

7:27F-3.2 Carbon standard for fuels

[(a)] No person shall store, offer for sale, sell, deliver, or exchange in trade[, for use in New Jersey.]* No. 4 fuel oil or No. 6 fuel oil, **for purposes of combustion in New Jersey**,* on or after [(the operative date of this section)]* **January 31, 2023***, except [as provided at (c) below.]* **that***

[(b)] No person shall use No. 4 fuel oil or No. 6 fuel oil on or after (the operative date of this section), except as provided at (c) below.]*

[(c)] No. 4 fuel oil or No. 6 fuel oil that was stored in New Jersey before [(the operative date of this section)]* **January 31, 2023***, may be **combusted**,* used, stored, offered for sale, sold, delivered, or exchanged in trade, in New Jersey, for two years after [(the operative date of this section)]* **January 31, 2023***.

7:27F-3.3 Exemption

This subchapter shall not apply to [fuel oil used by ocean-going vessels]* **any person who stores, offers for sale, sells, delivers, or exchanges in trade No. 4 fuel oil or No. 6 fuel oil that meets Emission Control Area (ECA) marine fuel criteria established by Federal regulation at 40 CFR 80.2 and is for use by interstate and international shipping lines***.

(a)

**NEW JERSEY WATER SUPPLY AUTHORITY
Notice of Readoption
New Jersey Water Supply Authority Rules
Readoption: N.J.A.C. 7:11**

Authority: N.J.S.A. 58:1B-1 et seq., specifically 58:1B-7.

Authorized By: New Jersey Water Supply Authority, Shawn LaTourette, Chair, and Commissioner, Department of Environmental Protection.

Effective Date: December 1, 2022.

New Expiration Date: December 1, 2029.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the New Jersey Water Supply Authority rules at N.J.A.C. 7:11 are readopted and shall continue in effect for a seven-year period. The rules were scheduled to expire on February 12, 2023. The New Jersey Water Supply Authority (Authority) has reviewed these rules and has determined that the rules should be readopted because they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. In accordance with N.J.S.A. 52:14B-5.1.c(1), timely filing of this notice extended the expiration date of the chapter seven years from the date of filing.

The New Jersey Water Supply Authority rules at N.J.A.C. 7:11 establish the permissible uses of the property and waters under the administrative jurisdiction of the Authority, the schedules of rates, charges, and debt service assessments for the sale of water from the Raritan Basin System and the Manasquan Reservoir System and the procedures for adjusting the schedules of rates, charges, and debt service assessments, and the procedures for the diversion, withdrawal, allocation, and use of water from the Raritan Basin System and Manasquan Reservoir System in accordance with the New Jersey Water Supply Authority Act, N.J.S.A. 58:1B-1 et seq.

The Authority anticipates publishing its annual proposal of changes to its Schedule of Rates, Charges, and Debt Service Assessments for the Sale of Water from both the Raritan Basin System and Manasquan Reservoir System for Fiscal Year 2024 in early 2023. Any further action on those proposed amendments would be the subject of a separate notice in the New Jersey Register. Readoption of the rules without change at this time ensures the chapter continues in effect.

HUMAN SERVICES

(b)

**OFFICE OF PROGRAM INTEGRITY AND
ACCOUNTABILITY**

**Manual of Standards for Community Care
Residences**

**Adopted Amendments: N.J.A.C. 10:44B-1.3, 1.4, 1.5,
2.1, 2.2, 2.3, 2.4, 2A.1, 2A.2, 3.1, 3.2, 3.3, 3.4, 3.5,
4.1, 4.2, 5.1, 5.2, 6.1, 6.3, 6.4, and 6.5**

Proposed: June 20, 2022, at 54 N.J.R. 1137(a).

Adopted: November 15, 2022, by Sarah Adelman, Commissioner, Department of Human Services.

Filed: December 8, 2022, as R.2023 d.006, **without change**.

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

Effective Date: January 3, 2023.

Expiration Date: February 19, 2027.

Summary of Public Comments and Agency Responses:

The Department of Human Services (Department) received comments from the following individuals in response to publication of the notice of proposal:

1. Catherine Chin, ABCD;
2. Mary A. Ciccone, Disability Rights NJ; and
3. Duwane Walker, CWA LOCAL 1040

The following is a summary of the comments received from members of the public and the Department's responses.

COMMENT: In response to the Department's Economic Impact statement, a commenter asked how can additional expenses be incorporated into payment to providers when the rate has not increased for over 10 years. The commenter also stated that the Department should bear the cost for privacy locks and security devices.

RESPONSE: Funding of Community Care Residences (CCRs) is not within the scope of these rules. However, the Department notes that CCR providers recently received substantial rate increases. As noted in the Economic Impact statement, "most of the expenses have been incorporated into the payments made to the providers ... by funding from the Department." Regulatory amendments largely address services that have been mandated and funded for years, such as transportation and food.

