

**CHAPTER 41
ADMINISTRATION**

Authority

N.J.S.A. 9:6-8, 10a, 20:10-12, 30:4-24.3, 30:6D-4(f).

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R.1994 d.196, effective April 18, 1994.
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Executive Order No. 66(1978) Expiration Date

Chapter 41, Administration, expires on April 18, 1999.

Chapter Historical Note

Chapter 41, Administration, became effective with Subchapter 2, Access to Client Records and Record Confidentiality, 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 expired on March 20, 1994 and was adopted as new rules by R.1994 d.196. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. ACCESS TO CLIENT RECORDS AND RECORD CONFIDENTIALITY

10:41-2.1 Purpose

The purpose of this subchapter is to provide a uniform approach to records management within the Division which safeguards the confidentiality of client records.

10:41-2.2 Scope

This subchapter applies to all service components of the Division and all providers contracted with or regulated by the Division.

10:41-2.3 Definitions

The words and terms in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

“Department” means the Department of Human Services.

“Division” means the Division of Developmental Disabilities.

“Agency records” means the organized compilation of documents that relate to the operation of a Division component or a provider agency under contract with or regulated by the Division.

“Client record” means the organized compilation of documents that relate to the provision of services to an individual client.

“Public record” means those records required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done to perform that function.

“Pupil record” means the organized compilation of documents that relate directly to the provision of educational

services to an individual school-age client as required by New Jersey law or rule.

“Service component” means any developmental center, regional office, day training, adult activity center or special residential services.

Amended by R.1993 d.381, effective August 2, 1993 (operative August 16, 1993).

See: 25 N.J.R. 432(a), 25 N.J.R. 3465(a).

10:41-2.4 Division policy

The Division recognizes its responsibility to protect the confidentiality of the records of clients in its care. Records may be released in accord 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 not subject to public disclosure. Any records which may be released shall not contain the name of any client other than the client whose records have been requested. Other clients shall be identified by initials. Requests for client records received by an agency under contract with or regulated by the Division shall be referred to the appropriate regional office of Community Services. Employees of the Division or agencies under contract with or regulated by the Division who violate confidentiality may be subject to disciplinary action.

Amended by R.1993 d.381, effective August 2, 1993 (operative August 16, 1993).

See: 25 N.J.R. 432(a), 25 N.J.R. 3465(a).

10:41-2.5 Copying fees

Copies of records which may be released shall be provided in accordance with the provisions of this chapter and upon payment of the fees listed in N.J.S.A. 47:1A-2. Fees may be waived for a client or his or her family, if it is demonstrated that the payment is a financial hardship.

10:41-2.6 Electronic records

Any client records which are maintained electronically shall be subject to the same requirements in this chapter as records which are maintained manually.

10:41-2.7 Security of records

All service providers, including those under contract with the Division, shall be responsible for securing records of clients in their care against loss, defacement and use or copying by unauthorized persons.

10:41-2.8 Public and non-public agency records

(a) Agency records which are public include:

1. The standard contract documents;
2. Appendices and supporting materials;
3. Programmatic and financial reports;

4. Monitoring and evaluation reports;
5. Auditing reports;
6. Licenses to operate; and
7. Inspection reports for licensure.

(b) Agency records which are not public include:

1. Investigation of unusual incidents;
2. Internal communication, not dealing with client's health, safety, welfare or rehabilitative goals, between agency personnel; and
3. Internal procedures.

Amended by R.1993 d.381, effective August 2, 1993 (operative August 16, 1993).

See: 25 N.J.R. 432(a), 25 N.J.R. 3465(a).

10:41-2.9 Client record

(a) The client record contains official information which is required by law. Only court commitments and payments of maintenance shall be considered to be public information. The client record includes, but is not limited to:

1. Eligibility determinations;
2. Applications for services;
3. Medical examinations and reports;
4. Evaluations reports;
5. Individual Habilitation Plan (IHP);
6. Progress notes and internal communications relating directly to the client's physical condition, IHP goals or service decisions, for example, placement in a day program;
7. Communication to legal guardian;
8. Initial reports of unusual incidents; and
9. Social history.

Amended by R.1993 d.381, effective August 2, 1993 (operative August 16, 1993).

See: 25 N.J.R. 432(a), 25 N.J.R. 3465(a).

10:41-2.10 Release of records

(a) A client currently or formerly receiving services from the Division, or a guardian, or, if a minor, a parent or guardian, is entitled to inspect or copy the client's records upon request.

