HUMAN SERVICES

DIVISION OF MENTAL HEALTH AND ADDICTION SERVICES

Licensed Community Residences and Community Support Services for Adults with Mental Illness

Adopted Recodifications with Amendments: N.J.A.C. 10:37A-2.1 through 2.7 and 2.9 through 2.15 as 12.1 through 12.7 and 12.8 through 12.14, Respectively

Adopted Amendments: N.J.A.C. 10:37A-1.2, 3.1, 4.2, 4.3, 6.1 through 6.12, 6.18, 6.19, 6.22, 7.1 through 7.4, 8.1, and 9.1 through 9.4, and 10:37A Appendix A; and 10:190-1.1, 1.3, 1.6, and 1.7

Adopted Repeals and New Rules: N.J.A.C. 10:37A-1.1, 4.1, 4.4, 4.5, and 5

Adopted New Rules: N.J.A.C. 10:37A-2.2, 3.1, 4.2, 4.3, 6.1, 6.4, and 7, and 10:37A Appendix B; and 10:37B

Adopted Repeals: N.J.A.C. 10:37A-2.8, 3.2, 6.13 through 6.17, and 9.5

Proposed: July 20, 2015, at 47 N.J.R. 1827(a).

Adopted: June 6, 2016, by Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Filed: July 20, 2016, as R.2016 d.098, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 30:1-12; 30:9A-10; 30:9A-21; and 30:11B-1 et seq., specifically, 30:11B-4.

Effective Date: August 15, 2016.

Expiration Dates: July 6, 2017, N.J.A.C. 10:37A;

August 15, 2023, N.J.A.C. 10:37B;

May 30, 2021, N.J.A.C. 10:190.

Summary of Public Comments and Agency Responses:

Comments were received from Bazelon Center for Mental Health and Disability Rights New Jersey (joint comments); Ralph M. Shenefelt for the Health and Safety Institute (Health and Safety Institute); Gail Levinson of the Supportive Housing Association on behalf of the Mental Health Coalition Workgroup representing the following agencies: Rutgers University Behavioral Heathcare, Triple C Housing, Supportive Housing Association of NJ, the Mental Health Association of Monmouth County, the Mental Health Association of Morris County, Easter Seals New Jersey, Jewish Family Service of Atlantic and Cape May Counties, Disability Rights New Jersey, New Jersey Association of Mental Health and Addiction Agencies, New Jersey Association of Psychosocial Rehabilitation Agencies, Mental Health Association in New Jersey, NewBridge Services, National Association of Social Workers - New Jersey Chapter ("the Mental Health Coalition Workgroup"); Nora Barrett, Associate Professor/Director, B.S. Program in Psychiatric Rehabilitation & Psychology, Department of Psychiatric Rehabilitation & Counseling Professions, Rutgers - SHRP; New Jersey Association of Mental Health and Addiction Agencies (NJAMHAA), Inc.; Ocean Mental Health Services; and Resources for Human Development, Inc.

General Comments

1. COMMENT: Bazelon Center and Disability Rights New Jersey stated that they strongly support the Community Support Services rule and view it as an important tool to facilitate compliance with the *Olmstead* decision and the *Conditional Extension Pending Placement* settlement.

RESPONSE: The Department appreciates the commenter's support.

2. COMMENT: Bazelon Center and Disability Rights New Jersey suggested replacing the words "admitted" or "admission" throughout the rules with "enrolled" or "enrollment" because the term "admitted" or "admission" may inappropriately suggest that community support services are provided in a facility.

RESPONSE: The Department disagrees that "admission" connotes receipt of services in a facility. In that regard, the Department notes that "admission" is used with respect to entry into services or programs in other Department rules, for example N.J.A.C. 10:37F-2.1, 2.3, and 2.4 (admission to partial care services) and N.J.A.C. 10:37I-5.4 (admission criteria for intensive family support services).

3. COMMENT: Bazelon Center and Disability Rights New Jersey suggested replacing the phrase "negotiated with the consumer" with "developed with the consumer" throughout the rules.

RESPONSE: The Department agrees that the phrase "negotiated with the consumer" may not sufficiently reflect the collaborative nature of the development of the individualized rehabilitation plan between the PA and the consumer. In that regard, the Department notes that proposed N.J.A.C. 10:37B-2.4(b) uses the word "partner" to describe the relationship between the PA and consumer with respect to development of the individualized rehabilitation plan. Consequently, the Department is changing upon adoption references to "negotiated with the consumer" to "developed in partnership with the consumer" in provisions addressing development of the individualized rehabilitation

plan, specifically the definitions of “individualized rehabilitation plan” at N.J.A.C. 10:37A-1.2 and 10:37B-1.2.

The phrase “negotiated with the consumer” is also used in proposed N.J.A.C. 10:37B-7.1(a). That section identifies the circumstances under which community support services may be terminated rather than development of the individualized rehabilitation plan. As set forth at N.J.A.C. 10:37B-4.1(b), as well as the Division of Medical Assistance and Health Services proposed rule at N.J.A.C. 10:79B-2.3(c), a consumer admitted to community support services receives the specific services identified in the consumer’s individualized rehabilitation plan. Thus, the phrase “services negotiated with the consumer” as used in this section means those services identified in the consumer’s individualized rehabilitation plan. Consequently, for the purposes of clarity, the Department is changing N.J.A.C. 10:37B-7.1(a) to delete the phrase “negotiated with a consumer” and replace it with “identified in the consumer’s individualized rehabilitation plan.”

Forms of the word “negotiate” also are in proposed N.J.A.C. 10:37A-6.3(c)1 and 10:37B-4.2(d)7 and 4.4(a)1, which address the provision of assistance and skill development training to the consumer regarding negotiations with landlords. The Department believes that use of “negotiate” is appropriate in those circumstances, because it involves the development of skills outside of the relationship between the consumer and the PA.

4. COMMENT: Bazelon Center and Disability Rights New Jersey recognized that N.J.A.C. 10:37B-3.2(a)4i indicates that use of WRAP® is not required, but suggested that the voluntary nature of WRAP® should be clarified throughout the rules.

RESPONSE: The Department believes that the voluntary nature of WRAP® is apparent in both N.J.A.C. 10:37A and 10:37B. In that regard, references to WRAP® at proposed N.J.A.C. 10:37A-5.2(b) and 10:37B-3.2(a)4i specifically indicate that a consumer may not have a WRAP®. Nonetheless, for the purposes of clarity and consistency, the Department is changing the provision regarding WRAP® at N.J.A.C. 10:37A-4.2(d)4i to include the same language used at N.J.A.C. 10:37B-3.2(a)4i indicating its voluntary nature.

5. COMMENT: Ocean Mental Health Services, Inc. commented that the regulations are too prescriptive and should set forth minimum standards and providers should be incentivized to exceed those standards.

RESPONSE: With respect to the rules at N.J.A.C. 10:37B, the requirements are dictated largely by the approved Medicaid State Plan Amendment for community support services. With respect to the rules at N.J.A.C. 10:37A, the Department seeks to harmonize the requirements regarding services with those at N.J.A.C. 10:37B and integrate the wellness and recovery philosophy. The Department notes that there has been a sea change from a medical model to the wellness and recovery model of treatment, as reflected by the work of President George W. Bush's New Freedom Commission and Governor Richard Codey's Mental Health Task Force. Furthermore,

the Department believes that these standards are required to insure high quality services.

6. COMMENT: NJAMHAA and Ocean Mental Health Services, Inc. expressed concern about the different units of time used to specify timeframes throughout the rules. For example, the rules sometimes refer to three months and at other times to 90 days. NJAMHAA suggested that timeframes should be expressed as the number of days to ensure clarity and compliance; however, Ocean Mental Health Services, Inc. suggests using three months rather than 90 days.

RESPONSE: The Department disagrees that it is inappropriate to use different units of time to express timeframes for different actions within the rules and, accordingly, declines to make the suggested changes.

7. COMMENT: Ocean Mental Health Services, Inc. noted the difficulty in commenting in the absence of concurrent publication of the proposed rates and opined that the rates will need to be extremely high to accommodate all of the regulations.

RESPONSE: The rates are outside of the scope of this rulemaking, which addresses licensing standards. The Department notes, however, that there has been a thorough, exhaustive, and transparent process over the course of several years to develop rates with the input of stakeholders.

8. COMMENT: Ocean Mental Health Services, Inc. expressed its belief that the results of the time study undertaken to evaluate the effect of the implementation of Community

Support Services on the fiscal integrity of provider agencies should have been considered prior to publication of the Community Support Services regulations.

RESPONSE: The purpose of the study referenced by the commenter is to assist in the development of rates and, as such, is outside the scope of this rulemaking.

9. COMMENT: Ocean Mental Health Services, Inc., requested that provider agencies be given at least one year to comply with the new regulations because of the extensive changes that will be required with respect to training manuals, policies and procedures, and electronic medical records.

RESPONSE: The Department disagrees. In anticipation of promulgation of the Community Support Services rules at N.J.A.C. 10:37B, the Division provided a series of trainings to providers over the past two years. Consequently, the providers, including supervisors and direct care staff, have been provided notice and guidance regarding probable requirements.

N.J.A.C. 10:37A Licensed Community Residences for Adults with Mental Illnesses

Subchapter 1. General Provisions

N.J.A.C. 10:37A-1.2 Definitions

10. COMMENT: NJAMHAA commented that the definition of "Level A+ Care" proposed in the rule amends the existing rule by requiring that services be available rather than provided to consumers at all times and asked for the definition of available.

RESPONSE: The amended definition of "Level A+ Care" in proposed N.J.A.C. 10:37A-1.2 requires that services be "available" rather than "provided" 24 hours per day. The

Department disagrees that the word “available” should be defined because it is clear within the context of this definition that available means that the service can be accessed by consumers who require it.

11. COMMENT: The Mental Health Coalition Workgroup commented that the terms “proxy directive” and “instruction directive,” which are included in the definition of “advance directive for mental health care” also must be defined.

RESPONSE: Upon further evaluation, the Department is changing the definitions of “advance directive for mental health care” at N.J.A.C. 10:37A-1.2 and 10:37B-1.2 upon adoption by deleting the second sentence, which states “An advance directive for mental health care may include a proxy directive, an instructive directive or both.” The Department believes inclusion of that statement in the definition of advance directive for mental health care in these rules is unnecessary because the statutory definition of the term in the New Jersey Advance Directives for Mental Health Care Act, which is cited in the definition of advance directive for mental health care at N.J.A.C. 10:37A-1.2 and 10:37B-1.2, makes clear that an advance directive for mental health care may include either or both. The Department also is changing the definition of “advance directive for mental health care” at N.J.A.C. 10:37B-1.2 upon adoption to change “or advance directive” to “or psychiatric advance directive” in the definition of advance directive for mental health care, which is consistent with the definition at N.J.A.C. 10:37A-1.2.

12. COMMENT: The Mental Health Coalition Workgroup commented that the reference to “PA” in the definition of “consumer service agreement” must be spelled out.

RESPONSE: The Department disagrees. The abbreviation “PA” is included in the definition of “provider agency” at N.J.A.C. 10:37A-1.2.

The Department notes that all consumers receiving services in supervised housing licensed under N.J.A.C. 10:37A and those receiving community support services under N.J.A.C.10:37B must have a consumer service agreement, as set forth at proposed N.J.A.C. 10:37A-4.2 and 10:37B-3.1, respectively. The definition section for community support services at proposed N.J.A.C. 10:37B-1.2 does not, however, include a definition of consumer service agreement. Although the Department believes that the requirements regarding a consumer service agreement at N.J.A.C. 10:37B-3.1 sufficiently suggest the meaning of the term, for the purposes of clarity and consistency, the Department is changing N.J.A.C. 10:37B-1.2 upon adoption to include the same definition of consumer service agreement as is included at N.J.A.C. 10:37A-1.2.

13. COMMENT: The Mental Health Coalition Workgroup commented that the terms “crisis contingency plan” and “advance directive for mental health care,” which are included in the definition of “crisis intervention” should be defined.

RESPONSE: Proposed N.J.A.C. 10:37A-1.2 includes a definition of “advance directive for mental health care.” With respect to “crisis contingency plan,” the Department disagrees that a definition is necessary because it is clear within the context of its use in the definition of “crisis intervention” that it means a plan of interventions and supports for a consumer to be provided in case of a crisis.

Subchapter 2. Policies and Procedures Manual

N.J.A.C. 10:37A-2.1 Written policies and procedures manual

N.J.A.C. 10:37A-2.1(b)

14. COMMENT: NJAMHAA asked how consumer and family involvement in the development of the policies and procedures manual should be documented in the policies and procedures manual and requested clarification on what exactly is expected.

RESPONSE: The PA has discretion regarding how it will document the involvement of consumers and family members in the development of the PA's policy and procedure manual.

N.J.A.C. 10:37A-2.2 Content of the manual

N.J.A.C. 10:37A-2.2(d)

15. COMMENT: The Department received several comments regarding N.J.A.C. 10:37A-2.2(d), which requires that the PA's policy and procedure manual include a section addressing confidentiality standards and identifies specific requirements regarding the participation of the consumer's family members. More specifically, NJAMHAA expressed concern that this subsection may not be in conformance with Health Insurance Portability and Accountability Act (HIPAA) and suggested less prescriptive policies.

The Mental Health Coalition Workgroup generally questioned why the detailed regulations regarding participation of family members are included in the section addressing the required contents of the PA's policy and procedure manual. In addition, it also expressed concern that allowing PA staff to infer consent may violate civil rights and existing Federal and State law and requested the following specific changes:

- Amend N.J.A.C. 10:37A-2.2(d)1 as follows: "To assure family participation in developing the assessments, rehabilitation plan, and revision **with the consumer's written permission** the PA shall seek the input of family members ..."
- Delete N.J.A.C. 10:37A-2.2(d)1ii3, which permits the PA staff to infer the consumer's consent under specified circumstances.

RESPONSE: Upon further review, the Department agrees that it is inappropriate to include the detailed provisions regarding the confidentiality rules governing the participation of family members at N.J.A.C. 10:37A-2.2(d). Instead, this subsection should require only that the PA's policy and procedure manual includes a section on confidentiality standards and procedures that are consistent with all applicable Federal and State laws, including, but not limited to, the Privacy Rule implementing the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, N.J.S.A. 30:4-24.3, and N.J.A.C. 10:37-6.79. The Department is changing N.J.A.C. 10:37A-2.2(d) accordingly upon adoption.

It is the responsibility of the PAs to develop and implement appropriate confidentiality standards and practices based on the applicable laws. The Department notes, however, that both the HIPAA Privacy Rule, 45 CFR 164.510(b), and N.J.A.C. 10:37-6.79(e) permit communication with family members without affirmative consent, as long as the consumer is provided with an opportunity to object and does not object. The PAs generally have the discretion, however, to develop policies and procedures that are more protective than the applicable confidentiality laws, as long as its policies

do not unnecessarily impede its ability to involve family members or otherwise share information for the benefit of the consumer.

N.J.A.C. 10:37A-2.2(e)

16. COMMENT: The Mental Health Coalition Workgroup commented that N.J.A.C. 10:37A-2.2(e), which requires the PA to include a section addressing consumer rights in its policies and procedures manual, should include information about Disability Rights New Jersey, JCAHO, etc.

RESPONSE: The Department disagrees that N.J.A.C. 10:37A-2.2(e) should include a requirement that the PA policies and procedures manual include information about organizations, such as Disability Rights New Jersey and the Joint Commission (formerly known as the Joint Commission on Accreditation of Health Care Organizations (JCAHO)). N.J.A.C. 10:37A Appendix A, which includes consumer rights regarding discharge and exclusion and must be provided to all consumers in a licensed supervised residence, includes a listing of numerous agencies, including Disability Rights New Jersey, that consumers can contact for assistance regarding rights.

N.J.A.C. 10:37A-2.2(f)

17. COMMENT: The Mental Health Coalition Workgroup requested that N.J.A.C. 10:37A-2.2(f), which requires the PA's policies and procedures manual to include a section on staff training requirements, include the requirement of documenting staff participation in training.

RESPONSE: The Department believes that the requested change is not necessary for the following reason. N.J.A.C. 10:37A-2.2(f) requires that the PA's policies and procedures manual include a section on staff training that is consistent with the training requirements set forth in proposed N.J.A.C. 10:37A-7. N.J.A.C. 10:37A-7.3(b) specifically addresses the documentation requirements.

Upon further review, the Department believes that the citations to the training requirements in proposed N.J.A.C. 10:37A-2.2(f) are overly broad and include provisions unrelated to training. Consequently, the Department is changing N.J.A.C. 10:37A-2.2(f) upon adoption to narrow those citations to include the provisions specific to training requirements, N.J.A.C. 10:37A-7.3 and 10:37D-2.14.

Subchapter 3. Consumer Admission Criteria

N.J.A.C. 10:37A-3.1 Consumer admission criteria

N.J.A.C. 10:37A-3.1(a)

18. COMMENT: NJAMHAA asked if the admission coordinator referenced in N.J.A.C. 10:37A-3.1(a) is a new staff position and whether one person is expected to perform this function for all of the agency's residential programs.

RESPONSE: Proposed N.J.A.C. 10:37A-3.1(a) adds the requirement that PAs submit to the Division the name of the individual staff member who shall serve as admissions coordinator. This does not need to be a new position, but at a minimum the PA must identify the staff member that will perform the responsibilities of the admissions coordinator. Additionally, the PA may have more than one admission coordinator depending upon how it is structured.

N.J.A.C. 10:37A-3.1(c)

19. COMMENT: The Mental Health Coalition Workgroup requested that the term "severe mental health needs," which is referenced in N.J.A.C. 10:37A-3.1(c) as conferring priority status for admission, be defined in N.J.A.C. 10:37A-1.2 and that such definition should conform the definition of "serious mental illness."

RESPONSE: Upon further review, the Department has determined that inclusion of "severe mental health needs" as a standard for priority admission at N.J.A.C. 10:37A-3.1(c) is duplicative of the priority requirements set forth at N.J.A.C. 10:37-5.2, which generally give first priority to consumers at high risk of hospitalization. Consequently, the Department is changing N.J.A.C. 10:37A-3.1(c) upon adoption by deleting the reference to "severe mental health needs." As set forth in the remaining proposed language at N.J.A.C. 10:37A-3.1(c), a PA's admission priorities will be guided by the PA's contract and the priority target populations set forth at N.J.A.C. 10:37-5.2. As a result of that change upon adoption, there is no need to include a definition of "severe mental health needs" in N.J.A.C. 10:37A-1.2.

N.J.A.C. 10:37A-3.1(d)

20. COMMENT: The Mental Health Coalition Workgroup and NJAMHAA expressed concern about the requirement that provider agencies notify the Division-designated entity of vacancies within one business day. NJAMHAA stated that the requirement will strain those agencies with several programs and types of beds and requested that the requirement be amended to require weekly notifications, as is the current practice with

some providers. The Mental Health Coalition Workgroup asked about cases where it is unclear if the consumer is actually to be discharged and stated that rushing to report vacancies could create false hope in new consumers and requested that the time frame for reporting vacancies be amended to three business days.

