

CHAPTER 48
APPEAL PROCEDURE

Authority

N.J.S.A. 30:1-12 et seq. and 30:4-6 et seq.

Source and Effective Date

R.2007 d.126, effective May 7, 2007.
See: 38 N.J.R. 1500(a), 39 N.J.R. 1714(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 48, Appeal Procedure, expires on May 7, 2014. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 48, Administration, Subchapter 1, Appeal Procedure, was adopted as R.1979 d.62, effective February 15, 1979. 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.

Subchapter 1, Appeal Procedure, was adopted as new rules by R.1985 d.673, effective January 21, 1986. See: 17 N.J.R. 876(b), 18 N.J.R. 184(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).

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).

Pursuant to Executive Order No. 66(1978), Chapter 48, Administration, was readopted as R.1991 d.27, effective December 19, 1990. 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Chapter 48, Administration, was adopted as new rules, and Subchapter 3, Lead Control Program, was repealed by R.1996 d.131, effective March 18, 1996. See: 27 N.J.R. 4857(a), 28 N.J.R. 1522(a). Pursuant to Executive Order No. 66(1978), Chapter 48, Administration, expired on March 18, 2001.

Chapter 48, Administration, was adopted as new rules by R.2001 d.157, effective May 21, 2001. See: 33 N.J.R. 346(a), 33 N.J.R. 1610(c).

Subchapter 2, Viral Hepatitis, expired on May 21, 2006. In accordance with N.J.S.A. 52:14B-5.1, Subchapter 1, Appeal Procedure, expired on November 17, 2006. See: 38 N.J.R. 2584(a).

Chapter 48, Appeal Procedure, was adopted as new rules by R.2007 d.126, effective May 7, 2007. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

10:48-1.1 Purpose

The purpose of these procedural rules is to delineate the steps to be taken when disagreements arise between citizens and the Division of Developmental Disabilities. The rules' 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.

10:48-1.2 Scope

(a) This chapter pertains to all disputes and disagreements with service components of the Division involving:

1. A competent adult receiving services from or applying for services of the Division;
2. The guardian or proposed guardian of a minor or incapacitated adult receiving services or applying for services from the Division;
3. An authorized representative of a competent adult receiving services or applying for services from the Division, or the guardian of a minor or incapacitated adult receiving services or applying for services from the Division; or
4. A licensee, or his or her authorized representative, of the Department of Human Services that provides services to an individual receiving services from the Division.

10:48-1.3 General provisions

(a) For persons of legal school age, when disputes arise relating to educational program issues, mediation pursuant to N.J.A.C. 6A:14-2.6 shall be available through the Office of Special Education Programs, Department of Education.

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

(c) An appeal may be settled at any time by a written agreement of both parties. The settlement agreement shall be considered the final decision.

(d) If an individual fails to follow the time limits for requesting an appeal as established in this chapter, the Assistant Commissioner may deny the appeal.

(e) The assessment of an individual to contribute toward the cost of care and maintenance if he or she has been residentially placed by the Division may be appealed in accordance with N.J.A.C. 10:46D.

10:48-1.4 Appeals of licensing actions

(a) Appeals of licensing actions relative to Division programs may be appealed under the Administrative Procedures Act as described at N.J.A.C. 1:1.

(b) Appeals of licensing actions relative to Division programs shall be directed to the Department of Human Services, Office of Licensing.

(c) The appeal of licensing actions shall be initiated within 30 days from the date on the written notification of licensing action.

(d) The request for appeals shall be submitted in the format as described in N.J.A.C. 10:48-1.6(e).

10:48-1.5 Definitions

The following words and terms, when used in this chapter, shall have the meanings as defined in N.J.A.C. 1:1-2.1 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 that is conducted by a review officer appointed by the Assistant Commissioner, or a paper review as decided by the Assistant Commissioner, 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, place-

ment, or provision of service. 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 from 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. An authorized representative of a competent adult receiving services or applying for services from the Division, a guardian of a minor, or a guardian for an incompetent adult receiving services or applying for services from the Division. Written verification of status as an authorized representative from the competent adult or guardian of a minor or incompetent adult authorizing representation shall be required;
5. A licensee, or his or her authorized representative, of the Department of Human Services that provides services to an individual receiving services from the Division; or
6. An attorney, if written verification of the client/attorney relationship is provided.

“Assistant Commissioner” means the Assistant Commissioner of the Division of Developmental Disabilities.

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

“Contested matter” means an adversarial 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.)

“Days” shall mean calendar days unless otherwise specified.

“Division” means the Division of Developmental Disabilities.