

## CHAPTER 48

### ADMINISTRATION

#### Authority

N.J.S.A. 30:4-6 et seq., 30:1-12 et seq., and 30:6D-5(b).

#### Source and Effective Date

R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### Executive Order No. 66(1978) Expiration Date

Chapter 48, Administration, expires on March 18, 2001.

#### Chapter Historical Note

Chapter 48, Administration, became effective February 15, 1979, as R.1979 d.62, with Subchapter 1, Appeal Procedure. See: 10 N.J.R. 431(c), 11 N.J.R. 133(a). Pursuant to Executive Order No. 66(1978), Chapter 48 expired on February 15, 1984. New rules regarding Appeal Procedure were adopted as R.1985 d.673, effective January 21, 1986. See: 17 N.J.R. 876(b), 18 N.J.R. 184(a). Subchapter 2, Viral Hepatitis, was adopted as R.1989 d.410, effective August 21, 1989. See: 20 N.J.R. 2437(a), 21 N.J.R. 2507(a). Subchapter 3, Lead Control Program, was adopted as R.1989 d.347, effective July 3, 1989. See: 20 N.J.R. 2555(a), 21 N.J.R. 1905(a).

Pursuant to Executive Order No. 66(1978), Chapter 48 was readopted as R.1991 d.27. See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b). Pursuant to Executive Order No. 66(1978), Chapter 48 expired on December 19, 1995.

Chapter 48, Administration, was adopted as new rules by R.1996, d.131, effective March 18, 1996. Subchapter 3, Lead Control Program, was repealed. See: Source and Effective Date. See, also, section annotations.

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##### SUBCHAPTER 3. (RESERVED)

##### SUBCHAPTER 1. APPEAL PROCEDURE

###### Law Review and Journal Commentaries

Disabilities. Steven P. Bann, 133 N.J.L.J. No. 15, 73 (1993).

##### 10:48-1.1 General provisions

(a) The purpose of this procedural rule is to delineate the steps to be taken when disagreements arise between citizens and the Division of Developmental Disabilities (DDD). Its aim is to encourage and permit the early resolution of disputes and, where that is not possible, to identify the steps to be taken for review by the appropriate authority.

(b) This subchapter pertains to all disputes and disagreements with service components of the Division of Developmental Disabilities involving a competent adult receiving services from or applying for services of the Division, the guardian of a minor or incompetent adult, the proposed guardian, a licensee of the Division or an authorized representative of a competent adult, guardian of a minor or incompetent adult. In the instance of an attorney, written verification of a client/attorney relationship shall be required.

(c) It is expected that, in most disputes between appellants and service components, the appellant will know the identity of the service component with whom there is disagreement. Where the precise service component is not known, such information may be obtained by calling the Administrative Practice Office of DDD (609) 633-2209.

(d) For persons of legal school age, when disputes arise relating to educational program issues, mediation pursuant to N.J.A.C. 6:28-2.6 shall be available through the Office of Education, Department of Human Services. If either party is unwilling to participate in mediation, a written request for a due process hearing under N.J.A.C. 6:28-2.7 may be made directly to the Department of Education. A request for mediation is not prerequisite to a hearing.

(e) Division staff are responsible for informing persons served and their families/guardians about appeals and to supply them with copies of the appeal procedure.

(f) An appeal may be settled at any time by a written agreement of both parties. The settlement agreement shall be considered the final decision. The terms of the settlement agreement shall be binding upon the appellant and the Division. The terms of the settlement agreement shall be

applicable only to the specific matter under appeal and shall not be released to anyone who is not a party to the settlement.

(g) A settlement may be accepted by the chairperson of an informal conference or the review officer in an administrative review in the same manner as an Administrative Law Judge, in the definition of settlement at N.J.A.C. 10:48-1.2.

(h) Contested matters shall be referred to the Office of Administrative Law (OAL) in accordance with N.J.A.C. 1:1. Non-contested matter shall be referred to administrative review.

(i) Appeals of eligibility, licensure action or specific offers of placement shall be initiated within 30 calendar days from the date on the written notification of ineligibility or licensure action.

(j) Appeals of services shall be limited to those services indicated in the Individual Habilitation Plan as defined at N.J.S.A. 30:6D-10.

(k) Except in emergencies, a placement may be deferred pending the exhaustion of the administrative appeal if the appeal is received verbally or in writing 15 calendar days before the proposed placement and the appellant can demonstrate that there may be irreparable harm to the individual as a result of the placement. The Division Director shall decide whether or not to defer the placement. If the Division Director agrees to defer the placement, the Division shall not be responsible to fund the placement except where the Division was funding the placement prior to the request to defer.

