

[N.J.A.C. 10:41](#)

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 56 No. 3, February 5, 2024

***NJ - New Jersey Administrative Code > TITLE 10. HUMAN SERVICES > CHAPTER 41.
RECORDS CONFIDENTIALITY AND ACCESS TO CLIENT, DIVISION, AND PROVIDER RECORDS***

Title 10, Chapter 41 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 9:6-8.10a](#), 30:1-12, 30:4-24.3, 30:6D-4(f), and 47:1A-1 et seq.; [34 CFR 361.38](#), 42 CFR Part 2, and 45 CFR Parts 160 and 164; and [42 U.S.C. §§ 3601](#) et seq.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2017 d.199, effective October 23, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 41, Administration, was adopted as R.1989 d.134, effective March 20, 1989. See: 20 N.J.R. 2435(a), 21 N.J.R. 757(b).

Subchapter 4, Human Rights Committees, was adopted as R.1989 d.302, effective June 5, 1989. See: 20 N.J.R. 2552(a), 21 N.J.R. 1573(a).

Pursuant to Executive Order No. 66(1978), Chapter 41, Administration, expired on March 20, 1994.

Chapter 41, Administration, was adopted as new rules by R.1994 d.196, effective April 18, 1994. See: 26 N.J.R. 81(a), 26 N.J.R. 725(a), 26 N.J.R. 1655(a). Pursuant to Executive Order No. 66(1978), Chapter 41 expired on April 18, 1999.

Chapter 41, Administration, was adopted as new rules by R.1999 d.263, effective August 16, 1999. See: [31 N.J.R. 844\(a\)](#), [31 N.J.R. 2396\(a\)](#).

Chapter 41, Record Confidentiality and Access to Client and Agency Records, was adopted as new rules by R.2004 d.320, effective August 16, 2004. As a part of R.2004 d.320, Subchapter 2, Access to Client Records and Record Confidentiality, was repealed. See: [36 N.J.R. 1906\(a\)](#), [36 N.J.R. 3920\(a\)](#).

Subchapter 4, Human Rights Committee, was repealed by R.2004 d.321, effective August 16, 2004. See: [36 N.J.R. 1910\(a\)](#), [36 N.J.R. 3925\(a\)](#).

Title 10, Chapter 41 -- Chapter Notes

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 41, Record Confidentiality and Access to Client and Agency Records, was scheduled to expire on February 12, 2010. See: [41 N.J.R. 2880\(a\)](#).

Pursuant to Executive Order No. 1(2010), the chapter expiration date was extended from February 12, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule was readopted pursuant to the Administrative Procedure Act, [N.J.S.A. 52:14B-1](#) et seq.

Chapter 41, Record Confidentiality and Access to Client and Agency Records, was readopted as R.2010 d.153, effective June 22, 2010. As a part of R.2010 d.153, Chapter 41 was renamed Records Confidentiality and Access to Client, Division and Provider Records, effective July 19, 2010. See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 41, Records Confidentiality and Access to Client, Division and Provider Records, was scheduled to expire on June 22, 2017. See: [43 N.J.R. 1203\(a\)](#).

Chapter 41, Records Confidentiality and Access to Client, Division and Provider Records, was readopted as R.2017 d.199, effective October 23, 2017. As a part of R.2017 d.199, Chapter 41 was renamed Records Confidentiality and Access to Client, Division, and Provider Records, effective November 20, 2017. See: Source and Effective Date. See, also, section annotations.

Annotations

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 41, Records Confidentiality and Access to Client, Division, and Provider Records, expires on October 23, 2024.

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[N.J.A.C. 10:41-1.1](#)

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

Substituted ", Division and provider records" for "records and agency records maintained by the Division".

Annotations

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[N.J.A.C. 10:41-1.2](#)

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

Substituted "the Division or licensed by the Department" for "or regulated by the Division".

Annotations

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[N.J.A.C. 10:41-1.3](#)

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§ 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.

