

CHAPTER 44C**STANDARDS FOR COMMUNITY RESIDENCES
FOR PERSONS WITH HEAD INJURIES****Authority**

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

Source and Effective Date

R.2004 d.31, effective January 20, 2004.
See: 35 N.J.R. 1337(a), 36 N.J.R. 533(a).

Chapter Expiration Date

Chapter 44C, Standards for Community Residences for Persons with Head Injuries, expires on January 20, 2009.

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APPENDIX**SUBCHAPTER 1. GENERAL PROVISIONS****10:44C-1.1 Purpose and scope**

(a) The purpose of this chapter is to establish specific requirements for the provision of residential services to persons with head injuries who reside in group homes, supervised apartments or supported living programs.

(b) Group homes, supervised apartments, and supported living programs designed specifically to meet the needs of developmentally disabled individuals are licensed under N.J.A.C. 10:44A.

(c) Community care residences, living arrangements in which a Family Care or Skill Development program is provided in a private home or apartment, are licensed under N.J.A.C. 10:44B.

(d) If none of the persons with head injury at a particular place of residence requires personal guidance, as determined by the transdisciplinary team, licensing shall be available on a strictly voluntary basis, in recognition of a person's right to choose independent living.

10:44C-1.2 Severability

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

10:44C-1.3 Definitions

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

“Abuse” means any act or omission that deprives a person served of his or her rights or which has the potential to cause or causes actual physical injury or emotional harm or distress. Examples of abuse include, but are not limited to: acts that cause pain, cuts, bruises, loss of a body function; sexual abuse; temporary or permanent disfigurement; death; striking with a closed or open hand; pushing to the ground or shoving aggressively; twisting a limb; pulling hair; withholding food or water; forcing a person served to eat substances obnoxious to the person served; dousing with water; use of verbal or other communications to curse, vilify, degrade a person or threaten a person served with physical injury. Planned use of behavioral intervention techniques, which are part of an approved behavior modification plan or individual treatment plan, are not considered abuse or neglect.

“Adaptive behavior” means behavior that in a cultural or functional context indicates the ability of a person served to adjust to environmental demands in a fashion that benefits the person served while respecting the rights of those with whom he or she comes in contact.

“Advanced practice nurse,” also known as a nurse practitioner (see N.J.S.A. 45:11-46c), is defined in N.J.S.A. 45:11-23 and may, in addition to those tasks lawfully performed by a registered professional nurse, manage specific common deviations from wellness and stabilized long term care illnesses by initiating laboratory and other diagnostic tests and prescribing certain medications and devices (see N.J.S.A. 45:11-49).

“Advocacy services” means one or more of the following services:

1. Personal advocacy: one-to-one advocacy to secure the rights of people with head injuries and their families;
2. Systems advocacy: seeking to change a policy or practice that affects people with head injuries;
3. Legislative advocacy as permitted by law: seeking legislative enactments that would enhance the rights and/or opportunities for people with disabilities or persons with head injury;
4. Legal advocacy: using the judicial and quasi-judicial systems to protect the rights of persons with head injuries;

5. Self-advocacy: advocacy of a person served on his or her own behalf.

“Affirming rights” means respecting rights and providing the assistance persons served need to exercise those rights and to engage in self-advocacy.

“Affiliation” means a relationship, usually signified by a written agreement, between two organizations, under the terms of which one organization agrees to provide specified services and personnel to meet the needs of the other organization, usually on a scheduled basis.

“Agency” means the licensee and his or her staff responsible for the care and safety of the persons served in each community residence for persons with head injuries licensed under this chapter.

“Approved” means approved by the licensing agency.

“Assessment” means the process of identifying the strengths and needs of a person served, and the conditions that impede or promote development. There are two levels of assessment: screening and evaluation.

“Assistive device” means any implement or mechanism that enables a person with head injuries to increase, maintain, and/or improve his or her functioning capabilities.

“Assistive technology” means the use of commercial or custom-designed devices, modifications, and/or related technical services to increase, maintain, and/or improve the functional capabilities of persons with head injuries who have resulting disabilities.

“Audiology” means services provided by an audiologist who meets applicable legal requirements for the provision of audiology services and who meets the academic and work experience standards established by the American Speech-Language and Hearing Association for the Certificate of Clinical Competence in Audiology.

“Authorization to operate” means official correspondence issued by the licensing agency to permit a licensee to operate beyond the license expiration date, because of a delay in completing a licensing inspection.

“Banking institutions” means and includes banks, trust companies, national banking associations, savings banks, savings and loan associations and Federal savings and loan associations.

“Behavior modification program” means a written, approved plan that employs techniques to:

1. Decrease maladaptive behavior; and
2. Increase adaptive behavior.

“Board certification” means satisfactory completion of the examination and certification process of one of the members of the American Board of Medical Specialties or the American Osteopathic Association.

