

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C and 29 Delaware Code, Section 10119
(16 Del.C. §1119C & 29 Del.C. §10119)
16 DE Admin. Code 3310

EMERGENCY

EMERGENCY SECRETARY'S ORDER

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119

16 DE Admin. Code 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities

3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities

AUTHORITY

Pursuant to 16 Del.C. §1119C and 29 Del.C. §10119, the Department of Health and Social Services ("Department") is adopting emergency regulatory amendments to 16 DE Admin. Code 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities. Additionally, 29 Del.C. §10119 authorizes the Department to adopt emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del.C. §10115. Moreover, 16 Del.C. §1119C authorizes the Department to adopt, amend, repeal, or issue regulations for neighborhood homes for individuals with intellectual and/or developmental disabilities.

REASON FOR THE EMERGENCY ORDER

Rapid and widespread transmission of COVID-19 has significantly impacted many vulnerable individuals receiving healthcare services throughout the community.

While the availability of COVID-19 vaccines has helped to mitigate some of the risk, health and safety protocols must continue. To protect our most vulnerable citizens from COVID-19, a comprehensive infection control and prevention program based upon guidance from the Centers for Disease Control and Prevention and other nationally recognized sources is imperative to prevent or significantly decrease transmission of COVID-19 and other infections. Emergency regulations to require this infection prevention and control program were published in the July 2021 *Register* at 25 DE Reg. 15 (07/01/21).

In addition, staff at neighborhood homes for individuals with intellectual and/or developmental disabilities must either provide evidence of COVID-19 vaccination, or undergo regular testing to prevent the transmission of COVID-19. While the state's requirements will offer employees the choice between getting vaccinated or getting tested, employers should encourage vaccination and federal guidance permits employers to require vaccinations. This emergency order adds language to the July amendment of Section 11.0.

EFFECTIVE DATE OF ORDER

It is hereby ordered, that 16 DE Admin. Code 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities, specifically, Section 11.0 which expands the infection prevention and control program requirements, is temporarily modified as shown by underline as follows:

11.0 Infection Control

11.4 Specific Requirements for COVID-19

11.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

11.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.

11.4.3 The facility must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.

11.5 The facility shall amend their policies and procedures to include:

11.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.

11.5.2 Staff refusals to participate in COVID-19 testing;

11.5.3 Staff refusals to authorize release of testing results or vaccination status to the facility.

11.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and

11.5.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

This Emergency Order shall take effect on September 30, 2021 and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Division of Health Care Quality, 3 Mill Road, Suite 308, Wilmington, DE 19806, by email to Corinna.Getchell@Delaware.gov, or by fax to 302-421-7401.

ORDER

It is hereby ordered, this 23rd day of September, 2021, that the above referenced amendment to 16 **DE Admin. Code** 3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities, a copy of which is hereby attached, is adopted, pursuant to 16 **Del.C.** §1119C and 29 **Del.C.** §10119, as referenced above, and supported by the evidence contained herein.

Molly K. Magarik, MS
Cabinet Secretary

3310 Neighborhood Homes for Individuals with Intellectual and/or Developmental Disabilities

1.0 Purpose

To promote the health, safety and well-being of all individuals living in neighborhood homes and to ensure that the providers are held accountable for services provided. In addition to these regulations, providers must comply with the requirements of Division of Developmental Disabilities Services (DDDS).

2.0 Definitions

"Abuse" means the term as defined in 16 **Del.C.** Ch. 11.

"Authorized Representative" means the person, on behalf of an individual without decision-making capacity, who has the highest priority to act for the individual under law, and who has the authority to make decisions on behalf of the individual. The individual's authorized representative could be a person designated by an individual under an advance health-care directive, an agent under a medical durable power of attorney for health-care decisions or financial decisions, a guardian of the person appointed pursuant to 12 **Del.C.** Chs. 39 and 39A, in accordance with the authority granted by the appointing court, a surrogate appointed under 16 **Del.C.** Ch. 25, a person designated by an individual pursuant to 16 **Del.C.** Ch. 94A, or an individual who is otherwise authorized under applicable law to make the decisions on the individual's behalf, if the individual lacks decision-making capacity.

"Aversive Interventions" means those interventions intended to inflict pain, discomfort and/or social humiliation or any intervention as perceived by the individual to inflict pain, discomfort or social humiliation in order to reduce behavior. Examples of aversive interventions include, but are not limited to, electric skin shock, liquid spray to one's face and strong, non-preferred taste applied to the mouth. (National Association of State Directors of Developmental Disabilities Services (NASDDDS) Research Committee-11/11/2014)

"Choice" means the process by which people make selections from an array of options.

"DDDS" means the Division of Developmental Disabilities Services.

"Department" means the Department of Health and Social Services.

"DLTCRP" means the Division of Long Term Care Residents Protection.

"Financial Exploitation" means the term as defined in 16 **Del.C.** Chapter 11.

"Incident" means an unexpected and usually unpleasant occurrence that interrupts normal procedure or functioning.

"Individual" means a person living in a neighborhood home in the community who receives authorized services and/or supports through the DDDS.