RESPONSE: The Department declines to make the requested change for the following reasons. First, it is critically important for vacancies to be reported promptly because of the large demand for these services. Second, the Division recently implemented a streamlined process for uniform electronic submissions of vacancies and, as a result, the Department does not believe that reporting vacancies within one business day places an undue burden on providers. Third, the Department does not believe there is a risk of "false hope" because N.J.A.C. 10:37A-3.1(d) requires PAs to report actual vacancies within one business day, not anticipated vacancies.

Subchapter 4. Consumer Services

21. COMMENT: The Mental Health Coalition Workgroup stated that brief visits should be added as part of consumer services to ensure or maximize successful discharge between the hospital and PA.

RESPONSE: Brief visits are governed by Division and hospital policy and are approved based on the hospital treatment team's assessment of clinical need. As such, they are beyond the scope of these rules.

N.J.A.C. 10:37A-4.1 Intake policies and procedures

22. COMMENT: The Mental Health Coalition Workgroup expressed concern that the provisions at N.J.A.C. 10:37A-4.1, which address intake policies and procedures, do not specifically address assignments vs. referrals and stated that providers should be able to accept or reject referrals based on valid issues.

RESPONSE: Per Division policy, State psychiatric hospitals refer only individuals who meet a PA's admission criteria and medical clearance policy, and only when a vacancy is pending or known to exist. Consequently, the Department's expectation is that PAs will honor the referral.

N.J.A.C. 10:37A-4.1(e)

23. COMMENT: The Mental Health Coalition Workgroup requested that the requirement that the "PA shall conduct the intake procedure for a referred consumer within five business days of a vacancy" be amended to state that the "PA shall conduct the intake procedure within five days of receipt of a complete referral package." The commenter explained that it is not uncommon for providers to receive incomplete information and they should not be required to act on incomplete information.

RESPONSE: The Department declines to make the suggested change. Proposed N.J.A.C. 10:37A-4.1(e), which applies to referrals from sources other than the State psychiatric hospitals, requires only that the PA conduct the intake procedure for a referral within five business days of a vacancy. Depending on the source of the referral, the intake procedure might require the PA to facilitate collection of information constituting a complete referral package, for example, if the referral comes from a family

member of the potential consumer. This provision does not require the PA to make a decision regarding admission based on incomplete information.

N.J.A.C. 10:37A-4.1(f)1

24. COMMENT: The Mental Health Coalition Workgroup expressed concern regarding the ability of State psychiatric hospital staff to make appropriate referrals of consumers to the PA without the consumer's expressed consent. The commenter believes that referrals should be made only with the consumer's express consent in recognition of the importance of consumer choice in the planning and referral process. The commenter requested that "appropriate" be defined.

RESPONSE: As set forth at proposed N.J.A.C. 10:37A-1.1, the scope and purpose of this chapter is to provide the standards governing licensed community residences for adults with mental illnesses. Consequently, prescribing the practices and procedures of the State psychiatric hospitals is beyond the scope of this rulemaking. The Department recognizes that proposed N.J.A.C. 10:37A-4.1(f) includes information regarding the role of the State hospitals with respect to referrals, but that information is provided for context only. The State hospitals' practices and procedures with respect to discharging consumers to community residences are governed by Division policy. The Department notes that its policy identifies factors hospitals shall consider in making referrals, including, but not limited to, the consumer's preferences.

N.J.A.C. 10:37A-4.1(f)3

25. COMMENT: The Mental Health Coalition Workgroup and NJAMHAA commented regarding the list of information provided by the State hospitals in the referral packet. The Mental Health Coalition Workgroup requested that the hospital referral form and response package should be the Division's new Individual Needs Discharge Assessment (INDA) to ensure a comprehensive discharge packet and that the items listed should be consistent with the content of the INDA. The Mental Health Coalition Workgroup also requested that the rule be changed to require that the assessments, evaluations, and reports to be included in the referral package from the hospitals must be current and that the PA should have the opportunity to insert updated information or make corrections. The commenter explained that referral packets frequently contain out-of-date psychiatric and psychological assessments, which hinders the provider's ability to accurately assess the consumer.

NJAMHAA expressed concern about the inclusion of requirements regarding the information to be provided by State psychiatric hospitals to the provider agencies licensed under these rules because the provider agencies have no control over the conduct of other entities. The commenter noted that providers report that they frequently receive incomplete reports from the hospitals and strongly recommended that steps be taken to ensure that the hospitals provide accurate and complete information to provider agencies.

RESPONSE: As noted in the Response to Comment 24, the State hospitals' practices and procedures are beyond the scope of this rulemaking. The Department notes, however, that the State hospitals are moving toward use of the INDA.

N.J.A.C. 10:37A-4.1(f)6

26. COMMENT: NJAMHAA expressed concern that the requirement that provider agencies inform State psychiatric hospital staff of the outcome of a referral within five business days of its receipt of the completed referral and response package is unrealistic and requested that the provision be amended to include a longer timeframe.

RESPONSE: The Department disagrees. The five-day timeframe is the result of discussions with the Statewide Residential Olmstead Committee, which included consumers, family members, providers, State psychiatric hospital staff, and Department staff. Moreover, the Department believes that an expedited process is needed to insure that consumers who no longer require inpatient hospitalization are discharged to the community in a timely manner.

N.J.A.C. 10:37A-4.2 Consumer service agreement

N.J.A.C. 10:37A-4.2(a)

27. COMMENT: The Mental Health Coalition Workgroup requested that the purpose of and mechanism for submitting a consumer service agreement to the Department be delineated.

RESPONSE: The Department disagrees that further explanation is required regarding the purpose of submitting the consumer service agreement to the Department for approval. As set forth in proposed N.J.A.C. 10:37A-4.2(a), the Department is reviewing the consumer service agreement form to insure that it meets the requirements set forth in N.J.A.C. 10:37A-4.2.

The Department agrees, however, that the rule should include the address for submission of the initial consumer service agreement and any subsequent revisions and is making that change upon adoption. In addition, the Department is recodifying the rule upon adoption by moving the requirement regarding approval of revisions at subsection (g) in the proposed rule to subsection (a), which includes the requirement regarding approval of the initial consumer service agreement. The Department believes these are closely related requirements appropriately addressed in the same subsection.

N.J.A.C. 10:37A-4.2(b)

28. COMMENT: The Mental Health Coalition Workgroup and NJAMHAA objected to the requirement that provider agency staff meet monthly with a consumer who refuses services to discuss the consumer's progress toward wellness and recovery goals and, as appropriate, alternatives for housing with or without services, but for different reasons. NJAMHAA is concerned that the consumer's refusal of services could lead to disruption in the home and negatively affect other consumers in the home and recommended that this requirement be applied only to supported housing programs. The Mental Health Coalition Workgroup objected to this provision based on its opinion that it is not respectful or therapeutic to require that PA staff visit a consumer refusing services on a monthly basis.

RESPONSE: It appears that NJAMHAA's concern relates primarily to allowing consumers who refuse services to remain in the supervised setting rather than to the meeting requirement set forth at N.J.A.C. 10:37A-4.2(b). In that regard, recodified and amended N.J.A.C. 10:37A-11.2(a)6 permits discharge of a consumer refusing services

under specific circumstances and is substantively identical to existing N.J.A.C. 10:37A-9.2(a)6. Further, as set forth in recodified N.J.A.C. 10:37A-11.4(b), a consumer may be removed immediately from the residence if the consumer's behavior presents a substantial, immediate threat to the physical safety of others or to the emotional health of other consumers in the residence. Consequently, the Department believes that the rules sufficiently address NJAMHAA's concern.

With respect to the Mental Health Coalition Workgroup's concern, the Department disagrees that it is disrespectful for PA staff to periodically meet with a consumer refusing services. Rather, this requirement insures that the consumer is provided with the opportunity to re-engage in services if the consumer is interested. Furthermore, the monthly visit requirement allows the PA to determine whether the consumer is decompensating and requires more services, including whether the consumer is a danger to self or others.

N.J.A.C. 10:37A-4.2(g)

29. COMMENT: NJAMHAA requested removal of the provision requiring prior approval of any changes to the consumer service agreement based on its concern that the requirement will delay provider agencies' processes in implementing continuous quality improvements.

RESPONSE: The Department declines to make the requested change because review and approval of changes to the consumer service agreement form is needed to ensure that it continues meets the requirements set forth at proposed N.J.A.C. 10:37A-4.2. The

value of that review with respect to quality assurance outweighs the short delay in the PA's use of the revised consumer service agreement.

N.J.A.C. 10:37A-4.5 Individualized rehabilitation plan

N.J.A.C. 10:37A-4.5(e)1

30. COMMENT: NJAMHAA requested clarification regarding the requirement in proposed N.J.A.C. 10:37A-4.5(e)1 that a physician or licensed practitioner authorized to recommend a course of treatment sign and date the individualized rehabilitation plan, specifically with regard to the meaning of "authorized to recommend a course of treatment." The commenter also requested a definition of the term "licensed practitioner." The commenter expressed concern that if this rule requires that a physician or clinically licensed Masters level clinician sign the individualized rehabilitation plan that would cause significant hardship to the provider agencies and delivery of services by limiting the type, and, therefore, the number of employees that can serve consumers.

RESPONSE: The Department disagrees that further clarification is required because it is clear that the individualized rehabilitation plan must be signed by a practitioner who is authorized to recommend a course of treatment within the scope of his or her license. The Department notes that the services provided under N.J.A.C. 10:37A-5.3 are rehabilitation services under the New Jersey State Medicaid Plan and this requirement is consistent with the definition of rehabilitation services in the Federal Medicaid regulations as "any medical or remedial services recommended by a physician or other licensed practitioner of the healing arts, within the scope of his practice under state law,

for maximum reduction of physical or mental disability and restoration of a beneficiary to his best possible functional level." 42 CFR 440.130(d). PAs that provide mental health services in general and services in a licensed community residence in particular should be aware of the scope of practice for licensed practitioners of the healing arts.

Subchapter 5. Clinical Record Documentation

N.J.A.C. 10:37A-5.3 Termination summary

31. COMMENT: The Mental Health Coalition Workgroup suggested the inclusion of a requirement that the PA inform consumers of their rights before termination in N.J.A.C. 10:37A-5.3, rather than including such notification as part of the discharge process as specified in N.J.A.C. 10:37A-11.3.

RESPONSE: The Department believes that the proposed change is unnecessary because the proposed rules at N.J.A.C. 10:37A-4.2(d)3 require the PA to advise consumers of their rights regarding discharge and exclusion from a supervised residence as part of the consumer service agreement, which is reviewed at the time of the consumer's admission. As part of that process, all consumers are provided with a copy of N.J.A.C. 10:37A Appendix A, which includes a description of consumer rights regarding discharge and exclusion from a supervised residence.

N.J.A.C. 10:37A-5.3(b)

32. COMMENT: The Mental Health Coalition Workgroup commented that in addition to the information listed at proposed N.J.A.C. 10:37A-5.3(b), the termination summary

should include a brief statement indicating whether the consumer was advised of his or her appeal rights and whether the consumer appealed the termination.

RESPONSE: As set forth at N.J.A.C. 10:37A-4.2(d)3, the signed consumer service agreement provides documentation that the consumer has been advised of and understands consumer rights and the complaint/ombuds procedures set forth at N.J.A.C. 10:37-4.6. Consequently, the Department does not believe it is necessary to document that the consumer has been so advised in the termination summary. The Department also does not believe it is necessary to require that PAs record whether or not the consumer has appealed the termination on the termination summary. The Department notes, however, that proposed N.J.A.C. 10:37A-5.3(b) identifies the required elements of the termination summary but does not preclude the inclusion of additional information if the PA so chooses.

Subchapter 6. Services

N.J.A.C. 10:37A-6.1 Purpose and goals

33. COMMENT: The Mental Health Coalition Workgroup noted the requirement that "PA staff shall offer a range of services and supports necessary to assist the consumer in achieving mental health rehabilitative and recovery goals as identified in the consumer's individualized rehabilitation plan" and expressed concern that the scope of services does not include maintenance of effort, particularly for consumers whose challenges are not suited to rehabilitation and recovery.

RESPONSE: The Department disagrees. Services provided by licensed community residences for adults with mental illness are intended for individuals with rehabilitation

needs. In that regard, the Department notes that the definitions of the levels of care in existing N.J.A.C. 10:37A-1.2 all refer to the provision of mental health rehabilitation services. Moreover, the emphasis on wellness and recovery is consistent with the current philosophy, brought to the fore by a robust consumer movement, of the belief in the possibility of recovery from mental illness and integration into the community of one's choice.

N.J.A.C. 10:37A-6.2 Services to be provided by the supervised housing program

N.J.A.C. 10:37A-6.2(a)

34. COMMENT: Ocean Mental Health Services, Inc. expressed concern regarding the added cost associated with the requirement that consumers have access to an on-call staff member to address a crisis and requested that the added cost be taken into consideration.

RESPONSE: The rules at N.J.A.C. 10:37A provide the standards for licensed community residences for adults with mental illness. They do not address funding of those services. Accordingly, the comment is beyond the scope of the proposed rules and no response is warranted. The Department notes, however, that the requirement has no impact on A+ level supervised residences, which have been and will continue to be required to have on-site awake staff 24/7. Moreover, based on past practice, most level A and B supervised residences have been providing on-call access to staff.

N.J.A.C. 10:37A-6.3 Other services

N.J.A.C. 10:37A-6.3(c)

35. COMMENT: The Mental Health Coalition Workgroup recommended that the regulations address the difference between the Supportive Housing Connection and delivery of housing services by the PA in areas such as housing search, landlord/neighbor relationships, and resolving landlord/tenant issues. The commenter stated that these are areas where the PA is effective and currently provides services, and requires clarification in order to avoid duplication.

The commenter further requested that the following current provisions should be retained because they describe critical services for consumers: N.J.A.C. 10:37A-4.3(c)1 – housing search; 4.3(c)3 – landlord/neighbor relationship; 4.3(c)5 – skill development training; 4.3(c)8 – employment; 4.3(c)13 – Social, recreational, leisure, and community involvement; and 4.3(c)14 – benefits/entitlements.

In addition, the commenter requested that the following be retained from existing N.J.A.C. 10:37A-4.3(c)7: "Consumer residents shall have access to an on-call staff 24 hours per day, seven days per week for times of stress and crisis."

RESPONSE: The services listed by the commenter in existing N.J.A.C. 10:37A-4.3(c) apply only to supportive housing programs, which generally are not within the ambit of the proposed amended rules at N.J.A.C. 10:37A (with the exception of specific provisions that apply to shared supportive housing units as set forth at proposed N.J.A.C. 10:37A-1.1(b) and (c)), and, therefore, have been removed. The Department notes, however, that the proposed Community Support Services rules at N.J.A.C. 10:37B, which apply to services provided in supportive housing environments, include the services identified by the commenter at proposed N.J.A.C. 10:37B-4.2(d). With respect to supervised housing programs governed by N.J.A.C. 10:37A, proposed to be

recodified at N.J.A.C. 10:37A-6.1, 6.2, and 6.3, the rules already include many of the services identified by the commenter that are applicable to supervised housing programs.

The Department notes that recodified and amended N.J.A.C. 10:37A-6.2(a) requires all supervised housing programs to have on-call staff available to consumers 24/7.

N.J.A.C. 10:37A-6.4 Medication

36. COMMENT: The Mental Health Coalition Workgroup questioned whether supportive housing residences governed under N.J.A.C. 10:37A also must meet the requirements of the proposed rules at N.J.A.C. 10:37B. If yes, then the commenter stated that there must be consistency between the regulations. As an example, the commenter noted that N.J.A.C. 10:37A-6.4(a) states "only (a)1 below is applicable to shared supportive housing residences," but the proposed regulations at N.J.A.C. 10:37B include the requirements at N.J.A.C. 10:37A-6.4(a),1, (b), (c), and (e).

In that regard, the commenter requested that the requirement specific to a level of care be more clearly defined by the opening section, for example there should be an introductory paragraph for N.J.A.C. 10:37A-6.4 stating that only item (a)1 below is applicable to shared supportive housing residences which is followed by subsections (a) through (e).

The commenter also stated, however, that N.J.A.C. 10:37A-6.4 should not apply to shared supportive housing where independent living requires that the consumer be able to self-administer, store, and retrieve medications.

The commenter requested that the reduced requirements applicable to supportive housing residences also apply to B level of care.

RESPONSE: Shared supportive housing providers are expected to provide community support services as set forth at N.J.A.C. 10:37B, including the medication provisions at N.J.A.C. 10:37B-4.3. As such, the Department agrees that the second sentence of N.J.A.C. 10:37A-6.4(a) is unnecessary and confusing. The statement that the subsection is applicable to supervised housing is superfluous because the entire chapter applies to supervised housing. Further, the proviso making N.J.A.C. 10:37A-6.4(a)1 applicable to shared supportive housing is redundant. Paragraph (a)1 defines self-administration, which is also included in the Community Support Services rule on medication at N.J.A.C. 10:37B-4.3(a)1.

Consequently, the Department is changing N.J.A.C. 10:37A-6.4(a) upon adoption by deleting the second sentence. In addition, for the purpose of consistency, the Department is changing N.J.A.C. 10:37A-1.1(c) upon adoption to remove the statement that shared supportive housing residence providers are required to comply with N.J.A.C. 10:37A-6.4 (as applicable).

N.J.A.C. 10:37A-6.4(a)3

37. COMMENT: The Mental Health Coalition Workgroup commented that the phrase "psychotropic or other controlled substances" is incorrect because psychotropic medications are not controlled substances and recommended replacing "other controlled substances" with "other prescribed substances."

RESPONSE: The provisions of proposed N.J.A.C. 10:37A-6.4(a)3 apply to psychotropic medications and controlled substances. Thus, it would not be appropriate to replace “controlled substance” with “prescribed medication.” The Department agrees, however, that the inclusion of “other” before “controlled substances” might suggest that all psychotropic medications are on the schedule of controlled substances in the Federal Controlled Substances Act, 42 U.S.C. § 802. Consequently, the Department is changing N.J.A.C. 10:37A-6.4(a)3 upon adoption by deleting “other.”

SUBCHAPTER 7. STAFF QUALIFICATIONS, RESPONSIBILITIES, AND TRAINING

N.J.A.C. 10:37A-7.2 Staffing credentials and responsibilities

N.J.A.C. 10:37A-7.2(a)

38. COMMENT: NJAMHAA commented that this provision appears to give the provider agencies discretion regarding the definition of appropriately licensed staff and the credentials required for specific job descriptions and that lack of detail is inconsistent with the prescriptiveness of other subchapters of the proposed rules. The commenter recommended the flexible approach be used throughout the regulations to allow providers to use their professional judgment in making staffing decisions.

RESPONSE: Unfortunately, the commenter does not identify the proposed rules that are more prescriptive than those at proposed N.J.A.C. 10:37A-7.2(a) and (b). To the extent that the commenter is referring to proposed N.J.A.C. 10:37B-5.2, which addresses staffing credentials and responsibilities for community support services, the

Department notes that those requirements are dictated by the approved Medicaid State Plan Amendment for Community Support Services.