COMMENT: An advocate commented that N.J.A.C. 10:44B-2.2(e)1 appears to be in conflict with N.J.A.C. 10:44B-2.2(g), as it permits the licensee and the placing agency to determine that the residence is no longer suitable, and transfer or discharge the resident without going through the process set forth in the Eviction for Good Cause statute, which involves a summary proceeding in New Jersey Superior Court, Special Civil Part. The advocate recommended that the first sentence at N.J.A.C. 10:44B-2.2(g)1 should be rewritten to say that the tenant has all the rights and responsibilities afforded by New Jersey landlord-tenant laws including, but not limited to, N.J.S.A. 2A:18-61.1 et seq., and has a lease comparable to leases for all other persons in the State. Similarly, the advocate stated that the second sentence at N.J.A.C. 10:44B-2.2(g)1 should be deleted because it is inconsistent with New Jersey's landlord tenant statute as it allows a consumer resident agreement that is comparable, but not the same, as a lease. The advocate recommended that this section make clear that where licensees engage in self-help lockout or evictions, the person served may avail themselves of New Jersey's forceable or unlawful entry and detainer laws, N.J.S.A. 2A:39-1 et seq., to affirmatively seek redress in Superior Court. The advocate noted that under the Eviction for Good Cause statute, landlords are permitted to have rules, as long as those rules are reasonable and have been accepted by the tenant, in writing, or made part of the lease at the beginning of the lease term. N.J.S.A. 2A:18-61.1.d. The advocate stated that rules that conflict with State or Federal law would not be considered reasonable and, under the Fair Housing Amendments Act, landlords must make reasonable accommodations in their rules to ensure that individuals with disabilities have an equal opportunity to use and enjoy the premises. The advocate commented that amendments to this proposed regulation must be clear

that the licensee must comply with all State and Federal laws regarding reasonable rules incorporated into the lease.

RESPONSE: The Department thanks the commenter for this feedback, but does not share the same interpretation of the cited State and Federal laws. The Federal Home and Community Based Services Rule (HCBS Rule) does not require licensees to enter into leases with residents that strictly mirror landlord/tenant eviction processes, but rather allows for residency agreements or other forms of written agreements that offer “protections that address eviction processes and appeals comparable to those provided under the jurisdiction’s landlord tenant law” in settings in which landlord-tenant laws do not apply. 42 CFR 441.301(c)(4)(iv)(A). In CCRs where a provider is providing services in conjunction with housing, the Division of Developmental Disabilities (the Division) requires providers and residents to enter into residency agreements that offer comparable protections to leases. The process followed in circumstances where a provider requests discharge of an individual is outlined in the residency agreement and is as follows: The provider will notify the individual/guardian/support coordination of their intent to terminate services/housing; the provider will follow policies as outlined in Division Circular #36—Transfer or Discharge, by notifying the Division and including substantive evidence as to why the action is being taken; the Division reviews the submission to determine if the request meets applicable standards; the decision is communicated; if the termination of services/housing is approved, the service provider must continue to support the individual until alternative services can be identified. Disputes regarding these decisions are governed by Department rules and Title 30 of the New Jersey Statutes, and are appealable through the administrative appeals process and ultimately to the Appellate Division; they are not cognizable in the New Jersey Superior Court, Special Civil Part. If the Special Civil Court exercised such jurisdiction, situations could arise where an individual can no longer be appropriately served by a CCR provider, yet continues to reside in the provider’s home, thus jeopardizing the individual’s health and safety. Such a result would be untenable and would violate New Jersey law requiring the provision of appropriate services to the Division’s service recipients. For these reasons, the Department declines to make the changes recommended by the commenter.

COMMENT: An advocate recommended that N.J.A.C. 10:44B-3.1(c)2 include a requirement that CCR providers provide a private space for residents to meet with visitors.

RESPONSE: The Department finds this rule is sufficient as written, as the rules entitle residents to privacy during visitation.

COMMENT: An advocate recommended that additional language be included at N.J.A.C. 10:44B-3.2(e) that specifies a CCR provider’s obligation to ensure the resident is aware of, notified of, and/or encouraged, but not coerced, to participate in activities outside the home.

RESPONSE: The Department finds this rule is sufficient as written. N.J.A.C. 10:44B-3.2(e) and (e)1 outline the provider’s obligation to promote activities for individuals served.

COMMENT: The CCR provider union stated that the amendment at N.J.A.C. 10:44B-2.2(f) requiring providers to give the Department 60 days’, rather than 30 days’, written notice of intent to have an individual depart from a CCR should be deleted. The union noted situations where a resident was not removed promptly, resulting in damage to homes.

