

**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.2001 d.157, effective May 21, 2001.
See: 33 N.J.R. 346(a), 33 N.J.R. 1610(c).

Executive Order No. 66(1978) Expiration Date

Chapter 48, Administration, expires on May 21, 2006.

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Chapter 48, Administration, was adopted as new rules, and Subchapter 3, Lead Control Program, was repealed by R.1996, d.131, effective March 18, 1996.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

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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 provision

(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) 987-0807.

(d) 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. If either party is unwilling to participate in mediation, a written request for a due process hearing under N.J.A.C. 6A:14-2.7 may be made directly to the Department of Education. A request for mediation is not a 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, an appellant may request that the Division Director defer the placement of an individual pending resolution of an administrative appeal when the following circumstances apply:

1. The appeal is received verbally or in writing 10 calendar days before the proposed placement, and:

i. The appellant can demonstrate that the placement may place the individual at risk of abuse or neglect; or

ii. The appellant has new information that was not known or available at the time the placement offer was made; or

iii. The appellant can demonstrate that the placement shall significantly compromise the appellant's ability to have the Division's action reversed or modified through the appeal process.

2. If the Division Director agrees to defer the placement, the Division shall not be responsible to maintain the status quo unless the Division was funding 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.

(s) 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. 10:46-7.1(b)-(e).

(t) Recommendation of placement changes, where no specific offers of placement have been made, shall be considered non-contested.

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.

Amended by R.2005 d.189, effective June 20, 2005.

See: 37 N.J.R. 187(a), 37 N.J.R. 2205(a).

Rewrote (d).

Administrative change.

See: 37 N.J.R. 2702(a).

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).