

Personnel Indicators	Points
<b>f. All school district-provided information required for a professional staff member to obtain a standard certificate is submitted to the Department within 30 days of the staff member becoming eligible for a standard certificate. (N.J.A.C. 6A:9B)</b>	<b>2</b>
5. The position control roster: (N.J.A.C. 6A:23A-6.8)	
a. (No change.)	
b. Is accurate and up to date; and	[5] <b>6</b>
c. (No change.)	
6. Documentation and evaluation of administrator practices, as well as an audit of personnel files, including observation reports, indicates that supervision processes are occurring in accordance with N.J.A.C. 6A:10 and result in:	[5] <b>12</b>
a. Professional practices aligned with goal-setting procedures (N.J.A.C. 6A:10-4.2 and 5.2); [and]	
b. Supervisory feedback that is timely, targeted, and actionable (N.J.A.C. 6A:10-2.4, 2.5, [and] 4.4, and 5.4)[.]; <b>and</b>	
<b>c. Required individual PDPs or CAPs that are aligned to the professional standards for school leaders or teachers and have been completed for administrators and teachers and that are linked to school district, school, team, and/or individual goals, and to results from individual performance evaluations. (N.J.A.C. 6A:9C and 6A:10-2.5)</b>	

## 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: Sarah Adelman, 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 requirements.

Proposal Number: PRN 2024-119.

Submit written comments by December 6, 2024, electronically to [DDD-CO.LAPO@dhs.nj.gov](mailto:DDD-CO.LAPO@dhs.nj.gov), or by regular mail or facsimile to:

Robert Strong  
 Administrative Practice Officer  
 Division of Developmental Disabilities  
 PO Box 726  
 Trenton, NJ 08625-0726  
 Fax: (609) 341-2451

The agency proposal follows:

#### Summary

The Division of Developmental Disabilities (Division) proposes to readopt with amendments, N.J.A.C. 10:41, Records Confidentiality and Access to Client, Division, and Provider Records. 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 23, 2004, and readopted the chapter effective June 22, 2010, and October 16, 2017, respectively. The chapter was scheduled to expire on October 23, 2024. As the Department filed this notice of readoption with the Office of Administrative Law prior to that date, the expiration date was extended 180 days to April 21, 2025, pursuant to N.J.S.A. 52:14B-5.1.c.

At N.J.A.C. 10:41-3.2(b), language is added referencing N.J.S.A. 30:6D-76, a provision in Stephen Komninos’ Law, P.L. 2017, c. 238, which became effective in 2018. In particular, N.J.S.A. 30:6D-76 provides the process for releasing copies of the Department’s Office of Investigation records and reports of investigations involving Division

clients to a guardian. The proposed amendment at N.J.A.C. 10:41-3.3(c) updates a provision concerning photographing, as well as audio and videotaping of individuals. Pursuant to the existing subsection, audio and videotaping in residential settings is prohibited other than for treatment purposes or healthcare operations, unless the individual or legal guardian provides written authorization. For purposes of clarity regarding the use of audio and videotaping, the amendment incorporates a reference to a recent update to the Department’s licensing rule, N.J.A.C. 10:44A, Standards for Community Residences for Individuals with Developmental Disabilities, which permits audio and video monitoring in common areas of licensed residential settings, within certain parameters. Finally, the definition of “Community Services Office” at N.J.A.C. 10:41-1.3, is proposed for amendment to update the website link for the Community Services Office contact information.

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

A summary of the subchapters 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 of terms used throughout the chapter.

#### 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.

#### 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.

N.J.A.C. 10:41-3.3 establishes the guidelines for photographing, audiotaping, and videotaping 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.

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.

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.

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

N.J.A.C. 10:41-5.1 sets forth procedures for access to client records.

N.J.A.C. 10:41-5.2 sets forth circumstances and parameters for the release of client records.

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 a subpoena.

N.J.A.C. 10:41-5.4 establishes the guidelines for the release of records for a deceased individual.

N.J.A.C. 10:41-5.5 establishes the guidelines for records created or held by certain other entities.

N.J.A.C. 10:41-5.6 sets forth applicable copying fees.

**Social Impact**

The rules proposed for readoption with amendments will have a positive social impact because they implement Federal and State laws 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 pursuant to 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 rules proposed for readoption with 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 New Jersey 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. Therefore, an agricultural impact analysis is not required.

**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 laws.

**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, pursuant to the State Development and Redevelopment Plan.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department of Human Services evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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]):

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/humanservices/ddd/staff/cso/index.html>] <https://www.nj.gov/humanservices/ddd/about/contactus/communityservices/>.  
...

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, **except that records and reports of an investigation can be released to an individual or guardian pursuant to N.J.S.A. 30:6D-76**. These Division and provider records include:

1.-7. (No change.)

10:41-3.3 Photographing, audio, and videotaping of individuals

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

(c) Audio taping and videotaping of individuals is prohibited for other than treatment purposes or health care operations unless written authorization is obtained from the individual or legal guardian, **except that agencies may use audio or video monitoring in accordance with N.J.A.C. 10:44A-2.2(b)21**.

(d) (No change.)