"Mistreatment" means the term as defined in 16 Del.C. Chapter 11.

"Neglect" means the term as defined in 16 Del.C. Chapter 11.

"Neighborhood Home" means a residence for no more than five (5) individuals that is fully integrated in the community, not on the grounds of an institution, has shared common living areas and is where the individual chooses to live. These homes offer 24 hour supports to individuals with intellectual and/or developmental disabilities.

"Person Centered Plan" means the Life Span Plan or other plan approved by DDDS. This plan includes the following elements: people chosen by the individual; cultural considerations; plain language; strategies for solving disagreements; informed choices to the individual regarding services and supports that the individual receives and from whom; and a method to request updates.

"Provider" means an entity that has been authorized and approved in accordance with the standards of DDDS to provide services to meet the specialized needs of individuals' with intellectual and developmental disabilities.

"Reportable Incident" means an occurrence, event or suspicion of same which must be reported immediately to the DDDS and within 8 hours to the DLTCRP.

"Rights Complaint" means an allegation that an individual's rights have been violated.

"Safety" means the absence of recognizable hazards in the design, construction and maintenance of any component of the physical environment including equipment and the establishment of procedures to evaluate and to reduce risks of physical harm.

"Sanitation" means the promotion of hygiene and prevention of disease by the maintenance of uncontaminated conditions.

"Support" means those methods designed to help an individual achieve a meaningful life and to function to his/her fullest capacity.

3.0 Licensing and General Requirements

3.1 No person shall establish, conduct or maintain in this State any neighborhood home without first obtaining a license from the Department.

3.1.1 Issuance of Licenses

3.1.1.1 Initial License

3.1.1.1.1 An initial license approval will be granted to those applicants who meet the requirements for licensure.

3.1.1.1.2 Once an initial license approval has been issued the applicant may accept residents.

3.1.1.1.3 An initial license shall be issued when the first resident moves in and shall be for a term of six (6) months, during which a follow-up inspection will be conducted.

3.1.1.1.3.1 If the applicant meets the licensing requirement at the end of the six (6) month period, an annual license for the remainder of the licensure year will be issued.

3.1.1.1.3.2 If the applicant does not meet the requirements but shows the ability to meet the requirements a provisional license may be issued for a period of 90 days pending the implementation of corrective actions.

3.1.1.2 Provisional License:

3.1.1.2.1 A provisional license may be granted for a period of 90 days to a neighborhood home that, after inspection by the Department, is not in substantial compliance with these rules and regulations but has demonstrated the ability and willingness to comply within the 90-day period.

3.1.1.2.2 The Department shall designate the conditions and the time period under which a provisional license is issued.

3.1.1.2.3 A provisional license may not be renewed.

3.1.1.2.4 A license will not be granted pursuant to subsection 3.1.1.2 after the provisional licensure period to any neighborhood home that is not in substantial compliance with these rules and regulations.

3.1.1.3 Annual License:

- 3.1.1.3.1 A license shall be granted, for a period of one year (12 months), to all neighborhood homes which are and remain in substantial compliance with these rules and regulations.
- 3.1.1.3.2 A license shall be effective for a twelve-month period following date of issue and shall expire one year following such date, unless it is: modified to a provisional license, suspended, revoked, or surrendered prior to the expiration date.
- 3.1.1.3.3 All applications for renewal of licenses shall be filed with the Department at least 30 days prior to expiration.
- 3.1.1.3.4 A license will not be issued to a neighborhood home which is not in substantial compliance with these regulations and/or whose deficient practices present an immediate threat to the health and safety of its residents.
- 3.1.2 Suspension or Revocation of Licenses
 - 3.1.2.1 The Department may suspend or revoke a license issued under this chapter for good cause, including but not limited to the following:
 - 3.1.2.1.1 Violation of any of the provisions of these rules and regulations or 16 **Del.C.** Ch. 11.
 - 3.1.2.1.2 Deficiencies which present a threat to the health and safety of residents.
 - 3.1.2.1.3 Permitting, aiding, or abetting the commission of any illegal act in the neighborhood home.
 - 3.1.2.1.4 Conduct or practices which the Department determines pose a serious threat to the health and safety of a resident or residents.
 - 3.1.2.1.5 Refusal to allow the Department access to the neighborhood home to conduct surveys/ investigations as deemed necessary by the Department.
 - 3.1.2.2 Before any license issued under this chapter is suspended or revoked, the Department shall give 10 calendar days written notice to the holder of the license, during which the holder may appeal for a hearing before the Secretary of the Department or her/his designee.
 - 3.1.2.3 The holder of the license may, within such 10-day period, give written notice of the desire to have a hearing.
 - 3.1.2.3.1 The due process protections of notice and opportunity to be heard shall be provided to facilities and the hearing process shall be consistent with the Administrative Procedures Act, 29 **Del.C.** Ch. 101.
- 3.1.3 Fees
 - 3.1.3.1 Fees shall be in accordance with 16 **Del.C.** Ch. 11.
- 3.1.4 A license is not transferable from provider to another or from one location to another.
- 3.1.5 A new license shall be required in the event of a change in the neighborhood home management company, building owner or controlling person.
- 3.1.6 The license shall be readily available in the neighborhood home for which it was issued.
- 3.2 Inspection
 - 3.2.1 Every neighborhood home for which a license has been issued under this chapter shall be inspected at least annually.
- 3.3 Application Process
 - 3.3.1 All persons or entities applying for a license shall request a licensure application from the Department.
 - 3.3.2 The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the Department.
 - 3.3.3 Providers applying for an initial license, must submit:
 - 3.3.3.1 Evidence of a satisfactory compliance history, as appropriate, during the preceding five years.
 - 3.3.3.2 A list of all facilities managed, owned or controlled by the applicant or associated entity in any jurisdiction during the preceding five years.
 - 3.3.3.3 Financial information as required by the Department.
 - 3.3.3.3.1 Financial information disclosed to the Department shall not be subject to Freedom of Information Act requests.
- 3.4 Separate licenses are required for separate homes maintained in separate locations, regardless of their proximity, even though operated by the same provider.
- 3.5 All required records maintained by the Neighborhood Home shall be open to inspection by the authorized representatives of the DLTCRP and DDDS.
- 3.6 The term "neighborhood home" shall not be used as part of the name of any program in this State unless the home is licensed under these regulations.

