

ASSEMBLY, No. 5317

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 29, 2021

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Co-Sponsored by:

Assemblywoman Dunn

SYNOPSIS

Requires each group home or other community-based residence for individuals with developmental disabilities to implement in-person family visitation policy as condition of licensure.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/3/2021)

1 **AN ACT** concerning the implementation of in-person family
2 visitation policies by group homes and other community-based
3 residential programs and supplementing Title 30 of the Revised
4 Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. As used in this act:

10 “Community-based residential program” or “community-based
11 residence” means a developmental center, group home, supervised
12 apartment, community care residence, nursing home, or other
13 residential setting for individuals with developmental disabilities,
14 which is licensed and regulated by the Department of Human
15 Services.

16 “Department” means the Department of Human Services.

17 “Division” means the Division of Developmental Disabilities in
18 the Department of Human Services.

19 “Developmental disability” means the same as that term is
20 defined by section 3 of P.L.1977, c.82 (C.30:6D-3).

21 “Group home” means a living arrangement that is operated in a
22 residence or residences leased or owned by an individual who is
23 licensed by the Department of Human Services; which provides the
24 opportunity for multiple individuals with developmental disabilities
25 to live together in a home, sharing in chores and the overall
26 management of the residence; and in which on-site staff provides
27 supervision, training, or assistance, in a variety of forms and
28 intensity, as required to assist the individuals as they move toward
29 independence.

30 “Immediate family members” means a resident’s spouse, parents,
31 siblings, children, step-children, grandparents, and grandchildren.

32 “Licensee” means an individual, partnership, or corporation that
33 is licensed by the Division of Developmental Disabilities in the
34 Department of Human Services and is responsible for providing
35 services associated with the operation of a group home or other
36 community-based residential program.

37 “Noncompliant family member or guardian” means a family
38 member or legal guardian of a resident, which family member or
39 guardian has failed to comply with applicable infection control and
40 other health and safety laws, rules, regulations, orders, policies,
41 standards, guidelines, or practices while on the premises of a group
42 home or other community-based residence, in violation of the group
43 home’s in-person family visitation policy and the provisions of
44 paragraph (2) of subsection b. of section 2 of this act.

45 “Repeat violator” means a noncompliant family member or
46 guardian who has violated applicable infection control or other
47 health or safety laws, rules, regulations, orders, policies, standards,
48 guidelines, or practices on more than one occasion.

1 “Resident” means a child or adult with developmental disabilities
2 who resides in a group home or other community-based residence.

3

4 2. a. The Division of Developmental Disabilities in the
5 Department of Human Services shall require the licensed operator
6 of a group home or other community-based residential program in
7 the State, as a condition of licensure, to adopt and implement a
8 written policy regarding in-person family visitation.

9 b. The in-person family visitation policy adopted pursuant to
10 this section shall:

11 (1) authorize a resident to engage in a specified number of in-
12 person visits, at regular intervals, with the resident’s immediate
13 family members and legal guardian during each year of residence.
14 At a minimum, the policy shall authorize a resident to engage in not
15 less than three in-person visits with the resident’s immediate family
16 members and legal guardian per month;

17 (2) authorize the family members and legal guardian of a
18 resident to engage in in-person visitation with the resident: (a) at
19 any time during normal business hours, without providing prior
20 notice to the licensee; and (b) either before or after normal business
21 hours, so long as the visiting family member or guardian provides
22 the licensee with at least 24-hours advanced notice of the visit. The
23 policy shall specify the procedure by which family members and
24 guardians will be informed of the notice requirements applicable to
25 after-hours visitation, and the procedure that is to be used by family
26 members and guardians in providing advanced notice of after-hours
27 visits;

28 (3) require visiting family members and guardians, while on the
29 premises of the community-based residence, to comply with all
30 applicable infection control and health and safety laws, rules,
31 regulations, orders, policies, standards, guidelines, and practices
32 imposed by the federal, State, or local government or by the
33 community-based residence, including, but not limited to, laws,
34 rules, regulations, orders, policies, standards, guidelines, or
35 practices providing for the use of social distancing measures or the
36 wearing of personal protective equipment while on the premises of,
37 or indoors at, the community-based residence; and

38 (4) identify the remedial, protective, and enforcement measures
39 that will be instituted by staff of the community-based residence
40 whenever a visiting family member or guardian is deemed to have
41 violated, on one or multiple occasions, the infection control or
42 health or safety laws, rules, regulations, orders, policies, standards,
43 guidelines, and practices described in paragraph (2) of this
44 subsection.

