

CORRECTIONS

THE COMMISSIONER

Adult County Correctional Facilities

Readoption with Amendments: N.J.A.C. 10A:31

Adopted New Rules: N.J.A.C. 10A:31-1.9, 8.2A, 13.31, and 21.9

Adopted Repeals: N.J.A.C. 10A:31-1.8, 8.28, 10.13, 12.9, 19.10, and 20.9

Proposed: August 7, 2017, at 49 N.J.R. 2450(a).

Adopted: November 6, 2017, by Gary M. Lanigan, Commissioner, Department of Corrections.

Filed: November 8, 2017, as R.2017 d.228, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 10:5-3, 30:1B-6, 30:1B-10, 30:4-15.1, and 2C:1-1 et seq.

Effective Date: November 8, 2017, Readoption;

December 4, 2017, Amendments, New Rules, and Repeals.

Expiration Date: November 8, 2024.

Summary of Public Comments and Agency Responses:

A summary of the timely submitted comments and the Department's response follows. The number(s) in parentheses embedded in each comment below identifies the commenter(s) listed.

Comments were received from the following individuals:

1. Assemblyman Gordon M. Johnson
2. Howard Moskowitz, Esq.
3. Steve Ramshur
4. Janet Crowley

5. Allyson Jankunas
6. Dana Shilling
7. Carla Naranjo
8. Meryl Elliott
9. Eleni Beja
10. Kristen Beatty
11. Eytan Stern Weber
12. Alana Horowitz Friedman
13. Mary Ciuffitelli
14. Jerry Fried
15. Laura Keller
16. Geralyn Abinader
17. Dennis Burkhardt
18. Matthew Smith
19. Cathy Berger

The comments related to the amendments proposed include several topics that are repeated by one or more commenters. The Department has grouped related comments into major topics as they appear below and provided responses to each of the topics.

1. COMMENT: Sixteen individuals requested a public hearing on the notice of proposal. (2, 3, 4, 5, 7 through 13, and 15 through 19)

RESPONSE: The requests were submitted approximately 58-59 days following publication of the notice of proposal in the New Jersey Register (NJR) and fail to meet the criteria set forth at

N.J.A.C. 10A:1-1.6(e)2 to conduct a public hearing in terms of timeliness and demonstrating sufficient public interest. The criteria specifies sufficient public interest for a hearing is met when 100 or more individual written requests are submitted within 30 calendar days of the publication of the proposed rulemaking activity in the NJR. As the criteria has not been met the Department will not conduct a public hearing on this rule action.

2. COMMENT: One commenter submitted that there are no changes to the rules in the proposed readoption of N.J.A.C. 10A:31 concerning access to medications despite enactment of P.L. 2016, c. 70, that requires continuation of prescription medication for each person in custody (whether awaiting a hearing or serving a sentence). (1)

3. COMMENT: A number of commenters stated that the rules should contain the same requirements as the law and apply to all held at the facility. (1, 2, 3, 4, 5, 7 through 13, and 15 through 19)

RESPONSE TO COMMENTS 2 AND 3: P.L. 2016, c. 70 does not require that the Commissioner promulgate rules related to access to prescription medication. The administrative rules in N.J.A.C. 10A:31 provide a framework, or minimum criteria, for the administration of adult county correctional facilities as set forth at N.J.A.C. 10A:31-1.1(a)2 and 3 and 2.1(a) and (b). Written standard operating procedures for adult county correctional facilities are developed at the county level. The Department rules include minimum criteria related to access to prescription medications as set forth at:

- N.J.A.C. 10A:31-13.9(c)2, which lists some of the medical screening that should take place prior to placement in general population or a housing area;
- N.J.A.C. 10A:31-13.4(a), which includes medical services for chronic care;

- N.J.A.C. 10A:31-13.4(a)10 and 17, pertaining to pharmaceuticals; and
- N.J.A.C. 10A:31-13.27, pertaining to pharmaceutical management.