- 3.7 No neighborhood home provider shall adopt rules that conflict with these regulations.
- 3.8 The Department shall be notified in writing of any changes in the ownership or management of a neighborhood home.
- 3.9 Each provider shall provide a complete statement listing all charges for services, materials and equipment that shall, or may be, furnished to the individual during the period of residency as part of the admission agreement to all individuals and authorized representatives.
- 3.10 Each provider shall provide a written statement at the time of admission that includes the refund and prepayment policy; and clarifies responsibility in the event of a retroactive denial in the case of a third party payment.
- 3.11 Each provider shall cooperate fully with the Medicaid Fraud Control Unit and the state protection and advocacy agency, as defined in 16 **Del.C.** §1102(7), in fulfilling functions authorized by 16 **Del.C.** Ch. 11.

4.0 Policies and Procedures

- 4.1 The provider shall maintain and comply with a written policy and procedure manual.
 - 4.1.1 The manual must be updated as necessary to comply with changes in state and/or federal laws and regulations.
 - 4.1.2 The manual must be reviewed at least annually.
 - 4.1.3 Staff must be notified promptly of changes and provided necessary education.
- 4.2 The provider shall establish written policies and procedures regarding:
 - 4.2.1 Individuals owning, renting, or occupying the premises:
 - 4.2.1.1 Under a legally enforceable agreement have the same protections from eviction that other tenants have under the Delaware Landlord Tenant Code 25 **Del.C.** Ch. 53.
 - 4.2.1.2 Are protected under Delaware Administrative Code 3102 Long Term Care Transfer, Discharge and Readmission Procedures.
 - 4.2.2 Behavior support that uses person-centered positive behavior support techniques that are consistent with the DDDS policies/standards and that are monitored by DDDS.
 - 4.2.3 The utilization of reportable incident data to track trends in and help prevent further incidents.
 - 4.2.4 The system for reporting and processing of reportable incidents.
 - 4.2.5 Open communication with persons of the community in which the neighborhood home is located in order to facilitate the individual's community integration.
 - 4.2.6 Criminal background check and drug testing laws as required under 16 **Del.C.** Ch. 11.
 - 4.2.7 The implementation and documentation of the person-centered plan.
 - 4.2.8 Employment/Personnel which shall include:
 - 4.2.8.1 Qualifications, responsibilities and requirements for each job classification;
 - 4.2.8.2 Pre-employment requirements;
 - 4.2.8.3 Position descriptions;
 - 4.2.8.4 Orientation for all employees and contractors including any guidelines for specialized training;
 - 4.2.8.5 Inservice education policy; and
 - 4.2.8.6 Annual performance review and competency testing.
 - 4.2.9 The rights of individuals and individual rights complaints.
 - 4.2.10 The safeguarding of the individuals' funds while still allowing access to the individuals' funds at all times.
 - 4.2.11 Control of the exposure of individuals and staff to persons with communicable diseases.
 - 4.2.12 Infection prevention and control.
 - 4.2.13 Limited lay administration of medication (LLAM).
 - 4.2.14 Maintenance (including electrical maintenance) and cleaning procedures, storage of cleaning materials and/or pesticides and other toxic materials.
 - 4.2.15 The prohibition of firearms on the premises of the neighborhood home.

5.0 Environment

- 5.1 Site Provisions
 - 5.1.1 Each neighborhood home shall be located on a site which is considered suitable by the Department.
 - 5.1.2 The site must be safe, easily drained, must be suitable for disposal of sewage and furnishing a potable water supply.

