DIVISION CIRCULAR #30
(N.J.A.C. 10:41-2)

DEPARTMENT OF HUMAN SERVICES
DIVISION OF DEVELOPMENTAL DISABILITIES

EFFECTIVE DATE: August 16, 1999

DATE ISSUED: September 3, 1999

(Rescinds Division Circular #30, issued August 30, 1993)

I. **TITLE:** Access to Client Records and Record Confidentiality

II. **PURPOSE:** To develop policies and procedures to safeguard an individual receiving services and agency information.

III. **SCOPE:** This circular applies to all components of the Division as well as agencies under contract with or regulated by the Division.

IV. **GENERAL STANDARDS:**

NOTE: The remainder of this circular is "Access to Client Records and Record Confidentiality" as it appears in N.J.A.C. 10:41-2.

_____**/s/**_____
James W. Smith
Deputy Commissioner

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 subchapter have the following meanings, unless the context clearly indicates otherwise.

"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.

"Department" means the Department of Human Services.

"Division" means the Division of Developmental Disabilities.

“Pupil record” means the organized compilation of documents that relate directly to the provision of educational services to a school-age person receiving services as required by New Jersey law or rule.

“Service component” means any developmental center, regional office or adult activity center.

10:41-2.4 Division Policy

The Division recognizes its responsibility to protect the confidentiality of the records of persons receiving services in its care. Records may be released in accordance 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. Where an individual is placed with an agency under contract with the Division, all records, required by N.J.A.C. 10:41-2.8(b) and 2.9, concerning that individual, whether generated or obtained by the contract agency, shall be deemed part of the Division's client record. Any records, which may be released, shall not contain the name of any person receiving services other than the person receiving services whose records have been requested. Other persons receiving services shall be identified by initials or facility identification numbers. Request for client records received by an agency under contract with or regulated by the Division shall be referred to the Regional Administrative Practice Officer at 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.

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 person receiving services 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 services providers, including those under contract with the Division, shall be responsible for securing records of persons receiving services in their care against loss, defacement and use of 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 which are not specific to any person receiving services;

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 person receiving services health, safety, welfare or habilitative goals, between agency personnel;

3. Internal procedures; and

4. Appendices and supporting materials containing specific person receiving services information.

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. Evaluation reports or Comprehensive Functional Assessment (CFA);

5. Individual Habilitation Plan (IHP);

6. Progress notes and internal communications relating directly to the physical condition or service decisions, for example, placement, day program for any person receiving services;

7. Communication to legal guardian;

8. Initial reports of unusual incidents;

9. Social history; and

10. Legal documents/guardianship.

10:41-2.10 Release of records

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

(b) Person receiving services 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 current medical condition (not the entire record) of any person receiving services may be released upon written inquiry stating the relationship to the person receiving services and the reason for a request from a relative, friend, physician, or attorney, if the information sought is directly or indirectly beneficial to the person receiving services;

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

5. Medical staff outside of the Department who have assumed temporary medical responsibility for the person receiving services shall have access to information and records as necessary for the treatment of the person receiving services, provided the person or legal guardian has been given written notice;

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

7. If a person receiving services is missing, the following information relating to the person receiving services 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.

8. To an agency authorized to investigate allegation of abuse or neglect (for example, DYFS in the case of children, the Ombudsman for the

Institutionalized Elderly for person over 60 years of age) of a person receiving services.

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

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

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

(f) In the case of guardianship actions, the Public Defender shall be recognized as the attorney representing the person receiving services, unless another attorney is noted in the client record.

(g) Copies of privileged information shall be transferred between components of the Division when the person receiving services 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 person for services, the Division shall be responsible to request the release of the report from the issuing entity;

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) The records of a deceased person who has received services may be released to the legal guardian after death. If there is no legal guardian, records may be released to the next of kin indicated in the record. If someone other than the next of kin requests the records, a release shall be obtained from the next of kin.

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

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

10:41-2.11 Court orders and subpoenas

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 person receiving services or the parent or legal guardian of the person receiving services, as applicable, has the right to review the client record. Staff knowledgeable of the contents of the record shall offer assistance in reviewing the record, and provide assistance if it is requested by the person receiving services or the parent or legal guardian.

10:41-2.13 Release of records to further the habilitation of the person receiving services.

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

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

2. Persons authorized by the Department to monitor the quality of services offered to the person receiving services.

(b) Authorization to have records released shall be produced upon request. 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 shall be responsible for safeguarding the records of persons 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 information regarding a person receiving services, or the agency, shall be made to the administrative head of the Division component.

(c) All requests for the release of information regarding any person receiving services 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 person receiving services if a competent adult or the legal 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.