N.J.A.C. 10:37A-7.2(b)

39. COMMENT: The Mental Health Coalition Workgroup stated that substance abuse testing of staff should be conducted only when probable cause exists and not on a routine basis and requested further clarification on who is responsible for paying for testing.

RESPONSE: Proposed N.J.A.C. 10:37A-7.2(b) requires only that the PA hire staff in compliance with any applicable law regarding criminal history background checks and substance use testing; it does not mandate random drug testing of all PA staff.

N.J.A.C. 10:37A-7.3 Staff training

N.J.A.C. 10:37A-7.3(e)

40. COMMENT: The Health and Safety Institute objected to the requirement that PA staff receive CPR and first aid training by a trainer certified by the American Heart Association or American Red Cross. The commenter stated that requiring certification by one of only two listed entities confers an unfair competitive advantage to those entities at the expense of other nationally recognized training organizations, such as the American Safety and Health Institute and MEDIC First Aid. The commenter also noted that the requirement is inconsistent with the Department's March 11, 2015, Information Bulletin on CPR and first aid training. The commenter suggested amending proposed N.J.A.C. 10:37A-7.3(e) as follows (deletions in brackets, additions in boldface):

A certificate of successful completion of a course in cardiopulmonary resuscitation (CPR) and first aid training, [issued by a trainer certified by the American Heart Association or the American Red Cross is required and must be renewed upon expiration.] **which meets current Emergency Cardiovascular Care (ECC) guidelines and includes assessment of skill competency by a certified instructor is required every two (2) years. On-line only certifications are not acceptable.**

RESPONSE: The Department agrees that the requirement that CPR training be provided only by instructors certified by the American Heart Association or the American Red Cross is too narrow. However, broadening the requirement is too substantive a change to be made upon adoption. Therefore, the Department will propose an amendment to broaden the requirement consistent with the commenter's request in future rulemaking.

N.J.A.C. 10:37A-7.3(f)

41. COMMENT: The Mental Health Coalition Workgroup and Ocean Mental Health Services, Inc. expressed concern about the timeframe for implementing the staff training requirements. The Mental Health Coalition specifically recommended that the training manual be completed within six months and that staff training take place within the following six months to allow the PAs more time to complete the requirements and accomplish training. Ocean Mental Health Services, Inc. acknowledged the need for new hires to receive extensive training prior to working independently, but stated that the training requirements set forth at proposed N.J.A.C. 10:37A-7.3(f) are unrealistic

and will result in a significant increase in expense to provider agencies. The commenter specifically suggested that there should be a minimum of 40 hours on-site training, CPR, first aid, suicide prevention, crisis intervention and medication training, and that other training should be done within six months and during that time period staff should be permitted to work independently under the supervision of senior staff but without direct on-site supervision.

RESPONSE: The Department declines to make the changes requested by the commenters. Although the requirement at proposed N.J.A.C. 10:37A-7.3(f) that all staff be trained within six months of hire is new, the other training requirements in proposed N.J.A.C. 10:37A-7.3 are not new. Existing N.J.A.C. 10:37A-3.1(a)4 requires that staff receive training as set forth in N.J.A.C. 10:77A. The list of required topics in the training curriculum listed at proposed N.J.A.C. 10:37A-7.3(d), which are referenced at proposed N.J.A.C. 10:37A-7.3(f), are substantively similar to the list of topics identified in the staff training rules at N.J.A.C. 10:77A-2.4(b). Given that the proposed new rules essentially contain the same core requirements regarding training that currently exist, the Department believes it is reasonable to expect that staff will be trained within six months. Moreover, the requirement that untrained staff provide services under supervision of on-site trained staff is not new; rather it is in the existing rules at N.J.A.C. 10:77A-2.4(d).

SUBCHAPTER 8. FACILITY

N.J.A.C. 10:37A-8.1 Physical plant requirements

42. COMMENT: The Mental Health Coalition Workgroup requested that the phrase “as appropriate” in the last sentence of proposed N.J.A.C. 10:37A-8.1 be replaced with “as required by the UCC.”

RESPONSE: The Department declines to make the suggested change. Proposed N.J.A.C. 10:37A-8.1 references both the New Jersey Uniform Construction Code (UCC) and the New Jersey Uniform Fire Code and requires compliance with both. However, not all supervised residences are required by the proposed rules to undergo a fire inspection by the municipal or State fire authority. Only a supervised residence in a single detached house is required to be inspected by the fire authority. By noting “as appropriate” in the rule, the rules provide clarification that the fire inspection certificate is not required for all residences.

N.J.A.C. 10:37A-8.8 Heating and cooling

N.J.A.C. 10:37A-8.8(f)

43. COMMENT: The Mental Health Coalition Workgroup commented that the Department should mandate a written cold emergency plan comparable to the mandated written heat emergency plan.

RESPONSE: The Department agrees with the commenter that it is appropriate to require PAs licensed under N.J.A.C. 10:37A to have a cold emergency plan, as well as a heat emergency plan. However, this would be a substantive change to the rule as proposed and, as such, cannot be made upon adoption. Therefore, the Department will propose this change in a future rulemaking.

N.J.A.C. 10:37A-8.9 Structural safety and maintenance

N.J.A.C. 10:37A-8.9(f)

44. COMMENT: The Mental Health Coalition Workgroup requested that the provision be amended as follows (deletions in brackets, additions in boldface): "each residence shall be free from chronic dampness [that is malodourous] in the living environment **with identification of mold conditions, should they exist.**"

RESPONSE: The Department proposed to recodify this section with a technical, grammatical amendment to subsection (f), consequently, the comment is beyond the scope of the rulemaking. The Department notes that other provisions generally address the concern raised by the commenter, for example: Recodified N.J.A.C. 10:37A-8.9(a) requires that the residence be kept clean and in good repair; recodified N.J.A.C. 10:37A-8.9(e) requires that the dwelling be free from defects that permit creation of damp conditions; recodified N.J.A.C. 10:37A-8.9(m) permits the Department to require a PA to address any stained or soiled ceilings or walls; recodified N.J.A.C. 10:37A-8.9(q) requires that residences be maintained in clean and sanitary condition; and recodified N.J.A.C. 10:37A-8.11(i) requires that the residence is maintained in a manner that ensures the health, safety, and welfare of the consumers.

N.J.A.C. 10:37A-8.9(m)

45. COMMENT: The Mental Health Coalition Workgroup stated that cleaning, painting, and repairing should be mandatory if the residence is deteriorating and requested that the phrase "The Department may require that the PA" be replaced with "The PA shall."

RESPONSE: The Department agrees that the PA must maintain the residence, as evidenced by the requirement at recodified N.J.A.C. 10:37A-8.9(a) that "[e]very foundation, floor, floor covering, wall, ceiling, door, window, roof, or other part of a residence shall be kept clean, in good repair and capable of the use intended by its design ..." as well as the requirement at recodified N.J.A.C. 10:37A-8.9(g) that "[e]very residence shall be free from rodents, vermin, and insects" and the requirement at recodified N.J.A.C. 10:37A-8.11(i) that the "PA shall maintain all residences that it owns, leases or contracts in a manner that ensures the health, safety and welfare of consumers." The Department disagrees, however, with the suggested amendment. Use of "may" in recodified N.J.A.C. 10:37A-8.9(m) simply gives the Department some discretion in determining how and to what extent it will require the PA to address the listed conditions; it does not vitiate the PA's affirmative obligation to maintain the residence as set forth in recodified N.J.A.C. 10:37A-8.1 through 8.17.

N.J.A.C. 10:37A-8.9(r)

46. COMMENT: The Mental Health Coalition Workgroup commented that is essential to maintain accessibility features for persons with disabilities and, in that vein, requested the following amendment (additions in boldface): "The PA shall maintain the PA owned, leased, or contracted premises**, including the premises' existing accessibility features for persons with disabilities,** to ensure compliance with all applicable laws and rules."

RESPONSE: The Department recognizes the importance of accessibility, but disagrees that the additional language is necessary to ensure that PAs comply with all applicable

laws and rules. The Department further notes that N.J.A.C. 10:37D-2.3(a)2, which applies to all licensed mental health programs, requires that services are accessible to persons with physical disabilities.

10:37A-8.11 Occupancy and use of space

N.J.A.C. 10:37A-8.11(a)

47. COMMENT: The Mental Health Coalition Workgroup commented that Federal and State law require additional square footage for consumers with mobility impairments and stated that the requirement should apply only to PA-owned homes and new development.

RESPONSE: The comment, particularly the reference to unnamed Federal and State laws, is too vague to allow the Department to provide a substantive response. The Department notes, however, that the minimum room sizes specified at proposed N.J.A.C. 10:37A-8.11(a) are not new requirements. Further, they provide the minimum size required by the Department. To the extent that there are laws applicable to the facility requiring larger rooms, the PA needs to comply with those laws.

N.J.A.C. 10:37A-8.11(d)

48. COMMENT: The Mental Health Coalition Workgroup requested that the term "adequate size" be defined.

RESPONSE: The Department disagrees that it is necessary or appropriate to specifically define the size of rooms used for purposes other than sleeping in these

rules. In addition, the Department notes that this is not a new requirement; rather it is the same language used in the existing rule at N.J.A.C. 10:37A-6.11(d).

N.J.A.C. 10:37A-8.13 Smoke and carbon monoxide detectors

N.J.A.C. 10:37A-8.13(a)4

49. COMMENT: The Mental Health Coalition Workgroup requested that the term "bedroom cluster" be defined.

RESPONSE: The Department agrees that the required location of smoke detectors outside of bedrooms would benefit from further clarification. However, rather than providing a definition of bedroom cluster, for the purpose of clarity and consistency with the provisions regarding carbon monoxide detectors at proposed N.J.A.C. 10:37A-8.13(d), the Department is changing N.J.A.C. 10:37A-8.13(a)4 upon adoption by deleting the reference to "bedroom cluster" and adding "within 10 feet of the door to each bedroom."

N.J.A.C. 10:37A-8.13(c)

50. COMMENT: The Mental Health Coalition Workgroup commented that person-first language should be used and specifically requested that the term "deaf or hearing impaired residents" be replaced with "residents who are deaf or have hearing impairments."

RESPONSE: The Department agrees that consistent with P.L. 2010, c. 50, these rules should use person first language and thanks the commenter for pointing out this oversight.

51. COMMENT: The Mental Health Coalition Workgroup requested that the provision for testing smoke detection systems at N.J.A.C. 10:37A-8.13(b) should be repeated with respect to carbon monoxide detectors at N.J.A.C. 10:37A-8.13(c).

RESPONSE: The Department appreciates the commenter's suggestion; however, this change would be a substantive change to the rule as proposed and as such, cannot be made upon adoption. The Department will propose the change in future rulemaking. The Department notes, however, that PAs must comply with applicable provisions of the New Jersey Uniform Construction Code and the New Jersey Uniform Fire Code, as stated in proposed N.J.A.C. 10:37A-8.1.

N.J.A.C. 10:37A-8.14 Fire drills

52. COMMENT: NJAMHAA commented that the requirement to develop and execute an evacuation plan for each consumer requiring more than three minutes to vacate the residence is unrealistic based on current staffing ratios, particularly during the overnight shift and/or if more than one consumer requires such a plan. The commenter requests that the requirement be amended to require the provider agency to develop one plan for all consumers requiring assistance.

RESPONSE: The Department declines to make the suggested change. Each consumer who needs assistance in evacuating in less than three minutes may have unique evacuation assistance needs that must be articulated in that consumer's evacuation plan. By developing one plan for all consumers who require assistance as

proposed by the commenter, these individualized needs may not be addressed in the plan.

SUBCHAPTER 11. EXCLUSION AND DISCHARGE FROM SUPERVISED RESIDENCES

N.J.A.C. 10:37A-11.2 Conditions permitting discharge from supervised residences

N.J.A.C. 10:37A-11.2(a)4

53. COMMENT: The Mental Health Coalition Workgroup commented that the PA should not determine on its own that "discharge would be in the consumer's best clinical interests," rather the consumer also should be consulted about clinical best interests.

RESPONSE: The Department agrees that the PA should consult with and involve the consumer with respect to clinical decisions, including the decision to discharge the consumer. That philosophy is infused throughout these rules, for example, the requirement that development of the comprehensive rehabilitation needs assessment be a consumer-driven process at proposed N.J.A.C. 10:37A-4.3 and the consumer's involvement in development, review, and revision of the individualized rehabilitation plan at proposed N.J.A.C. 10:37A-4.5(a). Moreover, N.J.A.C. 10:37A-11.3(b) generally requires the PA to discuss the factual and clinical basis for discharge with the consumer. As such, the Department disagrees that proposed revision is necessary.

N.J.A.C. 10:37A-11.2(a)6

54. COMMENT: The Mental Health Coalition Workgroup commented that in addition to a hospital, the following should not be considered an “alternative living arrangement” for a consumer: a shelter, motel, and boarding home. The commenter requested that those terms should be listed as “alternative living arrangements” that should not be considered for a consumer.

RESPONSE: Initially, the Department notes that it did not propose any amendment to this provision, which has been in place for decades, therefore, the comment is beyond the scope of this rulemaking. Although the Department appreciates the commenter’s request, the proposed change is too substantive to make on adoption. Consequently, the Department will consider making the change in future rulemaking.

N.J.A.C. 10:37A-11.3 Discharge procedures from supervised residences

N.J.A.C. 10:37A-11.3(b)

55. COMMENT: The Mental Health Coalition Workgroup commented that N.J.A.C. 10:37A-11.3(b) should specify the efforts that the PA must make to locate a consumer prior to discharge and clarify that those efforts are billable.

RESPONSE: The Department disagrees that it should mandate specific activities with respect to locating a consumer lost to contact. The Department notes, however, that it has developed and disseminated lost to contact guidelines to assist PAs in developing appropriate lost to contact policies and procedures. The Department further notes that PAs are required to include and update information regarding emergency contacts and the existence of any psychiatric advance directive or WRAP® in the consumer’s individualized rehabilitation plan pursuant to proposed N.J.A.C. 10:37A-4.3(a)4vii.

As set forth at proposed N.J.A.C. 10:37A-1.1, the purpose of this chapter is to provide the standards for licensed community residences for adults with mental illness. Consequently, the commenter's question regarding billing is beyond the scope of these rules. The Department notes, however, that it will be providing PAs with information and guidance regarding billing procedures and rates.

N.J.A.C. 10:37A-11.3(i)

56. COMMENT: The Mental Health Coalition Workgroup recommended amending the last sentence as follows (deletions in brackets; additions in boldface):

Any such discharge must be to an appropriate form of living arrangement[.] **when, if licensed, the license is in good standing.**

The commenter additionally recommended that N.J.A.C. 10:37A-11.3(i) specifically require that the Division and the PA collaborate to assist each consumer with accessing supportive services as part of an aftercare plan, within the agency or through an alternate agency.

RESPONSE: The Department disagrees that the requirement regarding discharge to an appropriate form of living arrangement requires further explanation. Further, the Department disagrees with the suggestion to amend N.J.A.C. 10:37A-11.3(i) to require that the PA assist each consumer discharged based on a review officer's approval with accessing supportive services. In that regard, the Department notes that recodified N.J.A.C. 10:37A-11.3(b)3 requires PA staff to develop a discharge plan and document efforts to obtain appropriate alternative living arrangements and appropriate alternate

services and that must be done before seeking review officer approval of a disputed discharge.

N.J.A.C. 10:37A-11.4 Miscellaneous provisions regarding the exclusion and discharge of consumers from supervised residences

57. COMMENT: The Mental Health Coalition Workgroup requested that the terms "exclusion" and "exclude" should be modified by the word "temporary" to further distinguish those terms from the term "discharge."

RESPONSE: The Department disagrees. "Exclusion" is defined at proposed N.J.A.C. 10:37A-1.2 as an "immediate and temporary removal[.]" As such, it would be redundant to modify the word "exclusion" with "temporary" at N.J.A.C. 10:37A-11.4.

N.J.A.C. 10:37A-11.4(b)

58. COMMENT: The Mental Health Coalition Workgroup commented that N.J.A.C. 10:37A-11.4(b), which addresses exclusion, should specify that any time a PA prevents the consumer's return overnight, the PA should comply with the procedures enumerated at N.J.A.C. 10:37A-11.4(b)1 and 2.

RESPONSE: The Department does not believe that the procedures at recodified N.J.A.C. 10:37A-11.4(b)1 and 2, which require approval of the PA's CEO and an administrative review of the exclusion, are necessary when the duration of the exclusion is less than 24 hours.

N.J.A.C. 10:37A-11.4(b)2

59. COMMENT: The Mental Health Coalition Workgroup requested that N.J.A.C. 10:37A-11.4(b)2 specify that the consumer should not be excluded from the residence while the reviewing officer is making his or her order.

RESPONSE: The Department disagrees. N.J.A.C. 10:37A-11.4(b)2 permits a PA to exclude a consumer from the residence only if the consumer's behavior presents a substantial and immediate threat to the safety or emotional or psychological well-being to others and requires review of that action only when the PA prevents the consumer's return for more than 24 hours. Thus, the consumer already has been excluded when the reviewing officer is considering the matter. The Department believes that exclusion prior to review is appropriate under these circumstances and prohibiting exclusion prior to the reviewing officer's order would place others at risk. The Department notes that N.J.A.C. 10:37A Appendix A provides consumers with notice that the PA may exclude them from the residence under such circumstances without prior review.

N.J.A.C. 10:37A-11.4(d)

60. COMMENT: The Mental Health Coalition Workgroup requested that N.J.A.C. 10:37A-11.4(d) be amended to require notice to the consumer prior to the PA disposing of the consumer's property.

RESPONSE: The Department agrees that is good practice for PAs to advise consumers that any property left at the residence will be discarded if not claimed within a specified period of time (of at least 30 days) post-discharge. The Department notes that the PAs have the discretion to include notice of such practice in the consumer agreement and/or provide such notice at discharge. The Department does not believe it

is necessary to add a requirement regarding notice at this time, but will consider adding it in future rulemaking.

SUBCHAPTER 12. LICENSING, SITE REVIEW, AND WAIVERS

N.J.A.C. 10:37A-12.3 Conditional licensure

61. COMMENT: The Mental Health Coalition Workgroup recommended that limits should be established regarding the number of incidents of non-compliance, deficiencies, etc. that a PA can incur before it is denied a conditional license.

RESPONSE: The Department disagrees with the recommendation. Denial of a conditional license is considered to be a revocation or non-renewal of the license, which is addressed in proposed N.J.A.C. 10:37A-12.12. Establishing limits regarding the number of incidents of non-compliance, deficiencies, etc. that result in revocation or non-renewal of the license is not appropriate because of the wide range of types of deficiencies and their seriousness. As such, the Department must retain discretionary decision-making in this regard.

