residents served, a range of services shall be offered, specifically addressing the maintenance or enhancement of consumer resident self-sufficiency. These services are intended to foster a sense of belonging, both within the residential setting and the greater community. They are designed to enhance the consumer resident's interest and participation in all spheres of community living (such as religious, social, political and cultural). The PA shall empower the consumer resident to use the full range of community services.

(b) Following assessment and evaluation of individual needs and services and in consultation with the consumer resident, the following minimum services shall be directly provided by the PA to enrolled consumer residents as individually appropriate and agreed to by the resident, and shall be documented in the clinical record:

1. Individual services coordination;
2. Training in daily living skills;
3. Residential counseling;
4. Support services; and
5. Crisis intervention services.

(c) Service agreements with local screening services shall be developed. These agreements shall address the timely sharing of information and procedures for follow-up on the care and disposition of the consumer resident.

(d) The PA shall document that it has the capability to provide or arrange the services listed below based on individual consumer resident need. This capability may be documented through such means as policies and procedures, schedules of services, and logs. In addition, the PA shall document that such services were in fact provided. Provided services shall be documented in the clinical record, schedules, logs, or other means of documentation presented by the PA.

1. Support services;
2. Recreation; and
3. Education. Instruction shall minimally be provided or arranged in basic academics, learning techniques, formal academics, vocational and career development, physical and mental health maintenance, alcohol and drug abuse prevention, family planning, prevention of sexually transmitted diseases and education about self-help and recovery programs.

(e) The PA shall maintain ongoing communication with all other providers of needed treatment and generic human services, so that appropriate adjustments are made in the services provided to the consumer resident. Such services include, but are not limited to, partial care, hospitalization, outpatient treatment, vocational services, medical services, education programs, community activities (such as YMCA, church), clinical case management, substance abuse counseling, acute care services and entitlements.

1. Clinical records shall identify all relevant service providers serving the consumer resident.
2. The PA shall maintain policies for emergency and routine case conferences.
3. The PA shall document ongoing communication with other service providers in the clinical record.

4. The PA shall maintain service agreements as needed.

5. The PA shall participate in local systems planning activities as needed.

6. The PA shall have policies that describe the PA's actions on behalf of the consumer resident when needed services are unavailable in the community, or when the current level of functioning of the consumer resident temporarily precludes participation in more normalized activities. In these circumstances, the PA may elect to provide these services directly. The PA may also elect to provide these services directly when doing so best serves the consumer resident's clinical needs.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
Rewrote the section.

10:37A-4.3 Settings to provide residential programs

(a) Residential programs may be provided in a variety of settings which may include, but are not limited to, the following:

1. Group homes;
2. PA apartments;
3. Family care homes; and
4. Supportive housing residences.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
In (a), added 4.

10:37A-4.4 Consumer resident service agreements

(a) All consumer residents enrolled in a residential program shall have a written agreement which clearly articulates the roles and responsibilities of the PA and rules that apply to the consumer resident. This agreement shall provide acknowledgement by the consumer resident that he or she understands the following:

1. A list of available services;
2. The expected duration of services;
3. The fees for services to be provided (if any);
4. The consumer resident's rights (for example, civil) and responsibilities (including expectations of the program and an appeal or complaint process);
5. The PA roles and responsibilities;
6. The rules which may apply to service provision;
7. Service termination procedures, to include any behaviors that could lead to dismissal from the program; and
8. The location and accessibility of residential policy and procedure manuals.

(b) The agreement shall include the signature of the consumer resident and the PA representative, and in family care homes, the homeowner or operator. A copy of this signed agreement shall be maintained in the consumer resident's clinical record.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
Rewrote the section.

10:37A-4.5 Recordkeeping

(a) The PA shall maintain a record for each client enrolled in the program, marked with the individual's name.

(b) The PA shall maintain the confidentiality of all records and shall store such records in a manner as to provide access only to authorized persons.

(c) Individual records for consumer residents in group homes, supervised apartments and family care homes shall be maintained in an up-to-date, organized fashion containing all relevant information about the consumer resident and shall include all required contents under N.J.A.C. 10:37-6.74 as well as those listed below.

1. A comprehensive intake assessment shall be completed for each consumer resident by the 14th day of admission. This assessment shall include: identifying information (name, gender, DOB, religion, race and SSN), referral date and source, presenting problem(s)/reason for referral, social support system (friends, etc.), relationship with family, psychiatric history, current mental status and multi-axial diagnosis, if such diagnosis can be obtained, previous living situation, physical health, allergies, adverse reactions to medications, medication history including current medication/dose/frequency and name of prescribing physician, educational history and current needs, work history and current needs, functional skills and deficits including activities of daily living, recreational/social needs, current and prior involvement with other agencies/mental health services, legal information relevant to treatment, abuse, neglect and domestic violence history if applicable, alcohol, tobacco and other drug use history, and risk factors (regarding what circumstances, if any, the consumer resident may be a danger to self or others).

2. The comprehensive intake assessment shall include consumer resident identified goals and clinical treatment recommendations to be used as an initial service plan (this may be completed as a separate document).

3. The Comprehensive Service Plan (CSP) shall be formulated for each consumer resident by the 30th day in the program. This plan shall be based on the intake assessment and all other relevant information.

4. The CSP shall include goals and time-framed, measurable objectives which are stated in behavioral terms. The CSP shall also include staff interventions and frequency of interventions and the staff or other party responsible for implementation of interventions.

5. The CSP shall be properly authenticated with dates and signatures of appropriate treatment team members. The CSP shall be developed with the consumer resident's active participation and input, and shall contain his or her signature indicating same. If the consumer resident is unwilling or unable to sign (or participation is contra-indicated), such shall be documented.

6. The CSP shall include specific measurable criteria for termination or reduction in services and the current level of supervision.

7. The CSP shall be reviewed, and revised as necessary, by the 90th day of enrollment and then no less frequently than every 90 days thereafter during the first year of treatment and six months thereafter.

