

i. An analysis of the depth and frequency of floodwaters that will inundate the railroad, roadway, or parking area. In no case shall the travel surface of a private roadway or parking area that serves a multi-residence building in a fluvial flood hazard area be situated greater than 12 inches below the flood hazard area design flood elevation;

ii. The number of people that will be adversely impacted when the railroad, roadway, or parking area is inundated; and

iii. Measures being proposed to ameliorate the anticipated adverse impacts described in (e)3i and ii above, such as the establishment of evacuation plans for individuals that would be trapped during a flood, provisions for emergency electrical service during an outage, and flood-proofing measures; and

4. (No change.)

(f) Where a private roadway or parking area is proposed to be constructed less than one foot above the flood hazard area design flood elevation pursuant to (c), (d), or (e) above, the following requirements shall apply:

1. The deed for each lot on which the private roadway or parking area is constructed, as well as any lot served by the private roadway or parking area, and each lease or rental agreement for a unit within a multi-residence building served by a private roadway or parking area that lies below the flood hazard area design flood elevation, shall be modified to:

i. Explain that the private roadway or parking area is likely to be inundated by floodwaters, which may result in damage and/or inconvenience; and

ii. Disclose the depth of flooding that the private roadway or parking area would experience during the FEMA 100-year flood, if available, and the flood hazard area design flood; and

2. Each deed modified in accordance with (f)1 above shall be recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which each lot served by the private roadway or parking area is located, and proof that the modified deed has been recorded shall be provided to the Department prior to the sooner of either:

i. The start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project); or

ii. The date that is 90 calendar days after the issuance of the individual permit.

SUBCHAPTER 13. RIPARIAN ZONE MITIGATION

7:13-13.12 Riparian zone preservation

(a)-(d) (No change.)

(e) The Department shall determine mitigation through preservation successful upon[:

1. Demonstration] **demonstration** that any required conservation restriction has been recorded in accordance with N.J.A.C. 7:13-14[; and].

[2. Documentation that the property has been transferred in fee simple to a government agency or a Department approved charitable conservancy and that the transfer has been recorded with each county in which the preserved land is located.]

SUBCHAPTER 18. APPLICATION REQUIREMENTS

7:13-18.2 General application requirements

(a)-(b) (No change.)

(c) The following persons may submit an application under this subchapter:

1. (No change.)

2. An agent designated by the owner(s) of a site to obtain or operate under a verification, an authorization under a general permit or general permit-by-certification, or an individual permit on behalf of the owner(s); [or]

3. A public entity proposing an activity within a right-of-way or easement that is held or controlled by that entity or that will be appropriated by that entity under the power of eminent domain[.]; or

4. A person that has the legal authority to perform the activities proposed in the application on the site, and to carry out all requirements of this chapter.

(d)-(f) (No change.)

(g) If an application includes activities within a right-of-way or easement, the application shall include written consent for the activity from the holder(s) of the right-of-way or easement.

1. For a gas pipeline located within a municipally owned right-of-way, written consent shall consist of one of the following:

i. Written consent from the municipality in the form of a resolution of the governing body or an ordinance;

ii. A municipal designation of the route pursuant to N.J.S.A. 48:9-25.4; or

iii. A Board of Public Utilities designation of route pursuant to N.J.S.A. 48:9-25.4.

(h)-(l) (No change.)

7:13-18.4 Additional application requirements for a verification, for an authorization under a general permit, or for an individual permit

(a) (No change.)

(b) An application for an individual permit for a regulated activity or project in the Pinelands Area as designated [by Section 10(a) of] **under** the Pinelands Protection Act[,] at N.J.S.A. 13:18A-[1 et seq.]**11.a** shall also include a Certificate of Filing, a Certificate of Completeness, or a resolution approving an application for public development, issued by the New Jersey Pinelands Commission.

(c) (No change.)

SUBCHAPTER 19. REQUIREMENTS FOR AN APPLICANT TO PROVIDE PUBLIC NOTICE OF AN APPLICATION

7:13-19.3 Contents and recipients of public notice of an application

(a)-(e) (No change.)

(f) An application for a verification, authorization under a general permit, individual permit, or major technical modification for a delineation, regulated activity, or project in the Pinelands Area as designated [by Section 10(a) of] **under** the Pinelands Protection Act[,] at N.J.S.A. 13:18A-[1 et seq.]**11.a**, shall provide a copy of the completed application form as submitted to the Department, to the New Jersey Pinelands Commission.

