

## RULE PROPOSALS INTERESTED PERSONS

The Department of Corrections provides notices of rule proposals in the New Jersey Register (N.J.R.), a semi-monthly official publication of the Office of Administrative Law which contains all State agency rule proposals and adoptions. The following paragraph is quoted from the Proposal section of the New Jersey Register: Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal. The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register. At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

---

### CORRECTIONS

#### THE COMMISSIONER

##### Health Services

##### **Proposed Readoption with Amendments: N.J.A.C. 10A:16**

Authorized By: Victoria L. Kuhn Esq., Commissioner, Department of Corrections.

Authority: N.J.S.A. 2A:154-3 and 4, 2C:58-15, 30:1B-6, 30:1B-10, 30:4-123.47.c, and 52:17B-169.

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

Proposal Number: PRN 2024-099.

Submit written comments by November 2, 2024, to:

Kathleen Cullen  
Administrative Rules Unit  
New Jersey Department of Corrections  
PO Box 863  
Trenton, New Jersey 08625-0863

or through email to [ARU@doc.nj.gov](mailto:ARU@doc.nj.gov).

The agency proposal follows:

#### Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10A:16 was scheduled to expire on July 26, 2024. Pursuant to N.J.S.A. 52:14B-5.1.c(2), as the Department of Corrections (“DOC” or “Department”) submitted this notice of proposal to the Office of Administrative Law prior to that date, the chapter expiration date was extended 180 days to January 22, 2025. The Department has reviewed this chapter and, with the exception of the proposed amendments, has determined it

to be necessary, reasonable, and proper for the purpose for which it was originally promulgated. The rules are, therefore, proposed for readoption with amendments.

The Department has determined that the comment period for this notice of proposal will be 60 days; therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, this notice is excepted from the rulemaking calendar requirement.

The Department renamed the Health Services Unit to the Health Compliance Unit on May 1, 2024, and, at this time, proposes to replace the name of the unit so that inmates and the public will have a clear understanding of the unit responsible for health services. As such, the Department proposes to replace “Health Services Unit” and “health service unit” with “Health Compliance Unit” at the following regulations: N.J.A.C. 10A:16-1.3, 3.2(a), 3.4(b) through (f), 3.8(b), 3.10(a) and (b), 3.11(a), 3.13(a)2, 4.2(a) and (b)4 and 5, 4.2(c), 4.4(c) through (f) and (j), 8.5(a), 8.6(a) and (c), and 13.5(f).

This chapter establishes guidelines for various aspects of inmate care, including medical, dental, mental health, and addiction services. It addresses obtaining informed consent for medical procedures, supporting pregnant inmates and their newborns, notifying next of kin in case of critical illness or death, and handling unclaimed inmate bodies. It also covers processes for executive clemency, inmate co-payments for services, donation of biological materials, involuntary psychotropic medications, advance directives, and managing medications. Additionally, it outlines procedures for maintaining inmate records, facilitating medical transfers, and identifying and monitoring inmates who are at risk of suicide.

Subchapter 1, General Provisions, sets forth rules for definitions, medical co-payments, and quality assurance among other things.

Subchapter 2, Medical Services, sets forth rules, but is not limited to, for medical services, medical emergencies, medical facilities, and equipment reportable diseases among other things.

Subchapter 3, Dental Services, sets forth, among other topics, rules for dental services, routine dental care, and oral surgery.

Subchapter 4, Mental Health Services, sets forth rules for access to mental health services, staff licensure, inmate/therapist confidentiality, and records among other things.

Subchapter 5, Informed Consent to Perform Medical, Dental, or Surgical Treatment, sets forth rules for treatment refusal and medical guardianship among other things.

Subchapter 6, Pregnant Inmates, sets forth rules for care of pregnant inmates through the placement of infants.

Subchapter 7, Critical Illness or Death of Inmates, includes rules for notification of next of kin, including, but not limited to, advanced directives, burial or cremation of inmates, and distribution of personal property.

Subchapter 8, Executive Clemency and Medical Parole, sets forth, but is not limited to, rules for executive clemency, compassionate release, and medical assistance.

Subchapter 9, Blood, Tissue, and Organ Donation by Inmates, sets forth rules for blood, tissue, and organ donation.

Subchapter 10, Medical Transfer, includes rules for medical transport of inmates.

Subchapter 11, Involuntary Psychotropic Medications, sets forth, but is not limited to, rules for the use of clinically indicated psychotropic medications, the Treatment Review Committee, notification of involuntary medication hearings, and emergency treatment.