45 c. The remedial, protective, and enforcement measures adopted
46 pursuant to paragraph (3) of subsection b. of this section:

1 (1) shall, to the extent practicable, be designed to: (a) enable
2 staff at the community-based residence to proactively and
3 appropriately respond to, and mitigate the potential and actual
4 effects of, any failure by a family member or guardian to comply
5 with applicable infection control and health and safety laws, rules,
6 regulations, orders, policies, standards, guidelines, and practices;
7 and (b) encourage and facilitate a noncompliant family member or
8 guardian's future and ongoing compliance with all applicable
9 infection control and health and safety laws, regulations, policies,
10 standards, guidelines, and practices while on the premises of the
11 community-based residence;

12 (2) shall not prohibit, or have the effect of preventing, a
13 noncompliant family member or guardian from continuing to
14 engage in in-person visitation with the resident, as authorized
15 pursuant to paragraph (1) of subsection b. of this section; and

16 (3) may: (a) provide for a noncompliant family member or
17 guardian to be subject to targeted monitoring, random pop-in
18 inspections, or other compliance verification methods while on the
19 premises of the residence, as may be necessary to ensure the family
20 member or guardian's future and ongoing compliance with
21 applicable infection control and health and safety laws, rules,
22 regulations, orders, policies, standards, guidelines, and practices;
23 (b) provide for a repeat violator to engage in in-person visitation
24 with a resident only under certain enhanced protective conditions,
25 such as when the resident is separated from the repeat violator by a
26 Plexiglas divider, or when the visitation occurs in a private and
27 enclosed isolation room or in an outdoor area apart from other
28 residents, as may be necessary to protect the health of all residents,
29 including the resident being visited; or (c) require a noncompliant
30 family member or guardian to pay a penalty fee or to otherwise be
31 subject to appropriate disciplinary action, including referral to law
32 enforcement authorities, for failing to comply with applicable
33 infection control and health and safety laws, rules, regulations,
34 orders, policies, standards, guidelines, and practices.

35 d. Each in-person family visitation policy adopted pursuant to
36 this section shall be approved by the Division of Developmental
37 Disabilities in the Department of Human Services prior to its
38 implementation. Within 90 days after the effective date of this act,
39 a community-based residential program shall submit its in-person
40 family visitation policy to the division for approval. Within 10 days
41 after making any material revisions to a previously approved in-
42 person family visitation policy, the community-based residential
43 program shall resubmit the revised policy to the division for re-
44 approval pursuant to this subsection, prior to implementing the
45 proposed changes. The division shall approve or disapprove an
46 initial or revised policy, submitted pursuant to this subsection,

1 within 15 days after receipt thereof. If the division does not
2 respond to a submission within the timeframe provided by this
3 subsection, the initial or revised policy shall be deemed approved,
4 and the community-based residence may proceed to implement the
5 policy. In any case where the division disapproves of an initial or
6 revised policy submitted pursuant to this subsection, the division
7 shall specify, in writing, the reasons for the disapproval and the
8 changes to the policy that need to be incorporated in order for
9 approval to be granted under this subsection. A community-based
10 residence that receives a disapproval under this subsection shall,
11 within 30 days after receipt thereof, revise the in-person family
12 visitation policy in accordance with the division's suggestions and
13 resubmit the policy for approval pursuant to this subsection.

14 e. Appropriate staff at a community-based residential program
15 shall annually provide a written copy of the in-person family
16 visitation policy that is developed and approved pursuant to this
17 section to each resident of the community-based residence and to
18 each family member and legal guardian who is identified in the
19 resident's service records.

20 f. Each licensee shall annually submit a written report to the
21 division, identifying:

22 (1) the total number of immediate family members and legal
23 guardians who engaged in in-person visits with a resident during the
24 year, in accordance with the community-based residence's in-
25 person family visitation policy;

26 (2) the total number and percentage of visiting family members
27 and legal guardians who were determined by staff, during the year,
28 to be noncompliant family members or guardians or to be repeat
29 violators;

30 (3) the nature of, and the financial costs associated with, the
31 remedial, protective, and enforcement actions that were undertaken
32 during the year by the licensee or staff at the community-based
33 residence with respect to noncompliant family members and
34 guardians and repeat violators, including any penalty fees imposed,
35 disciplinary action taken, or law enforcement referrals made in
36 accordance with the authorizations granted pursuant to paragraph
37 (3) of subsection c. of this section; and

38 (4) the actual effects on infection control and health and safety
39 within the community-based residence that are deemed to have been
40 caused, at least in part, by a noncompliant family member or
41 guardian's violation of applicable infection control and health and
42 safety laws, rules, regulations, orders, policies, standards,
43 guidelines, and practices.

44

45 3. a. Whenever the department or the division conducts an
46 inspection of a group home or other community-based residence,
47 the inspector shall determine whether the community-based
48 residence is operating in compliance with the provisions of this act

1 and the in-person family visitation policy adopted and approved
2 pursuant thereto.

