

2. Where necessary and according to the Division's determination, interim designation may be issued with one or more waivers in accordance with the standards delineated at N.J.A.C. 10:31-11.1.

New Rule, R.2010 d.175, effective August 16, 2010.
See: 41 N.J.R. 4014(a), 42 N.J.R. 1872(a).

SUBCHAPTER 11. WAIVER

10:31-11.1 Waiver standards

(a) The Division, in accordance with the intent and purpose of N.J.S.A. 30:4-27.1 et seq., and this chapter, may act to relax or waive, with or without conditions, sections of this chapter in the specific circumstances presented, if the Division finds the following:

1. The rule is not mandated by any provision of N.J.S.A. 30:4-27.1 et seq.;

2. The provision of screening services in accordance with the purpose and procedures contained in N.J.S.A. 30:4-27.5 would not be compromised if the waiver were to be granted; and

3. No significant risk to the welfare and safety of individuals subject to screening services or the staff of designated screening or emergency services or the general public, would result from the grant of the waiver.

(b) Every waiver granted by the Division shall state the specific provision(s) waived, all conditions placed on the waiver and the time period for the waiver. The Division shall not permit the waiver of this chapter in its entirety.

10:31-11.2 Procedures for all but personnel-related waivers

(a) A screening service seeking a waiver shall submit a written request at the time of the annual renewal of its contract, at the designation of its status as a screening service, or at any time, should circumstances arise that necessitate a waiver.

(b) A screening service seeking a waiver of any provision of this chapter, with the exception of the standards delineated at N.J.A.C. 10:31-3 and 4, shall submit its request in writing to the appropriate Division regional office and shall comply with the following procedures:

1. A screening service's written waiver request shall:
 - i. Specify the rule(s) or part(s) of the rule(s) for which a waiver is requested;
 - ii. Explain the reasons for requesting a waiver, including a statement specifying the type and degree of hardship (including, but not limited, to funding limitations) that would result if the waiver is not granted;

iii. State the period of time the waiver is needed and outline a plan to make the waiver unnecessary and a timetable for doing so; and

iv. Include all documentation supporting the waiver request; and

2. The screening service shall simultaneously send copies of its waiver request to its county's mental health board and systems review committee, as well as all mental health providers, hospitals, acute care or long-term care facilities treating mental illness or co-occurring disorders and any locally active, mental health family, consumer and advocacy organizations in the geographic area to be served, as determined by the county mental health board. The screening service shall also inform these parties of the address of the Division regional office and the county mental health board where comments may be sent for at least 30 days from the date of the waiver request. The notice shall also include the time, location and date of the first county mental health board meeting scheduled after the 30-day comment period. The screening service shall submit to the Division, documentation indicating compliance with this provision.

(c) The screening service's waiver request will be reviewed according to the following procedure:

1. The waiver request, and any comments received pertaining thereto, shall be discussed at the first county mental health board meeting after the close of the 30-day comment period, as a part of the regular agenda and in an open public meeting that includes an opportunity for public comment on the waiver request. Public comments shall be recorded. By motion, the county mental health board will either endorse the waiver request or record its objections to the granting of the waiver by the Division;

2. The Division shall review each waiver request, public comments on the waiver request and the mental health board's endorsement or objection to the waiver request, in accordance with the standards delineated in this section. The Division may deny, grant with or without conditions, or grant in part and deny in part a waiver for a period of up to one year. This decision shall be based on the full record, which shall include any public comments and discussion that occurred at the mental health board meeting, the motion approved by the board, and any written comments received by the Division;

3. Within 14 days of its receipt of the county mental health board's recommendation, the Division, through the appropriate regional assistant director, shall communicate in writing to the screening service indicating which provisions of this chapter, if any, have been waived, the expiration date of the waiver and any conditions or limitations that have been placed on the waiver;

4. The screening service may appeal denial by the regional assistant director of its waiver request by submitting an appeal to the Assistant Commissioner for

Mental Health Services. The screening service that originally requested the waiver, and other interested parties, may communicate their opinions about the appeal of the waiver denial to the Assistant Commissioner for Mental Health Services prior to his or her final decision. The Assistant Commissioner for Mental Health Services shall uphold or reverse the original waiver denial by the regional assistant director and communicate the decision to the screening service in a written final agency decision; and

5. Failure to comply with any conditions contained in the waiver shall constitute grounds for emergency suspension of screening service designation, in accordance with N.J.A.C. 10:31-10.2.