RESPONSE: The Department finds this rule is appropriate as written to afford service recipients, their guardians, and the Division adequate time to prepare for a move. The Division will continue to quickly, on a case-by-case basis, address circumstances where immediate removal of an individual is requested due to health and safety issues.

COMMENT: The CCR provider union commented that visitation should be restricted to reasonable hours, rather than at any time.

RESPONSE: The Department finds N.J.A.C. 10:44B-3.1(b)8 is sufficient, as written, to comply with the HCBS Rule. This rule requires that individuals are able to have visitors of their choosing at any time.

COMMENT: The CCR provider union asked whether the Division will provide medication administration training to potential alternates, as alternates are required at N.J.A.C. 10:44B-2.3(a)6 to have such training to administer medication.

RESPONSE: This is not a regulatory issue that can be addressed through the proposed rules. The Division advises that alternates may

attend medication trainings that will be offered, and questions and concerns surrounding this topic can be discussed with the Division or other placing agencies.

COMMENT: The CCR provider union noted that N.J.A.C. 10:44B-3.1 prohibits providers from charging individuals for gas and for tolls and parking, and asked whether providers can bill residents for these items when they take them on day and overnight trips and vacations.

RESPONSE: Individuals should not be charged for these expenses. CCR providers can follow the Division’s Travel Reimbursement Guidelines, which indicate that routine travel expenses are included in the rates paid for room, board, and services, as indicated in Division Circular 47. Reimbursement for non-routine travel expenses will be considered by the Division on a case-by-case basis.

COMMENT: The CCR provider union asked whether the requirement to have an operable telephone in the residence can be satisfied by a cell phone or services through fiber optics or a cable provider.

RESPONSE: N.J.A.C. 10:44B-6.1(i) requires an operable telephone. A cell phone or phone through fiber optics or cable satisfies this requirement, as long as it is operable, available to the resident at all times, without restriction, and accessible by the resident even if the sponsor or alternate are not available. This is a minimum standard and the Division or placing agency may choose to have a more specific requirement.

COMMENT: The CCR provider union asked what type of privacy locks will be acceptable.

RESPONSE: A privacy lock on a bathroom door that is lockable by the individual affording them privacy is acceptable. In order to ensure compliance with the HCBS Rule, a lock accessed through keys, and any other devices used to gain access through any door lock mechanism (for example, key cards, codes, etc.) to their living unit shall be the default for bedroom doors. Any restriction that would preclude a lock from being used must be discussed with the Planning Team and documented in the individual’s service plan. This includes review of the restriction by the Human Rights Committee.

COMMENT: A commenter stated that the costs of installing privacy locks and commercially available security devices for sliding glass doors should be the responsibility of the Department.

RESPONSE: The Department finds N.J.A.C. 10:44B-6.1(q) and (v) are sufficient, as written, and will not separately reimburse these costs to the extent there are any. The requirement of a privacy lock on a bathroom has been long-standing. As long as the lock that is currently installed on the bathroom has consistently afforded privacy, no change is being made. Additionally, the requirement for a commercially produced security device on a sliding glass door has also been long-standing. This was originally implemented due to various objects being placed in the bottom area of sliding glass doors to prevent the door from opening, which can become stuck if the object is not designed to be placed there.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), requires State agencies that adopt, readopt, or amend any State rule that exceeds any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. Some of the amendments are promulgated in order to implement and comply with guidelines established pursuant to Federal law, 42 CFR Part 441, Subpart 301, and the Statewide Transition Plan that incorporates or refers to Federal law, standards, or requirements, but does not exceed them. Accordingly, N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), do not require a Federal standards analysis of the adopted amendments.

Full text of the adoption follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10:44B-1.3 Definitions

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

“Abuse” means wrongfully inflicting, or allowing to be inflicted, physical abuse, sexual abuse, verbal or psychological abuse, or mistreatment by a caregiver on an individual with a developmental disability.

...

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

“Authorized family member” means a relative of the individual with a developmental disability authorized by the individual, or guardian, as applicable, to receive information pursuant to P.L. 2012, c. 69.

“Community residence for individuals with developmental disabilities” means any community residential facility housing up to 16 individuals with developmental disabilities that also provides food, shelter, personal guidance, and/or training. Such residences shall not be considered health care facilities within the meaning of the Health Care Facilities Planning Act, P.L. 1971, c. 136 (N.J.S.A. 26:2H-1 et seq.), and shall include, but not be limited to, group homes, halfway houses, supervised apartments, hostels, and community care residences (formerly skill development homes, family care homes, and respite homes). Such residences shall not be located on the grounds or immediately adjacent to public institutions serving a similar population.