3 b. In addition to any other applicable penalties provided by
4 law, whenever a community-based residential program fails to
5 comply with the provisions of this act or to properly implement the
6 in-person family visitation policy adopted and approved pursuant
7 thereto, the licensee:

8 (1) shall be liable to pay an administrative penalty, the amount
9 of which shall be determined in accordance with a schedule
10 established by regulation, which schedule shall provide for an
11 enhanced administrative penalty in the case of a repeat or ongoing
12 violation; and

13 (2) may be subject to adverse licensure action, as deemed by the
14 department to be appropriate.

15 c. Whenever a complaint received or an investigation
16 conducted by the Office of the Ombudsman for Individuals with
17 Intellectual or Developmental Disabilities and Their Families
18 discloses evidence indicating that a community-based residential
19 program has failed to comply with the provisions of this act or to
20 properly implement the in-person family visitation policy adopted
21 and approved pursuant thereto, the ombudsman shall refer the
22 matter to the department for disciplinary action and,
23 notwithstanding such referral, may take any other appropriate
24 investigatory or enforcement action, with respect to the matter, as
25 may be authorized by law.

26
27 4. a. Within 45 days after the enactment of this act, and
28 notwithstanding the provisions of the "Administrative Procedure
29 Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the
30 Commissioner of Human Services, in consultation with the
31 Assistant Commissioner of the Division of Developmental
32 Disabilities and the Commissioner of Health, shall adopt rules and
33 regulations, immediately upon the filing of proper notice with the
34 Office of Administrative Law, as may be necessary to implement
35 the provisions of this act. The rules and regulations shall include,
36 but need not be limited to, minimum standards and guidelines for
37 the in-person family visitation policies that are to be adopted
38 pursuant to section 2 of this act and a penalty schedule that is to be
39 used pursuant to section 3 of this act.

40 b. The rules and regulations adopted pursuant to this section
41 shall remain in effect for a period of not more than one year after
42 the date of filing and, thereafter, shall be adopted, amended, or
43 readopted by the commissioner in accordance with the requirements
44 of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
45 1 et seq.).

46
47 5. This act shall take effect immediately.

STATEMENT

This bill would require the operator of each community-based residential program in the State, as a condition of licensure, to adopt and implement a written policy on in-person family visitation. “Community-based residential program” or “community-based residence” is defined to include a developmental center, group home, supervised apartment, community care residence, nursing home, or any other residential setting for individuals with developmental disabilities, which is licensed and regulated by the Department of Human Services (DHS).

Each in-person family visitation policy adopted under the bill is to authorize a resident of a community-based residence to engage in a specified number of in-person visits with the resident’s immediate family members and legal guardian during each year of residence. At a minimum, the policy is to authorize a resident to engage in not less than three in-person visits with the resident’s immediate family members and legal guardian per month. The policy is to further authorize the family members and legal guardian of a resident to engage in in-person visitation with the resident: 1) at any time during normal business hours, without providing prior notice to the licensee; and 2) either before or after normal business hours, so long as the visiting family member or guardian provides the licensee with at least 24-hours advanced notice of the visit. The policy is to specify the procedure by which family members and guardians will be informed of the notice requirements applicable to after-hours visitation, and the procedure that is to be used by family members and guardians in providing advanced notice of after-hours visits.

Each visitation policy is to additionally require visiting family members and guardians, while on the premises of the community-based residence, to comply with all applicable infection control and health and safety laws, rules, regulations, orders, policies, standards, guidelines, and practices imposed by the federal, State, or local government or by the community-based residence, including, but not limited to, laws, rules, regulations, orders, policies, standards, guidelines, or practices providing for the use of social distancing measures or the wearing of personal protective equipment while on the premises of, or indoors at, the community-based residence. The policy is to further specify the remedial, protective, and enforcement measures that will be instituted by staff of the community-based residence whenever a visiting family member or guardian is deemed to have violated, on one or multiple occasions, applicable infection control or health or safety laws, rules, regulations, orders, policies, standards, guidelines, and practices. To the extent practicable, those remedial, protective, and enforcement measures are to be designed to: 1) enable staff at the community-based residence to proactively and appropriately

1 respond to, and mitigate the potential and actual effects of, any
2 failure by a family member or guardian to comply with applicable
3 infection control and health and safety laws, regulations, policies,
4 standards, guidelines, and practices; and 2) encourage and facilitate
5 a noncompliant family member or guardian's future compliance
6 with all applicable infection control and health and safety laws,
7 regulations, policies, standards, guidelines, and practices while on
8 the premises of the community-based residence.

