



Alliance for the Betterment of
Citizens with Disabilities

Empowering People: Providers Shaping Policies

Unlicensed Group Homes.

ABCD represents numerous agencies which operate DHS/DDD licensed group homes for individuals with intellectual and developmental disabilities (LGH). We are not aware of any ABCD members providing services to IDD eligible for Department of Human Services/Division of Developmental Disability (DHS/DDD) Wavier services and living in unlicensed group home settings (UGH), though we are aware of their existence. The presence of both LGH and UGH enables individuals to choose between not only LGHs exclusively, but also LGH and UGH. DHS/DDD is supportive of the existence of UGH within the context of increased choice and options for IDD in the community. But the existence of UGH must also be considered within the context of the DHS/DDD regulatory system.

UGH does not infer a regulatory free for all. Indeed, to the extent UGH houses individuals receiving services under the authority of the State Medicaid Waiver and paid for by Medicaid, DHS/DDD takes responsibility to promulgate ground rules. However, upon review of the April 2024 *Community Care Program Policies & Procedures Manual*, the *Attestation for Provider of Individual Supports*, the February 2018 *Medicaid Newsletter Volume 28, No. 82*,¹ and anecdotal reports from agencies, support coordinators and families, the ground rules are unclear, and information is either missing, incomplete, or outdated. The unintended consequences may be the erosion of the legitimacy of the licensing system. As reported to ABCD:

- A group of families planning to build group home(s) for their sons and daughters report that the homes will receive residential rates but be unlicensed because they “don’t want to go through the licensing process.” In addition to being UGH, and not meeting initial and annual licensing standards, an unaffiliated UGH² will not have unannounced visits from DHS as per the Stephen Komninos’ Law, not be included in the Office of Program Integrity and Accountability (OPIA) quarterly report card, and not be required to comply with the annual financial sustainability protocols, but will be able to bill residential rates and access Supportive Housing Coalition (SHC) housing rental vouchers through the Housing and Urban Development (HUD) approval process which is far less rigorous than the DHS/DDD licensing process.
- An agency with LGH opens a UGH claiming the same rates for services, in addition to accessing SHC rental vouchers through HUD. The UGH will not be required to meet initial and annual licensing standards, but as part of an agency with LGH, will receive unannounced visits from DHS as per Stephen Komninos’ Law, be included with their agency in the OPIA quarterly report card, and be included in their agency’s annual financial sustainability report, but will not be required to have things like fire drills and non-discrimination policies.

“Why bother getting a license to open a group home?” The mere existence of this rhetoric is indicative that the legitimacy of the licensing system may be at risk.

¹ NJDDD CCP Policies & Procedures Manual (Version 6.0), April 2024. Appendix M.

² Not part of an agency which also has LGH.

Need for Licensure. Criteria

Though every policy, especially initially, is a work in progress, enough time and data has been collected to firm up the fundamentals around UGH. Clearly DHS/DDD agrees, as evidenced by their intent to promulgate updated guidelines. We suggest for consideration the following narrative which limits the criteria to three standards:

The provision in this guidance dated _____ supersedes and replaces all DHS/DDD documents defining the need for licensure in group homes.

Need for Licensure: the following factors inform the determination that a group home setting be licensed under the provisions set forth in NJAC 44A. In the event one or more individuals residing in a group home setting is:

1. CCP, and
2. Designated by the ISP, requiring personal guidance as defined in 18.1,³ and
3. Receiving more than 3 hours/day or 21 hours/week of Individual Supports. The Individual Supports Daily Rate is not available for individuals residing in UGH.

Need for Licensure. Level of Need Clarified

The first two items above are widely recognized. Though the third was recently announced in a closed meeting between DDD and the trade associations and reportedly enforced by DDD, it is absent from all manner of communication we are aware of, unclear in both the *Procedure Codes Addendum Description* and the *Medicaid Newsletter Appendix M*,⁴ and prior to the meeting, unknown to ABCD. In fact, it has come to our attention that providers with LGH are required but have failed to automatically transition their UGH when a resident's Individual Supports are above 21 hours/week. This reality speaks to the necessity of including #3 in documents focusing on licensure requirements. We strongly support DDD's intent to clarify and communicate this obscure provision.