8. The PA staff shall document in progress notes the consumer resident's clinical course of treatment and community living skills while enrolled in a residential program. Progress shall be documented by a weekly summary. Such notes shall:

- i. Reflect consumer resident's status towards goals and objectives and any significant event/illnesses;
- ii. Describe interventions provided by staff;
- iii. Describe consumer resident response to treatment;
- iv. Reflect collateral contacts and communication with persons other than the consumer resident which impact on the consumer resident's status or service provision; and
- v. Be properly authenticated with staff signature, title, date, and time for each entry.

(d) Each consumer resident record for a supportive housing residence shall be maintained in an up-to-date, organized fashion and shall include the following:

1. A comprehensive intake assessment that includes:
 - i. Identifying information and presenting problem(s);
 - ii. Income verification;
 - iii. Supportive housing services needed/desired;
 - iv. Social and family information;
 - v. Current physical health (including medications);
 - vi. Medical and psychiatric history (including current service providers); and
 - vii. Specific diagnosis, if such diagnosis can be obtained.

2. A comprehensive service plan completed by the 14th day of enrollment into the program and reviewed every three months. The service plan shall be developed based on the consumer resident's input and stated needs (goals and objectives) and interventions the consumer resident would like from the staff member, and shall contain the signatures of the resident and responsible staff member, and the date. If the consumer resident is unwilling/unable to sign, this shall be documented.

3. Monthly progress notes documented by PA staff, indicating level of goal/objective attainment, services provided, significant events, and contacts with other service providers. This note shall be signed (with staff title) and dated; and

4. A termination summary shall be completed within 30 days of termination to include:

- i. Primary presenting problem;
- ii. Treatment provided and response;
- iii. Clinical condition at termination;
- iv. Recommendations and referrals, including medications;
- v. Reason for discharge; and
- vi. Residential address/housing status at termination.

(e) In addition to standard reporting to the Division, cited in N.J.A.C. 10:37-6.73 through 6.79, PAs who charge fees to consumer residents shall keep appropriate financial records.

1. Financial records shall include, for each consumer resident, specific charges for all service-related items.

2. Fees received from consumer residents should be recorded separately for each housing facility for which the PA collects such fees.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Rewrote (c), inserted new (d), and recodified and rewrote existing (d) as (e).

SUBCHAPTER 5. STAFF

10:37A-5.1 Staffing requirements

(a) The PA shall employ a sufficient number of residential counselors and senior residential counselors to provide all needed residential services to all enrolled consumer residents, based upon the numbers of consumer residents served, the level of functioning and disability of the consumer residents served, the types of residences utilized, and the geographical distribution of residences. The staffing pattern approved by the Division shall be reflected in the purchase

of service contracts with individual agencies. The staff requirements, qualifications and duties described within this subchapter shall only apply to PA staff hired after March 23, 1990.

(b) The PA shall employ at least one residential program coordinator.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), substituted "consumer residents" for "clients" throughout, and inserted "the level of functioning and disability of the consumer residents served" preceding "the types of residences"; in (b), substituted "program coordinator" for "clinical specialist"; deleted (c).

10:37A-5.2 Residential counselor requirements, qualifications and duties

(a) Residential counselors shall have one of the following:

- 1. A baccalaureate degree from an accredited college or university in a mental health related discipline;
- 2. A license as a registered nurse;
- 3. A combination of one or more years of college, plus education and experience equal to four years;
- 4. A license as a practical nurse plus two years of related work or life experience; or
- 5. A high school diploma or the equivalent, plus four years of related work or life experience.

(b) A residential counselor shall also have a valid driver's license, if driving a vehicle is necessary to provide services.

(c) When "related work or life experience" is relied upon to meet staff qualifications, the personnel file shall clearly document the "related work or life experience" and how it relates to the job duties and responsibilities for the position in which the individual is being hired.

(d) The duties of the residential counselor shall, at a minimum, include the following:

- 1. On-site consumer resident supervision or support;
- 2. Participation in assessment and evaluation;
- 3. Supervising, organizing and supporting recreational and/or socialization activities;
- 4. Transportation;
- 5. Residential counseling;
- 6. Crisis intervention services (but not including crisis intervention counseling);
- 7. Participation in the development of the comprehensive service plan; and
- 8. Participation in individual service coordination activities as defined in N.J.A.C. 10:37A-1.2.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Rewrote (a)3; inserted new (b) and (c); recodified and rewrote existing (b) as (d).

10:37A-5.3 Senior residential counselor requirements, qualifications and duties

(a) A senior residential counselor shall have the qualifications as cited in N.J.A.C. 10:37A-5.2(a) plus one year of experience in a residential mental health setting.

(b) The duties of the senior residential counselor shall, at a minimum, include the following:

1. Any duty listed in N.J.A.C. 10:37A-5.2(c);
2. Participation in the development of initial and comprehensive service plans;
3. Participation in individual service coordination activities as defined in N.J.A.C. 10:37A-1.2;
4. Participation in staff scheduling;
5. Participation in providing staff training and orientation; and
6. Assistance with facility management.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (b), substituted "Participation in the development" for "Development" in 2, substituted "Participation in individual" for "Individual" in 3, and added 4 through 6.

10:37A-5.4 Residential program coordinator requirements, qualifications and duties

(a) A residential program coordinator shall have the following:

1. A master's degree from an accredited college or university in a mental health related discipline, and three years relevant experience in a mental health setting;
2. A bachelor's degree in a mental health related discipline plus two years of experience in a mental health setting; or
3. A license as a registered nurse, plus two years of supervised, clinical mental health experience subsequent to receipt of degree or nursing license.

(b) Previous supervisory and residential experience is desirable but not required.

(c) The duties of the residential program coordinator shall minimally include:

1. Program administration, supervision and direction;
2. Inter-agency coordination;
3. Program development and implementation;
4. Staff development and/or training and clinical supervision;

5. Facility management;
6. Quality assurance;
7. Clinical assessment;
8. Individual, group and family counseling; and
9. Crisis intervention counseling.

