

HUMAN SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES

Moderate Security Unit

Proposed Readoption: N.J.A.C. 10:42B

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

Authority: N.J.S.A. 30:4-25.13 et seq.

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

Proposal Number: PRN 2015-139.

Submit written comments by January 1, 2016, electronically to DDD-CO.LAPO@dhs.state.nj.us,
or by regular mail or facsimile to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, Chapter 42B, Moderate Security Unit (MSU), is set to expire on October 6, 2015. As the Department of Human Services has filed this notice of readoption with the Office of Administrative Law prior to that date, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date is extended 180 days to April 3, 2016. The Division of

Developmental Disabilities (Division) has reviewed this chapter, and has found that the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated. In 2006, N.J.S.A. 30:4-25.13 et seq. was enacted. Among other things, this statute provides that admission to the MSU must be made by court order. The rules proposed for readoption were authorized by and implement the requirements of this law. The Division adopted N.J.A.C. 10:42B, Moderate Security Unit, as new rules effective October 6, 2008. The Division proposes to readopt the rules without change.

The MSU is a locked institutional treatment facility used as an alternative to detention in a correctional facility or as a residential requirement of probation for men with developmental disabilities 18 years of age or older who have been convicted of a crime or have engaged in criminal behavior. Its programs specialize in sex offender and arson-related treatment. The rules proposed for readoption set forth the procedures for admission to the MSU, periodic court review, and release from the MSU.

The chapter proposed for readoption contains seven subchapters described as follows:

Subchapter 1 contains the general provisions for the Moderate Security Unit, including the purpose, authority, scope, and definitions.

Subchapter 2 contains the requirements for admission to the MSU, specifically, that admission to the MSU shall be by a court order and that an individual shall not be permitted to voluntarily admit himself to the MSU.

Subchapter 3 contains the procedures to be followed prior to admission to the MSU. This includes a determination by the MSU director that the individual eligible for Division services is appropriate for and will benefit from admission to the MSU and that a vacancy exists.

Subchapter 4 contains the process for admission to the MSU. After the MSU Director advises the court that the individual may be admitted to the MSU, the court may order the individual be admitted to the MSU: as a condition of probation, until disposition of pending criminal charges, or into the care and custody of the Commissioner of the Department of Human Services if the person has been found unfit to stand trial.

Subchapter 5 contains the process for court reviews. The court shall review the order to admit an individual to the MSU at least every six months. Seven days prior to the court review, the MSU Director shall provide the court with a written report regarding the status and progress of the individual at the MSU. If the individual was placed at the MSU as a condition of probation, the MSU Director may, as he or she deems appropriate, recommend to the court that the individual be transferred to a less restrictive environment, in which case the court may modify its order.

Subchapter 6 contains the process for release from the MSU. An individual shall be released from the MSU when his probation period or his commitment to the care and custody of the Commissioner of the Department of Human Services ends or upon disposition of pending criminal charges. The subchapter addresses the provision of appropriate Division services for the individual following release. It also addresses evaluations for possible commitment under the Sexually Violent Predator Law, where appropriate, and Megan's Law registration, where applicable.

Subchapter 7 provides that nothing in the chapter shall be construed to limit the authority of the court to commit an individual to the care and custody of the Commissioner of the Department of Human Services in an environment that is less restrictive than the MSU.

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

Social Impact

The rules proposed for readoption will have a positive social impact for the public and for persons who may be admitted to the MSU, because they require that individuals be admitted pursuant to court order and provide for periodic court review of the individual's progress at the MSU. Additionally, the rules contain provisions to allow for appropriate transition from the facility upon release, including consideration for commitment pursuant to the Sexually Violent Predator Law and Megan's Law registration requirements. The rules also allow for placement in a less restrictive setting, where appropriate.

Economic Impact

The rules proposed for readoption will not have an economic impact, as they do not create any new costs, but rather, outline the process for admission to, court review of, and release from, the MSU.

Federal Standards Statement

The rules proposed for readoption are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption will not generate jobs or cause any jobs to be lost.

Agriculture Impact

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

Regulatory Flexibility Statement

The rules proposed for readoption will not impact small businesses because they involve the process for admission to the MSU, periodic court review, and release from the MSU, which are functions of the government. Therefore, a regulatory flexibility analysis is not required.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the rules proposed for readoption would evoke a change in the affordability of housing or the average costs associated with housing because the rules address the process for admission to the MSU, periodic court review, and release from the MSU.

Smart Growth Development Impact Analysis

The rules proposed for readoption concern the processes involved in admission to and release from the MSU. Therefore, there is an extreme unlikelihood that the rules would impact smart growth or 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. 10:42B.