(l) If a placement is made on an emergency basis, the appeal may be filed within 30 calendar days following the placement. The individual shall be maintained in the placement to which he or she was placed during the pending of the appeal.

(m) If an appellant fails to follow the time limits established, the Director's decision is final.

(n) No transcript shall be made of an informal conference.

(o) An initial appeal shall be made in writing to the administrative head of the service component in which the dispute exists except for licensure actions. Appeals of licensure actions shall be made to the Division Director.

(p) The administrative head of the component shall review the appeal to ensure that it conforms with the definition herein. If the administrative head determines that the matter does not conform to the definition of appeal, he or she shall review the matter with the Division's Administrative Practice Officer. If the Administrative Practice Officer agrees that the matter does not conform to the definition of an appeal, the administrative head shall set forth the reasons for this conclusion in writing and direct, as applicable, the individual to seek other means of redress.

(q) The appellant shall be notified in writing that the matter does not conform to the definition of an appeal within 10 working days of receipt by the administrative head of the component.

(r) Evidence as defined in N.J.A.C. 1:1-2 may be submitted in informal conference or administrative reviews. An allegation or conjecture does not constitute evidence.

Amended by R.1991 d.27, effective January 22, 1991.

See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b).

In (b) through (d), defined and clarified "appellants". Added (e) through (s).

Amended by R.1944 d.475, effective September 19, 1994.

See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

Amended by R.1999 d.432, effective December 20, 1999.

See: 31 N.J.R. 1786(a), 31 N.J.R. 4262(a).

In (k), substituted a reference to 15 calendar days for a reference to 30 calendar days.

#### Case Notes

Former regulations review process not futile or unfair. In the Matter of the Commitment of B.R., 202 N.J.Super. 182, 494 A.2d 333 (App. Div.1985), certification denied, 102 N.J. 354, 508 A.2d 224 (1985).

Placement decision was equivalent to "contested matter" entitled to a trial-type hearing. J.E. on Behalf of G.E. v. State, Dept. of Human Services, Div. of Developmental Disabilities, 131 N.J. 552, 622 A.2d 227 (1993).

Conditions requiring trial-type administrative hearing are discussed. J.E. on Behalf of G.E. v. State, Dept. of Human Services, Div. of Developmental Disabilities, 131 N.J. 552, 622 A.2d 227 (1993).

#### 10:48-1.2 Definitions

The following words and terms, when used in this chapter, shall have the meanings as defined in N.J.A.C. 1:1-2 or this section unless the context clearly indicates otherwise.

"Administrative hearing" means a proceeding which is conducted by the Office of Administrative Law.

"Administrative review" means a proceeding which is conducted by a review officer appointed by the Division Director or a paper review as decided by the Division Director following an informal conference concerning a non-contested matter.

"Appeal" means a request made by an authorized person within the established time frames for a review of a disputed decision of the Division which involves eligibility, placement, provision of service or licensure. The decision shall be a specific action or proposed action which is identifiable in terms of date, "and person(s) making the decision". General complaints or employee grievances shall not be considered appeals.

"Appellant" means the authorized person who may file an appeal with a service component. The authorized person is one of the following:

1. A competent adult receiving services from or applying for services of the Division;

2. The guardian of a minor or incompetent adult who is receiving services from or applying for services of the Division;

3. The proposed guardian of an individual receiving services where the Division has assessed that the individual is in need of a guardian but a guardian has not yet been appointed;

4. A licensee of the Division in response to a licensure action; or

5. An authorized representative of a competent adult receiving services, a guardian of a minor, a guardian for an incompetent adult receiving services or a licensee. Written verification from the competent adult or guardian of a minor or incompetent adult authorizing representation shall be required.

“Chairperson” means the individual appointed by the administrative head of the component to hold an informal conference.

“Contested matter” means an adversarial proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. (N.J.S.A. 52:14B-2(b), N.J.A.C. 1:1.)

“Evidence” is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay. (N.J.A.C. 1:1-2.1)

“Final decision” means a decision by an agency head that adopts, rejects or modifies an initial decision by an administrative law judge, an initial decision by an administrative law judge that becomes a final decision by operation of N.J.S.A. 52:14B-10 or a decision by an agency head after a hearing conducted in accordance with these rules. (N.J.A.C. 1:1-2.1)

“Informal conference” means a meeting prior to an administrative review in which the respective parties may informally attempt to resolve the issue which is the subject to appeal.

“Initial decision” means the administrative law judge’s recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision. (N.J.A.C. 1:1-2.1)

“Involved parties” means the representative of the appellant, and the service component.