Recodified from N.J.A.C. 10:37A-5.5 and amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), added 2 and 3; in (c), inserted "clinical" preceding "supervision" in 4 and added 7 through 9. Former N.J.A.C. 10:37A-5.4, Residential specialist requirements, qualifications and duties, repealed.

10:37A-5.5 (Reserved)

Recodified to N.J.A.C. 10:37A-5.4 by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

SUBCHAPTER 6. FACILITY

10:37A-6.1 Physical plant requirements

All licensed community residences for mentally ill adults shall comply with all applicable provisions of the New Jersey Uniform Construction Code as specified in N.J.A.C. 5:23, or all applicable provisions of the New Jersey Uniform Fire Code, as specified in N.J.A.C. 5:70, 5:71 and 5:72, and evidenced by a valid Certificate of Occupancy under the Construction Code or Certificate of Inspection under the Fire Code, as appropriate.

Amended by R.1999 d.203, effective July 6, 1999.

See: 31 N.J.R. 1179(a), 31 N.J.R. 1805(a).

Changed N.J.A.C. references.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Rewrote the section.

10:37A-6.2 Water supply

(a) Every residence shall be provided with a safe supply of potable water meeting the standards as set forth in the Safe Drinking Water Act rules at N.J.A.C. 7:10.

(b) The source of such water supply shall be approved by the New Jersey Department of Environmental Protection and Energy or the local health agency.

10:37A-6.3 Residences

(a) Every residence shall contain a kitchen sink of non-absorbent impervious material.

(b) Every residence shall be provided with a minimum of one toilet, bathroom sink and a bathtub or shower.

(c) There shall be at least one toilet, sink and one bath or shower for each eight residents.

(d) The bathroom sink shall be located in or adjoining the toilet area.

(e) Every toilet, bathroom sink and bathtub or shower shall be:

1. Accessible from within the building without passing through any part of any other rooming unit; and
2. Contained in a room or rooms which are separated from all other rooms by walls, doors or partitions that afford privacy.

(f) No consumer resident shall be required to go farther than one floor above or below his or her rooming unit to the toilet room.

(g) No consumer resident shall be without ready access to a bathroom, bathtub or shower by reason of physical disability.

(h) Every plumbing fixture shall be connected to water and sewer/septic systems approved by the New Jersey Department of Environmental Protection and/or the local health agency, and shall be maintained in good working condition. Plumbing systems shall be well maintained.

(i) Every kitchen sink, bathroom sink and bathtub or shower required by this section shall be connected to both hot and cold water lines.

(j) Every residence shall have water heating facilities which are installed and connected with the hot water lines.

(k) The water heating system must be capable of delivering water at a minimum temperature of not less than 115 degrees Fahrenheit and at a maximum temperature of not more than 135 degrees Fahrenheit at all times in accordance with anticipated needs.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (b) and (c), substituted references to toilets for references to water closets; in (f), substituted "toilet room" for "bathroom"; in (f) and (g), substituted "consumer resident" for "client"; in (k), substituted "115" for "120" and "135" for "140".

10:37A-6.4 Garbage and rubbish disposal

Garbage, rubbish or other organic waste shall be stored in watertight receptacles. A sufficient number of garbage or rubbish receptacles shall be available, and shall conform to all applicable State regulations and local ordinances. Any garbage container 13 gallons or less used inside the residence shall not require a lid.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
Added last sentence.

10:37A-6.5 Electrical system

(a) Every residence shall be provided with electrical service, which shall be adequately maintained. The electrical

system shall be in working order and sufficient for the appliances and equipment used. Every outlet and lamp shall be maintained in a good and safe condition and shall be connected to the source of electric power.

(b) Extension cords and flexible cords shall not be used as a substitute for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings, floors, under drapes or floor coverings, nor be subject to environmental damage or physical impact.

10:37A-6.6 Lighting

(a) Every bedroom shall have at least one window or skylight facing directly to the outdoors.

(b) The minimum glazed area of the total windows or skylights shall be eight percent of the floor area of each room.

(c) Every habitable room shall contain sufficient wall-type electric outlets and lamps or light fixtures to enable consumer residents to use the room for its intended function. Lighting in habitable rooms must be sufficient to read by. Open or unshielded halogen lamp stands shall be prohibited.

(d) Every portion of each staircase, hall, cellar, basement, landing, furnace room, utility room and all similar nonhabitable space shall have light available at all times.

(e) Every portion of any interior or exterior passageway or staircase shall have light available at all times.

(f) Every bathroom and toilet room shall have light available at all times. Artificial lighting shall be controlled by a wall switch so located as to avoid danger of electrical hazard. There must be sufficient light to use the room and/or area for its intended purpose.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
Rewrote (c) through (f).

10:37A-6.7 Ventilation

(a) A means of ventilation shall be provided for every habitable room.

(b) Means of ventilation shall be provided for every bathroom or water closet compartment.

(c) Ventilation shall be sufficient to remove odors.

10:37A-6.8 Heating

(a) Every residence shall have heating facilities which are:

1. Properly installed;
2. Maintained in good and safe working condition; and

3. Capable of safely and adequately heating all habitable rooms and bathrooms located therein to a temperature of at least 70 degrees Fahrenheit when the outside temperature is 14 degrees Fahrenheit.

(b) The temperature shall be read at a height of three feet above floor level at the center of the room.

(c) There shall be heat adequate to maintain a minimum inside temperature of 68 degrees Fahrenheit in all habitable rooms and bathrooms from October 1 of each year to the next May 1, and when the outside temperature is 57 degrees or less.

(d) Every space heater, except electrical, shall be properly vented to a chimney or duct leading to outdoors.

(e) Unvented portable space heaters, burning solid, liquid, or gaseous fuels, shall be prohibited.

10:37A-6.9 Structural safety and maintenance

(a) Every foundation, floor, floor covering, wall, ceiling, door, window, roof, or other part of a residence shall be kept clean, in good repair and capable of the use intended by its design, and any exterior part or parts thereof subject to corrosion or deterioration shall be kept well painted.