(b) Client information shall be kept confidential and be released only under the following circumstances:

1. In response to the plaintiff in a tort claim (that is, a suit for damages to which the Commissioner, Department, Division or employee of the Division is named as a defendant), as directed by the Office of the Attorney General;

2. To Department components, if directly related to their administration;

3. Information concerning the client's current medical condition (not the entire record) may be released upon written inquiry to a client's relative, friend, personal physician, or attorney if the information appears directly or indirectly for the benefit of the client;

4. When a client is transferred from one component of the Department/Division to another;

5. When medical staff outside the Department have assumed temporary medical responsibility for a client, to the extent that such records or information are necessary for the treatment of the client provided that the client or guardian is given written notice of such access;

6. When the information is already a matter of public record, such as court commitments or payments of maintenance;

7. If a client is missing, the following information relating to the client may be released to official agencies:

- i. Name;
- ii. Age;
- iii. Home address;
- iv. A physical description including a photograph, if available; and
- v. Other significant personal data, such as medical condition or dangerous to self or others; and

8. To an agency authorized to investigate allegation of client abuse or neglect (for example, the Division of Youth and Family Services (DYFS) in the case of children, the Ombudsman for the Institutionalized Elderly for persons over 60 years of age).

(c) Except as set forth in (b) above, client information shall not be released to third parties without written authorization from the client, if a competent adult, or the guardian of an incompetent adult or minor.

(d) Records of a client shall be open to inspection by other persons upon receipt of written authorization by the client, if a competent adult, or the guardian of an incompetent adult or minor.

(e) Pursuant to the provisions of N.J.A.C. 6:3-2.3 et seq., private and public facilities shall permit local school district representative access, without client or guardian consent, to pupil records of students for whom they are responsible.

(f) In the case of guardianship actions, the Public Advocate shall be recognized as the attorney representing the client, unless another attorney is noted in the client's record.

(g) Copies of privileged information shall be transferred between components of the Division when the client is transferred.

(h) If it has been specifically indicated that a report is not to be shared except by the person or agency issuing the report, the Division shall not release that report, and

1. The individual requesting the release of the report shall be directed to the issuing entity;

2. In the instance where the Division is referring the client for services, the Division shall be responsible to request the release of the report from the issuing entity; or

3. In the instance of the Division of Youth and Family Services' (DYFS) reports involving the investigation of abuse and neglect of individuals served by the Division of Developmental Disabilities, the requests for copies of these reports shall be referred to DYFS.

(i) Any questions concerning access to records shall be referred to the Division's Administrative Practice Officer.

(j) Division components or agencies under contract with or regulated by the Division shall ensure that their record keeping practices conform to the provisions of this subchapter.

Amended by R.1993 d.381, effective August 2, 1993 (operative August 16, 1993).

See: 25 N.J.R. 432(a), 25 N.J.R. 3465(a).

10:41-2.11 Court orders and subpoenas

(a) Records may be released upon proper judicial order. A subpoena is not sufficient to produce a client record. If a subpoena is received, legal advice shall be sought.

10:41-2.12 Staff assistance

The client, or parent or guardian of the client, as applicable, has the right to review the client record. Staff shall provide assistance in reviewing the record, if it is requested by the client or parent or guardian.

10:41-2.13 Release of records to further the client's habilitation

(a) Records shall be released to persons whose activities serve to further the habilitation of the client, including, but not limited to:

1. Program staff and associated professional personnel (including students completing professional internships or field placements) who provide habilitation services to the client; and

2. Persons authorized by the Department to monitor the quality of services being offered to the client.

(b) The persons specified in (a) above shall agree in writing to safeguard the confidentiality of records.

10:41-2.14 Safeguarding confidentiality of the record

(a) The chief executive officer or regional administrator or bureau chief has the responsibility for safeguarding the records of clients in their service component, including who may inspect or copy the record, how the record may be used, how long the record may be used, and other restrictions on access to the record, in accordance with this subchapter and N.J.S.A. 30:4-24.3.

(b) All requests for release of client, or agency information shall be made to the administrative head of the Division component.

(c) All requests for the release of client information shall be made in writing and identify the specific information requested, as well as the intended uses of the information. The request for client records shall be accompanied by a written release of information by the client, if a competent adult, or the guardian of an incompetent adult or minor.

(d) A list shall be maintained of every person other than those identified at N.J.A.C. 10:41-2.11 who reviews, inspects or obtains copies of a client's record, the stated use to be made of the information, and the person authorizing the release of the record. That list shall be considered internal information and not filed in the client record.

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. HUMAN RIGHTS COMMITTEES**10:41-4.1 Scope**

The rules in this subchapter establish the composition and operation of the human rights committees in developmental centers, regions of the Office of Community Services, and in the agencies and facilities under contract with or regulated by the Division of Developmental Disabilities, within the State of New Jersey.