§ 10:41-1.3 Definitions

"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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

Deleted definition "Agency records"; added definitions "Assistant Commissioner", "Division records" and "Provider records"; in definition "Division circulars", deleted "a" preceding "sequentially", inserted "series of" and inserted "the Division" preceding "or", and substituted "documents" for "document", "Assistant Commissioner" for "Director" twice, "licensed" for "regulated" and "Department" for "Division"; in definition "Individual", substituted "licensed" for "regulated" and "Department" for "Division"; in definition "Protected health information (PHI)", deleted a comma following "present" and inserted "that is of individuals served, as well as any other individual, including family and/or legal guardian"; in definition "Provider", inserted "the Division" and substituted "licensed" for "regulated" and "Department" for "Division"; and in definition "Transfer", inserted "an" and deleted "service" preceding "provider".

Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

Added definitions "Community Services Office" and "Under contract"; deleted definition "Office of the Regional Assistant Director"; and in definition "Service component", substituted "local office," for "regional office".

Annotations

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Case Notes

N. J.A.C. 10:41-3.2(b), a regulation which provides that incident reports prepared by the New Jersey Division of Developmental Disabilities, are not public records and may be released only by court order does not violate [N.J.S.A. 30:4-24.3](#), which authorizes a developmentally disabled resident of a state institution to consent to the release of a confidential document that mentions the resident; therefore, a developmentally disabled resident of a state institution or the resident's guardian is not entitled to unfettered access to a report prepared by a member of the institution's staff regarding an investigation of alleged neglect or abuse of the resident. [Caliendo v. Velez, 427 N.J. Super. 210, 48 A.3d 357, 2012 N.J. Super. LEXIS 120 \(2012\)](#). Abrogated in part by [Ciesla v. New Jersey Dep't of Health & Sr. Services, 429 N.J. Super. 127, 57 A.3d 40, 2012 N.J. Super. LEXIS 183 \(App.Div. 2012\)](#).

Trial court properly ordered only a redacted incident report be released to a developmentally disabled adult's guardians because [N.J.A.C. 10:41-3.2\(b\)](#) did not violate [N.J.S.A. 30:4-24.3](#), and a developmentally disabled resident of a state institution or the resident's guardian is not entitled to unfettered access to a report prepared by a member of the institution's staff regarding an investigation of alleged neglect or abuse of the resident. [Caliendo v. Velez, 427 N.J. Super. 210, 48 A.3d 357, 2012 N.J. Super. LEXIS 120 \(2012\)](#). Abrogated in part by [Ciesla v. New Jersey Dep't of Health & Sr. Services, 429 N.J. Super. 127, 57 A.3d 40, 2012 N.J. Super. LEXIS 183 \(App.Div. 2012\)](#).

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[N.J.A.C. 10:41-2.1](#)

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

§ 10:41-2.1 Division policy on confidentiality of records

Rewrote (a) and (g); and in (c), substituted "The release" for "Release" and deleted "agency" following "Division".
Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

In (c), updated the second N.J.A.C. reference; and in (d), substituted "CFR" for "C.F.R.".

Annotations

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

In (b)5, deleted "and" preceding "Individual" and inserted ", Essential Lifestyle Plan (ELP), Self-Determination Plan (SDP) and Individual Service Plan (ISP)".

Annotations

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§ 10:41-3.1 Client record

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[N.J.A.C. 10:41-3.2](#)

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§ 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.

History

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

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

Section was "Public and non-public agency records". In the introductory paragraph of (a), substituted "Division and provider" for "agency" and for "Agency", and inserted a comma following "information" and following "10:41-4.3"; in (a)3, substituted "providers" for "agencies", a comma for a colon following "limited to", and "reports" for "report", and inserted "or licensed by the Department" and a comma following "including"; in (a)5, deleted "agency" following "Provider" and a comma following "policy"; in (a)9, deleted a comma following "procedures" and substituted "provider" for "agency"; in the introductory paragraph of (b), substituted "Division and provider" for "agency" twice and deleted "or Grand Jury Subpoena" following "order"; in (b)4, deleted "or regulated" following "licensed" and substituted "Department" for "Division"; and in (b)7, deleted "as indicated in [N.J.A.C. 10:41-2.1\(d\)](#)" following "law".

Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

In (b)5, substituted "advisory, consultative, and deliberative material; risk management" for "Advisory, Consultative and Deliberative Material; Risk Management"; and in (b)6, substituted "the Department's Office of" for "Development Disabilities".

Annotations

Notes

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Case Notes

N. J.A.C. 10:41-3.2(b), a regulation which provides that incident reports prepared by the New Jersey Division of Developmental Disabilities, are not public records and may be released only by court order does not violate [N.J.S.A. 30:4-24.3](#), which authorizes a developmentally disabled resident of a state institution to consent to the release of a confidential document that mentions the resident; therefore, a developmentally disabled resident of a state institution or the resident's guardian is not entitled to unfettered access to a report prepared by a member of the institution's staff regarding an investigation of alleged neglect or abuse of the resident. [Caliendo v. Velez, 427 N.J. Super. 210, 48 A.3d 357, 2012 N.J. Super. LEXIS 120 \(2012\)](#). Abrogated in part by [Ciesla v. New Jersey Dep't of Health & Sr. Services, 429 N.J. Super. 127, 57 A.3d 40, 2012 N.J. Super. LEXIS 183 \(App.Div. 2012\)](#).

Trial court properly ordered only a redacted incident report be released to a developmentally disabled adult's guardians because [N.J.A.C. 10:41-3.2\(b\)](#) did not violate [N.J.S.A. 30:4-24.3](#), and a developmentally disabled resident of a state institution or the resident's guardian is not entitled to unfettered access to a report prepared by a member of the institution's staff regarding an investigation of alleged neglect or abuse of the resident. [Caliendo v. Velez, 427 N.J. Super. 210, 48 A.3d 357, 2012 N.J. Super. LEXIS 120 \(2012\)](#). Abrogated in part by [Ciesla v. New Jersey Dep't of Health & Sr. Services, 429 N.J. Super. 127, 57 A.3d 40, 2012 N.J. Super. LEXIS 183 \(App.Div. 2012\)](#).

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

In (d), deleted "considered" following "be".

Annotations

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§ 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.

Annotations

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

In (a), deleted "service" preceding "providers" and inserted "or licensed by the Department"; in (f), inserted ", provider" and substituted the first occurrence of "Division" for "agency" and "CFR" for "C.F.R."; in (g), inserted a comma following the first occurrence of "Services" and substituted "Senior" for "Human" and "Disability Rights New Jersey and the Department of the Public Advocate," for "New Jersey Protection and Advocacy, Inc.,"; and in (j), inserted "Legal and" and substituted "Office" for "Officer".

Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

In (b), substituted "community services" for "regional", and "CFR Parts" for "C.F.R. Part", and inserted a comma following "administrator" and following "inspect"; and in (g), inserted a comma following "Health", deleted "Senior Services," preceding "Disability" and deleted "and the Department of the Public Advocate" following the second occurrence of "New Jersey".

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[N.J.A.C. 10:41-4.2](#)

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 56 No. 3, February 5, 2024

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

Section was "Records held by agencies under contract with or regulated by the Division". Rewrote (a) through (c); in (f), deleted "agency" following "provider" preceding "may" and substituted "provider" for "agency" following "with the"; and in (g), deleted "agency" following "provider" and inserted "to be created".

Amended by R.2017 d.199, effective November 20, 2017.

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

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

In (c), substituted "Community Services Administrator" for "Regional Assistant Director" twice, and substituted the second occurrence of "a" for "the".

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[N.J.A.C. 10:41-4.3](#)

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

In (b), substituted "§§ 3601" for "§§ 3601", "CFR" for "C.F.R." and "Division and provider" for "agency".

Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

In (a), updated the CFR reference.