- 5.1.3 The exterior of the site shall be free from hazards and also from the accumulation of waste materials, obsolete and unnecessary articles, tin cans, rubbish, and other litter.
- 5.2 The neighborhood home must have a safe and sanitary environment, properly constructed, equipped, and maintained to protect the health and safety of residents.
- 5.3 The neighborhood home shall comply with all local and state building codes and ordinances as pertain to this occupancy.
- 5.4 Physical Plant
 - 5.4.1 All construction - new, renovations, or remodeling - must conform to the local building codes, current at the time of construction.
 - 5.4.2 When a neighborhood home plans to construct or extensively remodel a licensed home or convert a building to a licensed home, it shall submit one copy of properly prepared plans and specifications for the entire home to the Department.
 - 5.4.2.1 An approval, in writing, shall be obtained before such work is begun.
 - 5.4.2.2 All completed construction, extensive remodeling or conversions shall remain in accordance with the plans and specifications, as approved by the Department.
 - 5.4.2.3 The Department must visit the site upon completion of the work to ensure that the work was completed according to plans submitted.
 - 5.4.3 Windows
 - 5.4.3.1 Window space shall not be less than one tenth (1/10) of the floor space.
 - 5.4.3.1.1 Up to 25% reduction may be allowed when approved mechanical ventilation is utilized in multi-bed rooms.
 - 5.4.3.2 All windows in rooms to be used by individuals are to be constructed to eliminate drafts and to provide adequate light and ventilation.
 - 5.4.3.3 All windows designed to open and shut must be functional.
 - 5.4.4 The building shall be constructed and maintained to prevent the entrance, and control the existence, of rodents and insects.
 - 5.4.4.1 All exterior openings shall be effectively screened.
 - 5.4.4.2 Screen doors shall open outward and shall be equipped with self-closing devices.
 - 5.4.4.3 All screening shall have at least 16 mesh per inch.
 - 5.4.5 Individual bedrooms shall open directly into a corridor.
 - 5.4.6 The physical dimensions of the home will provide, as a minimum, 150 square feet of common living space for the first occupant and 100 square feet of living space for each additional occupant.
 - 5.4.7 Neighborhood homes with below grade accommodations must have a direct means of egress to the outside from that level.
 - 5.4.8 The roof, exterior walls, doors, skylights and windows shall be weather tight and watertight and shall be kept in sound condition and good repair.
- 5.5 Water supply and sewage disposal
 - 5.5.1 Non-public water systems must be approved by the Department.
 - 5.5.1.1 Providers must sample non-public water annually and have it tested by the Department.
 - 5.5.1.1.1 A copy of all water testing results must be kept on site at the neighborhood home.
 - 5.5.2 Non-public sewage disposal systems must be approved by the Department of Natural Resources and Environmental Control.
 - 5.5.3 The water system must supply adequate hot and cold water, under pressure, at all times.
 - 5.5.4 The plumbing shall meet the requirements of all municipal or county codes. Where there are no local codes, the provisions of the Department Sanitary Plumbing Code shall prevail.
 - 5.5.5 Hot water at shower, bathing and hand washing facilities shall not exceed 115°F (46°C).
- 5.6 A licensee must ensure that the home's premises and equipment accessible to or used by residents are free from any danger to their health, safety and well-being.
- 5.7 Electric shall meet all municipal, county and State requirements and laws.
- 5.8 Each room and access way shall be suitably lighted at all times for maximum safety, comfort, sanitation and efficiency of operation particularly in areas that present safety hazards. Careful attention shall be given to avoid glare.
- 5.9 Safety equipment