(b) Every inside and outside stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition and good repair.

(c) Every stairway having three or more steps shall be properly banistered and safely balustraded.

(d) Every porch, balcony, roof, and similar place higher than 30 inches above the ground, used for egress or for use by consumer residents, shall be provided with adequate railings or parapets which are properly balustraded and be not less than three feet in height.

(e) Every roof, wall, window, exterior door and hatchway shall be free from holes or leaks that would permit entrance of water within or be a cause of dampness.

(f) Every foundation, floor and wall of each residence shall be free from chronic dampness that is malodorous in the living environment.

(g) Every residence shall be free from rodents, vermin and insects. A PA of a residence located in an area found by the Division to be infested by rats, insects or other vermin shall carry out such rodent and insect control or other means of preventing infestations of said dwellings as may be required by the Division.

(h) Every openable window, exterior door, skylight, and other opening to the outdoors shall be supplied with properly fitting screens in good repair from May 1st until October 1st of each year. Screens shall have a mesh of not less than No. 16.

(i) Every residence, including all exterior areas of the premises, shall be clean and free from garbage or rubbish and hazards to safety.

(j) Lawns, hedges and bushes shall be kept trimmed and shall not be permitted to become overgrown and unsightly.

(k) Fences shall be kept in good repair.

(l) The ground maintenance shall be consistent with that of the neighborhood, unless the condition of the neighborhood does not generally meet the minimum standards for maintenance set forth at (j) above.

(m) The Division may require that the PA clean, repair, paint, whitewash or paper such walls or ceiling, when a wall or ceiling within a dwelling has deteriorated so as to provide a harborage for rodents or vermin, or when such a wall or ceiling has become stained or soiled, or the plaster, wall-board, or other covering has become loose or badly cracked or missing.

(n) Every water closet compartment floor and bathroom floor shall be so constructed and maintained as to be reasonably impervious to water and shall be kept in a clean condition.

(o) No PA shall cause or permit any services facilities, equipment, or utilities which are required under this chapter to be removed from, shut off, or discontinued, in any PA owned, leased or contracted residence or part thereof, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies, when discontinuance of service is authorized by the Division.

(p) In the event that any service or utility is discontinued in a PA owned, leased or contracted residence, the PA shall take immediate steps to cause the restoration of such service or utility.

(q) All residences must be clean and sanitary prior to occupation by any resident, and shall be maintained in a clean and sanitary condition.

(r) The PA shall maintain the PA owned, leased or contracted premises to ensure compliance with all applicable laws and regulations. The storage of objects or materials shall be done in a manner to avoid imminent health, safety or fire hazards.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Rewrote (a), (d), (f), (o), (p) and (r).

10:37A-6.10 Kitchen facilities

(a) Kitchen storage space shall be clean and well ventilated.

(b) Major appliances shall minimally include a refrigerator, freezer (or refrigerator with freezer compartment), an oven and a cooktop.

(c) Food products shall be thawed, stored, processed and prepared in a safe manner in all group homes, PA apartments and family care homes.

(d) Refrigeration and storage of food shall be provided at not more than 45 degrees Fahrenheit. Freezer compartments shall operate at no more than zero degrees Fahrenheit and must be maintained in good condition and without excessive ice build-up.

(e) All food and drink shall be safe for human consumption, clean, wholesome, free of spoilage and prepared and served in a sanitary manner. There shall be at least a two-day supply of food and drink in the group home, supervised apartment and family care residence at all times.

(f) All equipment and utensils used in PA group homes, supervised apartments and family care homes for eating, drinking, preparation and keeping shall be:

1. Kept clean and in good condition;
2. Thoroughly washed after each use; and
3. In sufficient quantity for the number of occupants.

(g) Floors, walls and work surfaces of food preparation and food serving areas shall be kept clean and in good condition at all times.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Rewrote (b), (c), (e) and (f).

10:37A-6.11 Occupancy and use of space

(a) Every rooming unit occupied for sleeping purposes by one consumer resident shall contain at least 80 square feet of floor space. Every room occupied for sleeping purposes by more than one consumer resident shall contain at least 60 square feet of floor space for each consumer resident. Doors for privacy shall be provided and maintained. Means of egress to the rest of the home shall be direct and not through any other bedroom.

(b) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet. The floor area of that part of any room where the ceiling is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(c) Sufficient closet space for storage shall be provided. The storage space shall be uncluttered and sufficient for clothing and supplies.

(d) Rooms shall be of adequate size for the number of people, types of activities and storage.

(e) A room located in whole or in part below the level of the ground may be used for sleeping, provided that the following requirements are met:

1. The walls and floor which are in contact with the earth shall be dampproofed; and
2. All requirements of this section and N.J.A.C. 10:37A-6.12 through 6.22 applicable to habitable rooms shall be satisfied.

(f) No consumer resident unable to walk without assistance shall occupy a rooming unit on other than the ground floor at any residence, unless provisions have been made to assure evacuation of the premises within two minutes.

(g) In family care homes, consumer residents shall be allowed to share sleeping rooms/accommodations only with other consumer residents.

(h) Bedrooms above the second floor shall have access to a second means of egress. If the second means of egress is a window, the window shall open onto a fire escape permanently attached to the building.

(i) Basements may be used for storage, heating and water supply equipment, other utilities such as washers and dryers, and as activity rooms. A second means of egress is not required.

(j) The PA shall maintain all residences which it owns, leases or contracts in a manner that ensures the health, safety and welfare of residents.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Substituted references to consumer resident for references to client throughout; added (h) through (j).

10:37A-6.12 Uniform Fire Code

The provisions of N.J.A.C. 5:70, the Uniform Fire Code, are incorporated herein by reference.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Substituted "5:70" for "5:18".

10:37A-6.13 Group homes with five or less residents not in multiple unit dwellings

Group homes with five or less residents not in multiple unit dwellings are subject to the provisions of N.J.A.C. 5:70. Typically, the Department of Community Affairs has determined that these homes are an R-3 use.

