

**DIVISION CIRCULAR #30
(N.J.A.C. 10:41)**

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES**

EFFECTIVE DATE: November 30, 2017

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(Rescinds Division Circular #30, "Records Confidentiality and Access to Client, Division and Provider Records," issued June 22, 2010).

- I. **TITLE:** Records Confidentiality and Access to Client, Division, and Provider Records
- II. **PURPOSE:** To provide a uniform approach to records management that safeguards the confidentiality of client, Division, and provider records.
- III. **SCOPE:** This circular applies to all service components of the Division and all providers under contract with the Division or licensed by the Department.
- IV. **GENERAL STANDARDS:**

NOTE: The remainder of this circular is the adoption of the Records Confidentiality and Access to Client, Division, and Provider Records as it appears in N.J.A.C. 10:41.



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Acting Assistant Commissioner

CHAPTER 41

RECORDS CONFIDENTIALITY AND ACCESS TO CLIENT, DIVISION, AND PROVIDER RECORDS

SUBCHAPTER 1. GENERAL PROVISIONS

10:41-1.1 Purpose

The purpose of this chapter is to provide a uniform approach to records management that safeguards the confidentiality of client, Division and provider records.

10:41-1.2 Scope

This chapter applies to all service components of the Division and all providers under contract with the Division or licensed by the Department.

10:41-1.3 Definitions

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

"Assistant Commissioner" means the Assistant Commissioner of the Division of Developmental Disabilities.

"Authorization" means a valid, written authorization on a form that conforms to the Federal regulations, 45 C.F.R. Parts 160 and 164, for the release of protected health information. The authorization may only be signed by the individual, if a competent adult, or the legal guardian of a minor or incapacitated adult.

"Client records" means the organized compilation of documents, including copies of electronic documents, that relate to the provision of services to an individual.

"Community Services Office" means a location housing components of Division community services operations. An individual's Community Services Office contact is determined by the county in which he or she resides. Community Services Office contact information can be found at <http://www.state.nj.us/humanservices/ddd/staff/cso/index.html>.

"Department" means the Department of Human Services.

"Discharge" means the individual is no longer receiving functional services from the Division.

"Division" means the Division of Developmental Disabilities and its staff.

"Division circulars" means sequentially numbered series of documents issued by the Assistant Commissioner, Division of Developmental Disabilities, to promulgate operational policies, standards and key procedures of the Division. The circulars convey policies that have broad applicability to major components of the Division and may have applicability to provider agencies under contract with the Division or licensed by the Department. The Assistant Commissioner may, however, limit the scope of a circular to a single component.

"Division records" means the organized compilation of documents, including electronic documents that relate to the operation of a Division component.

"Individual" means a person who is receiving or has applied for services from the Division. For the purpose of this chapter, this term also applies to those persons who are not eligible for services from the Division but reside in facilities licensed by the Department.

"MIS identification number" means the six-digit serial number assigned to all individuals served by the Division. This number is unique to each individual and does not provide any individually identifying information.

"Next of kin" means the spouse, mother and/or father, guardian, persons connected by birth or marriage, or other persons so indicated on official records.

"Protected health information (PHI)" means any information, including demographic information, whether oral or recorded in any form or medium, that is created or received by the Division and relates to the past, present or future physical or mental health or condition of an individual served by the Division, and identifies the individual, or the information can be used to identify the individual. PHI also means individually identifiable health information that is of individuals served, as well as any other individual, including family and/or legal guardian created or received by the Division that is transmitted or maintained by the Division.

"Provider" means a person, agency or business that is under contract with the Division or licensed by the Department.

"Provider records" means the organized compilation of documents, including electronic documents that relate to the operation of a provider under contract with the Division or licensed by the Department.

"Secure environment" means data encryption, which is a process involving data coding to achieve data confidentiality, data integrity, end point authentication, and other security objections.

"Service component" means any developmental center, local office, or central office unit.

"Transfer" means movement of an individual or record from one Division component or provider to another.

"Under contract" means a provider under a written agreement with the Division or a provider approved by the Division to provide disability services to individuals who are eligible to receive services from the Division.