“Non-contested case” means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case. The Director, Division of Developmental Disabilities, may, at his or her discretion with the agreement of the Director of the

OAL, transmit a non-contested matter to the OAL. (N.J.S.A. 52:14F-5(a); N.J.A.C. 1:1-2.1)

“Office of Administrative Law” (OAL) means an independent unit assigned to the Department of State which has the authority to hear contested matters.

“Placement” means the out of home living arrangement, other than for respite, provided by the Division or the day program exclusive of independent employment arranged by the Division.

“Recommended Decision” means the initial determination made by a Division review officer. That decision is subject to comments or exceptions by the parties and may be accepted, modified or rejected by the Division Director.

“Service component” means the operational unit of the Division of Developmental Disabilities (for example, Developmental Center, region, bureau, etc.) which has responsibility for the disputed matter.

“Settlement” means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including (1) pre-transmission settlement efforts by an agency; (2) pre-transmission settlement efforts by an administrative law judge at the request of an agency; (3) mediation by an administrative law judge; and (4) post-transmission settlement conferences by an administrative law judge. (N.J.A.C. 1:1-2.1)

“Settlement conference” means an initial step toward resolving a contested matter prior to transmitting the appeal to the OAL as a contested case.

Amended by R.1991 d.27, effective January 22, 1991.  
See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b).

Revised entire section; added new definitions.  
Amended by R.1944 d.475, effective September 19, 1994.  
See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

### 10:48-1.3 Contested cases

(a) Appeals of licensure actions, determination of ineligibility for services and appeals of specific offers of placement shall be considered to be contested.

1. The request shall be in writing and shall contain the information required below. This information shall be the basis of an initial pleading should the matter be transmitted to the Office of Administrative Law. An appeal shall be denied if the required information is not provided. The request shall include:

- i. Name and address of appellant;
- ii. Name and address of person with developmental disabilities, if the appeal is made by the person’s legal guardian;
- iii. A brief statement of the matter under appeal;

- iv. A list of potential witnesses; and
  - v. Reference to the law, rule, regulation or policy alleged to be violated.
- (b) Appeals of licensure actions shall be forwarded to the Division Director for actions in accordance with N.J.A.C. 10:48-1.4.
- (c) If the matter does not meet the conditions of (a) above, and the appellant believes that the matter is contested as defined herein, the appellant shall set forth his or her reasons supporting that the matter should be considered contested in writing.
- (d) The appeal shall be made to the administrative head of the component, who shall review the appeal and decide if it is a contested or non-contested matter.
1. If the matter is determined to be contested, prior to transmittal to the OAL, a settlement conference shall be scheduled by the administrative head of the component.
  2. If the matter is determined to be non-contested, the requirements of N.J.A.C. 10:48-1.5 shall apply.
    - i. The appellant shall be notified in writing that the matter is non-contested.
    - ii. If the appellant disagrees, he or she may request a review of that decision by the Division Director.
- (e) The appellant shall be notified in writing of a time and date of a settlement conference.
- (f) The settlement conference shall require a meeting of the parties, unless both parties agree to a conference by telephone.
1. The settlement conference shall be chaired by a designee of the administrative head of the component.
  2. The purpose of the conference is to negotiate a settlement and all matters discussed shall remain confidential and inadmissible as evidence.
  3. Evidence or testimony shall not be presented.
  4. No tape recording of the matter shall be made.
  5. The appellant may elect to be represented by legal counsel.
  6. In addition to the administrative head of the component's designee, a representative of the service component initiating the action under appeal shall be present. The Division may elect to have representation by the Office of the Attorney General.
- (g) If agreement is reached, a settlement agreement shall be negotiated and the terms of the agreement shall be made in writing. The settlement shall be time limited or otherwise note when the terms of the agreement shall have been satisfied.

(h) All parties shall sign the agreement. Any settlement is contingent upon the signature of the administrative head of the component.

(i) The settlement agreement shall conclude the matter.

(j) If no settlement is possible, the administrative head of the component shall notify the Division Director in writing that no settlement was made. A copy of that notice shall be sent to the appellant.

Amended by R.1991 d.27, effective January 22, 1991.

See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b).

Section revised to specify 10, 15 and 20 working-day procedural requirements; added (e).

Repeal and New Rule, R.1944 d.475, effective September 19, 1994.

See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

Section was "Initial step: Informal Conference".

#### Case Notes

Court could not order retroactive payment for private placement costs if agency action was consistent. S.I. by G. and S.I. v. New Jersey Div. of Developmental Disabilities, 265 N.J. 251, 626 A.2d 466 (A.D. 1993).

Challenge to an administrative placement decision was equivalent to a "contested matter" and entitled to a trial-type hearing. J.E. on Behalf of G.E. v. State, Dept. of Human Services, Div. of Developmental Disabilities, 131 N.J. 552, 622 A.2d 227 (1993).