**HUMAN SERVICES**

**(a)**

**DIVISION OF DEVELOPMENTAL DISABILITIES**

**Records Confidentiality and Access to Client, Division, and Provider Records**

**Proposed Readoption with Amendments: N.J.A.C. 10:41**

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 9:6-8, 10a, 30:1-12, 30:4-24.3, 30:6D-4(f), and 47:1A-1 et seq.; 34 CFR 361.38, 42 CFR Part 2 and 45 CFR Parts 160 and 164; and 42 U.S.C. §§ 3601 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-135.

Submit written comments by September 15, 2017, electronically to:

[DDD-CO.LAPO@dhs.state.nj.us](mailto:DDD-CO.LAPO@dhs.state.nj.us), or by regular mail or facsimile to:

Carol Jones  
Administrative Practice Officer  
Division of Developmental Disabilities  
PO Box 726

Trenton, NJ 08625-0726  
Fax: (609) 631-2214

The agency proposal follows:

#### Summary

The Division of Developmental Disabilities (Division) proposes to readopt N.J.A.C. 10:41, Records Confidentiality and Access to Client, Division, and Provider Records, with amendments. Chapter 41 implements the confidentiality protections for client, Division, and provider agency records that are mandated by Federal and State law. The Department of Human Services (Department) adopted Chapter 41 as new rules effective August 16, 2004, and readopted the chapter effective June 22, 2010. Chapter 41 was scheduled to expire on June 22, 2017, pursuant to N.J.S.A. 52:14B-5.1. As the Division has filed this notice of readoption with the Office of Administrative Law prior to that date, the expiration date of the chapter is extended 180 days to December 19, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division reviewed this chapter and has found that with the proposed amendments the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated.

The proposed amendments update language and reflect changes in operations since the rules were last readopted in 2010.

A summary of the rules proposed for readoption with amendments follows.

#### Subchapter 1. General Provisions

N.J.A.C. 10:41-1.1 sets forth the purpose of the chapter to provide a uniform approach to records management that safeguards the confidentiality of client, Division, and provider records.

N.J.A.C. 10:41-1.2 sets forth the scope of the rules. The rules apply to all service components of the Division and all providers under contract with the Division or licensed by the Department.

N.J.A.C. 10:41-1.3 provides the definitions used in the rules. The Division proposes to delete the definition of "Office of the Regional Assistant Director," as this office does not exist in the Division's current organizational structure. In its place, the Division proposes to add a definition for "Community Services Office." The Division amended the definition of "service component" to include "community" rather than "regional" offices. The amendment reflects the current organizational structure of the Division. The Division also proposes to add a definition for the term "under contract." At the time that the chapter was originally adopted, the Division funded services for individuals through traditional contracts with providers. Since that time, the Division has also funded services for individuals being served by providers who have been approved by the Division to provide disability services, but do not have a traditional contractual relationship with the Division. The addition of the definition for "under contract" clarifies that the rules apply to these providers.

#### Subchapter 2. Division Policy on Confidentiality of Records

N.J.A.C. 10:41-2.1 sets forth the Division's policy on record confidentiality and provides that the Division recognizes its responsibility to protect the confidentiality of records of individuals receiving services. The Division proposes a technical amendment to correct a cross-reference.

#### Subchapter 3. Client and Agency Records

N.J.A.C. 10:41-3.1 identifies the client records maintained by the Division.

N.J.A.C. 10:41-3.2 distinguishes between public and non-public Division and provider records. The Division proposes to amend a reference to the Office of Licensing to reflect that the licensing unit is within the Department.

N.J.A.C. 10:41-3.3 sets forth parameters for photographing, audiotaping, and videotaping of individuals served by the Division.

N.J.A.C. 10:41-3.4 establishes that electronic records are subject to the same requirements as records that are maintained on paper and that any transfer of electronic records must be secure.

#### Subchapter 4. Confidentiality of Records

N.J.A.C. 10:41-4.1 sets forth responsibilities and procedures for the safeguarding of client records. The Division proposes to amend references to regional staff titles to reflect the Division's current organizational structure. The Division also proposes amendments to update the name of the Department of Health and to reflect that the Department of the Public Advocate no longer exists.

N.J.A.C. 10:41-4.2 establishes that all records specific to an individual served by the Division and held by a provider agency belong to the Division and provides guidelines for the management of such records. The Division proposes to update references to regional staff to reflect the Division's current organizational structure.