10:41-4.2 Purpose

The purpose of this subchapter is to establish standards for the composition and operation of the Division's human rights committees, as well as those in agencies under contract with or regulated by the Division, within the State of New Jersey.

10:41-4.3 Definitions

The words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

"Behavior Management Committee (BMC)" means a representative body of individuals who have clinical expertise and individuals who have administrative authority within the Division component or provider agency who review behavior plans and who make a judgment as to whether or not the plans are clinically and technically appropriate.

"Chief executive officer (CEO)" means the person having administrative authority over, and responsibility for, a State-operated developmental center, or a private residential facility licensed under N.J.A.C. 10:47.

"Division" means the Division of Developmental Disabilities.

"Executive director" means the person having administrative authority over a private agency which operates community-based programs regulated by, or under contract with, the Division.

"Human rights committee" means a group comprised of professionals, individuals served, advocates and/or interested persons from the community at large who function as an advisory body to the CEO, executive director or regional administrator, on issues directly or indirectly affecting the rights of individuals served.

"Non-affiliated member" means a member of a committee who is not employed by the service component, facility or agency.

"Regional administrator" means the person having administrative authority and responsibility for a community based regional office.

Amended 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).

10:41-4.4 Rights of developmentally disabled persons

(a) Developmentally disabled individuals are entitled to exercise the same human and civil rights enjoyed by other citizens. These rights shall not be limited or modified unless the individual's disability limits the exercise of these rights. Staff shall make efforts to assure that the human and civil rights of developmentally disabled individuals are protected and exercised.

(b) Limitations of an individual's rights shall be documented in the client record.

(c) All staff and contract service providers shall advocate for and protect the rights of developmentally disabled individuals in programs for which they are responsible. Staff and contract service providers shall utilize the structured form of the human rights committee as an assist in protecting the rights of the developmentally disabled.

Amended 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).

10:41-4.5 Role of the human rights committee

(a) The human rights committee shall exercise an advisory role only in relation to the regional administrator, CEO or executive director.

(b) The regional administrator, CEO or executive director shall make the final decision on any issue regarding the rights of a person receiving services and when proceeding against the advice and recommendations of the human rights committee, shall document the substantive reasons for proceeding against the advice and recommendations of the human rights committee in the client record.

(c) The orientation of the human rights committee shall be proactive and preventative. The committee shall recommend procedures and programs which safeguard the rights of the individual.

(d) The regional administrator, CEO or executive director, shall ensure that each committee be afforded a private meeting area and an atmosphere respectful of its independence and objectivity as a review group.

Amended 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).

10:41-4.6 Appointment of members

(a) The members of the human rights committee shall be appointed by the regional administrator, CEO or executive director for a two year term. The term may be renewable.

(b) There shall be no more than one-third common membership of the behavior management committee and the human rights committee of any service component, facility or agency.

(c) A human rights committee shall consist of a minimum of five and a maximum of 15 members, at least one-third of whom shall not be employed by the component, facility or agency.

(d) The Division shall have the option of assigning an observer who is not a voting member to the human rights committee of any agency or facility with its own human rights committee.

Amended 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).

10:41-4.7 Appointment and duties of chairperson and vice-chairperson

(a) A chairperson and vice-chairperson shall be elected by a majority vote of the membership of each human rights committee.

(b) The chairperson and vice-chairperson may be staff members or individuals from outside the developmental center, region, agency or facility.

(c) The chairperson and vice-chairperson shall serve a two-year term to which they may be reelected.

(d) The vice-chairperson shall assume the responsibilities of the chairperson in his or her absence.

Amended 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).

10:41-4.8 Conflict of interest

(a) If any matter which arises in the committee's deliberation should constitute a conflict of interest for a member of the committee, that member shall abstain from voting on that issue.

(b) Representatives of legal services, such as the Department of the Public Advocate or other agency, who may represent future individual interests, shall not be appointed members of a human rights committee as defined in this subchapter. Their role and authority exist independent of this advisory body.

Amended 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).

10:41-4.9 Filling vacancies created by unexpired terms

(a) Any human rights committee member who cannot complete his or her term shall communicate this in writing to the regional administrator, CEO or executive director at least two weeks before the date of resignation.

(b) If any human rights committee member, for good reason, cannot complete his or her term, the regional administrator, CEO or executive director shall appoint a replacement within 30 days of the creation of the vacancy.

Amended 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).

10:41-4.10 Removal of human rights committee members

(a) A committee member may be removed by the regional administrator, CEO or executive director, for good cause, based upon a two-thirds majority vote of the full committee. The member who may be removed shall not vote on the action.

(b) If a member of the committee cannot be present for the meeting, he or she shall send an absentee vote to the chairperson prior to the meeting.

Amended 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).