The Department feels that the rules cited above already set forth the necessary minimum criteria for the administration of prescription medications in adult county correctional facilities. The Department will add a reference to the law (P.L. 2016, c. 70 and other applicable statutes) at N.J.A.C. 10A:31-13.4(a), 13.9(c), and 13.27 for clarification and no new requirements need to be added to these rules.

4. COMMENT: A number of commenters stated that the proposed readoption of N.J.A.C. 10A:31 should establish an enforcement mechanism related to P.L. 2016, c. 70. (2, 3, 4, 7 through 13, and 15 through 19)

RESPONSE: Commenters are respectfully referred to the enforcement procedures set forth at N.J.A.C. 10A:31-2. No action will be taken in response to the comment, as the Department feels enforcement is adequately addressed in N.J.A.C. 10A:31.

5. COMMENT: Commenters stated that P.L. 2016, c. 70 provides for, at least in part, adequate medical care for inmates of county jails including immigrant detainees. (2, 3, 4, 7 through 13, and 15 through 19)

RESPONSE: P.L. 2016, c. 70 requires the continuation of prescription medication for each person in custody and does not address the much broader topic of medical care for inmates of county jails. The commenters are referred to N.J.A.C. 10A:31-13, Medical, Dental and Health Services rules pertaining to said services as provided in county correctional facilities.

6. COMMENT: One commenter submitted that there should be no changes concerning access to medications despite the enactment of P.L. 2016, c. 70. (5)

RESPONSE: The commenter seems to confuse whether there should, or should not, be changes to Department rules as the majority of remarks submitted by this commenter are similar to those submitted by commenters 2, 3, 4, 7 through 13, and 15 through 19, except this one remark is contrary to other commenters. In either case, the commenter is referred to the Response to Comments 2 and 3.

7. COMMENT: A commenter stated that regulations must be adopted on a priority basis to ensure that persons under detention continue to receive their prescribed medications. (6)

RESPONSE: The commenter is respectfully referred to the Response to Comment 2 and 3 and N.J.A.C. 10A:31-13, Medical, Dental and Health Services, where medical services provided in adult county correctional facilities are set forth, as well as N.J.A.C. 10A:1-2.4 for the Department's rulemaking authority.

8. COMMENT: One commenter stated that this legislation would deny adequate medical care to inmates of county jails. (14)

RESPONSE: As a point of clarity this rule action is not legislation and it does not address or deny adequate medical care to any inmate. The commenter is referred to N.J.A.C. 10A:31-13, Medical, Dental and Health Services, for further information about the services currently provided in county correctional facilities.

Federal Standards Statement

The rules readopted with amendments, repeals, and new rules are promulgated under the authority of the rulemaking requirements of the Department of Corrections as established at N.J.S.A. 30:1B-6 and 30:1B-10. The rules readopted with amendments, repeals, and new rules comply with and do not exceed the Federal requirements established at U.S. Const. Art. 4 § 2, cl. 2 and 18 U.S.C. App. 2 § 2 and the Vienna Convention on consular Relations of 1963, Art. 26, 27, and 42.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10A:31.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

10A:31-13.4 Standard operating procedures

(a) Written standard operating procedures approved by the physician who is responsible for medical services ***should be consistent with P.L. 2016, c. 70, and other applicable statutes and*** shall be developed for the following:

1. -18 (No change.)

10A:31-13.9 Medical screening

(a)– (b) (No change.)

(c) The medical screening should ***be consistent with the criteria set forth in P.L. 2016, c. 70, and all other applicable statutes and*** include, but not be limited to:

1. – 7. (No change.)

10A:31-13.27 Pharmaceutical management

(a) The adult county correctional facility's written standard operating procedures for the management of pharmaceuticals ***should be consistent with P.L. 2016, c. 70, and all other applicable statutes and*** shall ***also*** include:

1.– 6. (No change.)