“Business manager” means the staff member charged with the responsibility of providing oversight of business practices, including budgets, purchasing, accounting and personnel practices.

“Capacity” means the maximum number of persons with head injury who may reside in the licensed residence.

“Case manager” means the person responsible for the development, coordination and overall management of the individual treatment plan for each person served. There may also be a case manager external to the agency, such as one acting on behalf of an insurance company or other payor source.

“Clinical Director” means the person who oversees the provision of rehabilitation and habilitation services.

“Cognitive rehabilitation” means a systematic, functionally oriented service of therapeutic cognitive activities based on an assessment and an understanding of the behavior of a person served. Services are directed to achieve functional improvement by:

1. Reinforcing, strengthening, or reestablishing previously learned patterns of behavior; or
2. Establishing new patterns of cognitive activity or mechanisms to compensate for impaired neurological systems.

“Commensurate wage” means a wage that is proportionate to the prevailing wage paid to similarly experienced workers in the geographic vicinity of the person’s place of employment for essentially the same type of work based on a comparison of the quantity of work produced by the worker with a head injury and a resulting disability with those of work produced by similarly experienced workers. This wage is to be determined by time studies as approved by the New Jersey Department of Labor.

“Community residence for persons with head injuries” means a community residential facility licensed pursuant to N.J.S.A. 30:11B-1 et seq. providing food, shelter and personal guidance and/or training, under such supervision as required, to not more than 15 persons with head injuries, who require assistance, temporarily or permanently, in order to live in the community, and shall include, but not be limited to: group homes, halfway houses, supervised apartment living arrangements, and hostels. Such a residence shall not be considered a health care facility within the meaning of the “Health Care Facilities Planning Act,” P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.)

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

“Critical information” includes, but is not limited to: unexpected behavioral outbursts, unexpected or unexplained mood swings on the part of persons served, the administration of PRN medication, problems with transportation, visits to the doctor or hospital, a reportable communicable disease, and missed medical appointments.

“Deficiency” means that an applicant or licensee has not complied with a rule contained in this chapter.

“Department” means the Department of Human Services.

“Dignity of risk” means:

1. Providing a person served with new and untried experiences;
2. Assisting the person served when he/she chooses among possible courses of action in trying new experiences;
3. Assisting the person served in determining the risks and consequences;
4. Assessing the risks and consequences on behalf of the person served;
5. Assuring that the person served and the legal guardian (if any) understand such risks and consequences; and
6. Defining, documenting and providing the means of support necessary to establish the allowable limits of the risk, assuring thereby that the person served is as safe as possible at all times.

“Division” means the Division of Developmental Disabilities.

“Evaluation” means an assessment process performed by qualified professionals according to procedures that incorporate the use, when possible, of standardized tests and measures.

“Executive leadership” means the person or persons to whom the licensee may delegate administrative authority over the licensee’s community based programs regulated or under contract with the Department. A person who functions as executive leadership may also be referred to as an executive director.

“Exploitation” means any unjust or improper use of a person served or his or her resources for one’s profit, advantage or gratification.

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

“Fiduciary capacity” means that the licensee acts with a high degree of good faith when handling money entrusted to the licensee by persons served.

“Fire official” means a person certified by the Commissioner of the Department of Community Affairs, and appointed or designated by the appointing authority of a local enforcing agency to direct the enforcement of the Uniform Fire Safety Act, and any certified fire inspector working under the direction of the fire official.

“Full license” means the authorization to operate based upon substantial compliance with this chapter. A full license shall be effective for up to one year.

“Functional limitations” means actual behaviors or mental or physical disabilities exhibited by persons served and/or conditions presented by their environments that shall be modified or minimized in order for persons served to fulfill their potential or maximize their functioning.

“Functional literacy” means the ability to read, comprehend, and assimilate the oral and written language and numerical information required to function in a specific work or community environment, with or without accommodation strategies. Accommodation strategies may include, but are not limited to, picture instructions or calculators, computers and/or audiovisual tapes.

“Group homes” means living arrangements operated in residences leased or owned by the licensee, which provide the opportunity for persons served to live together in a home, sharing in chores and the overall management of the residence. Staff in a group home provide supervision, training, and/or assistance in a variety of forms and intensity as required to assist the persons served as they move toward independence.

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

“Head injury” means, for the purposes of this chapter, traumatic brain injury.

“Human Rights Committee” means a group comprised of professionals, individuals served, advocates and/or interested persons from the community at large who function as an advisory group to the regional assistant director, CEO, executive director, or regional administrator on issues directly or indirectly affecting the rights of individuals served.

“Imminent danger” means a situation that could be expected to cause a serious risk to the health, safety or welfare of a person served.