Amended by R.1999 d.203, effective July 6, 1999.
See: 31 N.J.R. 1179(a), 31 N.J.R. 1805(a).
Changed N.J.A.C. reference.

10:37A-6.14 Group homes with six to 15 residents not in multiple unit dwellings

Group homes with six to 15 residents not in multiple unit dwellings are subject to the provisions of N.J.A.C. 5:70. Typically, the Department of Community Affairs has determined that these homes are an R-2 use.

Amended by R.1999 d.203, effective July 6, 1999.
See: 31 N.J.R. 1179(a), 31 N.J.R. 1805(a).
Changed N.J.A.C. reference.

10:37A-6.15 Group homes in multiple unit dwellings

Group homes in multiple unit dwellings are subject to the provisions of N.J.A.C. 5:70. Typically, the Department of Community Affairs has determined that these homes are an R-2 use.

Amended by R.1999 d.203, effective July 6, 1999.
See: 31 N.J.R. 1179(a), 31 N.J.R. 1805(a).
Changed N.J.A.C. reference.

10:37A-6.16 Family care homes

Family care homes are subject to the provisions of N.J.A.C. 5:70. Typically, the Department of Community Affairs has determined that these homes are an R-3 use.

Amended by R.1999 d.203, effective July 6, 1999.
See: 31 N.J.R. 1179(a), 31 N.J.R. 1805(a).
Changed N.J.A.C. reference.

10:37A-6.17 PA apartments

The provisions of N.J.A.C. 5:70 which apply to apartments shall apply to PA apartments.

Amended by R.1999 d.203, effective July 6, 1999.
See: 31 N.J.R. 1179(a), 31 N.J.R. 1805(a).
Changed N.J.A.C. reference.

10:37A-6.18 Smoke detectors

(a) Smoke detectors shall be installed at locations as follows:

1. At least one on every level of the dwelling;
2. In stairwells; and
3. In each bedroom.

(b) Smoke detectors shall be tested quarterly. The tests shall be documented.

(c) All licensed facilities housing deaf or hearing impaired residents shall be equipped with flashing and bed-vibrating fire alarms.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (b), substituted "quarterly" for "monthly"; added (c).

10:37A-6.19 Fire drills in group homes

(a) A minimum of one unscheduled fire drill shall be conducted at least every other month.

(b) Fire drills shall be conducted at night or in the evening hours (between 5:00 P.M. and 6:00 A.M.) at least 50 percent of the time.

(c) Evacuation should be completed in less than two minutes.

(d) For each fire drill, the time, date, participants, problem areas, resolution of problems and timeliness of egress shall be documented by agency staff or an assigned consumer resident.

(e) The Division's Bureau of Licensing and Inspections shall review agency compliance with this procedure annually during the onsite inspection.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), substituted "at least every other month" for "per month"; in (b), defined evening hours as "between 5:00 P.M. and 6:00 A.M."; in (d), added "by agency staff or an assigned consumer resident".

10:37A-6.20 Kerosene heaters

The use of kerosene heaters is prohibited.

10:37A-6.21 Fireplaces

All fireplaces, if operable and utilized, shall be cleaned and have a documented inspection every two years. If an unused fireplace is to become operable, it shall be cleaned and have a documented inspection prior to use.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
Rewrote the section.

10:37A-6.22 Variances

The PA shall provide the Division with a copy of all applications for variances from the codes cited in N.J.A.C. 10:37A-6.1 and the action taken on them.

SUBCHAPTER 7. HEARINGS, APPEALS, COMPLAINTS

10:37A-7.1 Administrative hearings

Administrative hearings will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:37A-7.2 Development of residential complaint procedures

All PAs shall establish internal complaint procedures which will be subject to the Division's review and approval at the time of the initial licensing and annual licensing renewal. Complaint procedures shall allow for a consumer resident of the PA or his or her designee to make known a grievance regarding services provided or which failed to be provided; to seek appropriate redress related thereto; and to have corrective action taken as might be warranted. The policy and procedure for consumer resident complaints shall be posted in a public place at the PA office site and a copy given to each consumer resident upon beginning the program. Any implementation of the complaint procedure shall be documented in the consumer resident's clinical record.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Substituted references to consumer resident for references to client throughout

10:37A-7.3 Appeal process; ombudsman

The provision of N.J.A.C. 10:37-4.6 regarding consumer resident complaint agency ombuds and review procedures are incorporated by reference.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Substituted "consumer resident" for "client".

10:37A-7.4 Consumer resident protection

No consumer resident shall be subject to retaliation of any form by the PA because of the filing of any complaint.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Substituted "consumer resident" for "client".

SUBCHAPTER 8. QUALITY ASSURANCE**10:37A-8.1 Quality assurance**

(a) The PA shall develop and implement policies and procedures for an ongoing quality assurance (QA) program that meet the QA requirements for community agencies as articulated in N.J.A.C. 10:37-9.

(b) Areas to be monitored and evaluated include the following:

1. Therapeutic environment and life safety to minimally include quarterly documentation of physical and fire safety inspections (including testing of smoke detectors) in group homes, apartments and family care homes; and
2. Adequacy of planning for more independent living and reduction of service intensity;

i. Barriers to discharge/transfer to a less restrictive living environment shall be reviewed annually for all consumer residents living in group homes and supervised apartments.

ii. These review findings shall be forwarded to the agency quality assurance oversight (or utilization review) committee for review and follow-up and should be available at the time of a licensing review.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Rewrote (b); deleted (c).

SUBCHAPTER 9. ADMISSION AND DISCHARGE**10:37A-9.1 Criteria for admission**

(a) All PAs shall establish written admission policies and procedures which shall include, but not be limited to, the following:

1. First priority for admissions into the residences shall be given to persons with severe and persistent mental illness and in accordance with target populations as defined at N.J.A.C. 10:37-5.2;

2. The PA shall fully describe the level of service intensity which it provides in each residence which it operates, and shall identify all consumer resident characteristics which are appropriate for such residence. All admission criteria must comply with all applicable laws against discrimination on account of race, ethnic origin, sex, age, religion and handicap.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a)2, substituted "consumer resident" for "client" preceding "characteristics" and "appropriate" for "inappropriate" preceding "for such residence".