9 The remedial, protective, and enforcement measures
10 implemented under the policy may not prohibit, or have the effect
11 of preventing, a noncompliant family member or guardian from
12 continuing to engage in in-person visitation with the resident, as
13 authorized by the bill and the policy. However, they may: 1)
14 provide for a noncompliant family member or guardian to be
15 subject to targeted monitoring, random pop-in inspections, or other
16 compliance verification methods while on the premises of the
17 residence, as may be necessary to ensure the family member or
18 guardian's future and ongoing compliance with applicable infection
19 control and health and safety laws, regulations, policies, standards,
20 guidelines, and practices; 2) provide for a repeat violator to engage
21 in in-person visitation with a resident only under certain enhanced
22 protective conditions, such as when the resident is separated from
23 the repeat violator by a Plexiglas divider, or when the visitation
24 occurs in a private and enclosed isolation room or in an outdoor
25 area apart from other residents; or 3) require a noncompliant family
26 member or guardian to pay a penalty fee or to otherwise be subject
27 to appropriate disciplinary action, including referral to law
28 enforcement authorities, for failing to comply with applicable
29 infection control and health and safety laws, regulations, policies,
30 standards, guidelines, and practices.

31 Within 90 days after the bill's effective date, each community-
32 based residential program will be required to develop and submit its
33 policy to the Division of Developmental Disabilities (DDD) in the
34 Department of Human Services (DHS) for approval. The bill
35 further provides that, within 10 days after making any material
36 revisions to an approved policy, the residential program will need to
37 resubmit the policy to the DDD for reapproval. The DDD will be
38 required to approve or disapprove a policy within 15 days after
39 receipt thereof. If the DDD does not respond to the submission
40 within the timeframe provided, the policy will be deemed approved.
41 In any case where the DDD disapproves an in-person family
42 visitation policy, the DDD will be required to specify, in writing,
43 the reasons for the disapproval and the changes to the policy that
44 need to be incorporated in order for approval to be granted. Any
45 policy that is disapproved will need to be revised and resubmitted to
46 the DDD within 30 days after receipt of the notice of disapproval.

1 Under the bill's provisions, appropriate staff at a community-
2 based residence will be required to annually provide a written copy
3 of the residence's approved in-person family visitation policy to
4 each resident and to each family member and legal guardian who is
5 identified in the resident's service records.

6 Each licensed operator of a community-based residential
7 program will also be required to annually submit a written report to
8 the DDD providing certain information about visiting family
9 members and guardians. The report is to identify the number of
10 family members and guardians who visited the residence during the
11 year, pursuant to the in-person family visitation policy, and include
12 certain additional information regarding: 1) those visiting family
13 members and guardians who have failed to comply with applicable
14 infection control and other health and safety laws, rules,
15 regulations, orders, policies, standards, guidelines, and practices;
16 and 2) the remedial, protective, and enforcement measures that were
17 used by staff at the residence to redress those failures and any
18 associated health effects.

19 The bill would require the DHS and the DDD, when conducting
20 an inspection of a community-based residence, to determine
21 whether the residence is in compliance with the bill's provisions
22 and the in-person family visitation policy adopted pursuant thereto.
23 In addition to any other applicable penalties provided by law, the
24 licensed operator of a community-based residence that fails to
25 comply with the bill's provisions or to properly implement the
26 visitation policy will be liable to pay an administrative penalty and
27 may be subject to adverse licensure action, as deemed by the DHS
28 to be appropriate. The amount of the administrative penalty
29 imposed is to be determined in accordance with a schedule
30 established by regulation, which schedule is to provide for an
31 enhanced administrative penalty in the case of a repeat or ongoing
32 violation.

33 The bill would further provide that, whenever a complaint
34 received or an investigation conducted by the Office of the
35 Ombudsman for Individuals with Intellectual or Developmental
36 Disabilities and Their Families discloses evidence indicating that a
37 community-based residence has failed to comply with the bill's
38 provisions or has failed to properly implement the visitation policy
39 adopted pursuant thereto, the ombudsman will be required to refer
40 the matter to the DHS for disciplinary action and, notwithstanding
41 such referral, may take any other appropriate investigatory or
42 enforcement action, with respect to the matter, as may be authorized
43 by law.

44 The bill would require the Commissioner of Human Services, in
45 consultation with the Assistant Commissioner of the Division of
46 Developmental Disabilities and the Commissioner of Health, to
47 adopt rules and regulations on an emergency basis, within 45 days
48 after the bill's effective date, as may be necessary to implement the

1 bill's provisions. These rules and regulations are to include, but
2 need not be limited to, minimum standards and guidelines for the
3 in-person family visitation policies adopted under the bill and a
4 penalty schedule to be used when penalizing residences that fail to
5 comply with the bill or properly implement the visitation policy
6 adopted pursuant thereto. The emergency rules and regulations are
7 to remain in effect for a period of not more than one year before
8 being subject to readoption or amendment.