Need for Licensure. Ownership

A requirement that the "setting be owned, licensed, or otherwise controlled by a service provider," has been deleted from most documents though it remains in the latest *Attestation for Provider of Individual Supports*. We believe it is meant to be removed from the criteria required for licensure. If so, we agree that who or what owns, licenses or controls the setting is irrelevant to the requirement that individuals with higher level of care must live in homes with additional controls and oversight. We are in a fee for service, free market system; any entity

³ NJDDD, CCP Policies & Procedures Manual (Version 6.0) April 2024, p.179. Personal Guidance – the assistance provided to an individual with intellectual/developmental disabilities on a daily basis in activities of daily living because they require help completing such activities of daily living and/or cannot direct someone to complete such activities when physical disabilities prevent self-completion; or there is a documented health or mental health problem requiring supervision of the person for the protection of the individual or others. In the absence of a court determination, the planning team determines the need for personal guidance for each individual, in accordance with N.J.A.C. 10:44A-4.3(c), Individual Habilitation Plan (IHP), minimum elements.

⁴ Ibid, 124-125 and 222-223.

can own, license or control a group home, but only if they follow the state's rules and standards and provide high quality care to individuals.

Need for Licensure. Management

The current criteria, which is not included in regulation, requires that "all residential services in the setting are coordinated and managed by a singular provider (also referred to as provider managed⁵) where the staff are employees of that provider." ^{6 7} So, if the entity is managed by one or more licensees⁸ whose workers are subcontractors, they would be able to remain a UGH, despite the level of care needed by the individual(s)? Farfetched is no excuse for not plugging this loophole.

While both manuals have a requirement to do background checks, who is verifying that these background checks are being completed in UGH? Who is verifying the safety and well-being of the people who live in the UGH?

Why are the current criteria focused exclusively on provider managed? We are not sure. The licensing regulations state that, "this chapter shall apply to a variety of program models, to include group homes and supervised apartments that are provider managed." ⁹ If the intent was to have it apply only to provider managed, it would have stated, "this chapter applies solely to group homes and supervised apartment that are provider managed." Instead, it includes the rather broad but prescient phrase that the requirements "shall apply to a variety of program models." Regarding licensure standards, perhaps the author's intent was to make sure that we understood that the rules included us.

As with ownership, who, what or how many manage the setting is irrelevant to the requirement that individuals with higher level of care must have additional controls and oversight. We believe that this section should be deleted so that licensing is predicated purely on level of need.

ABCD is Promoting Protectionist Regulation that Squashes New Ways to Deliver Services

Nonsense. Pull back to the years before FFS when we were under contract, when there were many limitations and fewer choices. Our recommendations call for requiring LGH for higher needs, but leaves open UGH for those with fewer needs. Our recommendations allow for anyone (who meets Medicaid and background check requirements) to own or manage a UGH or LGH. There is much more flexibility in the system than ten years ago. Of equal import, is that our recommendations allow more flexibility for the state to intercede when necessary. More

⁵ Provider managed is defined to mean "a setting where services and supports are coordinated by a single service provider, the licensee (the individual, partnership, or corporation responsible for providing services associated with the operation of a community residence) that manages all aspects of residential services for the individual's residing there

⁶ NJDDD Independent Living Discussion Tool, NJDDD Attestation for Provider of Individual Supports and NJDDD CCP Policies & Procedures Manual (Version 6.0), April 2024, 17.9.4.3.1, p 127,

⁷ NJAC 10:44A-1.3 and NJDDD CCP Policies & Procedures Manual (Version 6.0), April 2024, p. 179

⁸ The individual, partnership, or corporation responsible for providing services. NJAC 10:44A -1.3 Definitions

⁹ NJAC 10 44A-1.1 (b) Purpose and scope

choice and innovation must, consequently, be met with more dogged and vigilant oversight to ensure high quality services and minimize abuse, neglect and exploitation.

From a stable regulatory platform innovation, creativity, and choice can and does occur. Just ask our members.

Side Note

- The licensing regulations state that “The purpose of this chapter is to establish minimum requirements for the provision of residential services to people with developmental disabilities.”¹⁰ The existence of UGH renders this central claim inaccurate and misleading and, therefore, it should be deleted.
- The licensing regulations state that “No person shall own or operate a community residence for individual with developmental disabilities without authorization from the Office of Licensing.”¹¹ Though the definition of “community residence” does not specifically mention, it incorporates UGH. If the Office of Licensing does not already have this mechanism in place, we support efforts to do so.

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¹⁰ NJAC 10 44A 1.1 (a) Purpose and scope

¹¹ NJAC 10 44A 1.4 (j) Application for licensure.