10:37A-9.2 Additional criteria for admission

PAs may establish additional admission criteria with respect to consumer resident characteristics, provided such criteria comply with the applicable laws against discrimination on account of race, ethnic origin, sex, age, religion and handicap.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Substituted "consumer resident" for "client" preceding "characteristics."

10:37A-9.3 Procedures for admission

(a) All PAs shall submit all proposed admission policies and all substantive revisions thereto to the Division for review prior to implementation. The Division shall disapprove any such policy if it fails to comply with law or if it categorically excludes certain types of consumer residents

where there is a clinically appropriate method of accommodating the agency's programs to the needs of those consumer residents, consistent with available resources. The Division shall insure also that such policy provides for the development of consumer resident services agreements and/or other documents which are individualized according to the clinical needs and reading comprehension abilities of each consumer resident, and which give attention to the means by which each consumer resident's individual clinical needs shall be met.

(b) All PA admission policies shall ensure that the PA will provide a copy of the following documents to each consumer resident, review them with the consumer resident, and answer the consumer resident's questions regarding them:

1. The Statement of Consumer Residents' Rights set forth in Appendix A, to this subchapter;
2. The applicable consumer resident services agreement and/or other documents; and
3. All rules governing the consumer resident's conduct.

(c) All disclosure referred to in (b) above shall be made in a language sufficiently well understood by the consumer resident to assure comprehension.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), inserted "and all substantive revisions thereto" in the first sentence; substituted references to consumer resident for references to client throughout.

10:37A-9.4 General rule regarding the discharge of consumer residents

(a) No consumer resident shall be prohibited from utilizing or residing in a residence unless:

1. Such action is justified by one of the conditions specified in N.J.A.C. 10:37A-9.5; and
2. The PA follows all of the procedures set forth in N.J.A.C. 10:37A-9.6. A consumer resident may be discharged voluntarily if the PA has complied with the procedures set forth at N.J.A.C. 10:37A-9.6(b).

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

Substituted "consumer resident" for "client" throughout.

10:37A-9.5 Conditions permitting discharge from group homes, supervised apartments and family care homes

(a) A consumer resident of the PA may be discharged from a group home, a supervised apartment or a family care home pursuant to written PA policies which may include only the following conditions for discharge:

1. The PA reasonably concludes that the consumer resident clearly violates the rules set forth in the consumer residential service agreement (N.J.A.C. 10:37A-4.4(a)), which creates a substantial, continuing and immediate threat to the physical safety of other persons, or to the emotional or psychological health of other consumer residents of the residence; provided, however, that the PA shall not discharge such consumer resident on this basis if the consumer resident has been civilly committed.

2. The PA reasonably concludes that the consumer resident's clearly inappropriate behavior renders the residence or the PA out of compliance with any agreements to which the PA is signatory as a lessee or with any applicable law or regulation.

3. The consumer resident repeatedly violates a rule governing consumer resident conduct, which is reasonable both in itself and its application, after the PA delivers to him or her a written notice to cease violating such rule. No such rule shall be the basis for discharging a consumer resident unless it is reflected in a consumer resident services agreement and/or other documents in compliance with these rules.

4. The consumer resident has received the maximum clinical benefit of the services offered by the residence, an appropriate alternative living arrangement, other than a shelter or hospital, is available to him or her prior to discharge, and the PA reasonably determines that discharge would be in the consumer resident's best clinical interests.

5. The consumer resident absents himself or herself from the residence for a continuous period of 30 days without providing the PA with notice of intent that he or she will return after the expiration of such 30-day period; provided, however, that continued absence beyond 30 days shall be a condition for discharge if such absence is not in the consumer resident's clinical best interest.

6. The consumer resident has refused necessary and appropriate services offered by the PA pursuant to a properly developed treatment plan; the refusal is contrary to his or her clinical interest; the consumer resident has failed to offer any alternate plan which would be consistent with his or her clinical interest; and an alternative living arrangement other than a hospital is available.

Amended by R.2002 d.57, effective March 4, 2002.

See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), inserted "from a group home, a supervised apartment or a family care home" following "discharged" in the introductory paragraph, and rewrote 1; substituted references to consumer resident for references to client throughout.

10:37A-9.6 Discharge procedures from group homes, supervised apartments and family care homes

(a) The PA may discharge and remove a consumer resident from a group home, supervised apartment, or a family care home only after complying with all of the procedures set forth in this chapter.

(b) The PA shall comply with the following procedures in all cases prior to discharge, except when the consumer resident cannot be located, or, despite the PA's effort to comply, the consumer resident is unwilling to participate:

1. The PA's assigned clinical staff shall fully inform the consumer resident of and discuss with the consumer resident the factual and clinical basis for discharge, and, if the consumer resident does not agree, approve the discharge;

2. The PA shall offer to utilize the consumer resident Complaint/Agency Ombuds Procedure, N.J.A.C. 10:37-4, to attempt to resolve any problems; and

3. The PA's assigned clinical staff shall formulate a written discharge plan and document all efforts to obtain appropriate alternate living arrangements and appropriate alternate treatment modalities.

(c) If, after the procedures set forth in (b)1 through 3 above are completed, the consumer resident disagrees with the PA decision to discharge, the PA may discharge and remove the consumer resident from the residence only after complying with the following procedures and obtaining the approval of the Division's review officer as set forth below:

1. If the consumer resident has declined to utilize the consumer resident Complaint/Agency Ombuds Procedure, the PA shall submit its decision for review by the chief executive officer of the PA;

2. If the chief executive officer upholds the basis for the discharge and the consumer resident disagrees, the PA shall deliver to the consumer resident a written notice of intent to discharge the consumer resident from the residence, and read and explain such notice to the consumer resident in the same language utilized on admission to explain documents as set forth at N.J.A.C. 10:37A-9.3(c); and

3. The PA shall then schedule a meeting for administrative review by the Division as set forth at (d) below on a date at least 10 days after the date upon which it delivered, read and explained the notice referred to in (c)2 above, if an alternate residence is available. If an alternate residence is not available, the meeting shall be scheduled at least 20 days thereafter.