10:37A-12.4 Licensing of supervised residences in single detached homes

N.J.A.C. 10:37A-12.4(g)

62. COMMENT: The Mental Health Coalition Workgroup stated that N.J.A.C. 10:37A-12.4(g) should require the licensee to display a copy of the license at all times in a designated, prominent space specified by the Department.

RESPONSE: The Department believes that proposed N.J.A.C. 10:37A-12.4(g), which is substantively identical to the existing regulation and requires that the original license be available on the agency's premises for review by the Department or any interested party during normal business hours, is sufficient. Moreover, the Department

believes that displaying documents detracts from a normalized living environment and, as a result, generally discourages provider agencies from posting anything in residences.

N.J.A.C. 10:37A-12.6 Licensing supervised residences in family care homes

63. COMMENT: The Mental Health Coalition Workgroup recommended that N.J.A.C. 10:37A-12.6(f) be amended as follows (additions in boldface):

A license should only be issued once intent **and capability** to comply with program requirements has been demonstrated.

RESPONSE: The Department disagrees that the suggested amendment is necessary because proposed N.J.A.C. 10:37A-12.6(f) already requires that there is reasonable assurance that the facility will be operated consistent with the rules.

N.J.A.C. 10:37A-12.8 Waiver of standards

64. COMMENT: The Mental Health Coalition Workgroup commented that N.J.A.C. 10:37A-12.8 should require notice to consumers of the residence when the PA requests a waiver of standards and that the Department solicit input regarding the requested waiver from the consumers.

RESPONSE: The Department disagrees because waivers are permitted at the discretion of the Department, in consultation with the Assistant Commissioner, only under the circumscribed conditions set forth at recodified N.J.A.C. 10:37A-12.8(b).

N.J.A.C. 10:37A-12.9 License renewal

N.J.A.C. 10:37A-12.9(a)

65. COMMENT: Ocean Mental Health Services, Inc. expressed its understanding that the licensing reviews would be changed from triennial reviews to

quadrennial reviews and questioned why this regulation maintains the triennial review requirement.

RESPONSE: The Department believes that triennial reviews are appropriate to ensure consumer safety and welfare.

N.J.A.C. 10:37A-12.9(c)

66. COMMENT: The Mental Health Coalition Workgroup requested that the term "deemed status" be defined.

RESPONSE: The Department believes that term "deemed status" generally is understood by mental health providers with respect to licensure. In that regard, the Department notes that the term is defined in N.J.A.C. 10:190, which provides the licensure standards for mental health programs other than those licensed under N.J.A.C. 10:37A. Moreover, the Department believes that the meaning of the term is implicit in the provisions at proposed N.J.A.C. 10:37A-12.9(c). Nonetheless, for the purpose of clarity, the Department will change N.J.A.C. 10:37A-1.2 to include the same definition of "deemed status" in N.J.A.C. 10:190-1.2.

N.J.A.C. 10:37A-12.10 Inspection and monitoring of residences

N.J.A.C. 10:37A-12.10(i)

67. COMMENT: The Mental Health Coalition Workgroup disagreed with the removal of a timeframe for the Department to notify the PA regarding whether it has approved a plan of correction. The commenter suggested that the 30-day time period should be retained or, in the alternative, replaced by "within a reasonable time frame such as 45 days."

RESPONSE: The Department disagrees that proposed N.J.A.C. 10:37A-12.10(i) should specify the timeframe for the Department to respond to the provider agency regarding a submitted plan of correction. The purpose of this chapter, as set forth at N.J.A.C. 10:37A-1.1, is to establish the standards for providers of licensed community residences for adults with mental illness. Although the chapter also contains licensure processes, the main purpose of the chapter is to set standards for provider agencies. The Department prefers to remain flexible in the timeframe for responding to providers regarding the plan of correction.

N.J.A.C. 10:37A-12.12 Administrative sanction for PA's failure to adequately address violations

N.J.A.C. 10:37A-12.12(c)

68. COMMENT: The Mental Health Coalition Workgroup commented that N.J.A.C. 10:37A-12.12(c) should specify that the Division, rather than the PA, is responsible for placement of consumers when the PA fails to adequately address violations.

RESPONSE: The Department disagrees that the Division should have sole responsibility for the placement of consumers when the license is not renewed or revoked because of the PA's failure to adequately address violations. Rather, the Department believes that N.J.A.C. 10:37A-12.12(c) appropriately makes the PA, under the supervision of the Division, responsible for placement of the consumers under that circumstance.

N.J.A.C. 10:37A Appendix A

69. COMMENT: The Mental Health Coalition Workgroup commented that the provisions of the consumer rights statement must be aligned with the changes made to the rules at N.J.A.C. 10:37A.

RESPONSE: The Department notes that it has proposed amendments to N.J.A.C. 10:37A Appendix A to align with the proposed changes to the chapter regarding discharge and exclusion and is uncertain what further changes the commenter seeks.

N.J.A.C. 10:37A Appendix A, Procedures for Discharge or Exclusion, Section B.2

70. COMMENT: The Mental Health Coalition Workgroup stated that the second bullet point, which states that the consumer must be offered the opportunity to bring a lawyer or another person to the meeting with the Division representative, should include sources for consumers to obtain free legal representation.

RESPONSE: The Department notes that N.J.A.C. 10:37A Appendix A includes a listing of organizations that can provide assistance regarding consumer rights that includes potential sources of free/reduced cost legal representation.

N.J.A.C. 10:37A Appendix A, Other Procedures

71. COMMENT: The Mental Health Coalition Workgroup commented that the three-day timeframe for the Division to meet with a consumer who has been excluded from a residence without prior Division review is too long.

RESPONSE: Although the Division strives to meet with the consumer in fewer than three days, it is not always possible to do so, particularly if the removal occurs on a Friday.

N.J.A.C. 10:37A Appendix A, (Where to call for help)

72. COMMENT: The Mental Health Coalition Workgroup requested that TDD numbers be included where available.

RESPONSE: The Department notes that N.J.A.C. 10:37A Appendix A does include TTY numbers where available.

N.J.A.C. 10:37A Appendix B

73. COMMENT: NJAMHAA stated that the three Supportive Housing Principles do not appear to apply to licensed residence programs. The commenter asked whether those principles are required policies and procedures or are guidelines to be used by provider agencies to assist consumers to achieve goals when they leave group homes. The commenter specifically is concerned with the sections relating to who has control of keys to the residences.

RESPONSE: The Department agrees that some of the specific principles set forth at N.J.A.C. 10:37A Appendix B are not applicable to supervised housing programs, as evidenced by the statement in proposed N.J.A.C. 10:37A-1.1(a) that services shall embody those principles "to the extent practicable." The Summary of proposed new N.J.A.C. 10:37A Appendix B similarly explains that the "proposed new appendix delineates the supportive housing principles that must inform the provision of all residential programs (supervised residences and shared supportive housing residences) to the extent practical, and the wellness and recovery principles that providers of all licensed residential programs (supervised residences and shared supportive housing residences) must follow."

74. COMMENT: NJAMHAA asked whether the guiding principle stating that housing is not conditioned on the consumer's acceptance of and/or participation in

treatment programming means that an individual can refuse any and all external services and remain eligible for Community Support Services, specifically the housing subsidy.

RESPONSE: The answer depends of the type of program licensed under N.J.A.C. 10:37A. With respect to supervised housing, as set forth at recodified N.J.A.C. 10:37A-11.2(6), consumers may be discharged from the residence based on refusal of appropriate services offered by the PA when the other conditions set forth therein are met and the procedures at recodified N.J.A.C. 10:37A-11.3 are followed. That principle applies, however, to shared supportive residences licensed under N.J.A.C. 10:37A. Consumers in shared supportive residences may be evicted from the residence only as permitted under landlord-tenant law.

CHAPTER 37B COMMUNITY SUPPORT SERVICES FOR ADULTS WITH SERIOUS MENTAL ILLNESSES

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C 10:37B-1 General Comments

75. COMMENT: The Mental Health Coalition Workgroup stated a general concern regarding the focus on consumer development at the potential expense of consumers requiring maintenance-focused services.

RESPONSE: The focus on consumer development is required by the approved Medicaid State Plan Amendment for community support services. As set forth in the State Plan Amendment, an individual must require active rehabilitation and support

services to achieve the restoration of functioning to be eligible for consumer support services.

N.J.A.C. 10:37B-1.2 Definitions

76. COMMENT: The Mental Health Coalition Workgroup stated that the terminology used in the definition section at proposed N.J.A.C. 10:37B-1.2 is not identical to other Division definitions.

RESPONSE: This comment is too broad and non-specific to allow the Department to provide a substantive response.

77. COMMENT: Bazelon Center and Disability Rights New Jersey expressed concern that the definitions of "community support services" and "eligible consumer" may suggest that consumers must meet a certain level of functioning before they can achieve community integration and suggested amending the definitions as follows (additions in bold; deletions in brackets):

> "Community Support Services" means mental health rehabilitation services and supports necessary to assist the consumer in achieving mental health rehabilitative and recovery goals in an individualized rehabilitation plan; including achieving and maintaining valued life roles in the social, employment, educational and housing domains; and assisting the consumer in restoring or developing his or her level of functioning to that which allows the consumer to [achieve] **maximize** community integration, and [to remain] **including by remaining** in an independent living setting of his or her own choosing.

"Eligible Consumer" means a person who meets the medical necessity standard for community support services by having severe mental health needs evidenced by:

1. Having a current diagnosis of a serious mental illness;
2. Requiring active rehabilitation and support services to achieve the restoration of functioning to [promote] **maximize** the achievement of community integration and valued life roles in the social, employment, educational, or housing domains;

   and
3. (No change)

RESPONSE: The Department declines to make the requested changes because they are not consistent with the definitions of community support services and eligible consumer in the approved State Plan Amendment for Community Support Services.

78. COMMENT: The Mental Health Coalition Workgroup requested that the definition of "individualized rehabilitation plan" should state that the document is "drafted together" with the consumer rather than "negotiated with" the consumer. Bazelon Center and Disability Rights New Jersey similarly requested that "negotiated with" be replaced with "developed with."

RESPONSE: This comment is substantively identical to comment 3 above and for the reasons set forth in the response to that comment, the Department agrees and is changing the definition of "individualized rehabilitation plan" upon adoption to replace "negotiated with the consumer" with "developed in partnership with the consumer."

79. COMMENT: Bazelon Center and Disability Rights New Jersey suggested the following additional revision of the definition of “individualized rehabilitation plan” to increase alignment with recovery and independence goals (additions in bold; deletions in brackets):

> “Individualized Rehabilitation Plan” means a document ... that sets forth goals and objectives that will lead to [successful living] **recovery and independence**; identifies internal and external resources [for facilitating] **to support** recovery **and independence**; ...”

RESPONSE: The Department agrees that the suggested revisions better reflect the guiding wellness and recovery principles for community support services and is changing the definitions of “individualized rehabilitation plan” at N.J.A.C. 10:37B-1.2 and 10:37A-1.2 upon adoption as suggested by the commenter.

80. COMMENT: NJAMHAA commented that the definition of a serious mental illness is vague because it states that a serious mental illness “shall include, but is not limited to, a diagnosis of, and a documented history of treatment or evaluation for the following” listed diagnoses. NJAMHAA questioned why a non-exclusive list of diagnoses is included in the definition and suggests further clarification.

NJAMHAA also questioned what will happen if a consumer receiving community support services has a change in diagnoses and no longer meets the medical necessity standard set forth in the definition of an eligible consumer at proposed N.J.A.C. 10:37B-1.2.

RESPONSE: The Department disagrees. Non-exclusive lists frequently are included in statutes and rules to provide examples of the types of items that fall within the definition.

A consumer must be discharged from community support services if the consumer no longer meets the eligibility criteria.

81. COMMENT: The Mental Health Coalition Workgroup, NJAMHAA, and Resources for Human Development, Inc. commented on the inclusion of DSM codes in the definition of serious mental illness. The Mental Health Coalition Workgroup stated that the definition should specifically reference the DSM 5 or ICD-10 diagnoses. Resources for Human Development, Inc. requested clarification regarding whether the listed codes are from the DSM IV or DSM 5. NJAMHAA requested that the codes be aligned with the DSM 5 and the ICD-10.

RESPONSE: The Department agrees that the inclusion of codes may cause confusion because on the ongoing process of transitioning from the DSM IV to DSM 5. As such, the Department is changing the definition of “serious mental illness” at N.J.A.C. 10:37B-1.2 upon adoption by deleting the DSM codes.

N.J.A.C. 10:37B-1.3 Wellness and recovery principles

82. COMMENT: Bazelon Center and Disability Rights New Jersey strongly supported the requirement that Community Support Services be provided consistent with the wellness and recovery principles listed in N.J.A.C. 10:37B-1.3.

RESPONSE: The Department appreciates the commenters’ support.

N.J.A.C. 10:37B-1.3(a)6

83. COMMENT: The Mental Health Coalition Workgroup commented that some consumers receiving supportive housing services have achieved their desired recovery and are either not interested in or do not require psychiatric rehabilitation services, but still desire ongoing support from provider agencies to maintain community integration. The commenter stated that these consumers must be respected and served in a way that is not tied to the Community Support Services model and/or there should be an expansion of the model to include general ongoing supports.

RESPONSE: The Department disagrees. Community support services are being offered as a new rehabilitation service in New Jersey as set forth in the Medicaid State Plan Amendment approved on June 8, 2011. The commenter's suggestion to expand community support services to include consumers who require maintenance rather than rehabilitative services and to include services directed at maintenance rather than recovery is contrary to the requirements of the State Plan Amendment.

N.J.A.C. 10:37B-1.3(a)9

84. COMMENT: The Mental Health Coalition Workgroup recommended that evidence-based "informed" services be required by the program, not an adherence to the fidelity model, which can be costly and require specialty and certified staff.

RESPONSE: The Department prefers that PAs deliver evidence-based services, but recognizes that there are circumstances where it is appropriate or necessary to use approaches that are not evidence-based. Consequently, proposed N.J.A.C. 10:37B-1.3(a)9 does not require that all services be evidence-based, but rather requires only that such services be included in the "full complement of intervention strategies." In a

similar vein, proposed N.J.A.C. 10:37B-4.6(b) states: "Services provided shall include, but not be limited to, evidence-based practices."

SUBCHAPTER 2. ACCESSING COMMUNITY SUPPORT SERVICES

N.J.A.C. 10:37B-2.1 Enrollment

85. COMMENT: Bazelon Center and Disability Rights New Jersey strongly supported the requirement that following referral by the Division or its designee to an appropriate provider agency that provider agency shall assess, plan, and provide services to the consumer if he or she chooses to accept services from that provider agency. The commenters believe that this requirement will promote compliance with *Olmstead* and the *CEPP* settlement.

REPONSE: The Department appreciates the commenters' support.

N.J.A.C. 10:37B-2.1(a)

86. COMMENT: NJAMHAA and Ocean Mental Health Services requested clarification on this proposed new rule. More specifically, NJAMHAA requested clarity regarding the designee and approved instrument for evaluating consumers. Ocean Mental Health Services requested that the Department more clearly define the designee that will evaluate consumers for eligibility and provide further information on the procedures for enrollment of eligible consumers for community support services.

RESPONSE: Determination of eligibility for and enrollment of eligible consumers in Community Support Services are the responsibility of the Division and not the provider agencies licensed under these rules. These are functions that occur prior to the Division, or its designee, referring eligible and enrolled individuals to geographically appropriate Community Support Services providers. In short, eligibility determination

and enrollment into Community Support Services are not functions performed by the provider agency licensed under N.J.A.C. 10:37B and, therefore, the Department does not believe further detail is warrant.

N.J.A.C. 10:37B-2.1(b)

87. COMMENT: The Mental Health Coalition Workgroup commented that the referral process should be better defined and specifically requested that referrals from non-Division sources of at-risk, current consumers who move or wish to change providers should be explained.

RESPONSE: As stated in proposed N.J.A.C. 10:37B-2.1(b), PAs provide Community Support Services to consumers who are referred by the Division. As such, if a consumer requests a different provider agency, that request must be routed through the Division. The Division will be providing further guidance to licensed Community Support Services providers regarding that process.

N.J.A.C. 10:37B-2.1(c)

88. COMMENT: The Mental Health Coalition Workgroup commented regarding the statement in proposed N.J.A.C. 10:37B-2.1(c) that the "PA shall assign a primary service coordinator for each enrolled and admitted consumer ..." in two respects. First, the commenter requested removal of the word "assign" because it contradicts the philosophy of consumer consent and choice. Second, the commenter noted use of the term "service coordinator" as opposed to "case manager" and requested that the terminology be applied consistently thereafter.

RESPONSE: The Department disagrees that use of "assign" conflicts with the philosophy of consumer choice. That is because the consumer is involved in the

process of identifying the PA before the assignment takes place pursuant to Division policy.

The Department agrees that terminology should be used consistently. However, the term “case manager” is not used in the proposed Community Support Services rules at all. Consequently, the Department is not sure of the change requested by the commenter.

N.J.A.C. 10:37B-2.1(d)

89. COMMENT: The Mental Health Coalition Workgroup, NJAMHAA and Ocean Mental Health Services expressed concern regarding the provision in proposed N.J.A.C. 10:37B-2.1(d) that the Division or its designee will authorize payment for services delivered to enrolled consumers by licensed Community Support Services providers upon approval of the preliminary or comprehensive individualized rehabilitation plan. In that regard, the Mental Health Coalition Workgroup commented that this could cause cash flow concerns for the PAs and suggested a more specific timeframe for payment or a grace period. Ocean Mental Health Services similarly requested that the regulation be amended to specify a timeframe for the Division to respond and provide that approval is automatic if no response is received within that time period. NJAMHAA asked how far in advance the provider agency should submit plans for approval and how long it will take for the Division or its designee to respond.

RESPONSE: As set forth at proposed N.J.A.C. 10:37B-2.4(a) and (b), the PA does not have primary responsibility for development and approval of the preliminary individualized rehabilitation plan. Although the PA might collaborate in the development of the preliminary individualized rehabilitation plan, primary responsibility for insuring its

development rests with the referring agency and/or the Division and the PA must provide the services set forth in the preliminary individualized rehabilitation program upon the consumer's admission. In short, the PA is authorized to provide the services set forth in the preliminary individualized rehabilitation plan upon the consumer's admission for the time period set forth in proposed N.J.A.C. 10:37B-2.4(a).

Further, prior authorization is not required for the first 60 days of Community Support Services provided by the PA pursuant to the Medicaid State Plan Amendment for Community Support Services and the Division of Medical Assistance and Health Services' proposed new rule at N.J.A.C. 10:79B-2.7(a). During that time period, the PAs are expected to develop the Comprehensive Rehabilitative Needs Assessment and the Individualized Rehabilitation Plan as set forth at proposed N.J.A.C. 10:37B-2.3(b) and 2.4(b).