Conditions requiring trial-type administrative hearing are discussed. J.E. on Behalf of G.E. v. State, Dept. of Human Services, Div. of Developmental Disabilities, 131 N.J. 552, 622 A.2d 227 (1993).

Placement dispute was properly handled by administrative hearings as "noncontested". Mr. and Mrs. J.E. on Behalf of G.E. v. State Dept. of Human Services, Div. of Development Disabilities, 253 N.J. Super. 459, 602 A.2d 279 (A.D.1992), certification granted 130 N.J. 12, 611 A.2d 651, reversed 131 N.J. 552, 622 A.2d 227 (1993).

Appeal of administrative decision is properly made to appellate division of Superior Court. Mr. and Mrs. J.E. on Behalf of G.E. v. State Dept. of Human Services, Div. of Development Disabilities, 253 N.J. Super. 459, 602 A.2d 279 (A.D.1992), certification granted 130 N.J. 12, 611 A.2d 651, reversed 131 N.J. 552, 622 A.2d 227 (1993).

#### 10:48-1.4 Office of Administrative Law

(a) Those matters determined to be contested shall be referred to the Office of Administrative Law (OAL) for a hearing, in accordance with the Administrative Procedure Act at N.J.S.A. 52:14B-2(b) and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) If the contested matter is not settled or involves a licensure action, the Division Director shall transmit the matter to the Office of Administrative Law.

1. In the instance of licensure appeals, the matter shall be transmitted within 10 working days of the receipt of the appeal.

2. In the instance of all other contested matters, the matter shall be transmitted within 10 working days of the notice of the administrative head of the component that the settlement conference did not resolve the matter.

3. While contested cases are being prepared for transmittal to OAL, further efforts may be made to resolve the issue informally.

4. The Director, Division of Developmental Disabilities may, at his or her discretion with the agreement of the Director of the OAL, transmit a non-contested matter to the OAL (N.J.S.A. 52:14F-5(o)).

(c) A decision rendered by the OAL shall be adopted, rejected or modified by the Director, Division of Developmental Disabilities within 45 days of its receipt (N.J.S.A. 52:4B-10(c)). This shall be construed as constituting the final administrative decision of the matter under appeal.

(d) Upon issuance, the final administrative decision shall be sent to the involved parties with notice that any further appeal must be to the Appellate Division of the Superior Court of New Jersey.

(e) The Director shall notify the appellant that a matter has been transmitted to OAL.

Amended by R.1991 d.27, effective January 22, 1991.

See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b).

Clarified case transmittal procedure in accordance with N.J.S.A. 52:14B-2(b) and N.J.A.C. 1:1. Added (d).

Recodified from 10:48-1.5 and amended by R.1994 d.475, effective September 19, 1994.

See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

Prior text at 10:48-1.4, Final step: Administrative review or Administrative Hearing, repealed.

#### Case Notes

Placement dispute was properly handled by administrative hearings as "noncontested". Mr. and Mrs. J.E. on Behalf of G.E. v. State Dept. of Human Services, Div. of Development Disabilities, 253 N.J.Super. 459, 602 A.2d 279 (A.D.1992), certification granted 130 N.J. 12, 611 A.2d 651, reversed 131 N.J. 552, 622 A.2d 227 (1993).

Appeal of administrative decision is properly made to appellate division of Superior Court. Mr. and Mrs. J.E. on Behalf of G.E. v. State Dept. of Human Services, Div. of Development Disabilities, 253 N.J.Super. 459, 602 A.2d 279 (A.D.1992), certification granted 130 N.J. 12, 611 A.2d 651, reversed 131 N.J. 552, 622 A.2d 227 (1993).

#### 10:48-1.5 Non-contested cases

(a) Informal conference requirements are as follows:

1. An informal conference shall be scheduled by the administrative head of the component in response to a non-contested matter. The informal conference shall be scheduled no more than 20 working days from the date that a matter is determined to be non-contested. Extension of the conference date beyond 20 working days may only occur upon mutual agreement of both parties.

2. The administrative head of the component shall appoint a chairperson to convene the Informal Conference.

3. The chairperson shall prepare a report specifically identifying the issue(s) under appeal, a summary of the position of both parties and a decision with respect to

each issue. The reasons for the decision shall be provided. The summary shall be provided to the appellant within 20 working days of the conference. A copy of this summary shall be retained in the individual's file.

4. The appellant may be represented by legal counsel at the informal conference.

5. No transcript shall be made of the informal conference.

6. The Rules of Evidence shall not be strictly enforced.

(b) Should resolution not be possible at the informal conference level, the appellant may submit a written request to the Director, Division of Developmental Disabilities, for an administrative appeal.