- 5.9.1 Stairways shall have non-slip surfaces and sturdy handrails to prevent slipping. Stairways over six (6) feet in width shall have handrails on both sides.
 - 5.9.2 Working electric switches shall be located at the top and the bottom of stairways.
 - 5.9.3 Hallways shall be equipped with working night-lights.
 - 5.9.4 Floor surfaces shall be durable, yet non-abrasive and slip-resistant. Floor surfaces shall be kept in good repair. Area rugs on hard finished floors shall have a non-skid backing. Carpeting shall be maintained in a clean condition.
 - 5.9.5 All interior doors in areas used by individuals shall be capable of being opened from either side at all times.
 - 5.9.6 Cameras or monitoring devices are not permitted in individual bedrooms or bathrooms unless written permission by individual(s) or authorized representative(s) is on file.
- 5.10 Bedrooms
- 5.10.1 Each bedroom shall be well-ventilated.
 - 5.10.2 Each bedroom shall be an outside room with at least one (1) window opening directly to the outside. The window sill shall be at least three (3) feet above the floor and above grade.
 - 5.10.3 A one (1) person bedroom shall be at least 100 square feet.
 - 5.10.4 Multi-bed bedrooms shall:
 - 5.10.4.1 Provide at least eighty (80) square feet of floor space per person.
 - 5.10.4.2 Be adequately spaced for comfort.
 - 5.10.4.3 Have the beds spaced at least three (3) feet apart. Bunk beds are prohibited.
 - 5.10.5 The ceiling height shall be not less than seven (7) feet from the floor on average. Areas where the height of the ceiling is less than five (5) feet shall not be counted in the determination of the room size.
 - 5.10.6 Walls must extend from the floor to the ceiling.
 - 5.10.7 Doors must be closable and lockable by the individual with only appropriate staff having keys to the doors.
 - 5.10.8 Each bedroom must have adequate electrical outlets which are conveniently located.
 - 5.10.9 At least one (1) light fixture shall be switched at the entrance to each bedroom.
 - 5.10.10 Walls shall be cleanable.
 - 5.10.11 Each bedroom shall ensure adequate privacy.
 - 5.10.12 No more than two (2) individuals may share a bedroom.
 - 5.10.13 Individuals may furnish and decorate their own bedrooms.
 - 5.10.14 Mattresses shall be covered or protected with non-porous material.
 - 5.10.15 Each bedroom shall provide storage space for clothing and storage space for personal items to include, minimally, closet space.
 - 5.10.16 Bedrooms shall contain space, as needed, for bedside assistance and to accommodate the use and storage of mobility devices and prosthetic equipment.
- 5.11 Bathrooms
- 5.11.1 Floor and wall surfaces shall be constructed and maintained to be impervious to water and to permit the floor and walls to be easily kept in a clean condition.
 - 5.11.2 At least one (1) window or mechanical ventilation to the outside shall be provided.
 - 5.11.3 Floor surfaces shall be durable, yet non-abrasive and slip-resistant. Floor surfaces shall be kept in good repair.
 - 5.11.4 There shall be at least one (1) bathtub or shower for every four (4) individuals.
 - 5.11.4.1 Each bathtub or shower shall be in an individual room or enclosure which provides private space for bathing, drying and dressing.
 - 5.11.4.2 Each bathtub or shower shall be equipped with substantial grab bars and slip-resistant surfaces.
 - 5.11.5 There shall be at least one (1) toilet of appropriate size for each four (4) individuals which shall be located on the same level as the individuals' bedrooms.
 - 5.11.5.1 When more than one (1) toilet is located in the same room, provisions for private use shall be made.
 - 5.11.5.2 Each toilet shall be equipped with a substantial grab bar.
 - 5.11.5.3 Each toilet shall be equipped with a toilet seat and toilet tissue.
 - 5.11.6 There shall be at least one (1) hand washing sink for every four (4) individuals which shall be located on the same level as the individual's bedrooms.
 - 5.11.6.1 The hand washing sink shall have hot and cold water.

5.11.6.2 Hand washing sinks shall be available in or immediately adjacent to bathrooms and/or toilet rooms.

5.11.7 Mirrors shall be furnished in bathrooms, including mirrors that are accessible by individuals who use wheelchairs.

5.12 Kitchen

5.12.1 Floor, wall and counter surfaces shall be constructed and maintained to be impervious to water (to the level of splash) and to permit the floor and walls to be easily kept in a clean condition.

5.12.2 There shall be:

5.12.2.1 At least one (1) refrigerator and one (1) freezing unit, in proper working order and capable of maintaining frozen foods in the frozen state and refrigerated foods at 41 degrees F. or below, as determined in the warmest part of the refrigerator.

5.12.2.1.1 Each refrigerator shall be equipped with a refrigerator thermometer.

5.12.2.2 At least one (1) four-burner range and one (1) oven (or combination thereof) which is in proper working order.

5.12.2.3 A dishwasher that has a sanitizing cycle or the home must use a dishwasher detergent with bleach.

5.12.2.4 At least one (1) clean trash receptacle.

5.12.2.5 At least one (1) operable window or suitable exhaust system for removal of smoke, odors and fumes.

5.12.2.6 Adequate cleaning/disinfecting agents and supplies.

5.12.2.7 Storage areas with separate storage for:

5.12.2.7.1 Food, which must be stored off of the floor.

5.12.2.7.1.1 Dry or staple food items shall be stored at least six (6) inches above the floor in a ventilated room that is not subject to waste water back flow or to contamination by condensation or leakage.

5.12.2.7.2 Cleaning agents, disinfectants and polishes.

5.12.2.7.3 Poisons, pesticides or other toxic chemicals which must be stored in locked cabinets/storage areas.

5.12.2.7.3.1 Material Safety Data Sheets (MSDS) must be available for any poisons, pesticides or toxic chemicals stored on-site.

5.12.2.7.4 Eating and serving utensils, pots, pans and cooking utensils which must be stored off of the floor.

5.12.3 All food items shall be stored in closed or sealed containers or wrapping.

5.12.4 Food storage areas shall be free of food particles, dust and dirt.

5.12.5 Food preparation areas, utensils and appliances shall be cleaned following each meal prepared.

5.12.6 Opened foods that are to be stored shall immediately be dated with the date that the foods were opened.

5.12.7 Prepared and leftover foods requiring refrigeration must be kept for no more than three (3) days.

5.13 Dining and dayroom area

5.13.1 There shall be provided one (1) or more areas that are adequate in size and furnished for resident dining, recreational and social activities.

5.13.2 The furniture shall be of such condition so as not to pose a safety hazard and arranged and located as to provide convenient access to the individuals.

5.13.3 When a multi-purpose room is used, it shall have sufficient space to accommodate activities in order to prevent interference of one (1) activity with another.

5.14 Sanitation and housekeeping

5.14.1 All rooms and every part of the building shall be kept clean, orderly, in good repair and free of offensive odors.