Upon further review the Department has identified an inconsistency between the individualized rehabilitation plan requirements at N.J.A.C. 10:37B-2.4(a) and (b), which allow reliance on the preliminary individualized rehabilitation plan for 30 days and require the PA to develop and implement its individualized rehabilitation plan within 30 days after the consumer is admitted and proposed N.J.A.C. 10:79B-2.7(a), which, as noted above, permits delivery of services without pre-authorization based on the preliminary individualized rehabilitation plan for 60 days following admission Thus, for the purpose of consistency, the Department is changing N.J.A.C. 10:37B-2.4(a) upon adoption to replace 30 days with 60 days. The Department notes that this change does not increase the responsibilities of the PAs; on the contrary, it provides additional time for the PA to complete the individualized rehabilitation plan consistent with the State

Plan Amendment and N.J.A.C. 10:79B-2.7(a). Further, it will not cause the consumer to lose services because the PA can continue to provide the services in the preliminary individualized rehabilitation plan without prior authorization up to the 60th day following admission to consumer support services.

With respect to the time period required to receive prior authorization of services set forth in the individualized plan developed by the PA following the consumer's admission, the Department will provide the PAs with guidance on the prior authorization procedures.

N.J.A.C. 10:37B-2.2 Freedom of choice

90. COMMENT: Bazelon Center and Disability Rights New Jersey strongly supported the freedom of choice requirements, including the requirements that consumers be given the opportunity to select a primary service provider and to select staff within an agency or a different agency.

RESPONSE: The Department appreciates the commenter's support but needs to clarify that although the rule permits consumers freedom of choice to select a provider agency and to select staff within the provider agency, a consumer must select a single agency that will provide and coordinate community support services and cannot select staff from multiple community support services provider agencies.

91. COMMENT: The Mental Health Coalition Workgroup commented that the wording at N.J.A.C. 10:37B-2.2(d) is problematic because it seems to require that the consumer be allowed to pick his or her staff.

RESPONSE: The Department disagrees that the wording is problematic. Consumers must have the option of selecting different staff within an agency, or

selecting a different agency, pursuant to the State Plan Amendment for Consumer Support Services.

92. COMMENT: Ocean Mental Health Services objected to the requirement that consumers have the choice of staff to serve as their primary service provider/coordinator. It explained that although agencies make every effort to accommodate such requests, it is not always possible because of the consumer's treatment course, current caseloads, and staff availability/schedules.

RESPONSE: Freedom of choice is a general requirement for Medicaid services and the State Plan Amendment for Community Support Services specifically requires that consumers have the option of selecting different staff within the agency. Accordingly, the Department cannot remove this requirement.

93. COMMENT: Resources for Human Development, Inc., asked whether community support services may be split between two provider agencies if a consumer chooses staff in a different agency.

RESPONSE: As required by the State Plan Amendment for Community Support Services, consumers will select a single agency that will be the consumer's Community Support Services provider. Thus, if a consumer chooses staff in a different agency, then all Community Support Services will be provided by or through that agency.

N.J.A.C. 10:37B-2.3 Rehabilitation needs assessments

94. COMMENT: Bazelon Center and Disability Rights New Jersey strongly supported the requirement at N.J.A.C. 10:37B-2.3 that the development of the comprehensive rehabilitation needs assessment is a consumer-driven process informed by a face-to-face evaluation and discussion with the consumer.

RESPONSE: The Department appreciates the commenters' support.

N.J.A.C. 10:37B-2.3(b)

95. COMMENT: Bazelon Center and Disability Rights New Jersey noted that the timeframes for updating the comprehensive rehabilitation needs assessment in proposed N.J.A.C. 10:37B-2.3(b) are longer than the timeframes for updating the individualized rehabilitation plan set forth at proposed N.J.A.C. 10:37B-2.4(e)2 and suggest that N.J.A.C. 10:37B-2.3(b) be amended to require updates at the same frequency required in N.J.A.C. 10:37B-2.4(e)2, which is every three months, because the comprehensive rehabilitation needs assessment forms the basis of the individualized rehabilitation plan.

RESPONSE: The approved Medicaid State Plan Amendment for Community Support Services requires quarterly review of the individualized rehabilitation plan, but does not dictate the frequency of review and update of the comprehensive rehabilitation needs assessment. The Department believes that less frequent review and update of the comprehensive rehabilitation needs assessment, as set forth at proposed N.J.A.C. 10:37B-2.3(b), is appropriate and sufficient. In that regard, the Department notes that individualized rehabilitation plan review is based to a significant degree on progress toward goals and, in contrast, the comprehensive rehabilitation needs assessment includes significant historical information less susceptible to frequent change.

96. COMMENT: The Mental Health Coalition Workgroup commented that many of the required elements in the rehabilitation needs assessment will not change over time because they involve historical information, for example the consumer's psychiatric history, medication history, prior involvement with other agencies, etc. The commenter

stated that such elements should not have to be completed every six months and there should be an initial assessment and then an update.

RESPONSE: The Department agrees that much of the historical information recorded in the comprehensive rehabilitation needs assessment is not subject to change. Nonetheless, the Department believes that periodic review and update to assure accuracy of previously recorded information and to address the "new" history since the last comprehensive rehabilitation needs assessment was completed is appropriate. The Department further notes that after the first year, the written comprehensive rehabilitation needs assessment is completed on an annual rather than a biannual basis.

97. COMMENT: Resources for Human Development, Inc., asked whether the requirement to complete a comprehensive rehabilitation needs assessment for each consumer by the 14th day of admission and at specified intervals thereafter applies only to newly referred consumers or also to existing consumers.

RESPONSE: A comprehensive rehabilitation needs assessment is a requirement under the State Plan Amendment for Community Support Services and must be completed for all consumers. Therefore, provider agencies are expected to complete the comprehensive rehabilitation needs assessment for all newly referred patients consistent with the timeframe set forth in this rule; however, the Division will provide notice to provider agencies of a phased-in schedule for existing consumers.

N.J.A.C. 10:37B-2.3(c)

98. COMMENT: Bazelon Center and Disability Rights New Jersey suggested that N.J.A.C. 10:37B-2.3(c) be amended to clarify the requirement that the consumer participate in the periodic review/update of the comprehensive needs assessment.

RESPONSE: The Department declines to make the suggested change. Proposed N.J.A.C. 10:37B-2.3(b) requires PAs to complete a written comprehensive rehabilitation needs assessment by the 14th day after admission and at specified intervals thereafter. Proposed N.J.A.C. 10:37B-2.3(c) clearly states that the process for developing written comprehensive rehabilitation needs assessments is a consumer-driven process that involves discussion with the consumer and does not limit that requirement to development of first written comprehensive rehabilitation needs assessment. Consequently, clarification is not required.

N.J.A.C. 10:37B-2.3(d)

99. COMMENT: The Mental Health Coalition Workgroup expressed general concern about the number and types of information that must be included in the comprehensive rehabilitation needs assessment. The commenter specifically noted that proposed N.J.A.C. 10:37B-2.3(d)7 and 19 are similar and should be combined and that N.J.A.C. 10:37B-2.3(d)8 and 21 can be combined relative to advance directives.

RESPONSE: The Department agrees that N.J.A.C. 10:37B-2.3(d)7, which is the alcohol, tobacco, and drug use history, is duplicative of the information captured at N.J.A.C. 10:37B-2.3(d)19, which addresses current and past substance use. The Department also agrees that the information at N.J.A.C. 10:37B-2.3(d)21 regarding the existence of a mental health advance directive is captured by N.J.A.C. 10:37B-2.3(d)8. Accordingly, upon adoption the Department is deleting N.J.A.C. 10:37B-2.3(d)7 and 21.

In response to this comment, the Department also reviewed the list of required information in the comprehensive rehabilitation needs assessment in the Licensed Community Residences for Adults with Mental Illness rules at N.J.A.C. 10:37A-4.3(a)4. As a result of that review, the Department concluded that the information required under N.J.A.C. 10:37A-4.3(a)4vi is also captured under N.J.A.C. 10:37A-4.3(a)4xvii. Consequently, the Department is changing N.J.A.C. 10:37A-4.3(a)4 upon adoption by deleting N.J.A.C. 10:37A-4.3(a)4vi.

100. COMMENT: The Mental Health Coalition Workgroup commented that each PA already has an intake/assessment document that includes required elements from several governing bodies, such as the Division and the Joint Commission and that the required elements for a rehabilitation needs assessment listed at N.J.A.C. 10:37B-2.3 include items in the existing intake/assessment documents. The commenter suggests that forms should be merged to avoid duplication, or there should be a provision permitting a single, central universal document that reflects all aspects of the required assessment components.

RESPONSE: The Department notes that proposed N.J.A.C. 10:37B-2.3 does not preclude use of a single form, as long the single form includes all of the required elements set forth at N.J.A.C. 10:37B-2.3(d).

N.J.A.C. 10:37B-2.4 Individualized rehabilitation plan

101. COMMENT: Bazelon Center and Disability Rights New Jersey strongly supported the requirements in N.J.A.C. 10:37B-2.4 regarding development of the individualized rehabilitation plan.

RESPONSE: The Department appreciates the commenters' support.

N.J.A.C. 10:37B-2.4(c)

102. COMMENT: Bazelon Center and Disability Rights New Jersey suggested the following amendment to N.J.A.C. 10:37B-2.4 in order to clarify that all of the listed items should be used in the development of the individualized rehabilitation plan (deletion in brackets; addition in bold):

> At a minimum, each individualized rehabilitation plan shall be based upon the preliminary and comprehensive rehabilitation needs assessment and any other existing assessment, WRAP® [or] **and** advance directive for mental health care.

RESPONSE: The Department's intent is that the PA should use all existing assessments and plans (for example, WRAP®, advance directive for mental health care) when developing the individualized rehabilitation plan. However, the Department recognizes that use of the phrase "WRAP® or advance directive for mental health care" could suggest the two are mutually exclusive when, in fact, a consumer might have both. Consequently, the Department will make the requested change upon adoption for the purpose of clarifying that all existing assessments and plans should be used.

The Department notes that there is a substantively similar provision identifying information to be considered in development of the individualized rehabilitation plan at N.J.A.C. 10:37A-4.5(c), which also includes the phrase "WRAP® or advance directive for mental health care." The Department is also changing that rule upon adoption to clarify that a consumer might have both.

In reviewing N.J.A.C. 10:37B-2.4 in response to this comment, the Department noted that the first sentence of subsection (c) addresses the information considered

when developing the individualized rehabilitation plan, but the second sentence and following paragraphs address the required contents of the individualized rehabilitation plan. Because the second sentence of subsection (c) addresses a different requirement, the Department is recodifying N.J.A.C. 10:37B-2.4(c) upon adoption by recodifying the second sentence of subsection (c) as subsection (d).

103. COMMENT: The Mental Health Coalition Workgroup asked if the PA needs to duplicate information in the individualized rehabilitation plan that already is recorded in the agency's intake form.

RESPONSE: All of the information listed at proposed N.J.A.C. 10:37B-2.4(c) must be included in the individualized rehabilitation plan.

N.J.A.C. 10:37B-2.4(c)2ii

103. COMMENT: The Mental Health Coalition Workgroup commented that sometimes it is difficult to determine the location of delivery of community support services and that services may be delivered in a variety of locations. The commenter further stated that listing the location could be either too general to be meaningful or so specific that it would preclude delivery of services, except in very specific circumstances. As such, the commenter asked whether the location could be recorded in the progress notes rather than the individualized rehabilitation plan.

RESPONSE: The Department cannot make the requested change because the State Plan Amendment for Community Support Services requires that the location where the service is to be delivered be included in the individualized rehabilitation plan.

N.J.A.C. 10:37B-2.4(c)2iii

104. COMMENT: The Mental Health Coalition Workgroup questioned whether it is necessary to report the names and titles on the individualized rehabilitation plan every time a staff member changes.

RESPONSE: It is sufficient to update the name and title of the individual providing the service at the next periodic review of the individualized rehabilitation plan, as long as the type of practitioner to provide the service has not changed.

N.J.A.C. 10:37B-2.4(e)

105. COMMENT: NJAMHAA asked for guidelines for reviewing individualized rehabilitation plans for permanent housing consumers and those individuals who sign off on their services.

RESPONSE: As set forth at proposed N.J.A.C. 10:37B-2.4(e), the individualized rehabilitation plan must be reviewed on quarterly basis. In addition, the individualized rehabilitation plan shall be reviewed when requested by the consumer. Those reviews may result in revisions to the individualized rehabilitation plan. The Department is unsure what further guidance the commenter seeks with respect to the review process but notes that it generally would encompass review of the progress toward the identified rehabilitation and recovery goals and possible revisions to the plan with respect to the goals and strategies to reach those goals.

The Department also is unsure what further guidance the commenter seeks with respect to those individuals “who sign off on their services.” The requirements set forth in N.J.A.C. 10:37B-2.4(e) apply to documentation confirming that an individualized rehabilitation plan review occurred and the signatures required on that documentation and, as such, does not address requirements regarding signing of the individualized

rehabilitation plan. Proposed N.J.A.C. 10:37B-2.4(d) identifies the individuals who must sign the individualized rehabilitation plan. That rule is governed by the requirement in the State Plan Amendment for Community Support Services that each individualized rehabilitation plan be "authorized by a physician or licensed practitioner authorized by state law to recommend a course of treatment." For the purposes of clarity, the Department is changing N.J.A.C. 10:37B-2.4(d)1 upon adoption to use the same language used in the State Plan Amendment rather than the cross reference used in the proposed rule.

In addition, during its review of subsection (e), the Department noted that the cross-reference to subsection (c) in paragraph (e)3 should be subsection (d) and is making the change upon adoption

N.J.A.C. 10:37B-2.4(e)2

106. COMMENT: Bazelon Center and Disability Rights New Jersey suggest that N.J.A.C. 10:37B-2.4(e)2 be amended to clarify the requirement that the consumer participate in the periodic review/update of the individualized rehabilitation plan.

RESPONSE: The Department agrees that the provider agency must partner with the consumer during both the initial development and periodic review/updates of the individualized rehabilitation plan. In fact, the State Plan Amendment for Community Support Services requires that monitoring and updating of the individualized rehabilitation plan be done "in partnership with the client." Although the Department believes that requirement is evident in the definition of an individualized rehabilitation plan at proposed N.J.A.C. 10:37B-1.2, for the purpose of clarity, it is changing proposed

recodified subsection (e) upon adoption by adding new paragraph (e)3, specifically requiring that the consumer participate in the review.

107. COMMENT: The Mental Health Coalition Workgroup requested that the phrase “as necessary” be defined.

RESPONSE: The Department disagrees that the phrase “as necessary” should be defined as its meaning is clear within the context of proposed N.J.A.C. 10:37B-2.4(e)2, which states that “the PA shall review and, as necessary, revise the individualized rehabilitation plan ... “ Thus, the PA must revise the PA if the review indicates that an update or modification is required.

108. COMMENT: The Mental Health Coalition Workgroup requested that the PAs be permitted to review the individualized rehabilitation plan every six months after one year rather than every three months.

RESPONSE: The Department cannot make the requested change because the State Plan Amendment for Community Support Services requires that the individualized rehabilitation plan be reviewed quarterly.

SUBCHAPTER 3. CONSUMER SERVICE AGREEMENT

N.J.A.C. 10:37B-3.1 Standard consumer service agreement for all consumers

109. COMMENT: NJAMHAA questioned the purpose of requiring a consumer service agreement created by a provider agency if there are no safeguards or benefits for the provider agency. It further suggested that rather than a collection of individual documents created by provider agencies, the Division should create a standard consumer service agreement for Statewide use. The Mental Health Coalition

Workgroup similarly requested that the Division provide a standard form but allow the PA to request a waiver to use its own form.

RESPONSE: The purpose of the consumer service agreement is to emphasize the reciprocal relationship between the consumer and PA by clearly setting forth the roles, responsibilities, and rights of the consumer and PA. The Department disagrees that the consumer service agreement does not confer any benefits to the PA. On the contrary, the Department believes that the existence of the consumer service agreement will reduce the possibility of future misunderstandings and help resolve conflicts.

The Department believes that it has provided substantial guidance regarding the elements of the consumer service agreement at N.J.A.C. 10:37B-3.2 and that it is reasonable to expect licensed CSS providers to develop their own consumer service agreement based on that information.

N.J.A.C. 10:37B-3.1(a)

110. COMMENT: Resources for Human Development, Inc., asked for clarification regarding the recipient of the standard consumer agreement template, for example, should it be sent to the Division of Mental Health and Addiction Services Program Analyst, the Office of Licensing?

RESPONSE: The Department agrees and is changing N.J.A.C. 10:37B-3.1(a) upon adoption to include the address for submission of the consumer service agreement.

In addition, for the purpose of clarity, the Department is reorganizing the rule as follows upon adoption. First, it is moving the requirement regarding approval of

revisions at subsection (c) to subsection (a), which includes the requirement regarding approval of the initial consumer service agreement. The Department believes these are closely related provisions because both require Departmental approval of the consumer service agreement form used by the PAs and, consequently, appropriately are addressed in the same subsection. Second, the Department is relocating the last sentence of subsection (a) as new subsection (b) and is recodifying the following subsections accordingly because that sentence addresses the separate requirement that each consumer review and sign a consumer service agreement upon admission.

N.J.A.C. 10:37B-3.1(b)

111. COMMENT: The Mental Health Coalition Workgroup requested that proposed N.J.A.C. 10:37B-3.1(b) specifically state that the consumer service agreement should be written in the consumer's native language and in a format accessible relative to the consumer's disability.

RESPONSE: The Department agrees that the consumer service agreement should be understandable to the consumer, but believes that the requirement in proposed N.J.A.C. 10:37B-3.1(b) that the "agreement shall be written in a language sufficiently understood by the consumer to assure compliance" is sufficient to achieve that purpose.

N.J.A.C. 10:37B-3.1(c)

112. COMMENT: The Mental Health Coalition Workgroup requested that proposed N.J.A.C. 10:37B-3.1(c) be amended to require that the PA also must obtain the written approval of the consumer before making any changes to a consumer service agreement.

RESPONSE: Proposed N.J.A.C. 10:37B-3.1(c) requires Division review and approval of proposed changes to the standard consumer service document used by the provider agency. The Department disagrees that it is appropriate to also obtain consumer approval of such changes to the standard agreement. Proposed N.J.A.C. 10:37B-3.3 addresses the role of the consumer with respect to the consumer's specific consumer service agreement.

N.J.A.C. 10:37B-3.2 Provisions required in a consumer service agreement

N.J.A.C. 10:37B-3.2(a)4

113. COMMENT: Several commenters expressed concern about the requirement that the consumer service agreement state that the PA will ensure that the consumer is afforded the opportunity to interact with others, spend his or her own money, and see visitors each day.

More specifically, the Mental Health Coalition Workgroup commented that those rights are more applicable in an institutional setting and, in contrast, the rights of adults in supportive housing settings to spend their own money and have guests should not be regulated.

Bazelon Center and Disability Rights New Jersey similarly commented that use of the phrase "[s]ee visitors each day" is suggestive of an institutional setting and recommended replacing it with "[b]e afforded suitable opportunities to interact with other people of one's choice, including people without disabilities." Nora Barrett also commented that this requirement is not necessary in the CSS regulations because consumers receiving CSS services live in their own residences. She believes that the

requirement in proposed new N.J.A.C. 10:37B-3.2(a)4ii that consumers be "afforded suitable opportunities for interactions with others" is sufficient.