“Guardian” means a person or agency appointed by a court of competent jurisdiction to make decisions on behalf of an individual determined by a court to lack decision-making capacity in certain areas, as set forth at N.J.S.A. 3B:12-24.1.

“Interferon Gamma Release Assay (IGRA)” means a blood test to identify or rule out infection with *M. tuberculosis*. Only FDA-approved IGRAs, such as QuantiFERON-TB Gold or T-Spot.TB, are acceptable.

“Neglect” means any of the following acts by a caregiver on an individual with a developmental disability: willfully failing to provide proper and sufficient food, clothing, maintenance, medical care, or a clean and proper home; or failure to do or permit to be done any act necessary for the well-being of an individual with a developmental disability.

“Office of Licensing” or “Office” means the licensing agency, which is that component of the Department of Human Services responsible to inspect and license programs pursuant to this chapter.

“Outcome” means a written statement of attainable, behavioral, or service objectives expected to be achieved partially or completely within the year the service plan is in effect. Outcomes must be related to the personal needs and preferences of the individual.

“Placing agency” means the Division, or an agency under contract with the Division, that recruits, trains, and/or supports licensees that operate community care residences and is responsible for the placement of and payment for an individual in a community care residence.

“Plan of correction” (POC) means the written response from the licensee to the Office of Licensing addressing identified non-compliance.

“Respite care program” means the provision of room, board, and personal guidance services, on a temporary basis not to exceed 30 days without placing agency approval, in a licensed community care residence.

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

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

10:44B-1.4 Application for community care licensure

(a) All initial inquiries for a license to operate a community care residence shall be made to the placing agency.

(b)-(c) (No change.)

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

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

(e) (No change.)

(f) The placing agency representative shall conduct a visit to the home during the application process, including use of a Home Study, if applicable, to ascertain that it meets licensure requirements. The placing agency shall make recommendations regarding the capacity of the home during the application process.

1. (No change.)

(g) The applicant, all occupants of the household who are 18 years of age or older, and all alternates shall be fingerprinted through the placing agency.

(h) Except as otherwise provided in the Rehabilitated Offenders Act, N.J.S.A. 2A:168A-1 et seq., no license shall be issued to any person when that person, or any occupant of the household 18 years of age or older, nor shall any alternate be approved who, at any time, has been convicted of any of the crimes or disorderly persons offenses set forth at N.J.S.A. 2C:11-1 et seq., 2C:12-1 et seq., 2C:13-1 et seq., 2C:14-1 et seq., 2C:15-1 et seq., 2C:24-1 et seq., and 24:21-1 et seq. (P.L. 1970, c. 226), or for the following:

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

2. Any other civil or criminal action similar to (h)1 above.

(i) (No change.)

(j) No license shall be issued when the name of the applicant or the name of any occupant of the applicant’s home appear on the Central Registry or who is included on the child abuse registry of the Department of Children and Families.

(k) (No change.)

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

1. The orientation and training program, and any subsequent modifications, shall be jointly reviewed and approved by the placing agency and the Office of Licensing.

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

3. The applicant shall successfully complete both first aid and Cardiopulmonary Resuscitation Trainings, provided by training entities that meet the current Emergency Cardiovascular Care (ECC) guidelines and that require successful completion of a skills practicum.

(m)-(n) (No change.)

(o) The applicant shall consent to and undergo drug testing for controlled dangerous substances.

10:44B-1.5 Licenses and inspection

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

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

2. (No change.)

(b) (No change.)

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

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

1. (No change.)
2. The Office of Licensing may conduct unannounced inspections to verify that deficiencies of a significant nature have been corrected.
3. (No change.)
4. Failure to make such corrections or failure to submit the plan of correction within the required time frame shall be considered grounds for action against the licensee.
 - i. If, as a result of an annual inspection, a licensee is required to provide a plan of correction and that plan has not been successfully implemented within 30 days of the date the licensee submitted the plan to the Office of Licensing, the individual(s) shall be removed from the residence if the licensee's failure to implement the plan of correction could potentially threaten the health and well-being of the individual. If the health, safety, or well-being of an individual is immediately threatened because of a licensee's noncompliance with the standards, the individual shall be removed from the residence, and the licensee shall be subject to negative licensing action.
 - ii. The Department shall impose a penalty in an amount of \$350.00 per day on the licensee for two or more failures to implement a required plan of correction developed in response to an annual licensing inspection.
 - iii. If two or more failures to implement a required plan of correction developed in response to an annual licensing inspection endangers the health and well-being of an individual, the Office of Licensing, may, upon notice and after hearing, revoke the license.
- (e)-(j) (No change.)
- (k) Waivers or variances of specific standards may be granted at the discretion of the Department, provided that:
 - 1.-2. (No change.)
 3. The waiver or variance is in accordance with the particular needs of an individual(s);
 - i. (No change.)
 - ii. Verification that the waiver or variance comports with the individual needs of the person(s) residing in the residence may be requested from the case manager by the Office of Licensing; and
 4. (No change.)