“Impairment” means any loss or abnormality of psychological, cognitive, physiological or anatomical structure or functioning.

“Individual treatment plan” (ITP) means a written plan of intervention and action developed by the transdisciplinary team. It describes the methodologies, strategies and programs that will be employed and monitored to provide habilitation or rehabilitation to enable persons served to acquire or restore functional skills to the highest possible level of performance, within a reasonable time period. The ITP shall also document barriers to implementation and goal achievement. The ITP shall be reviewed and modified on a regular and as-needed basis, but no less than annually. For a person who makes only specific services requests, the ITP is a service plan that addresses only those specific requests. The ITP may be appealed in accordance with licensee procedure.

“Informed consent” means a formal expression, oral or written, of agreement with a proposed course of action by someone who has the capacity, the information and the ability to render voluntary agreement.

“Integration” means participation in the mainstream of community life, that persons served maintain social relationships with family members, peers, and others in the community who do not have head injuries. In addition, integration means that persons served have equal access to and full participation in community resources and activities available to the general public.

“License” means the authorization issued by the Department of Human Services to operate a community residence providing services to persons with head injury.

“Licensee” means the person, partnership, or corporation responsible for providing services associated with the operation of a community residence(s).

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

“Maladaptive behavior” means behavior that is injurious or destructive to self, others, or the environment, that demonstrates a reduction in or lack of ability that is necessary to adjust to environmental demands.

“Mental health program” means a service designed to develop, support, and maximize the quality of life and functional abilities of persons served with severe and/or persistent and diagnosed psychiatric disabilities, as a result of, or in addition to the head injury.

“Mini-team review” means a modified version of a complete transdisciplinary team, the composition of which shall always include the person served, and/or his or her guardian, and/or personal representative; the case manager; and the individual in the discipline(s) knowledgeable in the issues for review.

“Mobile non-ambulatory person” means a person served capable of independent bed to wheelchair transfer and capable of following procedures for evacuation from the facility.

“Negative licensing action” means an action which imposes a restriction on a licensee and may include suspension of admissions, issuance of a provisional license, a reduction in the licensed capacity, a denial of the license, a non-renewal of the license, a suspension of the license, or a revocation of the license.

“Neglect” means the failure of a paid or unpaid caregiver to provide for the care and safety of persons under his or her supervision, or failure to provide and maintain proper and sufficient food, clothing, health care, shelter, and/or supervision.

“Non-ambulatory person” means a person served not capable of independent ambulation.

“Occupant” means any person lawfully occupying or sharing occupancy of a unit of dwelling space on a regular basis or for more than 30 consecutive days.

“Occupational therapist” means a person who is currently certified as an occupational therapist by the American Occupational Therapy Certification Board and who meets any current requirements of licensure or registration in New Jersey.

“Owner” means the person, corporation or association who must comply with N.J.S.A. 30:11B-1 et seq. and this chapter. The owner may be responsible for day-to-day operations or may employ an executive leadership, if so desired or if required by the qualifications associated with the executive leadership title.

“Payment authority” means a person, a private corporation (usually an insurance company) or public agency (local, State or Federal government) that provides funding of the residential placement and related services for care of the person served.

“Person served” means a person with head injury receiving services in a community residence for persons with head injuries.

“Person with head injury” means a person with traumatic brain injury.

“Personal advocate” means a person selected by a person served to provide assistance or act on his or her behalf in non-legal matters.

“Personal care” means services and supports including, but not limited to:

1. Bathing, hair care, skin care, shaving, nail care, and oral hygiene;
2. Alimentary procedures to assist one with eating and bowel and bladder management;

3. Positioning;
4. Care of adaptive personal care devices; and
5. Feminine hygiene.

“Personal guidance” means the assistance provided to a person with head injury in activities of daily living and/or personal care because he or she routinely requires help completing such activities of daily living and/or cannot direct someone to complete such activities when physical handicaps prevent self completion; or there is a documented health or mental health problem requiring supervision of the person for the protection of the person or others.

“Physical therapist” means a person who is a graduate of a physical therapy education program that has been approved by a nationally recognized accrediting body or who has the documented equivalent education and meets current legal requirements of licensure as a physical therapist.

“Placing agency” means the person or payment authority that is responsible for selecting and/or funding a program.

“Plan of correction” means a written response outlining actions taken or to be taken to address deficiencies cited in a licensing inspection report.

“Post acute” means the provision of on-going, goal-oriented services without the need for 24-hour physician care.

“Process” means activities that are systematically and intentionally linked in order to produce a service.

“Program description” means a document submitted to obtain a license and/or funding from the Department. A program description includes a detailed description of services provided to persons with head injury and staff coverage, and is reviewed as part of the licensing inspection process. The program description shall be amended to reflect major changes in the provision of services.