SUBCHAPTER 2. DIVISION POLICY ON CONFIDENTIALITY OF RECORDS

10:41-2.1 Division Policy on Confidentiality of Records

- (a) The Division recognizes its responsibility to protect the confidentiality of the records of individuals in its care. Therefore, all client records, as defined in N.J.A.C. 10:41-1.3, shall be kept confidential in accordance with N.J.S.A. 30:4-24.3, which mandates that all certificates, applications, records and reports that directly or indirectly identify an individual currently or formerly receiving services from the Division be kept confidential and are not subject to public disclosure. In addition, the requirements of this chapter conform with the Federal Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, as it applies to the release of and access to protected health information; Developmentally Disabled Rights Act, N.J.S.A. 30:6D-1 et seq.; Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2; Vocational Rehabilitation, Protection, Use and Release of Patient Information, 34 CFR 361.38; and the Federal Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq.
- (b) The protections in this chapter extend to all records of individuals held by the Division, including applications for services of persons determined ineligible for services and those applications that are initiated but not completed.
- (c) The release of Division records, as defined in N.J.A.C. 10:41-1.3, shall be in accordance with N.J.S.A. 47:1A-1 et seq., the Open Public Records Act, and this chapter. All such records shall be redacted in accordance with N.J.A.C. 10:41-4.3.
- (d) Records that are otherwise protected by law, for example, individual HIV/AIDS information as indicated in N.J.S.A. 26:5C-5 et seq., and individual drug and alcohol abuse information as indicated in 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, shall not be disclosed without a specific authorization for the release of such information or a judicial order.

- (e) Records containing health information on family members of an individual are to be redacted to remove such information before disclosure to a third party. This information shall not be shared unless disclosure is required for treatment and/or services for the individual.
- (f) Division employees who violate confidentiality shall be subject to corrective action.
- (g) Where an individual is placed with a provider under contract with the Division or licensed by the Department, all records specific to that individual, whether generated or obtained by the provider, belong to the Division and/or Department and shall not be released except by the Division and/or Department.

SUBCHAPTER 3. CLIENT AND AGENCY RECORDS

10:41-3.1 Client record

- (a) Only court ordered civil commitments, including records of conviction, and payments of maintenance, shall be considered to be public information.
- (b) Except as indicated in (a) above, the information in the client record is not public information. The client record is specific to one individual and includes, but is not limited to, the following records:
 - 1. Eligibility determinations and supporting documents;
 - 2. Applications for services;
 - 3. Medical examinations and reports, medication administration records, and prescriptions;
 - 4. Evaluation reports or Comprehensive Functional Assessment (CFA);
 - 5. Individual Habilitation Plan (IHP), Individualized Family Service Plan (IFSP), Individual Educational Plan (IEP), Essential Lifestyle Plan (ELP), Self-Determination Plan (SDP) and Individual Service Plan (ISP);
 - 6. Progress notes and internal communications relating directly to the individual's condition or service decisions;
 - 7. Communications to or from parent or legal guardian;
 - 8. Legal guardianship documents;

9. Individual financial records; and
10. Health information regarding family members.

10:41-3.2 Public and non-public Division and provider records

(a) The following Division and provider records are considered public when the documents are final. Redaction of information, as defined in N.J.A.C. 10:41-4.3, must occur before release of these records. Division and provider records that are public include:

1. The standard contract documents, including appendices and supporting materials that are not specific to any individual;
2. Programmatic and financial reports;
3. Reports that monitor or evaluate the operations of the Division or of providers under contract with the Division or licensed by the Department, including, but not limited to, accreditation reports;
4. Fiscal auditing reports;
5. Provider policies and procedures that are required by State regulation and/or Division policy and are not specific to any individual;
6. Licenses to operate;
7. Inspection reports for licensure;
8. Plan of Correction for Inspection Reports; and
9. Division procedures including, but not limited to, Division Circulars, institutional and provider procedures.

(b) The following Division and provider records are not public and can only be released upon judicial order. These Division and provider records include:

1. Investigations of unusual incidents;
2. Initial Unusual Incident Reports and Unusual Incident Follow up Reports;
3. Any and all documents and materials related to a pending investigation of an unusual incident;

4. Addresses of community residences licensed by the Department;
5. Intra- and inter-agency communications and procedures that are considered by the Division to be advisory, consultative, and deliberative material; risk management documents; and self-critical analyses;
6. Investigations conducted by the Department's Office of Licensing; and
7. Records that are otherwise protected by law.

10:41-3.3 Photographing, audio and videotaping of individuals

- (a) An individual may be photographed if the photograph is to be used by the Division or provider for internal identification purposes.
- (b) Written authorization must be obtained from the individual or legal guardian before an individual may be photographed, if the photograph is to be used for display or public dissemination.
- (c) Audio taping and videotaping of individuals is prohibited for other than treatment purposes or health care operations unless written authorization is obtained from the individual or legal guardian.
- (d) All audiotapes and videotapes of individuals shall be confidential and not subject to public disclosure.

10:41-3.4 Electronic records

- (a) Any client records that are maintained electronically shall be subject to the same requirements in this chapter as records that are maintained on paper.
- (b) Electronic mail is part of the official record of the Division and its release shall conform to the requirements contained in this chapter.
- (c) Client-identifying information shall not be transmitted to persons or agencies external to the Department by electronic mail unless the information is transmitted in a secure environment.