SUBCHAPTER 2. MANAGEMENT OF THE RESIDENCE

10:44B-2.1 Licensee requirements

- (a) The licensee shall have overall responsibility for the individuals and boarders in the residence.
1. Except as otherwise provided in the Rehabilitated Offenders Act, N.J.S.A. 2A:168A-1 et seq., no license will be issued to any person in whose home or community care residence there is found to be any occupant who has been convicted of any offenses listed at N.J.A.C. 10:44B-1.4(h)1 through 2.
 2. (No change.)
 3. The licensee, members of the licensee's family, and occupants participating in individual care shall be of sound physical and emotional health.
 - i. Annually, the licensee shall have his or her physician or nurse practitioner complete, sign, and date the placing agency's required medical form, attesting that the licensee is capable of performing his or her duties and is able to provide care to the individuals placed in the residence. The form shall also identify any physical, emotional, or mental limitations of the licensee. The Department, at its discretion, may require additional physical and/or psychological examinations of the licensee to be provided by the licensee should any evidence of physical, emotional, or mental limitations of the licensee occur between annual attestations.
 - ii. (No change.)
 - 4.-5. (No change.)
- (b) The licensee shall assure that any occupant of the household 18 years of age or older, residing in the home or visiting in the home for a period of 30 days or longer, and any alternate, is fingerprinted through the placing agency. At the discretion of the placing agency or Office of Licensing, fingerprinting of other persons regularly visiting the home may be required.
- (c) (No change.)
 - (d) The licensee shall not enter into a contract with another person or entity to provide supervision, care, or habilitation of individuals for which

the licensee has contracted and is receiving payment from the placing agency, unless such contract is specifically approved, in writing, by the placing agency and the need for these services is clearly identified in the service plan.

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

(f) The licensee shall be required to successfully complete all courses of instruction that are required or deemed necessary by the placing agency and/or the Office of Licensing. A licensee shall annually attend a continuing education program conducted or approved by the Department.

1. The licensee shall successfully complete and maintain valid certification on file of, both first aid and Cardiopulmonary Resuscitation Trainings, provided by training entities that meet the current Emergency Cardiovascular Care (ECC) guidelines, and that require successful completion of a skills practicum.

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

(h)-(m) (No change.)

(n) The licensee shall annually take a two-week leave from providing services to an individual with a developmental disability residing in a community care residence, during which time an alternate specifically approved by the placing agency for that leave shall provide care or training, or both, to the individual with a developmental disability.

(o) The licensee shall be required to comply with random drug testing, consistent with P.L. 2017, c. 238 (N.J.S.A. 30:6D-9.1 et seq). Failure to comply shall be sufficient cause for immediate licensure revocation.

10:44B-2.2 Placements and departures

- (a) (No change.)
- (b) No more than three individuals shall be placed in any one residence.
- (c) (No change.)
- (d) For all boarders there shall be a written agreement signed by the assigned administrator of community care residences in the Division and the director of the placing agency serving the boarder, a copy of which shall be maintained at the residence.
- (e) (No change.)
- (f) The licensee shall notify the placing agency, in writing, 60 days prior, of any intention to have an individual depart from the residence.

(g) Upon admission, where applicable, a written lease agreement shall be signed by the individual, the guardian, as applicable, and the licensee, which shall provide the consumer with all the rights and responsibilities accorded by New Jersey tenant and landlord law, and shall be comparable to leases for all other persons in the State.

1. In the absence of a formal lease agreement, a consumer residency agreement, or other form of written agreement shall be signed by the consumer, and guardian, as applicable, that shall provide the consumer with the same protections against unlawful evictions as would otherwise be provided by a signed lease agreement. This consumer residency agreement shall provide protections addressing eviction processes and appeals comparable to existing New Jersey landlord and tenant law and shall afford the same rights to appeal an eviction as all other persons in the State.

10:44B-2.3 Alternates

(a) The licensee shall identify an alternate, or alternates, 18 years of age or older to assume the licensee's responsibilities when the licensee is absent.

1. Prior to utilizing an alternate, the licensee shall provide the name, address, last four digits of the Social Security number, and telephone number of all alternates to the placing agency.

i. Whenever the licensee adds or removes an alternate, the placing agency shall be notified immediately.

ii. Only persons identified to, and approved by, the Office of Licensing and placing agency shall act as an alternate or alternates.

2.-5. (No change.)