5.14.2 Waste material, obsolete and unnecessary articles, tin cans, rubbish and other litter shall not be permitted to accumulate in the home.

5.14.3 Sharps shall be stored in sanitary containers and disposed of in a sanitary manner.

5.14.4 When a separate sink is not provided for janitorial or laundry duties, the sink shall be sanitized with bleach after each use.

5.14.5 No laundry may be done in the food service area during the preparation or serving of food.

5.14.6 Laundry

- 5.14.6.1 Bed linens and towels must be changed at least weekly or more often as necessary.
- 5.14.6.2 If linen chutes are used, they will maintained in a sanitary condition.
- 5.14.6.3 If the clothes washing machine is in the kitchen, soiled laundry shall not be taken into the kitchen until it is ready to be washed.
- 5.14.6.4 The authorized provider will complete laundry for individuals who are incapable of doing so on their own.
- 5.15 Providers shall ensure a home-like environment for each licensed home. Functional arrangement of rooms, furnishings, and decor shall be compatible with the need for accessibility.
- 5.16 Furniture and furnishings shall be safe, comfortable, cleanable and in good repair and shall resemble those in homes in the local community, to the extent compatible with individuals' choice and the physical needs of the individuals living in the home. To the extent possible, personal furniture shall be chosen by individuals.
- 5.17 Heating apparatus shall not constitute a burn, smoke or carbon monoxide hazard to individuals served or their support staff.
- 5.18 Temperature, humidity, ventilation, and light in all living and sleeping quarters shall be maintained to provide a comfortable atmosphere.
- 5.19 Use of security or observational devices shall constitute a restrictive procedure and require consent and review by the human rights committee. The need for such devices shall be documented in the individual's behavior support plan.
- 5.20 Basement space may be used for activities for people in the home if there is a minimum of two (2) fire exits.

6.0 Records and Reports

- 6.1 There shall be a separate record maintained on each individual as per DDDS standards.
- 6.2 There shall be a medication administration record (MAR) including medications, dosages, frequency, route of administration, and initials of the person administering each dose. The record shall include the identity of each person administering medication.
- 6.3 Confidentiality of individuals' records shall be maintained in accordance with the federal Health Insurance Portability and Accountability Act (HIPAA) and 16 **Del.C.** §1121(6).
- 6.4 Records shall be retained for 6 years after discharge. For a minor, records shall be retained for three years after age of majority.
- 6.5 Incident reporting
 - 6.5.1 All incidents shall be adequately documented. Adequate documentation shall include:
 - 6.5.1.1 The name of the individual(s) involved;
 - 6.5.1.2 The date, time and place of the incident;
 - 6.5.1.3 A detailed description of the incident;
 - 6.5.1.4 A list of other parties involved, including witnesses;
 - 6.5.1.5 Witness statements;
 - 6.5.1.6 The nature of any injuries sustained;
 - 6.5.1.7 individual(s) outcome(s); and
 - 6.5.1.8 Follow-up action:
 - 6.5.1.8.1 Notification of the individual(s) authorized representative(s), attending physician and licensing or law enforcement authorities, when appropriate;
 - 6.5.1.8.2 The corrective action taken immediately for each individual or area impacted;
 - 6.5.1.8.3 How the staff will act to protect individuals in a similar situation;
 - 6.5.1.8.4 What measures will be taken or what systems will be changed to ensure that the incident does not recur;
 - 6.5.1.8.5 How the staff will measure the success of the interventions put in place.
- 6.6 All reports of incidents, whether or not required to be reported, shall be retained for three years.
- 6.7 Reportable incidents shall be communicated immediately to the DDDS and within 8 hours to the DLTCRP.
- 6.8 Reportable incidents are as follows:
 - 6.8.1 Abuse as defined in 16 **Del.C.** §1131, or reasonable suspicion of same.
 - 6.8.1.1 Physical abuse with injury if individual to individual and physical abuse with or without injury if staff to individual or any other person to individual.
 - 6.8.1.2 Any sexual act between staff and an individual and any non-consensual sexual act between individuals or between an individual and any other person such as a visitor.