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[N.J.A.C. 10:41-5.1](#)

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§ 10:41-5.1 Access to client record

(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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

In (c), deleted "record" following "client", substituted "Division" for "agency" and deleted a comma following "reviewing the record".

Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

In (a), substituted "an individual's legal guardian" for "the legal guardian of a minor or incapacitated adult", and substituted "CFR" for "C.F.R.".

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Case Notes

§ 10:41-5.1 Access to client record

N. J.A.C. 10:41-3.2(b), a regulation which provides that incident reports prepared by the New Jersey Division of Developmental Disabilities, are not public records and may be released only by court order does not violate [N.J.S.A. 30:4-24.3](#), which authorizes a developmentally disabled resident of a state institution to consent to the release of a confidential document that mentions the resident; therefore, a developmentally disabled resident of a state institution or the resident's guardian is not entitled to unfettered access to a report prepared by a member of the institution's staff regarding an investigation of alleged neglect or abuse of the resident. [Caliendo v. Velez, 427 N.J. Super. 210, 48 A.3d 357, 2012 N.J. Super. LEXIS 120 \(2012\)](#). Abrogated in part by [Ciesla v. New Jersey Dep't of Health & Sr. Services, 429 N.J. Super. 127, 57 A.3d 40, 2012 N.J. Super. LEXIS 183 \(App.Div. 2012\)](#).

Trial court properly ordered only a redacted incident report be released to a developmentally disabled adult's guardians because [N.J.A.C. 10:41-3.2\(b\)](#) did not violate [N.J.S.A. 30:4-24.3](#), and a developmentally disabled resident of a state institution or the resident's guardian is not entitled to unfettered access to a report prepared by a member of the institution's staff regarding an investigation of alleged neglect or abuse of the resident. [Caliendo v. Velez, 427 N.J. Super. 210, 48 A.3d 357, 2012 N.J. Super. LEXIS 120 \(2012\)](#). Abrogated in part by [Ciesla v. New Jersey Dep't of Health & Sr. Services, 429 N.J. Super. 127, 57 A.3d 40, 2012 N.J. Super. LEXIS 183 \(App.Div. 2012\)](#).

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§ 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

§ 10:41-5.2 Release of client records

- 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

In (a), deleted "grand jury subpoena or" preceding "judicial"; and in (d)8, substituted a comma for "or" following "Investigators" and following "investigation", substituted ", Division and provider" for "and agency", and inserted "or auditors", "or any agency authorized by law" and "or audit".

Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

In (b), substituted "an individual's legal guardian" for "the legal guardian of a minor or incapacitated adult", and substituted "CFR" for "C.F.R."; rewrote (c); and in (d)7, inserted the first occurrence of "the", updated the Division name, and substituted "age," for "age;".

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[N.J.A.C. 10:41-5.3](#)

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

In (a), deleted the second sentence, deleted "of the subpoena" following "recipient", and inserted "court-ordered" and "Legal and"; in (b), deleted "and agency" following "Client", inserted "not", substituted "an attorney" for "a Grand Jury", and rewrote the second sentence; and in (c), inserted a comma following "client" and substituted "Division and provider" for "and agency".

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[N.J.A.C. 10:41-5.4](#)

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§ 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](#).

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

In (c), inserted the second sentence; and in (d), substituted "Disability Rights New Jersey" for "New Jersey Protection and Advocacy, Inc." and "§ 15043" for "§ 15043", and inserted "and the Department of the Public Advocate".

Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

In (d), deleted "and the Department of the Public Advocate" from the end.

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§ 10:41-5.4 Records of deceased individuals

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§ 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.

History

HISTORY:

Amended by R.2010 d.153, effective July 19, 2010.

See: [41 N.J.R. 2880\(a\)](#), [42 N.J.R. 1603\(a\)](#).

Added (c) and (d).

Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

Rewrote the section.

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§ 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.

History

HISTORY:

Amended by R.2017 d.199, effective November 20, 2017.

See: [49 N.J.R. 2179\(a\)](#), [49 N.J.R. 3603\(b\)](#).

In (a), updated the N.J.S.A. reference.

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