10:41-4.11 Meetings of the human rights committee

The human rights committee shall meet at least every two months, and preferably every month. Attendance of 50 percent of the total membership shall constitute a quorum.

10:41-4.12 Minutes of the meeting

(a) Minutes of the meeting shall be retained on file in the office of the regional administrator, CEO or executive director, and shall be available to Division staff.

(b) Copies of the minutes shall be provided to the members of the committee.

(c) Copies of the minutes of human rights committees within the developmental centers and the regional offices shall be forwarded to the Division Director within two weeks of the date of the meeting.

(d) For agencies with their own committees, the minutes shall be forwarded to the regional administrator.

Amended 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).

10:41-4.13 (Reserved)

Repealed 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).

10:41-4.14 General committee functions

(a) The functions of a human rights committee shall include, but not be limited to, the following:

1. To advise the regional administrator, CEO or executive director with regard to issues, regarding the human and civil rights of individuals, bringing to his or her attention existing or potential infringements upon, or impediments to the free exercise of individual's rights including recommendations for action.

2. To contribute to the development of revision of policies and procedures directly relating to individual's rights.

3. To review alleged or suspected violation of the rights of individuals or groups of individuals brought to the attention of the committee and to recommended investigation of violations, as deemed appropriate by the committee.

4. To review behavior modification plans which employ the use of procedures not prohibited by law or rule which may present an element of risk and/or restriction to an individual's rights.

5. To review the proposed involvement of person participating in approved research projects.

(b) The human rights committee shall have available to it all information that is necessary to perform its functions. The committee shall have the right to observe programs and/or activities and conduct interviews in order to clarify a problem. Confidentiality of all information obtained shall be observed by the committee members, pursuant to N.J.S.A. 30:4-24.3.

(c) The human rights committee shall have the right to request expert advice from outside the committee, as the committee deems appropriate.

Amended 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).

10:41-4.15 Responsibilities of the chairperson

(a) The chairperson of the committee shall be responsible for the following:

1. Scheduling regular and special meetings and setting the agenda for each meeting;

2. Arranging for recording and transcription of minutes;

3. Forwarding copies of minutes and other communications to the members of the committee and to the regional administrator, CEO or executive director; and

4. Requesting consultation from outside the committee, based upon a decision of the committee.

Amended 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).

10:41-4.16 Decision making process; behavior modification plans

In the review of aversive techniques, the committee should reach consensus on the use of a specific techniques. If this does not occur, recommendation for approval may be given if only one member disagrees with the techniques. If two or more members disagree, a recommendation for approval shall not be granted by the committee. The dissenting members shall suggest alternate technique(s).

10:41-4.17 Orientation to the human rights committee

Individuals who are appointed to the human rights committee shall receive, from the developmental center, regional office, facility or agency, at a minimum, informational and instructional materials relevant to the services provided by the human rights committee.

10:41-4.18 Provider agency committees

(a) The administrator of each regional office shall review cases heard before facility or agency committees within the region.

(b) The CEO of a private mental retardation facility or the executive director shall establish a line of communication with the regional administrator of the appropriate office to facilitate case reviews.

(c) Any concern about the general functioning of the committee shall be resolved between the CEO or executive director and the chairperson of the committee. If these concerns cannot be resolved, the matters shall be referred to the regional administrator for resolution.

(d) Provider agencies may elect to have their own committee or utilize a committee within an appropriate Division component, upon consultation with and recommendation of the regional administrator.

Amended 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).

10:41-4.19 Procedures for provider agency committees

Provider agencies using their own human rights committees shall have procedures regarding the composition and operation of the committee, which shall be included in the agency or facility manual and which shall be consistent with the provisions of this subchapter.

10:41-4.20 Membership of provider agency human rights committees

(a) The CEO of a private mental retardation facility or the executive director shall appoint members of the committee, one of whom may be a Division employee.

(b) The Division may assign an observer who is not a voting member of the committee, under the following conditions:

1. The observer shall be familiar with the agency or facility, its manual, and the general function of the committee;

2. Should the observer have concerns about the agency or facility, he or she shall bring these concerns to the CEO of a private mental retardation facility or the executive director; and

3. If the observer's concerns are not resolved, he or she shall report these concerns to his or her immediate supervisor.

(c) Any change in the membership of the committee shall be reported to the regional administrator within 30 days.

Amended 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).

10:41-4.21 Notification of meetings

The provider agency shall notify the Division at least five working days in advance of routine meetings, and shall notify the Division immediately by telephone of any emergency meetings.

10:41-4.22 Minutes of meeting

(a) The minutes of provider agency meetings shall be available for review by person authorized by the Division Director.

(b) Committee members and observers shall be provided with copies of the minutes.