- 6.8.1.3 Emotional abuse whether staff to individual, individual to individual or any other person to individual.
- 6.8.2 Neglect, mistreatment or financial exploitation as defined in 16 **Del.C.** §1131, or reasonable suspicion of same.
- 6.8.3 Individual elopement under the following circumstances:
 - 6.8.3.1 An individual's whereabouts on or off the premises is unknown to staff and the individual suffers harm.
 - 6.8.3.2 A cognitively impaired individual's whereabouts are unknown to staff and the individual leaves the neighborhood home premises.
 - 6.8.3.3 An individual cannot be found inside or outside the neighborhood home and the police are summoned.
- 6.8.4 Significant injuries.
 - 6.8.4.1 Injury from an incident of unknown source in which the initial evaluation supports the conclusion that the injury is suspicious.
 - 6.8.4.1.1 Circumstances which may cause an injury to be suspicious are:
 - 6.8.4.1.1.1 The extent of the injury;
 - 6.8.4.1.1.2 The location of the injury (e.g., the injury is located in an area not generally vulnerable to trauma);
 - 6.8.4.1.1.3 The number of injuries observed at one particular point in time; or
 - 6.8.4.1.1.4 The incidence of injuries over time.
 - 6.8.4.2 Injury which results in medical or dental treatment other than first aid provided in the home.
 - 6.8.4.3 Areas of contusions or bruises caused by staff to a dependent individual during ambulation, transport, transfer or bathing.
 - 6.8.4.4 Significant error or omission in medication/treatment, including drug diversion, which causes the individual discomfort or jeopardizes the individual's health and safety.
 - 6.8.4.5 A burn greater than first degree.
 - 6.8.4.6 Any serious unusual and/or life-threatening injury.
- 6.8.5 Entrapment which causes the individual injury or immobility of body or limb or which requires assistance from another person for the individual to secure release.
- 6.8.6 Suicide or attempted suicide.
- 6.8.7 Poisoning.
- 6.8.8 Fire within a neighborhood home.
- 6.8.9 Utility interruption lasting more than eight hours in one or more major service(s) including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephones.
- 6.8.10 Structural damage or unsafe structural conditions.
- 6.8.11 Water damage which impacts individual health, safety or comfort.
- 6.8.12 Deaths.
- 6.9 The authorized provider shall maintain records and reports of fire safety, health, sanitation, and environmental inspections required by local and state laws and regulations.
 - 6.9.1 The provider shall document actions taken to correct deficiencies noted in these reports. Corrective actions shall include:
 - 6.9.1.1 The corrective action taken immediately for each individual or area impacted;
 - 6.9.1.2 How the staff will act to protect individuals in a similar situation;
 - 6.9.1.3 What measures will be taken or what systems will be changed to ensure that the incident does not recur;
 - 6.9.1.4 How the staff will measure the success of the interventions put in place.

7.0 Emergencies and Disasters

- 7.1 Fire safety in neighborhood homes shall comply with the rules and regulations of the State Fire Prevention Commission or the appropriate local jurisdiction.
- 7.2 The home shall have a minimum of two means of egress.
- 7.3 The home shall have an adequate number of UL approved smoke detectors in working order.
 - 7.3.1 In a single level home, a minimum of one smoke detector shall be placed between the bedroom area and the remainder of the home.

- 7.3.2 In a multi-story home, a minimum of one smoke detector shall be on each level. On levels which have bedrooms, the detector shall be placed between the bedroom area and the remainder of the home.
- 7.4 There shall be at least one functional two and one-half to five pound ABC fire extinguisher on each floor of living space in the home that is readily accessible, visible and mounted on the wall. Each extinguisher shall be checked annually.
- 7.5 The service provider shall have written procedures for meeting all emergencies and disasters such as fire, severe weather, and missing individuals; and such procedures shall be communicated to all staff.
- 7.5.1 The procedures shall assign staff on duty to specific tasks and responsibilities.
- 7.5.2 The procedures shall contain instructions related to the use of alarm and signal systems. Provisions shall be made to alert individuals living in the home according to their abilities, and these provisions shall be included in the procedures.
- 7.6 The provider shall maintain an adequate communication system to ensure that on and off-duty personnel and local fire and safety authorities are notified promptly in the event of an emergency or disaster.
- 7.7 The telephone numbers of the nearest poison control center and the nearest source of emergency medical services shall be posted.
- 7.8 Provisions shall be made for emergency auxiliary heat and lighting by means of alternate sources of electric power, alternate fuels, and stand-by equipment, or arrangements with neighbors, other agencies or community resources.
- 7.9 Evacuation Drills
- 7.9.1 Drills shall be held quarterly and on different days and at different times. Drills are not to be held at night, during individuals' sleep time, nor are they to be held in inclement weather.
- 7.9.2 The location of egress during these evacuation drills shall be varied, with window evacuation procedures discussed as an alternative, if not practiced.
- 7.9.3 During drills, individuals shall be evacuated with staff assistance to the designated safe area outside of the home.
- 7.9.4 As evidenced by evacuation drill reports that are maintained by the neighborhood home, drills shall assure that all individuals and staff are familiar with the evacuation requirements and procedures.
- 7.9.4.1 Any problems individuals have evacuating a building during a drill shall result in a written plan of specific corrective action(s) to be taken.

8.0 Individual Rights

Neighborhood homes must comply with 16 **Del.C.** Ch.11, Subchapter II, regarding the rights of the individuals residing in the neighborhood homes.

9.0 Individual Services

9.1 Healthcare

- 9.1.1 The provider shall ensure that individuals receive needed medical, dental, visual and behavioral care.
- 9.1.2 Necessary screenings/appointments are scheduled within five (5) business days of receipt of an order.
- 9.1.3 Providers assist individuals to carry out all health related orders as determined by the health care professionals.
- 9.1.4 Each resident shall have a physical/medical examination annually or more frequently as required by a physician or the affiliated social agency/program.
- 9.1.5 Medications
- 9.1.5.1 Medications prescribed for residents shall be kept locked in a cabinet or a lock box set aside for that exclusive purpose.
- 9.1.5.2 Medications requiring refrigeration shall be kept locked in a separate box within the refrigerator.
- 9.1.5.3 Medications shall be self-administered or distributed directly to the resident from the prescription container in strict accordance with the prescription directions.
- 9.1.5.3.1 Administration of medications must be in accordance with the requirements in 24 **Del.C.** Ch.19, §1932.
- 9.1.5.4 The authorized provider shall ensure that prescription medication is not used by other than the resident for whom the medication was prescribed.
- 9.1.5.5 Topical (external) medications must be stored separately from oral (internal) medications.
- 9.1.5.6 Controlled substances must be under a double lock whether stored in a cupboard or refrigerator. A lock on an outside access door can be considered the first lock.