1. Written request for an administrative appeal shall be made within 15 working days from the date on the written summary.

2. The Director shall offer an Administrative Review Conference with the parties present or a paper review without the parties appearing. The Division Director shall appoint an Administrative Review Officer.

(c) Administrative paper review requirements are as follows:

1. Each party shall submit written arguments supporting their position to the review officer within 20 calendar days of the written notification of the paper review. Evidence may also be provided.

2. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement of an individual into evidence instead of an affidavit.

3. Discovery shall be provided in accordance with the requirements of N.J.A.C. 10:41-2.

4. A written decision shall be forwarded to the involved parties within 20 working days of the receipt of both arguments. The written decision shall set forth the reasons for conducting a paper review. This shall be considered the Recommended Decision.

5. Written comments, objections or exceptions to the Recommended Decision may be made by either party and be sent to the Division Director within 10 working days from the date of the Recommended Decision.

6. After review of the Recommended Decision and any comments, objections or exceptions, the Division Director shall issue a Final Decision in writing, within 20 working days of the close of the comment period.

7. Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be made to the Appellate Division of the Superior Court of New Jersey.

(d) Administrative review conference requirements are as follows:

1. An administrative review conference shall be scheduled within 20 working days of receipt of the appeal. Adjournments may be granted by the Division Director for good and valid reason.

2. The appellant may be represented by attorney or spokesperson and may present documentation and such witnesses as have knowledge of the issues involved.

3. The service component shall be represented by a person designated by the administrative head of the component and may produce documentation and such witnesses as have direct knowledge of the issues involved. The person representing the component may not be the same person who chaired the informal conference.

4. A verbatim tape recording of the proceeding shall be made. The party requesting a written transcript shall bear the costs of transcription and shall provide copies to the other party and review officer at no cost.

5. The Rules of Evidence shall be relaxed to include hearsay. It is also permissible to accept a written statement by an individual if the individual is not present at the administrative review.

6. Discovery shall be provided in accordance with the requirements of N.J.A.C. 10:41-2.

7. The appellant may request that an employee of the Division testify at the conference. The appellant shall make such a request in writing to the Review Officer at least five working days prior to the conference. The request shall include the name, work location, title (if known) and a summary of the information to be provided by the employee.

8. The administrative review conference shall adhere to the following format:

- i. An opening statement by each party;
- ii. The presentation of testimony and evidence. There shall be the opportunity for cross examination;
- iii. Rebuttal of testimony and evidence. There shall be the opportunity for cross examination; and
- iv. A summary.

9. The review officer shall render a written decision within 20 working days of the review conference. This shall be considered the Recommended Decision.

10. Written comments, objections or exceptions to the Recommended Decision may be made by either party and be sent to the Division Director within 10 working days from the date of the Recommended Decision.

11. After review of the Recommended Decision and any comments, objections or exceptions, the Division Director shall issue a Final Decision in writing, within 20 working days of the close of the comment period.

12. Upon issuance, the Final Decision shall be sent to the parties with notice that any further appeal must be made to the Appellate Division of the Superior Court of New Jersey.

Amended by R.1991 d.27, effective January 22, 1991.

See: 22 N.J.R. 3192(a), 23 N.J.R. 209(b).

Section revised to clarify conduct of paper reviews and administrative review conferences.

Recodified from 10:48-1.6 and amended by R.1994 d.475, effective September 19, 1994.

See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

### 10:48-1.6 Emergency relief

Emergency relief shall be available as provided in N.J.A.C. 1:1-2.6.

New Rule, R.1994 d.475, effective September 19, 1994.

See: 26 N.J.R. 1280(a), 26 N.J.R. 3861(a).

## SUBCHAPTER 2. VIRAL HEPATITIS

### 10:48-2.1 Purpose

The purpose of this subchapter is to delineate Division of Developmental Disabilities policies and procedures regarding the screening, treatment and control of viral hepatitis B in the service components of the Division.

### 10:48-2.2 Scope

(a) This subchapter applies to those employees and individuals receiving services within the following service components of the Division of Developmental Disabilities:

1. Developmental Centers; and
2. Community Services.

(b) This subchapter also applies to programs offered by private mental retardation facilities licensed in accordance with N.J.A.C. 10:47.

Amended by R.1996 d.131, effective March 18, 1996.

See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

### 10:48-2.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Acute viral hepatitis B” means the recent onset of viral hepatitis B which is identified by positive blood tests for HBsAg, and elevated liver function tests with other clinical symptoms compatible with hepatitis B.