6. Only alternates who have successfully completed training arranged by the placing agency shall administer medications to an individual or individuals.

(b) The Department may allow alternates who have been convicted of any offenses listed at N.J.A.C. 10:44B-1.4(h)1 and 2 to provide care to individuals in a community care residence, only in accordance with the terms of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq.

(c)-(e) (No change.)

10:44B-2.4 Reporting requirements

(a)-(b) (No change.)

(c) The licensee shall immediately notify the placing agency and Office of Licensing in the event of:

1.-3. (No change.)

(d) The licensee shall notify the placing agency and the Office of Licensing no later than the next business day in the event of any change in:

1.-3. (No change.)

(e) The licensee shall notify the placing agency and the Office of Licensing no less than 60 days prior to any intent to move, including the new address, telephone number, and date of move, or of any intent to voluntarily cease to operate the home as a community care residence.

SUBCHAPTER 2A. RECORDS

10:44B-2A.1 Licensee records

(a) The licensee shall keep on file at the residence, in a location separate from the individual's records, the following administrative records:

1.-3. (No change.)

4. A record of monthly fire evacuation drills and smoke alarm and carbon monoxide detector checks, as specified at N.J.A.C. 10:44B-6.3(d);

5.-6. (No change.)

7. A copy of the alternate's annual medical form, in accordance with N.J.A.C. 10:44B-2.3(e)2; and

8. A record of all trainings successfully completed by the licensee.

10:44B-2A.2 Individual records

(a)-(b) (No change.)

(c) The licensee and alternate shall protect and maintain the confidentiality of all individual records, in accordance with N.J.A.C. 10:41.

1. Individual's records shall be stored in such a manner as to maintain confidentiality and to provide access only to the individual, the individual's legal guardian, the licensee, the alternate, the placing agency, the agency providing case management services, the Office of Licensing, or other persons authorized by law or a court of competent jurisdiction.

2.-3. (No change.)

(d) The record for each individual residing in the home (except respite placements) shall include:

1.-6. (No change.)

7. A copy of the current service plan with the names of all members who participated in its development;

8. Annual physical examination, and the date and results of previous Mantoux Skin Test or IGRA blood testing for tuberculosis;

9.-13. (No change.)

Recodify existing 15.-16. as 14.-15. (No change in text.)

(e) The record for each individual residing in the home as a respite placement, currently, or within the past year, shall include:

1.-3. (No change.)

SUBCHAPTER 3. CARE OF THE INDIVIDUAL

10:44B-3.1 Individual rights

(a) (No change.)

(b) Licensees shall assure that individuals are permitted to exercise all those rights outlined in the rights document distributed by the Division.

Unless otherwise addressed through a person-centered planning process documented in the ISP, individuals shall have the right to:

1. Privacy, dignity, respect, and freedom from coercion;

2.-5. (No change.)

6. Make or receive private phone calls at any time;

7. (No change.)

8. Have visitors of their choice at any time;

9.-16. (No change.)

17. Be free from restraints, restrictive intervention, or from being isolated; and

18. (No change.)

(c) The licensee may establish reasonable house rules, which shall not infringe on the rights of the individuals.

1. Individuals shall be permitted to rest in their homes for such periods as may be consistent with their personal needs or preferences, and to rise and retire at times of their choosing.

2. Complete privacy shall be afforded to individuals during visits with their guests.

i. Visiting is to be permitted at times of the individual's choosing.

(d) There shall be no restrictions on the individual's movement or access to any area inside or outside of the home that is commonly used by the licensee and the occupants of the home, other than those areas that are not routinely used by all the members of the household, such as the licensee or family member's personal bedrooms.

1. There shall be no restriction of the individual's access to their bedroom.

(e) Individuals shall have the right to access the community for recreation, education, shopping, competitive integrated employment, and to participate in social, religious, advocacy, or other groups of their choice.

1. The licensee shall provide or make arrangements to facilitate the individual's participation in all such community involvement, scheduled and unscheduled, including providing or obtaining transportation.

2.-4. (No change.)

5. The licensee shall provide supervision to the individual, as detailed in the ISP.

(f) (No change.)

(g) Individuals shall have access to a telephone for incoming and outgoing calls whenever they choose, and shall be afforded privacy during these conversations. Assistance shall be provided by the licensee, if requested by the individual.

(h)-(k) (No change.)

(l) The installation and/or operation of cameras for surveillance or monitoring inside the licensed residence without the approval of the licensing agency is prohibited.

10:44B-3.2 Personal funds

(a) (No change.)

(b) The licensee shall not commingle any individual's personal funds with those of the licensee or any other person or entity, and only the individual's name shall be on any bank account.

(c) (No change.)