N.J.A.C. 10:41-4.3 directs that certain individual identifying information and any community residence addresses be redacted prior to the release of records. The Division proposes a technical amendment to correct a regulatory citation.

#### Subchapter 5. Access and Release of Records

N.J.A.C. 10:41-5.1 sets forth procedures for access to client records. The Division proposes to update language used to reference individuals served by Division.

N.J.A.C. 10:41-5.2 sets forth circumstances and parameters for the release of client records. The Division proposes to update language used to reference individuals served by the Division and to reflect that the Division of Youth and Family Services is now the Division of Child Protection and Permanency.

N.J.A.C. 10:41-5.3 provides that a judicial order is needed for the release of client records in the absence of a valid authorization, and that records may not be released in response to an attorney subpoena.

N.J.A.C. 10:41-5.4 establishes the guidelines for the release of records for a deceased individual. The Division proposes an amendment to reflect that the Department of the Public Advocate is no longer in existence.

N.J.A.C. 10:41-5.5 establishes the guidelines for records created or held by certain other entities. The Division proposes amendments to update the names of these entities.

N.J.A.C. 10:41-5.6 sets applicable copying fees. The Division proposes an amendment to correct a statutory citation.

The Division has provided a 60-day comment period for this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The rules proposed for readoption with amendments will have a positive social impact because they implement Federal and State statutory law intended to protect individuals served by the Division from improper disclosure of confidential personal information. The rules proposed for readoption with amendments continue to ensure that the Division's record management conforms with the protections provided under the Federal Privacy Rule, 45 CFR Parts 160 and 164, the Health Insurance Accountability and Portability Act of 1996 (HIPAA), and N.J.S.A. 30:4-24.3.

#### Economic Impact

The proposed rules for readoption and amendments require any person requesting copies of records to pay for the duplication of the records, in accordance with applicable State law. There is no anticipated economic impact on clients or their families and/or legal guardians beyond the costs of duplication. Fees may be waived if they present a financial hardship. Fees paid to the Division are returned to the General Fund of the Department of the Treasury.

#### Federal Standards Statement

The rules proposed for readoption with amendments are consistent with the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (HIPAA), 45 CFR Parts 160 and 164, and the Federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq., as they relate to access to and disclosure of protected health information. The rules proposed for readoption with amendments do not impose any greater requirements than those imposed by Federal statutes and regulations.

**Jobs Impact**

The rules proposed for readoption with amendments will neither generate nor cause a loss of jobs.

**Agriculture Industry Impact**

The rules proposed for readoption with amendments will not have an impact on agriculture in the State of New Jersey.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses as that term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because the proposed rules implement the records confidentiality protections that are otherwise mandated by Federal and State law.

**Housing Affordability Impact Analysis**

There is an extreme unlikelihood that the rules proposed for readoption with amendments will have an impact on the affordability of housing in New Jersey or evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments concern confidentiality of records for individuals receiving services from the Division.

**Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments concern the confidentiality of records for individuals served by the Division. Therefore, there is an extreme unlikelihood that the rules proposed for readoption with amendments will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:41.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 41

RECORDS CONFIDENTIALITY AND ACCESS TO CLIENT, DIVISION, AND PROVIDER RECORDS

SUBCHAPTER 1. GENERAL PROVISIONS

10:41-1.3 Definitions

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

...  
**“Community Services Office” means a location housing components of Division community services operations. An individual’s Community Services Office contact is determined by the county in which he or she resides. Community Services Office contact information can be found at [http://www.state.nj.us/human\\_services/ddd/staff/cso/index.html](http://www.state.nj.us/human_services/ddd/staff/cso/index.html).**

...  
 [“Office of the Regional Assistant Director” means a component of the Division that provides administrative oversight for the provision of services to individuals served by the Division. Counties of service and locations of such offices are as follows:

Sussex, Warren, Morris, Bergen, Passaic, Hudson, Essex, Somerset and Union Counties:

Office of the Regional Assistant Director  
 c/o Greenbrook Regional Center  
 275 Greenbrook Road  
 Green Brook, NJ 08812

Mercer, Middlesex, Ocean, Hunterdon, Monmouth, Camden, Atlantic, Salem, Cape May, Gloucester, Cumberland and Burlington Counties:

Office of the Regional Assistant Director  
 PO Box 726  
 Trenton, NJ 08625

...