“Anti-HBc” means the presence of the antibody to hepatitis B core antigen, acquired once a person has contracted the disease, which indicates that the person is no longer susceptible to contracting viral hepatitis B.

“Anti-HBs” means the presence in the blood of the antibody to hepatitis B surface antigen which indicates that the person has had a hepatitis B infection and is immune or has received either immune globulin or hepatitis B vaccine. Provided that the person has not recently received immune globulin, anti-HBs means, for the purposes of this subchapter, that the person is not susceptible.

“At risk” means the designation of a person who is neither a carrier of hepatitis B virus, nor has an antibody to hepatitis B, and who is, or may be expected to be, exposed to the blood or body fluids of an individual who is hepatitis B surface antigen positive, through either the person’s own designated duties or through the behavior of the individual, which may include, but is not limited to, aggressive behavior (biting), self-mutilation, accidental injury, frequent bleeding, sexual activity, uncontained menstrual bleeding, seizure disorders, oral pathology, and skin lesions.

“Department” means the Department of Human Services.

“Developmental Center” means those State-operated facilities providing residential services to specific individuals.

“Division” means the Division of Developmental Disabilities within the Department of Human Services.

“Hepatitis B carrier” means a person in whom HBsAg is found in the blood when that person is tested twice six months apart.

“Individual habilitation plan” (“IHP”) means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the goals and objectives being pursued on behalf of the individual and the steps being taken to achieve them by each agency. It identifies a continuum of skill development that outlines progressive steps and the anticipated outcomes of services. The individual habilitation plan is a single, consistent and comprehensive plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a service plan, a treatment plan, and a health care plan. Various aspects of the plan, such as education, rehabilitation, health care, and others, are assigned to those persons or agencies who can provide, or are legally required to provide, the training or services.

“Infectious person” means a person who is hepatitis B surface antigen positive.

“Immune person” means a person who is hepatitis B surface antibody positive.

“Institution” means developmental centers operated by the Division or private mental retardation facilities.

“Interdisciplinary team” (“IDT”) means an individually constituted group of relevant individuals responsible to develop a single integrated IHP. The team shall consist of the individual served, the individual’s parent (if the client is a minor or an adult who deserves that the parent be included), guardian or advocate, those persons who work most directly with the individual and professionals and representatives of service areas who are relevant to the identification of the individual’s needs and the design and evaluation of program to meet them.

“Private mental retardation facility” means an institution for the mentally retarded, whether operated for profit or not, which is not maintained, supervised or controlled by any agency of the government, or the state, or any county or municipality and which maintains and operates facilities and collects fees for the residential care and habilitation training of 16 or more, non-related developmentally disabled individuals for periods exceeding 24 hours.

“Susceptible person” means a person who has no serologic marker for hepatitis B virus.

“Transfer” means the removal of an individual from one service unit and placement into another service unit, as follows:

From	To
Developmental Center	Developmental Center Community Services
Community Service	Developmental Center

“Viral hepatitis B” means a type of inflammation of the liver. Hepatitis B virus is found in the blood, blood products, and to a lesser degree, in other body secretions. The major mode of transmission is blood to blood contact.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

**10:48-2.4 Exclusion from programs**

(a) Individuals identified by a physician as hepatitis B carriers, or individuals who have acute hepatitis B, shall not be excluded from regular participation in services solely on the basis of being diagnosed as hepatitis B infected or carriers.

(b) The placement in programs of individuals who have acute hepatitis B or who are carriers of hepatitis B shall be determined on a case by case basis. Any exclusion of an individual from a program or from program activities shall be based upon objective criteria as determined by the individual’s interdisciplinary team and shall be related to a direct danger of infection to others. Reasonable and appropriate alternate activities, as determined by the interdisciplinary team, shall be provided to individuals who are excluded because of a diagnosis of active hepatitis B or carrier.

(c) If an individual is excluded from programming because of a diagnosis of hepatitis B or carrier of hepatitis B,

the individual, guardian or family shall be advised of the reason for exclusion.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.5 Immunization expenses

(a) When individuals and/or staff who are considered to be at risk are offered the opportunity to be immunized for hepatitis B, health care benefits and entitlements, medical insurance, or other means of medical coverage shall be utilized first as a means of payment.

(b) To the extent that the immunization costs are not covered by the sources in (a) above, the Division shall incur the expense either partially or totally.

(c) As a prerequisite for admission to a developmental center, appropriate immunization shall be required.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.6 Requirements for program participation or placement of persons with hepatitis B

(a) Decision concerning placement or program participation within community programs shall be made jointly by the Division and the service provider, in consultation with the individual's physician.

(b) Medical questions may be referred to a mutually agreed-upon expert for consultation.