SUBCHAPTER 4. CONFIDENTIALITY OF RECORDS

10: 41-4.1 Safeguarding records

- (a) All providers, including those under contract with the Division or licensed by the Department, shall secure records of individuals in their care against access, loss, defacement, use and copying by unauthorized persons.
- (b) The Division's chief executive officer, community services administrator, or unit director shall safeguard the records of individuals in his or her Division service component, and shall determine who may access, inspect, or copy the records, how the records may be used, how long the records may be used, and other restrictions on access to the records, in accordance with this chapter and the HIPAA Privacy Rule, 41 CFR Parts 160 and 164.
- (c) All requests for release of records shall be directed to the administrative head of the Division component, or the administrative head's designee.
- (d) All requests for release of client records shall be made in writing and identify the specific information requested as well as the intended uses of the information, except for those exceptions indicated in N.J.A.C. 10:41-5.2(d). The requests for release of client records shall be accompanied by a valid written authorization.
- (e) An accounting record shall be maintained of every person or entity that accesses, inspects or obtains copies of a client record, the stated use to be made of the information, and the staff person authorizing the release of the record. This information is to be maintained in accordance with the Federal HIPAA Privacy Rule, and 45 C.F.R. 164.528.
- (f) Retention and destruction of client, provider and Division records shall be in accordance with the State of New Jersey, Division of Archives and Records Management records retention schedule and the Federal HIPAA privacy rule, 45 CFR Parts 160 and 164.
- (g) Records shall be released to entities outside the Department of Human Services, such as the Centers for Medicare and Medicaid Services, New Jersey Department of Health, and Disability Rights New Jersey, if authorized by the Department to monitor the quality of services offered to the individual or as otherwise authorized by law. The persons identified in this subsection shall agree in writing to safeguard the confidentiality of records.
- (h) Information may be released to program staff and associated professional personnel (including students completing professional internships or field placements) who provide habilitation to the individual. The persons identified in this subsection shall agree in writing to safeguard the confidentiality of records.
- (i) Information may be released to persons authorized by the Division who serve as unpaid volunteers if necessary to further the habilitation of the individual. The persons identified in this subsection shall agree in writing to safeguard the confidentiality of records.

- (j) Any questions concerning access to records shall be referred to the Division's Legal and Administrative Practice Office.

10: 41-4.2 Records held by providers under contract with the Division or licensed by the Department

- (a) Where an individual is placed with a provider under contract with the Division or licensed by the Department, all records specific to that individual, whether generated or obtained by the provider, belong to the Division and shall not be released except by the Division.
- (b) Providers under contract with the Division or licensed by the Department, that violate confidentiality, shall be subject to corrective action and/or sanctions by the Division and as prescribed by 45 CFR Parts 160 and 164.
- (c) Requests for copies of client records received by a provider under contract with the Division or licensed by the Department shall be referred to a Community Services Administrator. The provider shall forward the records to the Community Services Administrator. The Division shall be responsible for forwarding the records to the requester.
- (d) When an individual transfers from one provider to another, the client record shall be transferred between the providers on the day of transfer.
- (e) Where a provider is assuming responsibility for an individual from another provider, the receiving provider will have access to the client record of that individual at the time of referral, including copies of the required records.
- (f) When an individual is discharged from Division services or is deceased, all client records shall be returned to the Division. A provider may keep a discharge summary with an outline of the time the individual was with the provider and general services provided.
- (g) Records created by a provider that are required to be created by statute or rule are considered Division records. These records will be provided to the Division upon request.

10: 41-4.3 Redaction of records

- (a) When providing client records, all individual identifying information regarding individuals other than the individual who is the subject of the request, must be redacted, including, but not limited to, names, initials, and specific descriptions, from all client and agency records before they are disclosed. Redaction of

individual identifying information shall be in accordance with 45 CFR 164.514(b)(2)(i). The Division MIS identification number may be used to identify individuals other than the individual who is the subject of the request.

- (b) In accordance with N.J.S.A. 30:4-24.3, 42 U.S.C. §§ 3601 et seq., and 45 CFR Parts 160 and 164, addresses of community residences are confidential. Therefore, the address of any community residence must be redacted from Division and provider records before the records are disclosed.

SUBCHAPTER 5. ACCESS AND RELEASE OF RECORDS

10: 41-5.1 Access to client records

- (a) An individual currently or formerly receiving services from the Division, or an individual's legal guardian, is entitled to inspect or request a copy of the client record. The Division shall require that the request to inspect the client record be in writing. The Division, or agency, must provide access or deny the request for access to the client record as soon as possible but no later than 30 days of the receipt of the request, as described in 45 CFR 164.524(b).
- (b) Records of an individual shall be open to inspection by other persons upon receipt of a valid written authorization, as described in 45 C.F.R. 164.524(b).
- (c) A staff person must be present, at all times, during the inspection of a client or Division record. Staff knowledgeable about the contents of the record shall offer assistance in reviewing the record and provide assistance, if requested.