“Protecting rights” means ensuring that the rights of a person served are not ignored or infringed upon. This affirmation and protection is reflected in all aspects of the service process, from service initiation to discharge and follow up.

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

“Reasonable accommodation” means a modification or adjustment that assists the person served to access benefits and privileges that are equal to those that are available to other citizens. Examples taken from the Americans with Disabilities Act 42 U.S.C. §§ 12101 et seq. (ADA) include: making existing facilities readily accessible to and usable by people with disabilities; restructuring jobs; modifying work schedules; reassigning people to vacant positions; acquiring or modifying equipment or assistive devices; adjusting or modifying examinations, training materials, policies, and procedures; and providing qualified readers or interpreters.

“Regional Assistant Director’s Office” means a component of the Division of Developmental Disabilities which provides administrative oversight for the provision of supportive services to persons with disabilities. Geographic regions and locations of such offices are as follows:

1. Northern Region and Upper Central Region
c/o Greenbrook Regional Center
275 Greenbrook Road
Green Brook, NJ 08812
2. Lower Central Region
Capital Center
50 East State Street
PO Box 726
Trenton, NJ 08625-0726
3. Southern Region
101 Haddon Avenue Suite 17
Camden, NJ 08103-1485

“Rehabilitation/habilitation” means the process of providing those comprehensive services deemed appropriate to the needs of a person with a head injury in a coordinated manner in a program designed to achieve objectives of improved health, welfare, and the realization of the person’s maximum physical, cognitive, social, psychological and vocational potential.

1. Rehabilitation services are necessary when the person with a head injury is in need of assistance in order to reacquire skills and it is beyond the person’s personal capacities and resources to achieve his or her maximum potential for personal, cognitive, social, and economic adjustment and beyond the services available in the person’s usual daily experience.

2. Habilitation is closely related to and is conceptually and programmatically a part of rehabilitation. The range of functional goals is the same as the range of services that shall be provided for the person to attain the goals. The chief difference is the condition or nature of the person served. Habilitation refers to the process that involves persons served who need to acquire particular skills and/or functional abilities they did not possess previously, such as independent living skills or vocational skills, while rehabilitation refers to the process that involves persons served who need to re-acquire or maximize lost skills and/or functional abilities.

“Rehabilitation nurse” means a person who meets legal requirements as a registered nurse and who has training and experience in dealing with the unique needs of those persons served who need rehabilitation. Rehabilitation nursing is a specialty practice within the profession. Rehabilitation nurses diagnose and treat the human responses of persons and groups to actual or potential disabilities that interrupt or alter their functioning and life satisfaction. The goal of rehabilitation nursing is to assist the person or group in the restoration and maintenance of maximal health and improve the person’s quality of life. One mechanism of ascertaining the knowledge of rehabilitation nursing is through certification as a certified rehabilitation nurse (C.R.R.N.).

“Rehabilitative treatment environment” means a rehabilitation setting that provides for:

1. The provision of a range of choices, with personal preference, self-determination and dignity of risk receiving full respect and consideration;
2. A variety of social interactions that promote community integration;
3. An environment of peer support and mentorship;
4. Professional team involvement and competence; and
5. A physical environment conducive to enhancing the functional abilities of the persons served.

“Relocate” means providing accommodations which enable a person to evacuate the premises within three minutes, if prior accommodations could not be evacuated by the person within three minutes.

“Residence” means a community residence for persons with head injuries.

“Respite placement” means a service in which a licensee provides short term supports for a person with head injury.

“Restriction of rights” means any externally imposed limitation of rights.

“Self-advocacy group” means a group of persons with head injury who meet on a regular basis (such as at house meetings) to discuss common goals, issues, needs and wishes. With the assistance of a facilitator, if needed, a self-advocacy group can serve as a united voice for persons with head injury.

“Special Response Unit” (SRU) means that component of the Department responsible to investigate serious unusual incidents in community programs contracted by the Division and/or licensed and regulated by the Department.

“Staff member” means a person who is directly employed by an agency that serves people with head injuries on either a full or part-time basis.

“Substantial non-compliance” means:

1. The violation by an owner, applicant, licensee or executive leadership of the laws of the State of New Jersey pertaining to or governing community residences for persons with head injury;
2. One or more licensing requirements have been left unmet and the unmet licensing requirements directly endanger the health, safety, or well-being of a person served;

3. The owner, applicant, licensee or executive leadership refuses to cooperate with Department personnel in gaining admission to a residence or in conducting an investigation or inspection;

4. The owner, applicant, licensee or executive leadership has failed to adhere to the approved program description;

5. The owner, applicant, licensee or executive leadership has falsified any information in order to obtain a license;

6. The owner, applicant, licensee or executive leadership has refused to furnish the Department with files, reports, or records as required by this chapter; or

7. The owner, applicant, licensee or executive leadership has failed to act in a fiduciary capacity in order to protect the funds of persons served.