(c) Individuals shall be immunized for hepatitis B before placement in a developmental center.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.7 Staff training

(a) Before the admission to service of an individual who has acute hepatitis B or who is a hepatitis B carrier, all staff shall receive instruction in the methods by which hepatitis B is transmitted and how personal hygiene can prevent the transmission of hepatitis.

(b) Staff shall be informed of the various types of hepatitis vaccine and the protection provided by each type and shall be given the opportunity to receive immunization.

(c) The service provider shall provide, or cause to be provided, the required training.

(d) Training shall be repeated as circumstances require.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.8 Responsibility for testing and monitoring

(a) The provisions of this subchapter shall be followed in developmental centers and in private mental retardation facilities in New Jersey.

(b) The provisions of this subchapter may be used as guidelines by physicians of individuals in community programs.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.9 Testing and monitoring process

(a) Except in emergency situations, each individual shall have a blood test to determine the presence of HBsAg and anti-Hbc, or anti-HBs, using currently accepted techniques, within 60 days before the admission of the individual to developmental centers or private mental retardation facilities.

(b) In emergency situations which require that the individual be admitted before testing has been completed or before the test results are obtained, the testing and monitoring process shall be completed as soon as possible after the individual is admitted.

(c) If the individual is HBsAg positive, the individual shall be tested once more six months later, unless he or she is a known carrier. Testing thereafter shall be at the discretion of the attending physician.

(d) No further testing is required if the anti-HBs and/or the anti-Hbc is positive and the patient is certified by a physician as having a natural immunity.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.10 Admission of an individual receiving services

(a) An individual may be admitted to a developmental center if he or she has been tested and found to have acute hepatitis B or be a carrier of hepatitis B, if the developmental center can provide adequate medical care and precautions, as determined by the Medical Director of the center.

(b) An individual may be admitted to a community program if he or she has been tested and found to have acute hepatitis B or be a carrier of hepatitis B, upon evaluation on a case-by-case basis, by the Division and the program, in consultation with the individual's physician.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.11 Transfer of an individual receiving services

(a) If an individual is to be transferred, testing shall be performed unless the individual has been identified as having a natural immunity, is a known carrier or has had testing within 30 days prior to the proposed transfer date. Monitoring and retesting shall be conducted as indicated in N.J.A.C. 10:48-2.8 and 2.9.

(b) If testing has occurred within 30 days prior to the proposed transfer date, the monitoring and retesting shall be conducted as indicated in N.J.A.C. 10:48-2.8 and 2.9.

(c) Any delays in transferring an individual who has acute hepatitis B who is a hepatitis B carrier shall be reviewed on a case-by-case basis by the sending and receiving programs. A decision to delay the transfer of an individual shall be reviewed no less than every 90 days.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### **10:48-2.12 Immunization of susceptible individuals at risk**

(a) All individuals receiving services in day or residential programs in New Jersey who are not carriers and who do not have natural immunity and are at risk of contracting hepatitis B shall be provided with the opportunity to receive hepatitis B vaccine, under the terms indicated in N.J.A.C. 10:48-2.4(a) and (b).

(b) Any staff member considered to be at risk contracting hepatitis B while employed in a program operated by, or under contract with, the Division in New Jersey shall be given an opportunity to be tested and to receive hepatitis B vaccine, under the terms of N.J.A.C. 10:48-2.4 (a) and (b).

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### **10:48-2.13 Informed consent**

(a) Staff responsible for testing or vaccination shall obtain the individual's or individual's guardian's, or staff person's, informed consent before testing or vaccination. The informed consent shall be placed in the client record or staff person's file, as appropriate.

(b) Individuals who are not mentally deficient or incompetent and staff who are at risk shall be informed of the risk of contracting hepatitis B and the availability of vaccines, the benefits of the vaccines and possible adverse side effects of the vaccines. Written documentation of the information given to the individual or staff person shall be placed in the client record or staff person's file, as appropriate.

(c) In the cases of minors or mentally deficient or incompetent adults who are at risk, the guardian of the person shall be informed of the availability of the vaccine, the benefits of the vaccine, and the possible adverse side effects. Written documentation of the information given to the guardian of the person shall be placed in the client record.

(d) The person being informed shall be advised to consult his or her personal physician, or the personal physician of a minor or the mentally deficient or incompetent individual, as appropriate, to determine if the vaccine is contraindicated in the particular situation.

(e) A staff member, an individual who is competent, a guardian of a minor or a guardian of a deficient or incompetent individual may elect to decline the offer of vaccination, after receiving information of the vaccine from the staff person designated to obtain consent.