“Service component” means any developmental center, [regional] local office, or central office unit.

...  
**“Under contract” means a provider under a written agreement with the Division or a provider approved by the Division to provide disability services to individuals who are eligible to receive services from the Division.**

SUBCHAPTER 2. DIVISION POLICY ON CONFIDENTIALITY OF RECORDS

10:41-2.1 Division policy on confidentiality of records

(a)-(b) (No change.)

(c) The release of Division records, as defined in N.J.A.C. 10:41-1.3, shall be in accordance with N.J.S.A. 47:1A-1 et seq., the Open Public Records Act, and this chapter. All such records shall be redacted in accordance with N.J.A.C. 10:41-[4.4]**4.3**.

(d) Records that are otherwise protected by law, for example, individual HIV/AIDS information as indicated in N.J.S.A. 26:5C-5 et seq., and individual drug and alcohol abuse information as indicated in 42 [C.F.R.] **CFR** Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, shall not be disclosed without a specific authorization for the release of such information or a judicial order.

(e)-(g) (No change.)

SUBCHAPTER 3. CLIENT AND AGENCY RECORDS

10:41-3.2 Public and non-public Division and provider records

(a) (No change.)

(b) The following Division and provider records are not public and can only be released upon judicial order. These Division and provider records include:

1.-4. (No change.)

5. Intra- and inter-agency communications and procedures that are considered by the Division to be [Advisory, Consultative and Deliberative Material; Risk Management] **advisory, consultative, and deliberative material; risk management** documents; and self-critical analyses;

6. Investigations conducted by [Developmental Disabilities] **the Department’s Office of Licensing**; and

7. (No change.)

SUBCHAPTER 4. CONFIDENTIALITY OF RECORDS

10:41-4.1 Safeguarding records

(a) (No change.)

(b) The Division’s chief executive officer, [regional] **community services** administrator, or unit director shall safeguard the records of individuals in his or her Division service component, and shall determine who may access, inspect, or copy the records, how the records may be used, how long the records may be used, and other restrictions on access to the records, in accordance with this chapter and the HIPAA Privacy Rule, 41 [C.F.R.] **CFR** Parts 160 and 164.

(c)-(f) (No change.)

(g) Records shall be released to entities outside the Department of Human Services, such as the Centers for Medicare and Medicaid Services, New Jersey Department of Health, and [Senior Services,] Disability Rights New Jersey [and the Department of the Public Advocate], if authorized by the Department to monitor the quality of services offered to the individual or as otherwise authorized by law. The persons identified in this subsection shall agree in writing to safeguard the confidentiality of records.

(h)-(j) (No change.)

10:41-4.2 Records held by providers under contract with the Division or licensed by the Department

(a)-(b) (No change.)

(c) Requests for copies of client records received by a provider under contract with the Division or licensed by the Department shall be referred to [the Regional Assistant Director] **a Community Services Administrator**. The provider shall forward the records to the [Regional

Assistant Director] **Community Services Administrator**. The Division shall be responsible for forwarding the records to the requester.

(d)-(g) (No change.)

#### 10:41-4.3 Redaction of records

(a) When providing client records, all individual identifying information regarding individuals other than the individual who is the subject of the request, must be redacted, including, but not limited to, names, initials, and specific descriptions, from all client and agency records before they are disclosed. Redaction of individual identifying information shall be in accordance with 45 [C.F.R. 164-514(b)(2)(i)] **CFR 164.514(b)(2)(i)**. The Division MIS identification number may be used to identify individuals other than the individual who is the subject of the request.

(b) (No change.)

### SUBCHAPTER 5. ACCESS AND RELEASE OF RECORDS

#### 10:41-5.1 Access to client record

(a) An individual currently or formerly receiving services from the Division, or [the] **an individual's** legal guardian [of a minor or incapacitated adult], is entitled to inspect or request a copy of the client record. The Division shall require that the request to inspect the client record be in writing. The Division, or agency, must provide access or deny the request for access to the client record as soon as possible but no later than 30 days of the receipt of the request, as described in 45 [C.F.R.] **CFR 164.524(b)**.

(b)-(c) (No change.)

#### 10:41-5.2 Release of client records

(a) (No change.)

(b) An individual currently or formerly receiving services from the Division, or [the] **an individual's** legal guardian [of a minor or incapacitated adult], shall receive a copy of the client record within 30 days of receipt by the Division of a valid written authorization or shall be advised in writing of reason for denial, as described in 45 [C.F.R.] **CFR 164.524(b)**.