“Supervised apartments” means apartments that are occupied by persons served and leased or owned by the licensee. Staff provide supervision, guidance, and training as needed in activities of daily living as defined by the needs and targeted future goals of the person served, in accordance with the requirements of this chapter.

“Support” means activities, materials, equipment or other services designed and implemented to assist the person served. Examples include, but are not limited to, instruction, training, assistive technology, and/or removal of architectural barriers. Support also includes positive interactions between the person served and person(s) significant to the person served.

“Supported living” means a living arrangement in which a highly flexible array of services and supports are provided in a variety of settings.

“Transdisciplinary Team” (TDT) means a group that shall be comprised of the person served and all personnel directly involved in the process of defining the person’s capabilities and needs, in refining and meeting all of the person’s goals and objectives and in the provision of care or supervision. The team shall also include, as needed, other significant persons such as employers and those disciplines and persons involved in the provision of care or supervision. Team membership shall represent a variety of disciplines, to the extent possible. The team members shall share their knowledge and expertise in order to facilitate the assessment, planning and implementation of the person’s program. There shall be interaction and integration among the team members to ensure that the achievement of the individual’s goals is facilitated. Family members, peers and advocates shall participate at the discretion of the person served or his or her legal guardian.

“Traumatic brain injury” means an acquired injury to the brain. Such term does not include brain dysfunction caused by congenital or degenerative disorders, nor birth trauma,

but may include brain injuries caused by anoxia due to trauma.

“Uniform Construction Code” means N.J.S.A. 52:27D-119 et seq. and N.J.A.C. 5:23.

“Uniform Fire Safety Act” means N.J.S.A. 52:27D-192 et seq., and the related codes adopted pursuant thereto.

“Unusual incident” means an event involving a person served or employee involving indications or allegations of criminal actions, injury, negligence, exploitation, abuse, clinical mismanagement or medical malpractice, a major unforeseen event, for example, serious fire, explosion, power failure that presents a significant danger to the safety or well being of persons served, and/or employees; or a newsworthy incident.

“Variance” means written recognition by the Department that the licensee has complied with the intent of a standard in a Department-approved alternative manner, in accordance with N.J.A.C. 10:44C-1.10.

“Volunteer” means an unpaid person who supports and supplements programs and services. A volunteer may be an individual, or a member of an organized group.

“Waiver” means the temporary suspension of a standard that is granted in writing by the licensing agency.

“Willful non-compliance” means that action or non-action of an applicant or licensee who has knowledge of the violations of licensing rules and/or terms of the license, has been advised of the consequences of not achieving compliance and has not achieved compliance after being given an adequate opportunity to do so.

10:44C-1.4 Application for a license

(a) An application for a license may be obtained from:

Department of Human Services
Developmental Disabilities Licensing
50 East State Street
PO Box 726
Trenton, NJ 08625-0726

(b) Except as otherwise provided in the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., no license shall be issued to any applicant or licensee who has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person, crimes involving a controlled dangerous substance or other like offenses.

1. No license shall be issued to any applicant or licensee who has been convicted of a crime of moral turpitude.

2. No license shall be issued to any applicant or licensee who has been adjudged civilly or criminally liable

for abuse of a person served by the Department or placed in a community residence regulated by this chapter.

(c) An application for licensure as an operator of a community residence for persons with head injury shall be submitted to the licensing agency.

1. The application shall be composed of the following:
 - i. Identification of all owners;
 - ii. A table of organization;
 - iii. A curriculum vitae for the applicant and executive leadership;
 - iv. Documentation that the applicant meets the requirements of (b) below;
 - v. A description of the applicant's experience in providing services to persons with head injury;
 - vi. Documentation that the business is incorporated or otherwise authorized to do business in the State of New Jersey;
 - vii. A list of the members of the governing body (for example, board of directors/trustees), their occupations, addresses and telephone numbers;
 - viii. At least three references; and
 - ix. The program description.

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

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

(d) The licensing agency shall initially review the materials to determine:

1. Whether all required elements have been submitted;
2. The applicant's qualifications;
3. The applicant's apparent ability to comply with this chapter;
4. The applicant's apparent ability to deliver services in accordance with its stated goals and purposes; and
5. Potential barriers to licensing.

(e) The licensing agency may employ the services of any qualified professional, as necessary, in the review process in order to conduct a thorough and valid review of the program, supports and services to be rendered.

(f) Within 60 calendar days of the receipt of the completed application, the applicant shall be advised in writing of its approval or non-approval.

(g) Upon a determination that an application is denied, the licensing agency shall notify the applicant in writing of the reason through certified mail, return receipt requested.