RESPONSE: The Department agrees that the requirement that PAs afford the consumer the opportunity to spend his or her own money and have visitors is not necessary for non-residential service providers, including Community Support Services providers. In a similar vein, it also is not necessary for the non-residential service provider to ensure that the consumer is afforded the opportunity practice religion or abstain from religious practices or be afforded suitable opportunities for interactions with others. In that regard, the section on client rights in the Community Mental Health Act rules at N.J.A.C. 10:37-4.5(h)7 requires only residential programs to provide consumers with those rights. Consequently, the Department is changing N.J.A.C. 10:37B-3.2(a)4 to delete subparagraphs (a)4ii through v upon adoption. The Department notes, however, that although the PA is not responsible for ensuring those opportunities for consumers as a right, skill development training with respect to social functioning and money management are among the Community Support Services that must be provided by the PA when included in the consumer's individualized rehabilitation plan.

N.J.A.C. 10:37B-3.2(a)4iii

114. COMMENT: Ocean Mental Health Services requested that the requirement that the consumer be afforded the opportunity to spend his or her own money for expenses and purchases set forth in the consumer service agreement be amended to include "except in the circumstances that the agency is the representative payee for the consumer." The commenter states that representative payees make financial decisions for persons deemed unable to make their own financial decisions and, therefore, the

proposed regulation could conflict with an agency's responsibilities as a representative payee under Federal law. The commenter notes, however, that when it serves as representative payee it affords the consumer the opportunity to spend money that remains after their basic needs are met.

RESPONSE: As described in the Response to Comment 113, the Department is deleting the requirement that the consumer service agreement specifically state that the PA shall ensure that the consumer is afforded the opportunity to spend his or her own money because that requirement is not applicable or necessary when the consumer is living independently.

The Department notes, however, that if a provider agency is appointed as a consumer's representative payee by the Social Security Administration, that appointment only gives the provider the authority to manage the consumer's Social Security benefits as set forth under Federal law. Contrary to the commenter's suggestion, appointment as a representative payee does not give the payee authority to manage all of the person's finances; rather it is strictly limited to management of Social Security benefits.

N.J.A.C. 10:37B-3.2(b)

115. COMMENT: Bazelon Center and Disability Rights New Jersey strongly supported the requirement that consumers in Division-subsidized housing have the right to refuse services subject to a monthly wellness check.

RESPONSE: The Department appreciates the commenters' support.

116. COMMENT: NJAMHAA contended that the provision is contradictory because it suggests a consumer can reject community support services but that a

rejection will not have any effect of eviction from a residence. The commenter questions why a provider agency would take on such a risk and suggested that refusal of community support services should negate the need for the involvement of a licensed community support services provider agency and under that circumstance the subsidy should simply be "managed" by Supportive Housing Connection.

RESPONSE: The Department disagrees that the provision is contradictory. Community Support Services are distinct from an individual's living arrangement and the licensed community support services PA is not responsible for managing any subsidy that the consumer receives.

N.J.A.C. 10:37B-3.2(b)2

117. COMMENT: The Mental Health Coalition Workgroup stated that consistent with the supportive housing model, consumers who refuse treatment should not be required to admit the PA to discuss progress toward wellness and recovery. Accordingly, the commenter requests that this section should be eliminated or reworded to respect a consumer's right to refuse treatment and the voluntary nature of community support services.

RESPONSE: The Department disagrees that it is disrespectful for PA staff to periodically meet with a consumer refusing services. Rather, this requirement insures that the consumer is provided with the opportunity to re-engage in services if the consumer is interested. Furthermore, the monthly visit requirement allows the PA to determine whether the consumer is decompensating and requires more services, including whether the consumer is a danger to self or others.

N.J.A.C. 10:37B-3.3 Procedures for review and access to the consumer services agreement

N.J.A.C. 10:37B-3.3(b)

118. COMMENT: The Mental Health Coalition Workgroup stated that in keeping with consumer autonomy, the requirement that, if applicable, a copy of the DMHAS rental subsidy agreement be attached to the consumer services agreement should be removed. The commenter further requested that if the requirement is maintained, then "if applicable" should be defined.

RESPONSE: The Department disagrees that the requirement to attach a copy of the consumer's DMHAS rental subsidy agreement to the consumer services agreement impinges on the autonomy of the consumer. Further, the Department believes that it is clear that "if applicable" means if there is a DMHAS rental subsidy agreement.

SUBCHAPTER 4. SERVICES

N.J.A.C. 10:37B-4

119. COMMENT: Bazelon Center and Disability Rights New Jersey opined that the services described in Subchapter 4 are important and useful and are encouraged by the Department's focus on independence and recovery in the descriptions of those services.

RESPONSE: The Department agrees with this comment and appreciates the commenters' support.

N.J.A.C. 10:37B-4.2 Skills development training

N.J.A.C. 10:37B-4.2(d)10

120. COMMENT: Bazelon Center and Disability Rights New Jersey urged that Subchapter 4 be revised to include greater focus on integrated, competitive employment. More specifically, the commenters noted that the last item under the description of "therapeutic skills development training" at N.J.A.C. 10:37B-4.2(d)10 includes "employment ... readiness activities" and "preparing the recipient to be employable," but does not mention integrated, competitive employment.

RESPONSE: The Department declines to change the proposed rule describing skill development training in work readiness activities, which is consistent with the description of services in the State Plan Amendment for Community Support Services. In that regard, the Department notes that the State Plan Amendment for Community Support Services specifically excludes training in skills related to a specific vocation. Nonetheless, the general work readiness skills described in proposed N.J.A.C. 10:37B-4.2(d)10 are skills necessary to obtain and retain competitive employment.

N.J.A.C. 10:37B-4.3 Medication

121. COMMENT: The Department received two comments regarding the administration of medication. NJAMHAA requested the addition of provisions for administering medications to consumers because many consumers are not able to self-administer medication. The Mental Health Coalition Workgroup commented that the section on medication is geared to licensed residential settings rather than to community support services, which are for consumers living independently with supports. The commenter interpreted proposed N.J.A.C. 10:37B-4.3(b) and (c) as requiring PA staff to supervise and administer medication and document medication supervision as is done in a licensed residential program and explained that unless a

medical practitioner, for example a L.P.N., is available, the term “administer” should not be used. Non-medical personnel are not permitted to administer medication.

RESPONSE: The Department expects that most consumers receiving community support services will be able to self-administer medication, either independently or with verbal guidance. The Department also recognizes that some licensed CSS providers may not have appropriately qualified staff available to administer medication. Consequently, in the unusual cases where a consumer cannot self-administer medication and the PA does not have qualified staff to administer medication, the Department expects that the PA will arrange for a qualified professional to administer medication, for example through a visiting nurse service or, with the consumer’s agreement, assist with arranging for family members to administer medication as set forth at proposed N.J.A.C. 10:37B-4.4(a)22iii. The Department will consider revising this section in future rulemaking to further clarify its expectations, if it becomes apparent that further clarity is necessary.

N.J.A.C. 10:37B-4.3(b)

122. COMMENT: The Mental Health Coalition Workgroup commented that the phrase “psychotropic or other controlled substances” is incorrect because psychotropic medications are not controlled substances and recommended replacing “other controlled substances” with “other prescribed substances.”

RESPONSE: This comment is substantively similar to comment 37, regarding N.J.A.C. 10:37A-6.4(a)3. For the reasons set forth in the Response to Comment 37, the Department is changing N.J.A.C. 10:37B-4.3(b) upon adoption by deleting “other.” The

Department notes that the same terminology is used in proposed N.J.A.C. 10:37B-2.4(c)4 and, consequently, it also will delete “other” in that paragraph upon adoption.

N.J.A.C. 10:37B-4.3(d)

123. COMMENT: The Mental Health Coalition Workgroup opposed the requirement that the consumer’s clinical record include a list of all prescribed medications at proposed N.J.A.C. 10:37B-4.3(d). The commenter stated that not all consumers want staff to know this information or need supervision with regard to self-administered medication. The commenter opined that consumers requiring supervision of medication administration would be better served in a supervised community residence rather than through community support services. The commenter added that medication monitoring is not permissible for case management staff and not all agencies employ staff with the credentials required for monitoring. Accordingly, the commenter recommended that proposed N.J.A.C. 10:37B-4.3 be clarified or removed.

RESPONSE: The Department disagrees with the commenter’s suggestion that a need for assistance with medication management by itself justifies receipt of supervised housing services rather than CSS services. In fact, medication management is among the illness management and recovery training and support services listed in the State Plan Amendment for Community Support Services. The Department agrees, however, that this subsection should be changed to clarify that the requirement to record information on prescribed medications applies only when the consumer’s individualized rehabilitation plan includes medication management services. Consequently, the Department is changing N.J.A.C. 10:37B-4.3(d) upon adoption to clarify that a list of

prescribed medications must be kept only to the extent required by the consumer's individualized rehabilitation plan.

N.J.A.C. 10:37B-4.4 Other services

124. COMMENT: Ocean Mental Health Services noted that some of the services listed in this regulation, specifically housing assistance, transportation, and establishing relationships with landlords are not billable under Community Support Services and requests that be considered when establishing rates.

RESPONSE: As stated at proposed N.J.A.C. 10:37B-1.1, the purpose of N.J.A.C. 10:37B is to provide the program standards for licensed providers of community support services. Consequently, the commenter's question regarding rates is beyond the scope of this rulemaking. The Department notes, however, that there has been a thorough, exhaustive, and transparent process over the course of several years to develop rates with the input of stakeholders.

N.J.A.C. 10:37B-4.4(a)

125. COMMENT: Ocean Mental Health Services requested that the Division consider additional funding to cover the requirement that provider agencies have an on-call staff member available to consumers in stress and/or crisis 24 hours a day, seven days a week.

RESPONSE: The proposed new rules at N.J.A.C. 10:37B provide the licensure standards for Community Support Services. They do not address funding of those services. Accordingly, the comment is beyond the scope of the proposed rules and no response is warranted. The Department notes, however, that this is not a new

requirement for supportive housing programs, but rather exists in the current rule applicable to supportive housing set forth at N.J.A.C. 10:37A-4.3(c)7.

In reviewing this comment, the Department noted that the second sentence in subsection (a) should be a separate subsection. Accordingly, the Department is making the second sentence a separate subsection upon adoption.

The Department notes that a consumer receives only those services identified in the consumer's individualized rehabilitation plan, as set forth at proposed N.J.A.C. 10:37B-4.1(b) and 4.6(a). Consequently, for the purpose of clarity, upon adoption the Department is changing recodified N.J.A.C. 10:37B-4.4 to reiterate that the listed services are provided to consumers only when identified in the consumer's individualized rehabilitation plan.

N.J.A.C. 10:37B-4.4(a)1

126. COMMENT: The Mental Health Coalition Workgroup requested that proposed N.J.A.C. 10:37B-4.4(a)1, which addresses housing search assistance, specify the difference in functioning between the Supportive Housing Connection and the PA. The commenter recommended that the PA be able to serve consumers in all areas specified.

RESPONSE: The Supportive Housing Connection administers Department housing subsidies. The PA is responsible for the delivery of Community Support Services to admitted consumers, regardless of whether or not the consumer is receiving a subsidy.

N.J.A.C. 10:37B-4.4(a)15

127. COMMENT: The Mental Health Coalition Workgroup questioned the inclusion of assisting the "consumer to save for bicycles or other low-cost methods of transportation" in the list of other services, to be offered by the PA, noting that it seemed unnecessary to provide regulatory oversight for saving for a bicycle. The commenter recommended replacing that language with "educating consumers on low-cost methods of transportation."

RESPONSE: The Department disagrees that proposed N.J.A.C. 10:37B-4.4(a)15 has the effect of regulating saving for a bicycle; rather, it is an example of the type of service the PA could provide to assist the consumer with identifying and accessing low-cost methods of transportation. Nonetheless, the Department is changing paragraph (b)15 upon adoption to clarify that saving for a bicycle is an example of assistance provided to consumers with respect to identifying and accessing low-cost transportation.

N.J.A.C. 10:37B-4.4(a)16

128. COMMENT: The Mental Health Coalition Workgroup recommended that transportation services be provided "in accordance with the rehabilitation plan and needs assessment," instead of for appointments, shopping, and education courses.

RESPONSE: As set forth at N.J.A.C. 10:37B-4.1(b) and 4.6(b), all services are to be provided in accordance with the individualized rehabilitation plan, which, in turn, is based on the comprehensive needs assessment. Further, as noted in the Response to Comment 125, the Department is changing N.J.A.C. 10:37B-4.4 to clarify that the services listed in that section are provided only when they are identified in the consumer's individualized rehabilitation plan.

129. COMMENT: Resources for Human Development, Inc. asked if a provider agency can bill for transportation services it provides to consumers if no other transportation service is available.

RESPONSE: As stated at proposed N.J.A.C. 10:37B-1.1, the purpose of N.J.A.C. 10:37B is to provide the program standards for licensed providers of community support services. Consequently, the commenter's question regarding billing is beyond the scope of this rulemaking. The Department notes, however, that there has been a thorough, exhaustive, and transparent process over the course of several years to develop rates with the input of stakeholders.

N.J.A.C. 10:37B-4.4(a)17

130. COMMENT: The Mental Health Coalition Workgroup recommended replacing "church members" with "interfaith community" in the list of examples of non-professional community supports in proposed N.J.A.C. 10:37B-4.4(a)17.

RESPONSE: The Department agrees that more inclusive terminology is appropriate. Consequently, the Department is changing recodified paragraph (b)17 upon adoption by replacing "church members" with "clergy or members of religious institutions."

N.J.A.C. 10:37B-4.4(a)22i

131. COMMENT: The Mental Health Coalition Workgroup objected to the requirement that PA staff provide education about medication effectiveness, side-effects, and safety in order for consumers to make informed decisions about medication. The commenter stated that not all supportive housing programs have medical professionals on staff available to every consumer and other credentialed

providers are not qualified to advise consumers regarding medication effectiveness and safety.

RESPONSE: The Department disagrees that medical staff are required to provide the service described at N.J.A.C. 10:37B-4.4(a)22, which addresses medication assistance and requires PAs to provide the consumer with "pertinent information regarding effectiveness, medication, and safety." That could involve reviewing medication labels and inserts with the consumer and/or assisting consumers to contact the prescribing professional or pharmacist with any questions.

N.J.A.C. 10:37B-4.4(a)22iii

132. COMMENT: The Mental Health Coalition Workgroup commented that proposed N.J.A.C. 10:37B-4.4(a)22iii, which addresses the participation of family members in consumer medication efforts, should specifically state that family should be involved only if wanted by the consumer.

RESPONSE: The Department disagrees with the suggested revision. Proposed N.J.A.C. 10:37B-4.4(a)22iii states that "family members shall be invited to participate in consumer medication efforts where appropriate, and in accordance with State and Federal confidentiality laws." The Department believes that inclusion of the phrase "where appropriate" and the citation to applicable confidentiality laws adequately address the commenter's concerns.

N.J.A.C. 10:37B-4.4(a)25

133. COMMENT: The Mental Health Coalition Workgroup stated that the term "emergency response services" must be defined.

RESPONSE: The Department agrees that that the reference to “emergency response services” would benefit from further clarification, but disagrees that a separate definition is required. Rather, the Department is changing recodified paragraph (b)25 upon adoption to clarify that the PA shall educate the consumer regarding the process for accessing appropriate services in the event of an emergency, for example a medical emergency or fire.

N.J.A.C. 10:37B-4.5 Coordination and management of services

N.J.A.C. 10:37B-4.5(a)2

134. COMMENT: The Mental Health Coalition Workgroup objected to the requirement that the PA assure that all services in the individualized rehabilitation plan are provided. The commenter stated that should be a function of coordination, collaboration, and with consumer consent, particularly because many of the services provided are outside the scope of the PA.

RESPONSE: The Department agrees that delivery of services in the individualized rehabilitation plan are a function of coordination, collaboration, and consumer involvement. The Department expects the PA, as the lead agency, to undertake those functions.

N.J.A.C. 10:37B-4.6 Provision of services identified in an individualized rehabilitation plan

N.J.A.C. 10:37B-4.6(b)

135. COMMENT: The Mental Health Coalition Workgroup commented that services should include, but not be limited to, evidence-based “informed” practices. A PA should not be required to implement practices according to fidelity models.

RESPONSE: The Department prefers that PAs deliver evidence-based services, but recognizes that there are circumstances where it's appropriate or necessary to use approaches that are not evidence-based. That is consistent with the language in proposed N.J.A.C. 10:37B-4.6(b), which states: "Services provided shall include, but not be limited to, evidence-based practices." In a similar vein, proposed N.J.A.C. 10:37B-1.3(a)9 requires only that evidence-based services be included in the "full complement of intervention strategies" and, therefore, does not limit services to evidence-based services.

SUBCHAPTER 5. STAFF QUALIFICATIONS, RESPONSIBILITIES, AND TRAINING

N.J.A.C. 10:37B-5.2 Staffing credentials and responsibilities

N.J.A.C. 10:37B-5.2(a)

136. COMMENT: The Mental Health Coalition Workgroup requested the addition of language stating that peers can provide crisis intervention, as well as other services.

RESPONSE: The Department cannot make the requested change because peers are not authorized to provide crisis intervention services under the Medicaid State Plan Amendment for Community Support Services.

N.J.A.C. 10:37B-5.2(a) and (b)

137. COMMENT: NJAMHAA strongly recommended that the required credentials for performing specified tasks be broadened based on its concern that the requirements specified in the proposed rule will affect the ability of provider agencies to meet timelines and provide services in the most timely and effective manner.

RESPONSE: The Department declines to make the recommended change. The staffing credentials and responsibilities in the proposed rules reflect the requirements of the State Plan Amendment for Community Support Services and, therefore, cannot be relaxed.

N.J.A.C. 10:37B-5.3 Staff training

138. COMMENT: Bazelon Center and Disability Rights New Jersey urged that the employee training requirements set forth at N.J.A.C. 10:37B-5.3 include more focus on the topics of community integration, independence, and self-determination and specifically requested that the training curriculum reference the "wellness and recovery principles" set forth at N.J.A.C. 10:37B-1.3.

RESPONSE: Amending the training requirements to include additional topics is too substantial a change to make upon adoption. The Department will convene a stakeholder work group to consider these issues and if the stakeholder work group deems the changes to be viable, the Department will propose the changes in future rulemaking. In the interim, the Department encourages PAs to integrate topics of community integration, independence, and self-determination in its training programs.

139. COMMENT: Several commenters requested that training be offered through a centralized source. More specifically, Nora Barrett suggested adding language that permits attendance at the Rutgers CSS Training series to be sufficient for some of the training in lieu of provider agency in-service training.