APPENDIX A

COPYING FEES FOR REQUEST OF RECORDS

- First page to tenth page… $0.75 per page,
- Eleventh page to twentieth page… $0.50 per page,
- Pages over 20… $0.25 per page.

APPENDIX B

Release of Records to New Jersey Protection and Advocacy, Inc.

1. Requests for records should be directed to the Administrative Head of the Component (i.e. Chief Executive Officer of a Developmental Center, Regional Administrator or head of a Central Office Unit).

2. Client and agency records shall be released to the New Jersey Protection and Advocacy, Inc. without consent when:

    a. New Jersey Protection and Advocacy, Inc. claims, in a written request for records, to have probable cause to believe or has received a complaint that an individual has been subjected to abuse or neglect and;

    b. The individual does not have a legal guardian although it appears that there is a need for a guardian or;

    c. The individual's guardian is the Bureau of Guardianship Services (BGS).

3. When an individual is a competent adult or there is a legal guardian other than BGS, written authorization from the individual or guardian shall be obtained before records are released.

4. If an investigation of abuse or neglect is being conducted by law enforcement authorities and the Division is advised not to release records which might jeopardize the investigation, a court review of the request may be necessary to order the release of the records. The APO shall be advised of these situations before records are released.

5. **In the event NJP&A requests the records of an eligible individual who is deceased,** the client record and agency record may be released without prior authorization. Agency records include investigations of unusual incidents and follow-up reports. No other authorization or consent is required.

DEPARTMENT OF HUMAN SERVICES
Division of Developmental Disabilities

INTEROFFICE COMMUNICATION

TO: Distribution List

FROM: James W. Smith
Director

DATE: February 28, 2002

SUBJECT: Division Circular 30
Access to Client Records and Confidentiality
Appendic C
Electronic Mail

Attached is a new Appendix which addresses electronic mail. This appendix reminds staff that electronic mail is part of our record keeping system. Recent changes in law may make certain communication subject to public disclosure. Therefore, it is required that electronic mail be appropriate and professional.

In addition, information concerning eligible individuals should not be transmitted to provider agencies through electronic mail without appropriate security.

Please be reminded that appendixes are not part of Division rules.

mes
Enclosure

File: DC30AppendixC

Appendix C

Electronic Mail

(a) Electronic mail is part of the official record of the Division and its release shall conform to the requirements contained in this subchapter.

(b) The content of electronic mail should at all times be professional and appropriate.

(c) Division electronic mail communications should are not private and employees should not use the electronic mail system for confidential matters that are not intended for public disclosure. Electronic mail should not contain confidential information.

(d) Client-identifying information should not be transmitted to agencies external to the Department by electronic mail except where information may be sent to the party making the request in a secure medium.

DATE ISSUED: June 7, 2003

I. TITLE: Office of Licensing and Inspections (DHS/OLI) Inspection Report Process

II. **PURPOSE:** The purpose of this policy is to provide clarification regarding the Office of Licensing and Inspections' Inspection Report Process and the determination of completion of the inspection report for licensure.

III. POLICY:

NJAC 10:41-2.8(a)7 identifies the 'inspection report for licensure' as a public document. This policy will clarify the process of when the inspection report for licensure process is complete, and therefore, is a public document.

A. The OLI inspection report is not a final document until the Plan of Correction, where required, is received by the OLI. Disclosure of the OLI inspection report is to include the Plan of Correction.

B. The licensee is to submit the completed Plan of Correction within the established timeframe.

C. If an extension to submit the Plan of Correction is required, the licensee and OLI must agree upon a new submission date, in writing.

D. A copy of the extension notice will be provided to the requestor of the inspection report when there is a request under the Open Public Records Act. The request for the inspection report will be held until the Plan of Correction is provided within the agreed upon timeframe.

E. A licensee's failure to respond to requests for the Plan of Correction within the established timeframes will not prohibit public disclosure of the inspection report once the timeframes have lapsed.

F. Timeframes are provided in regulation as follows:

<u>10:44B-1.6 - Options on non-compliance with standard</u>

(a) After each inspection, the licensee shall be provided with a copy of the inspection report. At the discretion of the licensing agency, it shall be the obligation of the provider to provide a plan of correction within 30 days of the issuance of the report. Unless a plan for earlier correction is required, all deficiencies shall be corrected by the time of the next inspection. Failure to

make such corrections shall be considered grounds for action against the licensee.

10:44A-1.6 - Issuance of an initial license

(d) If licensure is not approved an applicant or licensee shall submit a plan of correction regarding all deficiencies within 30 days after notification to the licensee.

10:44A-1.7 - Renewal of License

(b) Upon imposition of a provisional license or a non-renewal of license a licensee shall submit a plan of correction regarding all deficiencies within 30 days or in accordance with a shorter time frame as established by the licensing agency.