10: 41-5.2 Release of client records

- (a) All elements of the client record shall be kept confidential and be released only upon receipt of a valid, written authorization or upon judicial order.
- (b) An individual currently or formerly receiving services from the Division, or an individual's legal guardian, shall receive a copy of the client record within 30 days of receipt by the Division of a valid written authorization or shall be advised in writing of reason for denial, as described in 45 CFR 164.524(b).
- (c) Records of an individual shall be provided to other persons upon receipt of a valid written authorization by the individual or the individual's legal guardian.
- (d) Client records may be released without authorization if the request meets one of the exceptions set forth below:
 1. As directed by the Office of the Attorney General (N.J.S.A. 59:8-4) in response to the plaintiff in a tort claim or civil action for damages to

which the Commissioner, Department, Division or employee of the Division is named as a defendant;

2. To Department components, if directly related to the administration of its services;
3. Upon admission, the individual or legal guardian shall provide a list of individuals, including relatives, friends, personal physician or personal attorney, who may receive information regarding the individual's general medical condition over the telephone. This listing shall be updated annually;
4. When an individual is transferred from one component of the Department or Division to another;
5. Medical staff outside of the Department who have assumed temporary medical responsibility for the individual shall have access to information and records as necessary for the treatment of the individual;
6. If an individual is missing, or Division staff is assisting law enforcement in location of a suspect, fugitive, or material witness, the following information relating to the individual may be released to official agencies, if applicable:
 - i. Name and address;
 - ii. Date and place of birth;
 - iii. Social security number;
 - iv. ABO blood type and Rh factor;
 - v. Type of injury;
 - vi. Date and time of treatment;
 - vii. Date and time of death;
 - viii. A physical description including a photograph, if available; and
 - ix. Other significant personal data, such as medical condition or dangerousness to self;
7. To an agency authorized to investigate allegations of abuse or neglect of an individual, for example, the Division of Child Protection and Permanency (DCP&P) in the Department of Children and Families in the case of children, the Ombudsman for the Institutionalized Elderly for individuals over 60 years of age, and Adult Protective Services in the case of an adult living in his or her own home;
8. Investigators, inspectors or auditors from the Department or any agency authorized by law shall have access to client, Division and

provider records in the course of conducting an investigation, inspection for licensure or audit; or

9. In the case of guardianship actions, the Public Defender shall be recognized as the attorney representing the individual, unless another attorney is noted in the client record and shall be permitted access.

10: 41-5.3 Court orders and subpoenas

- (a) If a valid written authorization is not provided, then a judicial order is required for the release of client records. If staff of the Division or a provider receives a court-ordered subpoena, the recipient shall immediately contact the Division's Legal and Administrative Practice Office.
- (b) Client records may not be released in response to a subpoena issued by an attorney. If staff of the Division or a provider receive a subpoena, the recipient shall immediately contact the Division's Legal and Administrative Practice Office.
- (c) The Division may release client, Division and provider records to law enforcement officials when the Division initiates law enforcement action.

10: 41-5.4 Records of deceased individuals

- (a) The records of a deceased individual who has received services may be released to the administrator or executor.
- (b) ~~If there is no administrator or executor, records may be released to the next of kin indicated in the client record. A valid written authorization for the release of this information must be obtained from next of kin in the following order:~~
 1. Natural or adoptive parents;
 2. Siblings;
 3. Grandparents; or
 4. Family caregiver of record.
- (c) If someone other than the next of kin requests the records, a release shall be obtained from the next of kin prior to the release of the records. The Division shall request proof of the identity and degree of the relationship with the deceased individual.
- (d) Records shall be provided to Disability Rights New Jersey in accordance with 42 U.S.C. § 15043.

10: 41-5.5 Records created or held by other entities

- (a) Requests for copies of Division of Child Protection and Permanency (DCP&P) reports involving the investigation of abuse and neglect of individuals served by the Division of Developmental Disabilities shall be referred to DCP&P.
- (b) Requests for copies of Division of Mental Health and Addiction Services' (DMHAS) reports of investigations involving individuals served by the Division of Developmental Disabilities shall be referred to DMHAS.
- (c) Requests for copies of Department's Office of Investigation (OI) reports of investigations involving individuals served by the Division shall be referred to OI.
- (d) Requests for copies of Department's Office of Licensing (OOL) reports of licensing investigations involving individuals served by the Division shall be referred to OOL.

10: 41-5.6 Copying fees

- (a) Copies of records that may be released shall be provided in accordance with the provisions of this chapter and upon payment of the fees listed in N.J.S.A. 47:1A-5.
- (b) Fees may be waived for an eligible individual or his or her family, if it is demonstrated that the payment is a financial hardship.