The Mental Health Coalition Workgroup commented that a significant amount of training is required by each PA of its entire staff and asked how training offered by DMHAS or its designees intersects with these requirements. The commenter stated

that it is burdensome and inefficient for each PA to develop comprehensive training requirements and suggested that training for supervisors and direct care staff, as well as new staff, is a continuing need that may be best resolved through a regional or consortium training model to fulfill requirements. The commenter also asked who will reimburse for training.

RESPONSE: The Department acknowledges that the Division has sponsored training on the Community Support Services by Rutgers University in preparation for the launch of these services. PAs may arrange for the training to be provided by another entity. However, the PA has ultimate responsibility for ensuring staff competency.

As previously noted, issues regarding billing and rates are beyond the scope of this rulemaking. The Department notes, however, that it has involved stakeholders, including the provider community, in the development of the community support rates. Further, in setting rates the Department has considered the cost of non-billable services, such as training.

N.J.A.C. 10:37B-5.3(c)1i

140. COMMENT: Nora Barrett suggested replacing the term “psychiatric rehabilitation” with “psychiatric rehabilitation principles and methods” in the list of topics to be included in the overview of adult mental health rehabilitation services section of the training curriculum.

RESPONSE: The Department agrees and is changing N.J.A.C. 10:37B-5.3(c)1i as suggested by the commenter upon adoption.

N.J.A.C. 10:37B-5.3(c)1iii

141. COMMENT: Bazelon Center and Disability Rights New Jersey noted that WRAP® is the only type of plan specifically mentioned in the training requirements and suggested that the required training cover all types of assessments, plans, and services that may be provided to consumers.

RESPONSE: The Department disagrees. The training requirements include many topics in addition to recovery and action planning, including advance directives, development of crisis plans, assessments, and individualized rehabilitation plans. Moreover, the list is not exclusive and the PAs may include other relevant topics.

N.J.A.C. 10:37B-5.3(c)9

142. COMMENT: Nora Barrett suggested expanding this provision addressing training on activities of daily living and personal care management to include training to help consumers develop all physical, cognitive, intellectual, and behavioral skills that are goal related, rather than just those related to activities of daily living and personal care management.

RESPONSE: The Department appreciates the commenter's suggestion; however, the recommended change is too substantive to be made upon adoption. The Department will convene a stakeholder work group to consider these issues and if the stakeholder work group deems the changes to be viable, the Department will propose the changes in future rulemaking.

N.J.A.C. 10:37B-5.3(d)

143. COMMENT: The Health and Safety Institute objected to the requirement that PA staff receive CPR and first aid training by a trainer certified by the American Heart Association or American Red Cross. The commenter stated that requiring

certification by one of only two listed entities confers an unfair competitive advantage to those entities at the expense of other nationally recognized training organizations such as the American Safety and Health Institute and MEDIC First Aid. The commenter also noted that the requirement is inconsistent with the Department's March 11, 2015, Information Bulletin on CPR and first aid training. The commenter suggested amending proposed N.J.A.C. 10:37B-5.3(d) as follows (deletions in brackets; additions in bold):

> A training completion summary sheet shall be documented for each employee, listing each topic and subtopic required by (c) above and indicating the date that each training was provided, the source of the training, and the competency (as indicated by a completed test, if applicable) or certification achieved. On-line training may serve as the delivery method for each topic or subtopic. In addition, a certificate of completion of cardiopulmonary resuscitation (CPR) and first aid training **which meets current Emergency Cardiovascular Care (ECC) guidelines and includes assessment of skill competency by a certified instructor is required every two (2) years. On-line only certifications are not acceptable.** [issued by a trainer certified by the American Heart Association or the American Red Cross is required and must be renewed upon expiration.]

RESPONSE: This comment is substantively identical to comment 40 regarding N.J.A.C. 10:37A-7.3(e). As stated in the Department's Response to Comment 40, broadening the requirement with respect to CPR training would be a substantive change to the rule as proposed and, as such, cannot be made upon adoption. Therefore, the

Department will propose an amendment to broaden the requirement consistent with the commenter's request during future rulemaking.

N.J.A.C. 10:37B-5.3(e)

144. COMMENT: Bazelon Center and Disability Rights New Jersey requested that proposed N.J.A.C. 10:37B-5.3(e) be amended to require that employees complete the training within a shorter period of time than six months from hire or enactment of the rule. In addition, the commenters requested that a requirement for ongoing or periodic follow-up training be added to the rule.

RESPONSE: The Department disagrees with the requested change. It believes that the requirements in the proposed rule are sufficient and represent a reasonable compromise between the need for trained staff and the time needed for the PAs to implement the training.

145. COMMENT: Ocean Mental Health Services, Inc. acknowledged the need for new hires to receive extensive training prior to working independently, but expressed concern that the training requirements set forth N.J.A.C. 10:37B-5.3(e) are unrealistic and will result in a significant increase in expense to provider agencies. It specifically suggested that there should be a minimum of 40 hours on-site training, CPR, first aid, suicide prevention, crisis intervention, and medication training and that other training should be done within six months and during that time period staff should be permitted to work independently under the supervision of senior staff but without direct on-site supervision

RESPONSE: The Department notes that it is not proposing a specific amount of time to be devoted to the training areas. The Department strongly believes, however,

that staff must receive training in the areas set forth at proposed N.J.A.C. 10:37A-5.3 in order to be able to independently do their job effectively.

SUBCHAPTER 7. TERMINATION OF SERVICES

N.J.A.C. 10:37B-7.1 Reasons for termination of community support services

146. COMMENT: Bazelon Center and Disability Rights New Jersey expressed general support of the requirement in N.J.A.C. 10:37B-7.1 limiting the circumstances under which community support services may be terminated. The commenters recommend, however, that the circumstances be further limited by specifying at N.J.A.C. 10:37B-7.1(a)6 that termination based on a rule violation is permitted only when the conduct at issue substantially interfered with the ability to serve other consumers or placed others in danger.

RESPONSE: The Department believes that the rule as proposed is fair and reasonable.

N.J.A.C. 10:37B-7.1(a)5

147. COMMENT: The Mental Health Coalition Workgroup commented that there was a difference of opinion within the workgroup regarding the timeline for termination of services when a consumer is out of contact with the PA. More specifically, Disability Rights New Jersey agrees with the 90-day timeframe set forth in proposed N.J.A.C. 10:37B-7.1(a)5, but other providers in the Workgroup support a more flexible approach, particularly if the consumer is not receiving services for an extended period. The commenter asked if there is a flexible standard that the Department might incorporate that respects the needs of consumers while permitting opportunity for earlier discharge for those no longer receiving services.

RESPONSE: The Department acknowledges that there is a difference of opinion among provider agencies and other stakeholders with respect to the timeframe required before services may be terminated based on loss of contact, but believes that the 90-day timeframe in the proposed rule provides an appropriate length of time for efforts to re-engage the consumer prior to termination. Consequently, the Department declines to change the provision to include a more flexible time period at this time.

N.J.A.C. 10:37B-7.2 Consumer-initiated termination

N.J.A.C. 10:37B-7.2(a) and (b)

148. COMMENT: Resources for Human Development, Inc. requested information on the mechanism for reporting consumer-initiated terminations to the Division and/or Medicaid.

RESPONSE: Generally, notification should be made to the program analyst assigned to the county. The Department will be providing further guidance to the PAs regarding the process for making this notification.

SUBCHAPTER 8. CONTINUOUS QUALITY IMPROVEMENT

N.J.A.C. 10:37B-8.1 Continuous quality improvement

N.J.A.C. 10:37B-8.1(b)1ii

149. COMMENT: Bazelon Center and Disability Rights New Jersey urge that the term “less restrictive living environment” be replaced with “most integrated setting.” The commenters recognize that “less restrictive living environment” and similar terms are used elsewhere in Title 10 of the New Jersey Administrative Code, but state that the term “most integrated setting” aligns with the requirements of the Americans with Disabilities Act, citing to the implementing regulations at 28 CFR 35.130(d) (requiring

public entities to administer services, programs and activities in “most integrated setting”). The commenters further noted that the term “most integrated setting” is used in the New Jersey rules implementing the New Jersey Law Against Discrimination, N.J.A.C. 13:13-4.4.

RESPONSE: The Department does not believe that there is any substantive difference between the term “less restrictive living environment” and “most integrating setting.” Nonetheless, it recognizes that “most integrated setting” is becoming the preferred term-of-art and, accordingly, is changing N.J.A.C. 10:37B-8.1(b)1ii as suggested by the commenter.

SUBCHAPTER 9. HEARINGS, APPEALS, COMPLAINTS

N.J.A.C. 10:37B-9.1 Development and communication of complaint procedures

150. COMMENT: The Mental Health Coalition Workgroup recommended that the following language be added to proposed N.J.A.C. 10:37B-9.1(a) “If a consumer, or his or her designee, believes that the corrective action was unsatisfactory and he or she wishes to pursue the matter further, PAs shall provide the contact information to the appropriate DMHAS county program analyst.”

The commenter also requested that proposed N.J.A.C. 10:37B-9.1(b) be amended as follows (additions in boldface): The policy and procedure for consumer complaints**, along with the contact information for DMHAS county program analyst(s),** shall be posted in a public place at the PA office site and a copy shall be given to each consumer upon admission to the program.

RESPONSE: The Department disagrees that consumers should have direct access to the county program analysts. Rather, if the issue is not resolved at the PA level, the procedures set forth at N.J.A.C. 10:37-4.6 should be followed.

SUBCHAPTER 10. RECORDKEEPING

N.J.A.C. 10:37B-10.2 Progress notes

N.J.A.C. 10:37B-10.2(a)

151. COMMENT: NJAMHAA requested that the requirement that the provider agency enter a progress note for each encounter with the consumer and in times of crisis and transition be relaxed to require only weekly progress notes. The commenter is concerned that the requirement will be an added burden to staff and will negatively impact face-to-face time with consumers.

RESPONSE: Proposed N.J.A.C. 10:37B-10.2(a) requires that each encounter be recorded in the progress notes, but does not specify the timeframe for entering that information. In that regard, the Department notes that the proposed new Division of Medical Assistance and Health Services rules on community support services at N.J.A.C. 10:79B-2.5(f) specifies that all documentation be entered into the record within one calendar week. Nonetheless, the Department encourages PAs to enter the information as close to the event as feasible.

N.J.A.C. 10:37B-10.2(b)

152. COMMENT: The Mental Health Coalition Workgroup asked whether PAs are permitted to use tools other than information in the progress notes to determine the frequency of contact. The commenter explained that some PAs already use specific assessments to determine the frequency of contacts in all direct care programs.

RESPONSE: No. The information must be recorded in the progress note.

N.J.A.C. 10:37B-10.2(c)

153. COMMENT: Resources for Human Development, Inc. asked whether an electronic signature on the progress note is acceptable.

RESPONSE: N.J.A.C. 10:37B-10.2(c) requires only that the progress note be signed, but does not specifically require a written signature. As such, electronic signatures are permitted when consistent with any applicable State and Federal laws and the provider agency has procedures in place to ensure the confidentiality of each electronic signature and prevent the improper or unauthorized use of electronic signatures.

N.J.A.C. 10:37B-10.4 Other records

N.J.A.C. 10:37B-10.4(a), (b), and (c)

154. COMMENT: Resources for Human Development, Inc. asked what fees are being referred to in this section.

RESPONSE: These are fees that the provider agency charges to consumers for optional services not covered under the State Plan Amendment for Community Support Services. As set forth at N.J.A.C. 10:37B-3.1 of the proposed rules, the optional services and associated fees must be listed in the consumer service agreement.

SUBCHAPTER 11. POLICIES AND PROCEDURES MANUAL

N.J.A.C. 10:37B-11.1 Written policies and procedures manual

N.J.A.C. 10:37B-11.2(d)1ii

155. COMMENT: The Mental Health Coalition Workgroup commented that the PA should not be in the position of “inferring” consumer disclosure of protected health

information. The regulations should specifically require the PAs obtain written consent from every consumer or document if a consumer refuses to provide consent.

RESPONSE: This comment is substantively similar to Comment 15 and the Department is making the same changes to N.J.A.C. 10:37B-11.2(d) upon adoption that it is making to N.J.A.C. 10:37A-2.2(d)1.

Summary of Agency-Initiated Changes:

1. The Department is changing N.J.A.C. 10:37A-1.2: Definition of "Accrediting Body" upon adoption by replacing "Joint Commission on Accreditation of Healthcare Organizations (JCAHO)" with "Joint Commission."

2. The Department is changing N.J.A.C. 10:37A-1.2: Definition of "Registered profession nurse (RN)" upon adoption by replacing "profession" with "professional."

3. The Department is changing N.J.A.C. 10:37A-4.2(d)4i and 6.4(a)2 and 3, and 10:37B-2.4(c)4 and 4.3(a)1 and (b) on adoption by replacing "individual rehabilitation plan" or "individuals' rehabilitation plan" with "individualized rehabilitation plan" to be consistent with terminology used throughout the rules.

4. The Department is changing N.J.A.C. 10:37A-4.4(e) upon adoption by deleting the phrase "and every 90 days thereafter" because it is unnecessary. This subsection already requires a nursing visit "every 90 days following the initial comprehensive nursing assessment."

5. The Department is changing N.J.A.C. 10:37A-5.4(a) upon adoption by replacing "PAs who" with "PAs that."

6. The Department is changing N.J.A.C. 10:37B-2.1(a) upon adoption by adding "(CSS)" after the first reference to "community support services" and deleting the

second reference to “community support services” and leaving just the reference to CSS.

7. The Department is changing N.J.A.C. 10:37B-4.4(b)17 upon adoption by adding “of” before the word “professionals.”

8. The Department is changing N.J.A.C. 10:37B-11.2 upon adoption by adding “policies and procedures” before “manual” in the heading of the subsection.

Federal Standards Statement

The adopted new rules, repeals, and amendments do not contain any standards that exceed those established by Federal law, and therefore, a Federal standards analysis is not required.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:37A-1.1 Scope and purpose

(a) – (b) (No change from proposal)

(c) An integral component of the community residence program is the assistance of consumer residents in gaining the life skills necessary to move to a less restrictive environment, unless otherwise restricted by specific contract provision. Consumers residing in supervised residences shall not be required to be a party to a lease, and providers shall comply with all standards in this chapter. Consumers residing in shared supportive housing residences shall have leases in their own names, and providers shall only be required to comply with N.J.A.C. 10:37A-1, *[6.4 (as applicable)]* 8, 10, and 12.

N.J.A.C. 10:37A-1.2 Definitions

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

"Accrediting body recognized by the Department" means an organization that accredits mental health programs that is recognized by the Department for deemed status purposes. These organizations include, but are not limited to, the Joint Commission *[on Accreditation of Healthcare Organizations (JCAHO)]*, the Council on Accreditation of Family Services Agencies (COA), the Council on Accreditation of Rehabilitation Facilities (CARF), and the National Commission on Quality Assurance (NCQA).

. . .

"Advance directive for mental health care" or "psychiatric advance directive" means a writing executed in accordance with the requirements of ***the New Jersey Advance Directives for Mental Health Care Act,*** N.J.S.A. 26:2H-107 et seq. *[An advance directive for mental health care may include a proxy directive, an instruction directive, or both.]*

. . .

"Deemed status" means that status granted to a supervised housing program that has received accreditation by an accrediting body recognized by the Department. In effect, the Department, through the granting of deemed status, substitutes the standards of the accrediting body for certain selected Department program standards.

. . .

"Individualized rehabilitation plan" or "IRP" means a document that is *[negotiated]* ***developed in partnership*** with the consumer that sets forth goals and objectives that will lead to *[successful living]* ***recovery and independence***; identifies internal and external resources *[for facilitating]* ***to support*** the consumer's recovery ***and independence***; and identifies concrete skills the consumer will develop and actions the consumer will take to meet those goals, with the assistance of and participation in programs, interventions, and supports offered by licensed professionals, natural supports, or PAs, or a combination of these resources.

. . .

"Registered *[profession]* ***professional*** nurse (RN)" means a person who is licensed by the State of New Jersey as a professional nurse pursuant to N.J.S.A. 45:11-26 et seq.

. . .

SUBCHAPTER 2. POLICIES AND PROCEDURES MANUAL

10:37A-2.2 Content of the manual

(a) – (c) (No change from proposal.)

(d) Confidentiality. The manual shall have a section setting forth confidentiality standards and procedures that are to be followed in all aspects of the PA's supervised residential program and that are consistent with ***all applicable*** Federal and State law, including, but not limited to, ***the Privacy Rule implementing the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, N.J.S.A. 30:4-24.3 and*** N.J.A.C. 10:37-6.79.

1. *[To assure]* ***The confidentiality standards and procedures shall encourage*** *family participation in developing the assessments, rehabilitation plan, and revisions*[, the PA shall seek the input of family members or friends any time treatment is discussed with the consumer; any information they give may be received by the PA and shall be made a part of the consumer's record; however, the PA may not disclose protected health information to family members or friends, except as follows:

i. Protected health information may be disclosed to the extent permitted by a valid written authorization executed in conformity with N.J.A.C. 10:37-6.79(i);

ii. If the consumer is present at a service planning milestone, or any other meeting at which protected health in-formation is discussed or made available to the participants, protected health information may be disclosed to family members or friends participating in that meeting if it is directly relevant to the person's involvement with the consumer's care and one of the following situations is documented in the record of the meeting:

(1) The consumer agrees to disclosure of the information at the time of the meeting;

(2) The consumer is provided with an opportunity to object to the disclosure at the meeting and does not express an objection; or

(3) Based on the exercise of professional judgment, the PA employee chairing the meeting has reasonably inferred from the circumstances at the meeting that the consumer does not object to the disclosure;

iii. Absent countervailing circumstances, the consumer's agreement to participate in the meeting with the family member or friend present is sufficient evidence that the consumer does not object to disclosure of protected health information that is directly relevant to the family member's or friend's involvement with his or her care; or

iv. If the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the manual must identify staff by title who may, in the exercise of their professional judgment, determine whether the disclosure is in the best interests of the consumer and, with that approval, PA staff may disclose protected health information that is directly relevant to the recipient's involvement with the consumer's health care.]* ***to the extent disclosures to family members are permitted under the applicable Federal and State confidentiality laws.***

(e) (No change from proposal.)

(f) Staff training and responsibilities. The manual shall have a section delineating staff training requirements and responsibilities, consistent with N.J.A.C. 10:37A-7***.3***, 10:37D***-2.14***, and 10:77A-2.4.

(g) – (l) (No change from proposal.)

10:37A-3.1 Consumer admission criteria

(a) – (b) (No change from proposal.)

(c) *[First priority]***Priority*** for admission shall be *[given to persons with severe mental health needs and]* in accordance with an individual PA's Division contract *[. The order of priority for admissions]* ***and*** shall reflect that which has been established at N.J.A.C. 10:37-5.2, regarding target populations.

(d) (No change from proposal.)