- 9.1.5.7 Medication must be stored at room temperature (59-86F) unless otherwise indicated by the labeling in a manner that protects the product itself from deterioration or container breakage.
- 9.1.6 Communicable disease
 - 9.1.6.1 An individual with an active communicable disease must receive prompt medical treatment and supervision.
 - 9.1.6.2 The provider shall assume responsibility for seeing that necessary precautions are taken and that there is a minimum danger of transmission of a communicable disease to any occupant of the home.
 - 9.1.6.3 Minimum requirements for tuberculosis (TB) testing require all occupants to have a base line two step tuberculin skin test.
 - 9.1.6.4 All homes shall have on file evidence of an annual vaccination against influenza for all residents unless refused or medically contraindicated.
- 9.2 The provider shall provide or assist to arrange for transportation for an individual's appointments.
- 9.3 Food service
 - 9.3.1 A minimum of three (3) meals shall be available and/or served in each 24 hour period.
 - 9.3.2 There shall not be more than a 14 hour span between the evening and breakfast meals unless suitable nourishment is provided in the interim.
 - 9.3.3 Individuals shall have access to food at all times.
 - 9.3.4 The food served shall be suitably prepared and of sufficient quantity and quality to meet the nutritional needs of the residents.
 - 9.3.5 Special diets shall be served on the written prescription of the resident's physician.
 - 9.3.6 There shall be three day supply of food and water in each home at all times.

10.0 Personnel

- 10.1 Personnel records shall be kept current and available for each employee, and include the following:
 - 10.1.1 Results of tuberculosis screening.
 - 10.1.2 Documentation of annual influenza vaccination or refusal.
 - 10.1.3 Result of criminal background check.
 - 10.1.4 Result of mandatory drug testing.
 - 10.1.5 Result of Adult Abuse Registry check.
 - 10.1.6 Titles and hours of in-service training.
 - 10.1.7 If applicable, license/certification number and expiration date.
- 10.2 Each neighborhood home must have at least one (1) staff person on duty at all times when individuals are present in the home.
 - 10.2.1 Staffing must conform to the specific needs of the individuals as recorded on the person-centered plan.
- 10.3 Each neighborhood home must have at least one (1) staff person, on duty at all times, trained in first aid and CPR.
- 10.4 Each neighborhood home must have a nurse on-call at all times for consultation.

11.0 Infection Control

- 11.1 The provider shall establish an infection prevention and control program which shall be based upon Centers for Disease Control and Prevention and other nationally recognized infection prevention and control guidelines.
 - 11.1.1 The infection prevention and control program must cover all services and all areas of the facility, including provision of the appropriate personal protective equipment for all residents, staff and visitors.
- 11.2 The individual designated to lead the licensee's infection prevention and control program must develop and implement a comprehensive plan that includes actions to prevent, identify, and manage infections and communicable diseases. The plan must include mechanisms that result in immediate action to take preventive or corrective measures that improve the licensee's infection control outcomes.
- 11.3 All staff shall receive orientation at the time of employment and annual in-service education regarding the infection prevention and control program.
- 11.4 Specific Requirements for COVID-19
 - 11.4.1 Before their start date, all new staff, vendors and volunteers must be tested for COVID-19 in accordance with Delaware Division of Public Health Guidance.

- 11.4.2 All staff, vendors and volunteers must be tested for COVID-19 in a manner consistent with Division of Public Health guidance.
- 11.4.3 The facility must follow recommendations of the Centers for Disease Control and Prevention and the Division of Public Health regarding the provision of care or services to residents by staff, vendor or volunteer found to be positive for COVID-19 in an infectious stage.
- 11.5 The facility shall amend their policies and procedures to include:
 - 11.5.1 Work exclusion and return to work protocols for staff tested positive for COVID-19.
 - 11.5.2 Staff refusals to participate in COVID-19 testing;
 - 11.5.3 Staff refusals to authorize release of testing results or vaccination status to the facility.
 - 11.5.4 Procedures to obtain staff authorizations for release of laboratory test results to the facility to inform infection control and prevention strategies; and
 - 11.5.5 Plans to address staffing shortages and facility demands should a COVID-19 outbreak occur.

12.0 Severability

Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

7 DE Reg. 505 (10/01/03)

14 DE Reg. 1360 (06/01/11)

15 DE Reg. 1477 (04/01/12)

21 DE Reg. 229 (09/01/17)

25 DE Reg. 326 (10/01/21) (Emer.)