(d) The administrative review referred to in (c)3 above shall be conducted by the designee of the Director of the Division, and such designee shall be an employee of the Division. The reviewing officer shall schedule at least one meeting between the PA representatives, the consumer resident and the reviewing officer, at which meeting or meetings the reviewing officer shall insure the following:

1. That the PA has engaged in all of the procedural steps required by this chapter, prior to the meeting date;

2. That the consumer resident has had fair notice of the factual and clinical basis for the PA's decision to discharge;

3. That the consumer resident is given a reasonable time within which to obtain the services of an advocate or attorney, if the consumer resident so desires;

4. That the consumer resident is present during all meetings conducted by the reviewing officer, unless the consumer resident waives his or her right to be present;

5. That the consumer resident is assisted and/or represented by any available individual of his or her choice during the meeting, if the consumer resident so desires;

6. That the consumer resident has a full opportunity to respond to everything stated during the meeting; and

7. That the consumer resident has a full opportunity to present any relevant documents, objects or statements of third persons. The officer must permit such persons to make such statements in person during the meeting, and may accept such statements in writing. The officer may base his or her decision in part upon written statements, if at least one person attends the meeting who has personal knowledge of the relevant facts.

(e) During or after the meeting or meetings described in (d) above, the reviewing officer shall make the following findings:

1. That the consumer resident has or has not been accorded the safeguards listed in (d) above;

2. That the factual basis for the PA's decision to discharge is or is not true, based upon a preponderance of the credible evidence; and

3. That one or more of the conditions justifying discharge, as specified in N.J.A.C. 10:37A-9.5, does or does not in fact exist at the time of the final review meeting, or that it is reasonable to believe that, if such condition does not exist at the time of the final review meeting, the condition will recur immediately upon disapproval of discharge.

(f) If the reviewing officer makes all of the findings set forth at (e) above in the affirmative, such officer may, in his or her discretion, approve the discharge and removal of the consumer resident from the residence in question, and set a reasonable date and reasonable conditions, if any, for discharge. If the reviewing officer does not approve such discharge, he or she shall make such recommendation as he or she may consider fair and appropriate.

(g) By letter, the reviewing officer shall notify the PA, the consumer resident and the consumer resident's representative, if any, of the officer's findings and decision. The PA staff shall read and explain such letter to the consumer resident in the same language utilized at admission to explain documents as set forth above at N.J.A.C. 10:37A-9.3(c).

(h) The decision of the reviewing officer shall be the final decision of the Department; the PA's noncompliance with such decision shall be grounds for revocation of licensure or other administrative sanction.

(i) If the reviewing officer approves the discharge, the PA may discharge and peaceably remove the consumer resident from the residence as directed by the reviewing officer, and in any event no sooner than seven days after the consumer resident receives the reviewing officer's written decision. Any such discharge must be to an appropriate form of living arrangement.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), substituted "a group home, supervised apartment, or a family care home" for "the residence" preceding "only after"; substituted references to consumer resident for references to client throughout.

10:37A-9.7 Miscellaneous provisions regarding the discharge of consumer residents from group homes, supervised apartments and family care homes

(a) A PA shall not discharge a consumer resident from a group home, supervised apartment, or a family care home as a retaliation or reprisal for such consumer resident's attempt to assert his or her rights, desires or needs.

(b) Whenever a consumer resident's behavior presents a substantial, immediate and emergent threat to the physical safety of others, or to the emotional or psychological health of other consumer residents, the PA may remove the consumer resident immediately and temporarily, if necessary, and may prevent the consumer resident from returning until the immediate threat has been obviated. The PA may not discharge such consumer resident, however, unless a condition for discharge listed above at N.J.A.C. 10:37A-9.5 exists, and unless the PA follows all procedures for discharge set forth in this chapter. If the PA prevents the consumer resident's return for more than 24 hours, it must comply with the following procedures:

1. The proposed decision shall be submitted to the chief executive officer of the PA for his or her approval;
2. If the chief executive officer approves, the PA shall schedule an administrative review of such exclusion within the next 48 hours, before a reviewing officer appointed as set forth in N.J.A.C. 10:37A-9.6(d), and such review shall determine the propriety of the continuation of such exclusion. Such review shall be conducted pursuant to the procedures set forth at N.J.A.C. 10:37A-9.6(d), to the extent that such procedures are feasible and applicable. The reviewing officer shall make such order as he or she shall consider fair and appropriate.

(c) The PA shall maintain the consumer resident's residential placement during brief hospitalizations and temporary absences for up to 30 days from the date of such consumer resident's admission to a hospital, or from the date of such consumer resident's leaving the residence.

(d) The PA must exercise reasonable care to safeguard the consumer resident's property for a reasonable period of time after the consumer resident is discharged, and in any event for at least 30 days.

(e) A shelter for the homeless shall not be considered an appropriate alternative residence as required pursuant to this subchapter.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

In (a), inserted "from a group home, supervised apartment, or a family care home" preceding "as a retaliation"; substituted references to consumer resident for references to client throughout.

Case Notes

Mental health patients, who were involuntary rehospitalized following alleged violation of condition of their release, were improperly placed on Conditional Extension Pending Placement (CEPP) status, which continued their involuntary hospitalization, as patients each had appropriate placements. In re Commitment of B.L., 346 A.2d 285.

10:37A-9.8 Conditions for termination of supportive housing services

(a) The supportive housing services used by a consumer resident may be terminated only if a consumer resident:

1. Has achieved the service plan goals and needs no further treatment;
2. Is out of contact with the supportive housing service provider for a continuous period of 90 days, and the provider has attempted to engage the consumer resident through repeated telephone calls, correspondence and home visits which shall be documented in the clinical record;
3. Is refusing services;
4. Moves into another residential program;
5. Leaves the geographic area served by the PA and services are no longer accessible. If the consumer resident moves to another location with a supportive housing program, the PA shall provide that program's name and telephone number; or
6. Repeatedly violates a written rule governing consumer resident conduct, which is reasonable both in itself and its application, after the PA delivers to him or her a written notice to cease violating such rule. No such rule shall be the basis for terminating supportive housing services unless it is reflected in a consumer resident service agreement.