(d) Unless otherwise determined by the IDT, an individual's personal funds in excess of \$200.00 shall be maintained in a separate bank account in the individual's name, accessible only by the individual and the licensee.

(e) (No change.)

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

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

2.-3. (No change.)

(g) (No change.)

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

1. (No change.)

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

3. (No change.)

4. Grooming supplies including, but not limited to, items, such as soap or other personal cleansing products, shampoo and conditioner, shaving cream, disposable razors, regular toothbrushes, toothpaste, mouthwash, deodorant, lotion, feminine products, washcloths, towels, facial tissues, and toilet tissue shall be available to the individual at the licensee's expense.

i. If the individual's preference for a certain brand of such products poses a hardship to the licensee, the IDT may approve and document in the service plan that the individual will pay for them.

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

6.-9. (No change.)

(i) Licensees shall cooperate with reviews conducted by the Department by making the financial records available to the Office of Auditing, the case manager, the case manager's supervisor, and any representative so authorized by the Department.

1. The Office of Auditing will select licensees at random and notify them of an audit with instructions on how to comply.

2.-5. (No change.)

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

(a) (No change.)

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

1.-2. (No change.)

3. Opportunity to shave, as desired;

4.-6. (No change.)

(c)-(d) (No change.)

10:44B 3.4 Food

(a)-(e) (No change.)

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

1. (No change.)

2. Foods required by any medically prescribed diet shall be provided at no cost to the individual, unless a hardship has been demonstrated by the licensee, approved by the IDT, and documented in the service plan.

(g)-(h) (No change.)

10:44B-3.5 Clothing

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

1.-2. (No change.)

(b)-(c) (No change.)

(d) An individual's clothing shall not be discarded without the approval of the placing agency.

SUBCHAPTER 4. SERVICE PLAN

10:44B-4.1 Service plan

(a) A service plan shall be developed for each individual by the interdisciplinary team in accordance with N.J.S.A. 30:6D-10, 11, and 12 and shall be kept on file in the residence. Documentation of who participated in the plan shall be provided on the service plan. (These requirements do not apply to Respite Care Programs).

(b) (No change.)

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

(d)-(e) (No change.)

(f) An agency or organization that causes a written, individualized service plan to be developed for an individual with a developmental disability residing in a community care residence shall not include the Social Security number of the individual with a developmental disability on the plan.

(g) (No change.)

10:44B-4.2 Day activities

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

1. (No change in text.)

(b) (No change.)

SUBCHAPTER 5. HEALTH SERVICES

10:44B-5.1 General medical and health care

(a)-(b) (No change.)

(c) Each individual shall have a baseline Mantoux Skin Test or IGRA blood test result, documentation of which shall be maintained on file in the individual's record.

1. For any individual with a baseline positive or newly positive test result for *M. tuberculosis* (TB) infection, or documentation of treatment for latent TB infection or TB disease, the licensee shall obtain documentation of a medical evaluation and follow-up testing, as determined by the physician, to rule out pulmonary TB disease.

2. Upon any known or suspected exposure to a confirmed case of TB by an individual, the licensee shall consult with the physician and maintain documentation that all requirements for follow-up testing were met.

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

(e)-(i) (No change.)

10:44B-5.2 Medication

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

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

i.-vii. (No change.)

2.-3. (No change.)

(b)-(h) (No change.)

SUBCHAPTER 6. PHYSICAL PLANT AND SAFETY

10:44B-6.1 General home requirements

(a)-(e) (No change.)

(f) Every residence shall be provided with heating facilities that are installed, maintained, and operated in good and safe working condition and which are capable of maintaining all habitable rooms at a temperature of 65 degrees Fahrenheit.

1. (No change.)

2. The licensee shall take steps to assure the health and safety of individuals served if the temperature in the home exceeds 82 degrees Fahrenheit for more than four hours.

(g)-(h) (No change.)

(i) An operable telephone shall be available in the residence.

1. (No change.)

(j)-(p) (No change.)

(q) Every residence shall be provided with at least one full bathroom consisting of a door for privacy with a privacy lock, one flush type toilet,

sink, and bathtub or shower maintained in good sanitary condition and available for every eight persons living in the residence.

1.-4. (No change.)

(r)-(u) (No change.)

(v) Only commercially available security devices that are quick release and visible shall be permitted for use with sliding glass exit doors. The placement of a stick or bar in the door track is prohibited.

(w)-(bb) (No change.)

10:44B-6.3 Fire safety

(a)-(h) (No change.)

(i) Documentation of the fire drills shall be maintained on the Office of Licensing's form, filed in the licensee's administrative records, and shall include:

1.-4. (No change.)

(j) (No change.)

(k) If there is any reason to believe that an evacuation problem exists, the licensee shall contact a representative of the placing agency to observe a fire drill conducted in the residence, and follow all recommendations made by the placing agency.