SUBCHAPTER 4. CONSUMER SERVICES

10:37A-4.2 Consumer service agreement

(a) The PA shall develop and submit for approval to the Department prior to use a consumer service agreement that meets the specifications of this subchapter. *** In addition, the PA shall obtain written approval from the Department before deleting, adding, or revising in any way the requirements of the consumer service agreement. The initial consumer service agreement and any subsequent revisions shall be submitted for approval to:**

New Jersey Department of Human Services

Office of Licensing

PO Box 707

Trenton, NJ 08625-0707*

(b) All consumers enrolled in a supervised residence shall have a written consumer service agreement which is reviewed by the consumer prior to acceptance and signed by both the consumer and PA upon the consumer's admission and which clearly articulates the roles and responsibilities of the PA and the consumer.

Recodify proposed (b) and (c) as ***(c) and (d)*** (No change in text from proposal.)

[(d)] ***(e)*** The consumer service agreement shall indicate the consumer's written acknowledgement that he or she understands the following terms of the agreement:

1.-3. (No change from proposal.)

4. A PA shall ensure that the consumer is afforded the opportunity to:

i. Be supported in an effort to achieve the wellness and recovery goals outlined in a fully developed WRAP® ***where one is available, and the consumer chooses to use that tool,*** and in the consumer's *[individual]* **individualized*** rehabilitation plan;

ii.-v. (No change from proposal.)

5.-7. (No change from proposal.)

Recodify proposed (e) and (f) as ***(f) and (g)**** (No change in text from proposal.)

[(g) The PA shall obtain the written approval of DMHAS before deleting, adding, or revising in any way the requirements of the consumer service agreement.]

10:37A-4.3 Comprehensive rehabilitation needs assessment

(a) The PA shall complete a written comprehensive rehabilitation needs assessment for each consumer by the 14th day after admission.

1.-3. (No change from proposal.)

4. The written comprehensive rehabilitation needs assessment shall include:

i.-v. (No change from proposal.)

[vi. Alcohol, tobacco, and other drug use history;]

Recodify proposed vii.-xx. as ***vi.**–**xix.**** (No change in text from proposal.)

10:37A-4.4 Nursing assessments, reassessments, and 90-day visits in supervised residences

(a)-(d) (No change from proposal.)

(e) A registered nurse or higher level nursing professional shall provide face-to-face nursing visits every 90 days following the initial comprehensive nursing assessment*[, and every 90 days thereafter]* while the consumer resides in a supervised residence and shall document such visits in the consumer's progress notes. In addition, where necessitated by the consumer's needs, a registered nurse or higher level nursing professional shall visit the consumer to periodically evaluate the consumer's condition

and the appropriateness of care provided by staff. These 90-day visits shall include an assessment and review of the consumer's clinical condition, which shall assure that services are being provided consistent with the consumer's individualized rehabilitation plan. During each 90-day visit, the nursing professional shall:

1.-4. (No change from proposal.)

10:37A-4.5 Individualized rehabilitation plan

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

(c) The individualized rehabilitation plan for each consumer shall be based upon the comprehensive rehabilitation needs assessment, WRAP® *[or]* ***and*** advance directive for mental health care, most recent nursing assessment, and any other existing assessments.

(d)-(f) (No change from proposal.)

10:37A-5.4 Financial records

(a) In addition to the recordkeeping requirements found in N.J.A.C. 10:37-6.73, 6.74, 6.76, 6.77, and 6.79, PAs *[who]* ***that*** charge consumers fees shall keep appropriate financial records.

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

10:37A-6.4 Medication

(a) Each consumer taking prescribed or over-the-counter medication shall self-administer his or her own medication to the extent possible. *[This subsection is

applicable to supervised residences, however, only (a)1 below is applicable to shared supportive housing residences.]*

1. (No change from proposal.)

2. Qualified PA staff (including those qualified by training to administer diabetes testing and medications) may assist the consumer in self-administering the medication or by coaching or monitoring the consumer while he or she is self-administering the medication as part of the *[individuals']* ***individualized*** rehabilitation plan.

3. If psychotropic medication or *[other]* controlled substances are included in the *[individual]* ***individualized*** rehabilitation plan, arrangements appropriate to the consumer's ability to self-administer such medications shall be provided or arranged as appropriate by any engaged service provider, including procedures for location, storage, and retrieval of the medications.

(b)-(e) (No change from proposal.)

10:37A-7.3 Staff training

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

(f) Individuals who have not completed the required training elements set forth in (d)1 through 9 and (e) above may only deliver services with a co-signature by a person who has been so trained. The co-signer shall be on site and available at all times to provide in-person guidance. Within six months of beginning employment or *[(the effective date of this subsection)]* ***August 15, 2016***, whichever comes later, all employees must have completed all required training elements.

SUBCHAPTER 8. FACILITY

10:37A-8.13 Smoke and carbon monoxide detectors

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

1.-3. (No change from proposal.)

[4. Outside each bedroom cluster.]

4. Within 10 feet of the door to each bedroom.

(b) (No change from proposal.)

(c) All licensed residences housing ***consumers who are*** deaf or hearing impaired *[residents]* shall be equipped with flashing and bed-vibrating fire alarms and carbon monoxide detectors. In residences without a hard-wired smoke and carbon monoxide detection system, the bed-vibrating device shall be activated by the smoke detector in the bedroom, the smoke detector outside the bedroom, and the carbon monoxide detector outside the bedroom.

(d) (No change from proposal.)

10:37A-9.3 Complaint process; *[ombudsman]* ***ombudsperson***

The PA's internal complaint procedures shall be consistent with the provisions of N.J.A.C. 10:37-4.6 regarding consumer complaint agency ombudsperson and review procedures**,** which are incorporated by reference.

SUBCHAPTER 1. GENERAL PROVISIONS

10:37B-1.2 Definitions

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

"Advance directive for mental health care" or "***psychiatric*** advance directive" means a writing executed in accordance with the requirements of ***the New Jersey Advance Directives for Mental Health Care Act,*** N.J.S.A. 26:2H-107 et seq. *[An advance directive for mental health care may include a proxy directive, an instruction directive, or both.]*

. . .

"Consumer service agreement" means a written agreement between the PA and consumer that includes responsibilities of both the PA and the consumer and that meets the requirements of N.J.A.C. 10:37B-3.1.

. . .

“Eligible consumer” means a person who meets the medical necessity standard for community support services by having severe mental health needs *[evidenced by:

1. Having a current diagnosis of a serious mental illness.
2. Requiring active rehabilitation and support services to achieve the restoration of functioning to promote the achievement of community integration and valued life roles in the social, employment, educational, or housing domains; and
3. either

i. Is currently functioning at a level, as assessed using an instrument approved by the Division, that puts the consumer at risk for hospitalization or other intensive treatment settings, such as 24-hour supervised congregate group or nursing home;

ii. Exhibits deterioration in functioning that will require that they be hospitalized or treated in another intensive treatment setting in the absence of community-based services and supports; or

iii. Does not have adequate resources and supports to live safely in the community]*.

"Individualized rehabilitation plan" means a document that is *[negotiated]* ***developed in partnership*** with the consumer that sets forth goals and objectives that will lead to *[successful living]* ***recovery and independence***; identifies internal and external resources *[for facilitating]* ***to support*** recovery ***and independence***; and identifies concrete skills the consumer will develop and actions the consumer will take, with the assistance of and participation in programs, interventions, and supports offered by the PA, to meet those goals.

. . .

"Serious mental illness" shall include, but not be limited to, a diagnosis of, and a documented history of treatment of or evaluation for the following:

1. Schizophrenia *[295.30, 295.10, 295.20, 295.90, 295.60]*;

2. Schizophreniform Disorder *[295.40]*;

3. Schizoaffective Disorder *[295.70]*;

4. Delusional Disorder *[297.1*];

5. Psychotic Disorder NOS *[298]*;

6. Major Depressive Disorder Recurrent *[296.3x]*;

7. Bipolar I disorder *[296.00, 296.40, 296.4x, 296.6x, 296.5x, 296.7]*;

8. Bipolar II Disorder *[296.89]*;

9. Bipolar Disorder NOS *[296.80]*;

10. Schizotypal Personality Disorder *[31.22]*; or

11. Borderline Personality Disorder *[301.83]*.

***"Severe mental health needs" means an individual:**

1. Has a current diagnosis of a serious mental illness;

2. Requires active rehabilitation and support services to achieve the restoration of functioning to promote the achievement of community integration and valued life roles in the social, employment, educational, or housing domains; and

3. Either:

i. Is currently functioning at a level, as assessed using an instrument approved by the Division, that puts the consumer at risk for hospitalization or other intensive treatment settings, such as 24-hour supervised congregate group or nursing home;

ii. Exhibits deterioration in functioning that will require that they be hospitalized or treated in another intensive treatment setting in the absence of community-based services and supports; or

iii. Does not have adequate resources and supports to live safely in the community.*

. . .

SUBCHAPTER 2. ACCESSING COMMUNITY SUPPORT SERVICES

10:37B-2.1 Enrollment

(a) The Division or its designee shall evaluate consumers, using an instrument approved by the Division for eligibility of community support services ***(CSS)***, enroll eligible consumers, and refer them to appropriate licensed providers of *[community support services (]*CSS*[)]* in the appropriate geographic area.

(b)-(d) (No change from proposal.)

10:37B-2.3 Rehabilitation needs assessments

(a)-(c) (No change from proposal.)

(d) The written comprehensive rehabilitation needs assessment shall include:

1.-6. (No change from proposal.)

[7. Alcohol, tobacco, and other drug use history;]

Recodify proposed 8.-20 as ***7.-19.*** (No change in text from proposal.)

[21. An indication of whether there are psychiatric and/or medical advance directives;]

Recodify proposed 22.-24. as ***20.-22.*** (No change in text from proposal.)

10:37B-2.4 Individualized rehabilitation plan

(a) Each eligible consumer shall be admitted with a preliminary individualized rehabilitation plan, to be developed with the consumer by the referring agency, health care provider, or Division in consultation with the PA, based on the medical necessity

identified by the referring agency or the Division during the eligibility determination process. The preliminary individualized rehabilitation plan shall be followed in providing medically necessary services for up to *[30]* ***60*** calendar days after admission.

(b) No later than *[30]* ***60*** days after the consumer has been admitted, PA staff shall partner with the consumer to develop and implement an individualized rehabilitation plan.

1. (No change from proposal.)

(c) At a minimum, each individualized rehabilitation plan shall be based upon the preliminary and comprehensive rehabilitation needs assessment and any other existing assessment, WRAP® *[or]* ***and*** advance directive for mental health care.

(d) All individualized rehabilitation plans shall include the following information:

1.-3. (No change from proposal.)

4. If psychotropic medication or *[other]* controlled substances are included in the [individual]* ***individualized*** rehabilitation plan, any arrangements appropriate to that consumer's ability to self-administer such medications, assistance to be provided or arranged by the community support service provider, and the procedure and location for storage and retrieval of the medications.

[(d)] ***(e)*** Each individualized rehabilitation plan and subsequent revisions shall be signed and dated by:

1. A physician or licensed practitioner *[specified in N.J.A.C. 10:37B-5.2(a) or (b)]* ***authorized by State law to recommend a course of treatment***;

2. -3. (No change from proposal.)

[(e)] ***(f)*** Review of the individualized rehabilitation plan shall occur as follows:

1.-2. (No change from proposal.)

3. The provider agency shall partner with the consumer during any requested or scheduled review of the individualized rehabilitation plan.

[3] ***4*.** In addition to the requirements of *[(c)]* ***(e)*** above, documentation confirming reviews shall include the date of the review and signature of the consumer, the PA staff member who conducted the review and is assigned to coordinate services for the consumer, and that staff member's supervisor.

SUBCHAPTER 3. CONSUMER SERVICE AGREEMENT

10:37B-3.1 Standard consumer service agreement for all consumers

(a) The PA shall develop and submit for approval to the Division prior to use a consumer service agreement that meets the specifications of this subchapter. *** In addition, the PA shall obtain written approval from the Department before deleting, adding, or revising in any way the requirements of the consumer service agreement. The initial consumer service agreement and any subsequent revisions shall be submitted for approval to:**

New Jersey Department of Human Services

Office of Licensing

PO Box 707

Trenton, NJ 08625-0707*

(b) All consumers enrolled in a community support services program shall have a written consumer service agreement that is reviewed by the consumer prior to

acceptance and signed by both the consumer and PA upon the consumer's admission and that clearly articulates the roles and responsibilities of the PA and the consumer.

[(b)] ***(c)***(No change in text from proposal.)

[(c) The PA shall obtain the written approval of DMHAS before deleting, adding, or revising in any way the requirements of the consumer service agreement, as delineated in this subchapter.]

10:37B-3.2 Provisions required in a consumer service agreement

(a) The consumer service agreement shall indicate the consumer's written acknowledgement that he or she understands the following terms of the agreement:

1.-3. (No change from proposal.)

4. A PA shall ensure that the consumer is afforded the opportunity to: *[i. Be]* ***be*** supported in an effort to achieve the wellness and recovery goals outlined in a fully developed WRAP® where one is available, and the consumer chooses to use that tool, and in the consumer's individualized rehabilitation plan;

*[ii. Be afforded suitable opportunities for interactions with others;

iii. Spend one's own money for expenses and purchases;

iv. See visitors each day; and

v. Practice the religious/spiritual program of one's own choice or to abstain from religious practices;]*

5.-7. (No change from proposal.)

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

SUBCHAPTER 4. SERVICES

10:37B-4.3 Medication

(a) Each consumer taking prescribed or over-the-counter medication shall self-administer his or her own medication to the extent possible.

1. Self-administration of medication means the consumer removes the individual dose of medication from a container provided by a pharmacy, sample medication container provided by the prescriber, or a container of non-prescription medication, and consumes the medication, places it into another container for consumption at a later time, applies the medication externally, or injects him- or herself with the medication. Qualified PA staff (including those qualified by training to administer diabetes testing and medications) may assist the consumer in self-administering the medication or by coaching/monitoring the consumer while he or she is self-administering the medication as part of the *[individual]* ***individualized*** rehabilitation plan.

(b) If the consumer is not capable of taking his or her own medication independently, the PA staff shall verbally assist and/or supervise the self-administration of the medication as prescribed. If psychotropic medication or *[other]* controlled substances are included in the *[individual]* ***individualized*** rehabilitation plan, any arrangements appropriate to that consumer's ability to self-administer such medications shall be arranged by the community support service provider, including the procedure and location for storage and retrieval of the medications.

(c) (No change from proposal.)

(d) *[A]* ***When a consumer's individualized rehabilitation plan includes medication management services, a*** list of all prescribed medications, including the name, purpose, dosage, self-administration frequency, and date prescribed for each medication shall be entered into the consumer's clinical record, as per PA policy.

10:37B-4.4 Other services

(a) Consumers shall have access to on-call staff 24 hours per day, seven days per week for times of stress and crisis.

(b) At a minimum, the PA shall offer and make available or arrange for the following services ***when they are included in the consumer's individualized rehabilitation plan***:

1.-14. (No change from proposal.)

15. Assist consumers to *[save for bicycles or other]* ***identify and access*** low-cost methods of transportation***, for example, saving for a bicycle***;

16. (No change from proposal.)

17. Assist consumers to develop a support network other than ***of*** professionals, which may include neighbors, family, friends, co-workers, clergy or *[church]* members ***of religious institutions***, spiritual advisors, shopkeepers, etc.;

18.-24. (No change from proposal.)

25. *[Emergency]* ***Provide guidance regarding accessing emergency*** response services.

SUBCHAPTER 5. STAFF QUALIFICATIONS, RESPONSIBILITIES, AND TRAINING

10:37B-5.3 Staff training

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

(c) The training curriculum shall include, at a minimum, the following topics:

1. An overview of adult mental health rehabilitation services delivery, including:

i. Psychiatric rehabilitation ***principles and methods***;

ii.-vi. (No change from proposal.)

2.-10. (No change from proposal.)

(d) (No change from proposal.)

(e) Individuals who have not completed the required training elements delineated at (c)1 through 7 above may only deliver services with a co-signature by a person who has been so trained. The co-signer shall be on site and available at all times to provide in-person guidance. Within six months of beginning employment or *[(the effective date of this provision)]* ***August 15, 2016***, whichever comes later, all employees must have completed all required training elements.

SUBCHAPTER 7. TERMINATION OF SERVICES

10:37B-7.1 Reasons for termination of community support services

(a) The community support services *[negotiated with a]* ***identified in the*** consumer***'s individualized rehabilitation plan*** may be terminated only if a consumer:

1.-6. (No change from proposal.)

(b) (No change from proposal.)

SUBCHAPTER 8. CONTINUOUS QUALITY IMPROVEMENT

10:37B-8.1 Continuous quality improvement

(a) (No change from proposal.)

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

1. Adequacy of planning for more independence in housing, education, activities of daily living, employment, and social environments, and reduction of service intensity.

i. (No change from proposal.)

ii. Barriers to transfer to a *[less restrictive living environment]* ***more integrated setting*** shall be reviewed annually for any consumer receiving community support services.

iii. (No change from proposal.)

2. (No change from proposal.)

SUBCHAPTER 11. POLICIES AND PROCEDURES MANUAL

10:37B-11.2 Content of the ***policies and procedures*** manual

(a)-(c) (No change from proposal.)

(d) Confidentiality. The manual shall have a section setting forth confidentiality standards and procedures that are to be followed in all aspects of the PA's provision of community support services and that are consistent with ***all applicable*** Federal and State law, including, but not limited to, ***the Privacy Rule implementing the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, N.J.S.A. 30:4-24.3 and*** N.J.A.C. 10:37-6.79.

1. *[To assure]* ***The confidentiality standards and procedures shall encourage*** family participation in developing the assessments, rehabilitation plan, and revisions *[, the PA shall seek the input of family members or friends any time treatment is discussed with the consumer; any information they give may be received by the PA and shall be made a part of the consumer's record; however, the PA may not disclose protected health information to family members or friends, except as follows:

i. Protected health information may be disclosed to the extent permitted by a valid written authorization executed in conformity with N.J.A.C. 10:37-6.79(i);

ii. If the consumer is present at a service planning milestone, or any other meeting at which protected health in-formation is discussed or made available to the participants, protected health information may be disclosed to family members or friends participating in that meeting, if it is directly relevant to the person's involvement with the consumer's care and one of the following situations is documented in the record of the meeting:

(1) The consumer agrees to disclosure of the information at the time of the meeting;

(2) The consumer is provided with an opportunity to object to the disclosure at the meeting and does not express an objection; or

(3) Based on the exercise of professional judgment, the PA employee chairing the meeting has reasonably inferred from the circumstances at the meeting that the consumer does not object to the disclosure.

2. Absent countervailing circumstances, the consumer's agreement to participate in the meeting with the family member or friend present is sufficient evidence that the

consumer does not object to disclosure of protected health information that is directly relevant to the family member's or friend's involvement with his or her care; or

3. If the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the individual's incapacity or an emergency circumstance, the manual must identify staff by title who may, in the exercise of their professional judgment, determine whether the disclosure is in the best interests of the consumer and, with that approval, PA staff may disclose protected health information that is directly relevant to the recipient's involvement with the consumer's health care.*] ***to the extent disclosures to family members are permitted under the applicable Federal and State confidentiality laws***

(e)-(l) (No change from proposal.)