(f) A staff member, an individual who is competent, or a guardian of a minor or a guardian of a mentally deficient or incompetent individual shall sign a statement that he or she understands the benefits and the possible side effects of the vaccine and that he or she either agrees to or refuses the testing and/or the vaccine. The signed statement shall be kept in the employee's file or client record.

(g) The requirements of (a) through (f) above shall be documented and kept in the client record or employee's file. Documentation shall be kept on file of all informed consent forms distributed and whether or not they were returned.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### **10:48-2.14 Immunization of individuals scheduled to be admitted to developmental centers**

(a) Prior to the admission of individuals to a developmental center, at least one dose of hepatitis B vaccine shall be administered to any individual who has been tested pursuant to the recommendations of the Center for Disease Control Report Number 50, published March 1986 and who has no antibody or antigen to hepatitis B.

(b) The following procedures shall be followed for emergency admissions:

1. If admission occurs before testing and immunization can be initiated, then full hepatitis B testing and immunization shall take place as part of the initial admission medical evaluation;
2. If admission occurs after testing is completed, but before immunization, and the client has no antibody or antigen to hepatitis B, the first dose of the Hepatitis B vaccine shall be given within 14 days from admission.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### **10:48-2.15 Treatment for those who have been exposed to hepatitis and have not been immunized or who have no natural immunity**

(a) Treatment for those who have been exposed to hepatitis and have not been immunized or who have no natural immunity shall be administered pursuant to the Morbidity and Mortality Report published by the Centers for Disease Control, June 23, 1989 (Centers for Disease Control, Atlanta, Georgia 30333) as follows:

1. Appropriate Division or agency staff shall inform the individual or guardian and staff that immunization is

recommended in some cases, including, but not limited to, the following:

- i. When the individual or staff person has been bitten by an individual who tests positive for HBsAg, if the bite breaks the skin;
- ii. When the susceptible individual or staff person has been exposed to the blood or other body fluids of an individual who tests positive for HBsAg.

2. Appropriate Division or agency staff shall inform the individual or guardian or staff person that the appropriate post-exposure treatment, as determined by a physician, pursuant to the current Morbidity and Mortality Report, published by the Centers for Disease Control, Atlanta Georgia 30333, should be given.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.16 Registry of carriers of hepatitis B

(a) A registry of hepatitis B carriers shall be maintained by developmental centers, and regional Offices of Community Services of the Division, which shall contain the names of all individuals of the center, or office who have been determined by a physician to be carriers of hepatitis B.

(b) The registry shall be confidential, in accordance with N.J.A.C. 10:41-2.

(c) The registry shall contain the individual's:

1. Name;
2. Date of birth;
3. Guardianship status;
4. Current residential placement name and address;
5. Current day program name and address;
6. Hepatitis B surface antigen status;
7. Hepatitis Be antigen status.

(d) The Community Services Registry shall contain, for each individual on the registry, a history of the person's institutional placement, and shall include psychiatric hospital, developmental center, or other placement, as applicable.

(e) The registry shall be maintained as follows:

1. In the developmental center, by the staff person responsible for infection control;
2. In the Bureau of Special Residential Services, by the Office of the Chief; and

3. In the regional offices, by the Regional Nurse.

(f) An individual's name shall be removed from the registry if he or she becomes immune.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.17 Limitations to program participation

(a) An individual who has acute hepatitis B or who is a carrier of hepatitis B shall be included in all programs designed for the individual in the IHP, unless a determination has been made by the IDT that the individual shall not participate in programming. This determination shall be fully documented in the individual's IHP.

(b) Where exclusion from a specific program activity has been determined appropriate by the IDT, reasonable and appropriate alternatives shall be provided to the individual, consistent with the recommendations in his or her IHP.

(c) Any exclusion of an individual from a program shall be based upon objective criteria, including, but not limited to, medical and behavioral consideration of any of the individual's behaviors which result in increased risk of transmission of hepatitis to others (for example, aggressive behavior (biting), self mutilation, accidental injury, frequent bleeding, sexual activity, uncontained menstrual bleeding, seizure disorders, oral pathology and skin lesions).

(d) The individual or family of the individual or the guardian, as appropriate, shall be informed in writing of the individual's exclusion and the reason(s) for the exclusion.

(e) The IDT shall evaluate exclusion of individuals from programming every 90 days as long as the exclusion is in effect. The evaluation shall be noted in the client record.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

#### 10:48-2.18 Appeal of exclusion of individual from program

If the individual, family or guardian disagrees with the exclusion from programming, an appeal may be made in accordance with the provisions of N.J.A.C. 10:48-1.

Amended by R.1996 d.131, effective March 18, 1996.  
See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a).

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SUBCHAPTER 3. (RESERVED)