1. The applicant may submit a new application after six months.

(h) The approved program description shall be available for review, as appropriate, by persons with head injury, their guardians, their families and their advocates.

(i) The licensee shall be responsible for the overall operation of each community residence for persons with head injuries, including the arrangement whereby executive leadership is delegated to a person who is employed to oversee the day-to-day operation.

(j) No license shall be issued to any person who has previously been denied a license by any State agency due to substantial noncompliance or due to violation of any State or Federal law pertaining to the operation of a community residential facility.

(k) No license shall be issued to, or held by any person who, in a final determination by a court of record or by the Division on Civil Rights, has been found to discriminate against any person on the basis of race, color, creed, gender, national origin, ancestry or disability.

(l) No person shall own or operate a community residence for persons with head injuries without authorization from the licensing agency.

(m) Each community residence for persons with head injuries shall be subject to inspection or investigation by the Department as deemed necessary without limitation or notice to allow for an inquiry into the facility's records, equipment, sanitary conditions, accommodations and management of the persons served.

10:44C-1.5 Procedure manual

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

10:44C-1.6 Issuance of an initial license

(a) Upon approval of the program description, and upon approval of the licensee's policy and procedure manual, the licensing agency shall conduct an on-site initial inspection of the residence.

(b) Prior to the issuance of an initial license, the following, at a minimum, shall be available:

1. Documentation which demonstrates compliance with all certificate of occupancy (CO) requirements, including any required inspection by the Fire Official and registration with the Department of Community Affairs;
2. A fire evacuation plan;

i. A minimum of two levels of appeal, the last of which shall involve the executive leadership or the licensee;

ii. Time frames for decision-making at each step;

iii. Written notification procedures;

iv. The rights and responsibilities of each party; and

v. The opportunity for the person served, his or her guardian or his or her personal advocate to obtain assistance from any of the individuals or organizations listed at (b)2 above.

(c) If a person served is unable to read (b)1 through 4 above, the text shall be read to the person served in a language or manner the person understands.

1. The licensee shall make provisions to explain portions that are not understood and answer any questions the person served may have regarding (b)1 through 4 above.

(d) A copy of a written acknowledgment that (b)1 through 4 above has been explained and understood shall be immediately signed and dated by the person served, the licensee's representative(s) and the person's guardian, if present.

1. If the guardian is not present, the signed acknowledgment shall be sent to the guardian within five days.

i. Documentation shall be maintained in the person's record.

2. The acknowledgment may also be witnessed by a personal advocate, if present.

3. The acknowledgment shall be placed in the record of the person served.

(e) Persons served shall receive training and support in order to understand options, make choices and exercise rights and responsibilities.

1. The exercise of rights is not limited when a person served has a guardian or interested family.

(f) The licensee shall be responsible for utilizing a Human Rights Committee in accordance with N.J.A.C. 10:41-4.

(g) The licensee shall have procedures for the documentation of the investigation and resolution of allegations of infringements of rights.

10:44C-3.2 Rules governing a residence

(a) The licensee may establish reasonable rules that govern the conduct of persons in a particular residence, including, but not limited to, rules regarding smoking, pets and visitors, provided:

1. The rules are commensurate with the abilities and rights of the persons served;

2. Persons served and their guardians, where applicable, are informed of the rules governing a residence prior to their admission;

3. The persons served affected by such rules are consulted whenever a revision is considered, and there is evidence the rules are necessary to promote order and to benefit the collective group;

4. The rules include provisions to ensure that a person served exercising his or her rights does so in such a way so as to not infringe upon the rights of, or endanger, others; and

5. The licensee complies with the rules contained in this chapter regarding the requirements for a grievance process or appeal of a licensee decision or a decision of the TDT as specified at N.J.A.C. 10:44C-2.2(b)8.

(b) A person served or a group of persons served shall be given a copy of such rules, and additional copies shall be made available upon subsequent request

(c) Each copy of the rules shall contain a statement that a person served or a group of persons served has the right to challenge such rules as to their appropriateness through the licensee's grievance procedure, as specified at N.J.A.C. 10:44C-2.2(b)8.

(d) No policy, procedure, or rule of the home shall be inconsistent with or contrary to a right enumerated in N.J.A.C. 10:44C-3.4.

10:44C-3.3 Self-advocacy

(a) The licensee shall identify persons served who want a personal advocate or who wish to participate in a self-advocacy group.

(b) Persons with head injury shall be given the opportunity to participate in a self-advocacy group of their choice.

(c) Notices of advocacy or self-advocacy conferences, seminars or meetings shall be made available to all persons served in each residence unless determined otherwise by the TDT.

(d) The process of conducting house meetings shall include the person served as much as possible unless the TDT has determined otherwise. The scheduling of such meetings shall include the persons served living in the home. Staff shall assist the persons served with setting the schedules and agendas for house meetings.