10:31-11.3 Procedures for personnel waivers

(a) Any requested waiver of the screening and screening outreach personnel requirements delineated at N.J.A.C. 10:31-3 or the affiliated emergency service personnel requirements delineated at N.J.A.C. 10:31-4 shall be known as a personnel waiver. In the interests of preserving a job candidate's privacy and to avoid undue delay in the hiring process, a screening service's request for a personnel waiver shall not be required to follow the procedures delineated in N.J.A.C. 10:31-11.1 and 11.2, but shall be required to meet the following requirements.

1. The screening service shall submit its written request only to the Division's regional office. The request need not undergo the public review procedures delineated at N.J.A.C. 10:31-11.2.

2. The personnel waiver request shall contain the information delineated in N.J.A.C. 10:31-11.2(b)1 and shall include clear clinical or programmatic justification.

(b) The Division shall issue a written decision within 14 days of receipt of the personnel waiver request.

(c) The Division shall base its decision to grant or deny a personnel waiver request, according to whether it meets the standards set forth in N.J.A.C. 10:31-11.1(a).

1. A decision granting a personnel waiver request shall indicate which personnel requirements have been waived, the expiration date and any relevant conditions or limitations.

2. A personnel waiver may be for a maximum time period of one year, subject to renewal upon a request made in accordance with the process delineated at N.J.A.C. 10:31-11.4.

10:31-11.4 Renewal requests and extensions

(a) To renew a waiver originally granted for one year, a screening service shall submit a written request to the appropriate Division regional office 60 days prior to the waiver's expiration. This request shall meet the standards delineated in N.J.A.C. 10:31-11.1(a) or 11.3, as applicable.

(b) The screening service may request an extension of a waiver granted for less than one year by submitting a written request to the appropriate Division regional office 60 days prior to its expiration. This request shall meet the standards delineated in N.J.A.C. 10:31-11.1(a) or 11.3, as applicable.

(c) Notwithstanding the procedure set forth in (a) and (b) above, the Division, upon written request of a screening service, may issue a new waiver or renew an existing waiver. The Division may also extend a waiver and/or waiver conditions on an emergent basis the Division determines that public health and safety concerns require immediate action. Such an issuance or extension shall be issued prior to public notice and comment and shall be limited to the time period necessary to complete the waiver decision process.

SUBCHAPTER 12. CONFIDENTIALITY OF CONSUMER RECORDS

10:31-12.1 Confidentiality of consumer records held by screening services

(a) Consumer records held by screening services are confidential protected health information (PHI).

(b) Screening service staff and affiliated emergency services (AES) staff shall comply with all State and Federal confidentiality laws to maintain the confidentiality of consumer PHI, including, but not limited to, the protections mandated by N.J.S.A. 30:4-24.3 and 26:5C-7; the Federal privacy rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164, as they apply to the release of and access to PHI; 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records; 34 CFR 361.38 Vocational Rehabilitation Protection, Use and Release of Patient Information; and the Federal Fair Housing Amendments of 1988, 42 U.S.C. §§3601 et seq.

10:31-12.2 Disclosure upon the consumer's written authorization

(a) Consumer protected health information may be disclosed to the extent permitted by a valid, written, unrevoked authorization, signed by the consumer or the consumer's legal guardian or mental health care representative.

(b) The authorization must conform to the requirements of the HIPAA privacy rule at 45 CFR 164.508(a).

(c) Authorizations for the release of psychotherapy notes, HIV/AIDS information and individual drug and alcohol abuse information must specifically identify those records as being subject to release.

10:31-12.3 Disclosure upon court order

Consumer protected health information may be disclosed pursuant to a court order.