(c) Records of an individual shall be provided to other persons upon receipt of a valid written authorization by the individual[, if the individual is a competent adult,] or the **individual's** legal guardian [of an incapacitated adult or minor].

(d) Client records may be released without authorization if the request meets one of the exceptions set forth below:

1.-6. (No change.)

7. To an agency authorized to investigate allegations of abuse or neglect of an individual, for example, **the** Division of [Youth and Family Services] **Child Protection and Permanency (DCP&P) in the Department of Children and Families** in the case of children, the Ombudsman for the Institutionalized Elderly for individuals over 60 years of age[;], and Adult Protective Services in the case of an adult living in his or her own home;

8.-9. (No change.)

#### 10:41-5.4 Records of deceased individuals

(a)-(c) (No change.)

(d) Records shall be provided to Disability Rights New Jersey in accordance with 42 U.S.C. § 15043 [and the Department of the Public Advocate].

#### 10:41-5.5 Records created or held by other entities

(a) [In the instance of the Division of Youth and Family Services' (DYFS)] **Requests for copies of Division of Child Protection and Permanency (DCP&P)** 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] **DCP&P**.

(b) [In the instance of the] **Requests for copies of** Division of Mental Health and Addiction Services' ([DMHS] **DMHAS**) reports of investigations involving individuals served by the Division of Developmental Disabilities[, the requests for copies of these reports] shall be referred to [DMHS] **DMHAS**.

(c) [In the instance of the Special Response Unit (SRU), within the Department,] **Requests for copies of Department's Office of Investigation (OI)** reports of investigations involving individuals served by the Division[, the requests for copies of these reports] shall be referred to [SRU] **OI**.

(d) [In the instance of the Developmental Disabilities Licensing Unit (DDL), within the Department,] **Requests for copies of Department's Office of Licensing (OOL)** reports of licensing investigations involving individuals served by the Division[, the requests for copies of these reports] shall be referred to [DDL] **OOL**.

#### 10:41-5.6 Copying fees

(a) Copies of records that 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]5.

(b) (No change.)

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION OF GAMING ENFORCEMENT

#### Applications; Casino Licensees; Junket Enterprises Not Employed by a Casino or Applicant; Persons Doing Business with Casino Licensees

#### Proposed Amendments: N.J.A.C. 13:69A-5.6B, 5.11, and 8.6; 13:69C-10.5; 13:69H-1.5; and 13:69J-1.2B, 1.14, and 1.14B

Authorized By: David Rebuck, Director, Division of Gaming Enforcement.

Authority: N.J.S.A. 5:12-69.a, 70.a, 76.g, 92.a, and 102.c.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-133.

Submit written comments by September 15, 2017, to:

Charles F. Kimmel, Deputy Attorney General  
Division of Gaming Enforcement  
1300 Atlantic Avenue  
Atlantic City, NJ 08401  
or electronically at: [rulecomments@nidge.org](mailto:rulecomments@nidge.org).

The agency proposal follows:

#### Summary

The Division of Gaming Enforcement (Division) is proposing to make amendments to N.J.A.C. 13:69A, 13:69C, 13:69H, and 13:69J.

The proposed amendment to N.J.A.C. 13:69A-5.6B(b) eases the regulatory burden for institutional investor companies that hold shares in subsidiary funds by making it easier for them to qualify for waiver from licensure. The proposed amendments to N.J.A.C. 13:69A-5.11 consolidate the process of filing different forms by a publicly traded company. The amendments further permit such companies to file a link to their SEC forms rather than having to print and mail the form to the Division. The amendments also codify the requirement that copies of a vendor's casino contracts be filed with the Division. Previously, investigations could be delayed while the Division waited to receive and review such contracts. As review of such contracts is routine, it is thus being added to the rule. The proposed amendment to N.J.A.C. 13:69A-8.6(d) clarifies that a casino hotel alcoholic beverage license may be withdrawn the same as any other casino service industry enterprise license.

The proposed amendments to N.J.A.C. 13:69C-10.5 provide regulatory relief for casino suppliers and companies that service casinos by broadening the available exemptions from licensure available to entities that receive payments from casinos. Exempted from licensure pursuant to these amendments would be: payments in lieu of litigation (N.J.A.C. 13:69C-10.5(b)2); payments made to or received from a sister