(b) Termination of supportive housing services shall not directly affect the consumer's rights to enjoy the owned or leased premises as contained in real estate/lease agreements. Continued occupancy, and eviction proceedings if appropriate, shall be in conformance with New Jersey landlord-tenant law.

New Rule, R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).

APPENDIX A

Each consumer resident in a licensed group home, supervised apartment and family care home is to be provided with a copy of the following consumer rights regarding discharge and exclusion from the facility (with the appropriate names, addresses and phone numbers of the individuals listed on page two of this appendix):

STATEMENT OF CONSUMER RESIDENT RIGHTS REGARDING DISCHARGE AND EXCLUSION FROM A PA OWNED, LEASED OR CONTRACTED RESIDENCE

As a consumer resident in a Community Residence licensed by the New Jersey Division of Mental Health Services, you are protected from being discharged or excluded from the PA-owned, leased or contracted residence against your will and without sufficient cause as outlined in the service agreement and/or lease. Also, specific procedures must be followed by the Agency before any discharge or exclusion can occur.

The reasons for discharge or exclusion and the procedures to be followed are as follows:

REASONS FOR DISCHARGE:

To be discharged or excluded from the group home, PA apartment or family care residence, one of the following conditions must occur:

1. You have received the maximum clinical benefit offered by the program and another place (not a hospital or shelter) is available for you to live in, and discharge would be in your clinical best interests.
2. You behave in a manner which substantially threatens the physical safety or emotional or psychological health of others.
3. You repeatedly break a written rule of the residence after being given a written warning to stop.
4. You behave in a manner which is inappropriate and which breaks the law or causes the residence to violate its lease or other agreements.
5. You leave the residence for 30 days without informing staff that you will return soon.
6. You refuse to participate in many of the services listed in your previously agreed upon treatment plan, have not offered a reasonable alternative plan of daily activities, and there is another place available for you to live, other than a hospital.

PROCEDURES FOR DISCHARGE OR EXCLUSION:

A. The following procedures must be followed in the case of all discharges or exclusions from a Community Residence:

1. Your assigned clinical staff must fully explain the reasons.
2. If you wish, you must be offered the opportunity to speak with the Agency Ombudsperson and to follow the consumer resident Complaint Procedure. If you wish more information about this procedure, the Agency which operates this Community Residence will give you the full details.

3. In the case of discharge, clinical staff must make a discharge plan for you and attempt to locate another place for you to live and other appropriate treatment services.
- B. If you disagree with the decision to discharge or exclude you, the following procedures must be followed:
 1. The Agency's Chief Executive Officer must review the decision and approve it.
 2. A representative of the Division of Mental Health Services must review the decision and you must be given the opportunity to meet with that representative.
 - You will receive at least ten (10) days notice before a meeting is scheduled.
 - You must be given the opportunity to bring a lawyer or another person to the meeting if you desire and to have other persons present to tell what they know.
 - You must be given the opportunity to say or show anything that helps the Division representative understand why you disagree with the plan to discharge or exclude you. You must also be read any letters or written statements made by others and be allowed to respond to them.
 3. The Division's representative may make any decision he or she reasonably considers to be fair and send the decision to you in writing. If the decision is made to approve the discharge or exclusion, you must be given at least seven (7) days from the date you receive the letter to move out of the residence. If the decision does not approve the discharge or exclusion, the Agency which operates this Community Residence will comply with the terms of the decision or otherwise be subject to administrative sanction.

OTHER PROCEDURES:

1. In the event you are hospitalized or leave the residence temporarily, your place in the residence must be held for you for thirty (30) days.
2. In the event you are discharged or excluded and you have not taken all of your personal property with you, the Agency must safeguard that property for a reasonable period of time, at least thirty (30) days.
3. In the event of an emergency where your behavior endangers others and there is no other effective way of dealing with the situation, you may be removed from the residence temporarily without prior review by the Division. If that occurs, you must be given the opportunity to meet within three (3) days with a representative of the Division of Mental Health Services. As much as possible, the procedures set forth above will be followed.
4. You may not be discharged or excluded from a community residence as a retaliation or reprisal for trying to state or obtain your rights or anything you may want or need.

WHERE TO CALL FOR HELP:

If you need assistance regarding your rights in a licensed Community Residence, you may call any of the following:

Agency Ombudsperson
(Name, Address and Phone Number)

County Mental Health Administrator
(Name, Address and Phone Number)

Bureau of Licensing and Inspections
Division of Mental Health Services
50 East State Street
PO Box 727
Trenton, New Jersey 08625-0727
(609) 341-3330

Community Health Law Project
185 Valley Street
South Orange, New Jersey 07079
(973) 275-1175

Legal Aid Society of Morris County
(where appropriate)
30 Schuyler Place, 2nd Floor
PO Box 900
Morristown, New Jersey 07963-0900
(973) 285-6911

Middlesex County Legal Services Corporation
(where appropriate)
78 New Street, 3rd Floor
New Brunswick, New Jersey 08901-2564
(732) 249-7600 or 324-1613

New Jersey Protection & Advocacy, Inc.
210 South Broad Street (Third Floor)
Trenton, New Jersey 08608
1-800-922-7233

This statement is a summary of your full discharge rights, which appear at N.J.A.C. 10:37A-9.4 et seq., and which shall be available at your request at the Agency. Nothing in this statement is intended to alter or interpret the provisions of N.J.A.C. 10:37A-9.4 et seq.

Amended by R.2002 d.57, effective March 4, 2002.
See: 33 N.J.R. 960(a), 34 N.J.R. 1003(a).
Rewrote section.