10:44C-3.4 Enumeration of rights

(a) The provision of services and support shall demonstrate recognition that persons with head injury have the same rights as all other citizens.

1. A person's exercise of his or her rights shall not be prohibited or be used as a cause for retribution against him or her.

(b) Each person served shall further be afforded the following rights and freedoms while living in a community residence for persons with head injury:

1. A safe, clean place to live and a lifestyle like other New Jersey residents;

2. Privacy and respect;

3. Physical exercise and the opportunity to practice personal health care;

4. Keep and use his or her own clothes, money and personal things, and to have a place to put them that no one else may use;

5. Associate with members of the opposite sex;

6. Practice the religion of his or her choice, or choose not to practice any religion;

7. Send and receive mail without it being opened or read by other people and to have help, if he or she wants it, in reading or writing letters;

8. Make or receive private telephone calls during set times, unless the person served has a personal telephone, in which private telephone calls shall not be restricted unless otherwise determined by the TDT;

9. Have a healthy diet;

10. Have a voice in matters that affect him or her;

11. Have visitors of his or her choice during set times;

12. Work with pay that is a commensurate wage or otherwise appropriate for the type or work he or she does and how well he or she does it;

13. Request release from a program or transfer to another program;

14. Register and vote in all elections;

15. Share in developing his or her "Individual Treatment Plan" (ITP) designed specifically for him or her and to help decide what kinds of programs would be best for him or her in that plan;

16. Have his or her ITP and all records about him or her kept confidential, unless the person or the person's legal guardian says that someone else may see them;

17. Be free from any restrictions of appropriate movement or behavior;

18. Receive special therapy services, if they will help him or her;

19. Receive guardianship services, if the person served needs them and if the person served is an adult;

20. Receive regular medical, dental and nursing care in order to stay in good health and to receive prompt treatment of any health problem;

21. Be informed of the condition of his or her health and to be able to contact his or her physician or advanced practice nurse;

22. Be free from unnecessary medical tests or treatment;

23. Be free from physical restraint unless in an emergency; and

24. Be free from physical punishment, abuse, neglect and exploitation.

(c) The licensee shall ensure that staff are familiar with and observe the rights enumerated in (b) above.

1. The licensee shall assure that a copy of the rights identified at (b) above is available at each residence licensed under this chapter.

(d) Persons served shall receive training and support in order to understand options, make choices and exercise rights and responsibilities.

1. The exercise of rights shall not necessarily be limited even when a person served has a guardian or interested family.

10:44C-3.5 Informed consent and guardianship

(a) In securing informed consent, the licensee shall inform each person served or his or her guardian of:

1. Any medical condition requiring intervention;

2. Any need for behavioral intervention, including, but not limited to, behavior modification or the administration of psychotropic medication;

3. Any other circumstance requiring intervention;

4. The attendant risks of treatment;

5. The attendant risks of refusing treatment;

6. The right to refuse treatment; and

7. The right to withdraw informed consent at any time.

(b) Informed consent shall not be coerced.

(c) Informed consent shall be obtained in writing and filed in the record of the person served.

(d) Any person served over the age of majority and without a court-appointed guardian shall be expected to sign his or her own informed consent forms.

(e) When a person served has a guardian, informed consent shall be signed by the guardian.

(f) Every effort shall be made to support the person served through formal and informal activities prior to pursuing guardianship, unless the person served is in risk of immediate harm.

(g) The removal of decision-making responsibility through guardianship shall only be considered for persons served who, through their actions, do not demonstrate adaptive behavior or do not demonstrate that they are capable of identifying or understanding the consequences of their decisions.

(h) The TDT shall identify the need for assistance and guardianship for each person served, unless the person served is in risk of immediate harm.

(i) Neither a service agency nor an employee or volunteer shall become a guardian for any person served.

(j) The licensee may petition the court to appoint a person to assist the person served with a particular decision.

(k) An advocate from a local, State or private agency may be requested to assist the person served.

(l) Family members may be requested to assist in making decisions with and for the person served, if the person served so desires.

10:44C-3.6 Restriction or modification of rights

(a) If the exercise of the rights of the person served is restricted or modified, the ITP shall document each restriction or modification.

1. No restriction or modification of rights shall be implemented until it is reviewed and approved by the TDT.

2. The ITP shall state when restrictions or modifications may be lessened or eliminated.

3. The TDT shall review all such restrictions or modifications on an as needed basis, but not less than on a quarterly basis.

(b) The licensee shall be responsible for utilizing a Human Rights Committee in accordance with N.J.A.C. 10:41-4.

1. The Human Rights Committee shall review all restrictions or modifications of rights.

(c) The person served or his or her legal guardian shall be advised of his or her right to appeal any restriction or modification of rights.