(l)-(r) (No change.)

(s) There shall be at least two means of egress from the residence, as approved by the Office of Licensing.

(t)-(u) (No change.)

10:44B-6.4 Individual bedrooms

(a) Individuals shall occupy only those bedrooms that have been inspected and approved by the Office of Licensing.

(b)-(f) (No change.)

(g) Licensed bedrooms shall be provided with a solid surface entry door in good condition that opens easily, latches securely, and that has a doorknob. These doors shall not be prevented from opening completely or be blocked in any way.

1. The doorknob must have a privacy lock, which can be unlocked readily from the inside. The key or other device to open the doorknob from the outside shall be kept readily available only to the licensee or alternate for emergency entry into the room.

2. (No change.)

(h) (No change.)

(i) Individuals shall not share a bedroom unless there is documentation in each individual's service plan, through a person-centered planning process, that this choice is based on the personal preference of each individual and that the individual has participated in the selection process.

(j)-(l) (No change.)

(m) At no time shall an occupant of the home, family member, or visitor occupy a licensed room while it is being occupied by individuals. A vacant licensed room may be temporarily occupied by someone other than individuals, only upon written request by the licensee and approval by the placing agency.

(n)-(p) (No change.)

10:44B-6.5 Transportation and vehicle safety

(a) (No change.)

(b) The licensees who drive shall have a driver's license valid in the State of New Jersey.

1. Licensees who do not possess a driver's license shall identify to the placing agency and Office of Licensing, a designated driver, with a valid driver's license, to transport individuals.

(c)-(e) (No change.)

(a)

OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY

Standards for Community Residences for Persons with Head Injuries

Adopted Amendments: N.J.A.C. 10:44C-1.1, 1.3, 1.4, 1.7, 1.8, 1.9, 1.12, 2.1, 2.2, 2.4 through 2.10, 3.2, 3.3, 3.4, 3.6, 4.1, 4.2, 4.3, 4.4, 5.2, 5.5, 5.6, 5.7, 6.1, 6.2, 6.3, 6.5, 6.6, 6.9, 6.13, 6.14, and 6.15

Adopted Repeal: N.J.A.C. 10:44C-1.5

Proposed: June 20, 2022, at 54 N.J.R. 1146(a).

Adopted: November 15, 2022, by Sarah Adelman, Commissioner, Department of Human Services.

Filed: December 8, 2022, as R.2023 d.005, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: January 3, 2023.

Expiration Date: January 10, 2024.

Summary of Public Comments and Agency Responses:

The Department of Human Services (Department) received comments from the following individuals in response to publication of the notice of proposal:

Barbara Young;

Jaymee Bernstein, Universal Institute; and

Mary Ciccone, Disability Rights NJ.

COMMENT: A commenter expressed concern about the requirement that bedrooms have a privacy lock because locks could be dangerous for individuals who could not open them. The commenter stated that the regulations should not override a guardian's instruction not to use a lock. Another commenter expressed several concerns about privacy locks, and recommended that individuals should have the option to have a lock, and if a lock is chosen, the providers keep a key above the door frame.

RESPONSE: Privacy locks are required by the Federal Home and Community Based Services Rule (HCBS Rule). The HCBS Rule requires that a key lock be the default for bedroom doors. However, a guardian may instruct that a lock not be used for individualized circumstances, as long as this is discussed with the Transdisciplinary Team (TDT) and presented before the Human Rights Committee (HRC).

COMMENT: A commenter expressed several concerns about visitation being allowed at any time, and recommended that agencies and residents be able to establish house rules around visitation.

RESPONSE: The HCBS Rule requires visitation to be allowed at any time. The residents, in conjunction with the provider, may develop house visitation rules, but the rules must be driven by the residents, rather than for the convenience of the provider. Any agency visitor policy must afford residents the ability to have visitors at any time.

COMMENT: A commenter recommended that a written agreement be required between the resident and the provider that attendance at a day program be mandatory, absent legitimate exceptions, while also acknowledging that individuals can leave the program if this condition is burdensome.

RESPONSE: The Department declines to accept this recommendation. The HCBS Rule requires individuals to have the ability to set their schedule. The individual's schedule and the program's ability to provide services within this schedule should be discussed prior to admission. Should an individual's schedule change after admission, and a program is not able to provide appropriate support, this would be addressed through the TDT.

COMMENT: A commenter stated that, as service recipients age, egress protocols should be updated to accommodate them. The commenter also recommended that providers be educated on the I-1 Use Group classification.

RESPONSE: The Department finds the rules are sufficient as written as the fire safety requirements for an I-1 Use Group are within the scope at N.J.A.C. 5:70, Uniform Fire Code.