

CHAPTER 41**RECORDS CONFIDENTIALITY AND
ACCESS TO CLIENT, DIVISION
AND PROVIDER RECORDS****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.

Source and Effective Date

R.2010 d.153, effective June 22, 2010.
See: 41 N.J.R. 2880(a), 42 N.J.R. 1603(a).

Chapter Expiration Date

Chapter 41, Records Confidentiality and Access to Client, Division and Provider Records, expires on June 22, 2015.

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 As a part of R.2004 d.320, Subchapter 2, Access to Client Records and Record Confidentiality, was repealed.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Subchapter 4, Human Rights Committee, was repealed by R.2004 d.321, effective August 16, 2004.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).

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: Source and Effective Date. See, also, section annotations.

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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.

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”.

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.

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”.

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.

“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.

“Office of the Regional Assistant Director” means a component of the Division that provides administrative oversight for the provision of services to individuals served by the Division. Counties of service and locations of such offices are as follows:

Sussex, Warren, Morris, Bergen, Passaic, Hudson, Essex, Somerset and Union Counties:

Office of the Regional Assistant Director
c/o Greenbrook Regional Center
275 Greenbrook Road
Green Brook, NJ 08812

Mercer, Middlesex, Ocean, Hunterdon, Monmouth, Camden, Atlantic, Salem, Cape May, Gloucester, Cumberland and Burlington Counties:

Office of the Regional Assistant Director
PO Box 726
Trenton, NJ 08625

“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, regional office or central office unit.

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

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”.

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