1. The person served or his or her legal guardian shall be informed of his or her right to obtain assistance from any of the individuals or organizations at N.J.A.C. 10:44C-3.1(b)2.

(d) Any use of mechanical restraint or safeguarding equipment shall comply with N.J.A.C. 10:42.

SUBCHAPTER 4. SERVICE DELIVERY/REHABILITATION/ HABILITATION

10:44C-4.1 Pre-admission and admission

(a) The licensee shall have written criteria for admission to a particular program, including temporary (respite) placements. These criteria shall include, at a minimum:

1. Specific services provided;

2. A non-discrimination statement regarding admissions, assuring no one will be denied admission on the grounds of race, sex, color, national origin, religion, age, physical or mental disability, ancestry, sexual preference/affiliation, including AIDS or HIV infection, atypical cellular hereditary blood traits or any other legally protected status;

3. A statement regarding any limitations an agency may have in providing services to a person served with a specific head injury;

4. A statement affording all persons served and/or their guardians the opportunity of preplacement visits to the residence;

5. A statement regarding any minimum and/or maximum age restrictions;

6. A statement regarding respite criteria; and

7. Fees charged by the licensee.

(b) The number of persons with head injury admitted to a residence shall not exceed the licensed capacity.

(c) Prior to admissions, the licensee shall obtain the following:

1. Information that addresses eligibility for services;

2. Results from a medical examination conducted no more than 90 days prior to admission;

3. A current immunization record, as available and hepatitis B screening results in accordance with N.J.A.C. 10:48-2;

4. The results of a Mantoux Skin Test for tuberculosis, administered within one year prior to the date of admission; and

5. Pre-admission information required under N.J.A.C. 10:44C-2.9(d)1i through xiii.

(d) The licensee shall, at the time of admission, and without cost to the person served, provide the following:

1. A copy of the written procedures for safekeeping of valuable personal possessions;
2. A written statement explaining the rights of the person served;
3. A copy of the rules governing the residence, as applicable;
4. A copy of the grievance procedure;
5. A copy of the procedure regarding toll calls/charges; and
6. A copy of the financial rights and services procedures.

(e) The licensee shall make provisions to explain (e)1 through 6 above and answer any questions the person served may have regarding this information.

(f) The guardian of the person served shall be notified, in writing, that the person served has had this information explained to him or her.

1. A copy of the notifications shall be maintained in the person's record.

(g) Within 30 days of an admission, an ITP shall be developed or modified by the TDT.

10:44C-4.2 Individual treatment plan (ITP)

(a) A TDT shall be responsible for the development of a treatment plan for each person served.

1. In the absence of a court determination, the TDT shall determine the need for personal guidance for each person served.

(b) At service initiation, evaluations covering the areas in 1 through 11 below shall be obtained within 30 days.

1. An assessment of the person served, with input from the person served, of preferences, goals and needs;
2. Physical examination and health assessment;
3. The need for post acute care;
4. Dental examination (including oral hygiene practices);
5. Social: reflecting social and developmental history, social interactions, family situation and the social support network of the person served;
6. Psychological: emotional and intellectual status;
7. Adaptive behavior or independent living: functional skills for personal care and self-support, mobility and other areas affecting daily life;
8. Developmental, cognitive, educational and/or vocational capabilities or needs;
9. Medication and immunization history;

10. Screening of nutritional, vision, auditory and speech and language areas (must reflect current status and need for support or training); and

11. Assessment in additional areas specific to the needs of the person served, including:

- i. Self advocacy;
- ii. Self care;
- iii. Functional literacy;
- iv. Financial management, including short-or long-term budgeting skills;
- v. Home maintenance;
- vi. Personal hygiene skills;
- vii. Safety and emergency procedures;
- viii. Accessing community resources;
- ix. Recreation and leisure skills;
- x. Decision making skills;
- xi. Social and interpersonal skills; and
- xii. Exercise of rights and responsibilities.

(c) Treatment and/or service needs shall be identified without regard to the immediate availability of those services.

(d) Each training program comprising the plan shall include information that addresses the following issues:

1. The need for rehabilitation and/or habilitation for the person served, and his or her learning preferences and strengths (for example, learning modality);
2. Specific instructions for prompting or coaching the person served;
3. How to interact with the person served during training:
 - i. What to do when no response is received;
 - ii. What to do when the person served is not cooperative; and
 - iii. What to do when the person served responds as desired;
4. Unique learning motivation for the person; and
5. Which environments are most conducive to promoting the learning or change of the person served.

(e) The goals and objectives shall be written in behavioral terms that have the following characteristics:

1. Reflect short-term outcome (one year or less);
2. Reflect a small step toward goal accomplishment;
3. Target a single behavior;