Subchapter 12, Suicide Prevention, sets forth rules for suicide prevention including, but not limited to, suicide watches and reports.

Subchapter 13, Commitment for Psychiatric Treatment, includes rules for psychiatric commitments.

Subchapter 14, Substance Use Disorder Treatment Services, sets forth, but is not limited to, rules for substance use disorder treatment services and the drug diversion program.

Subchapter 15, Keep on Person (KOP) Medication, sets forth rules for the distribution, responsibility, compliance, spot checks, and handling of keep on person (KOP) medication.

### **Social Impact**

The rules proposed for readoption with amendments provides information regarding the health services provided to incarcerated persons while assigned to a correctional facility. The Department anticipates a positive social impact as the rules proposed for readoption with amendments are necessary for the health and well-being of incarcerated persons and the amendments reflect recent changes within the Department.

### **Economic Impact**

Additional funding is not necessary to implement the requirements of the rules proposed for readoption with amendments. The cost of meeting and maintaining the requirements of the rules proposed for readoption with amendments is met by the Department through the established budget with funds allocated by the State and has no external economic impact.

### **Federal Standards Statement**

The rules proposed for readoption with amendments are promulgated pursuant to the authority of the rulemaking requirements of the Department, as established at N.J.S.A. 30:1B-6 and 10. The rules proposed for readoption with amendments are not subject to any Federal statutes, requirements, or standards; therefore, a Federal standards analysis is not required.

### **Jobs Impact**

The rules proposed for readoption with amendments will cause neither the generation of nor the loss of any jobs.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

### **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 defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments affect the Department and governmental entities responsible for the enforcement of the rules.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will have no impact on housing affordability and there is an extreme unlikelihood that the rules proposed for readoption with

amendments would evoke a change in the average costs associated with housing. The rules proposed for readoption with amendments concern the close custody housing of inmates found guilty of disciplinary infractions, as used by the Department.

### **Smart Growth Impact Development Analysis**

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and there is an extreme unlikelihood 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. The rules proposed for readoption with amendments concern health services, as provided in correctional facilities in New Jersey.

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

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention or sentencing. Health services do not directly impact probation and potential parole and has been implemented and updated in compliance with related State laws. 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. 10A:16.

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

## SUBCHAPTER 1. GENERAL PROVISIONS

### 10A:16-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

“Health [Services] **Compliance** Unit” means the unit administered by the Assistant Commissioner, Division of Operations, responsible for auditing the provision of medical, dental, and mental health and substance use disorder services to inmates [under] **pursuant to the** jurisdiction of **the** Department of Corrections.

...

## SUBCHAPTER 3. DENTAL SERVICES

### 10A:16-3.2 Administration of dental services and program(s)

(a) The dental health services provider in each correctional facility shall designate a dental health services staff member as the responsible health authority who shall be administratively and/or clinically responsible for the management and direction of the dental services and/or program. The Division of Operations, Health [Services] **Compliance** Unit staff shall be notified, in writing, as to who is administratively and clinically responsible for the dental services and/or program of the correctional facility and immediately be notified, in writing, if the designee(s) is changed.

(b) (No change.)

10A:16-3.4 Licensure

(a) (No change.)

(b) The following licenses and certificates of dentists shall be forwarded to the Health [Services] **Compliance** Unit, Director of Dental Services:

1.-5. (No change.)

(c) Final approval to hire dental personnel may be granted only after credential review by the Health [Services] **Compliance** Unit, Director of Dental Services.

(d) Copies of licenses of dental personnel shall be maintained both at the correctional facility dental department and at the Division of Operations, Health [Services] **Compliance** Unit.

(e) The dental health care provider shall report all disciplinary actions and license suspensions to the Health [Services] **Compliance** Unit, Director of Dental Services, and other State regulatory bodies, as required by law.

(f) Dental personnel shall be responsible for providing proof of license(s) and certification(s) renewal to the Health [Services] **Compliance** Unit, Director of Dental Services through the dental health care provider. The responsible health authority of each dental service and/or program shall conduct an annual review of license and certification validation and shall provide a written report of such annually to the Director of Health Services.

(g) (No change.)

10A:16-3.8 Use of community facilities and consultants

(a) (No change.)

(b) Use of general and specialist community dental offices or hospitals shall be subject to the review and written approval of the Health [Services] **Compliance** Unit, Director of Dental Services.

10A:16-3.10 Dental treatment classification and priority treatment guidelines

(a) Dental staff in each correctional facility shall follow and comply with the Health [Services] **Compliance** Unit dental treatment classifications to be used following the initial examination and as treatment progresses as established in internal management procedures.

(b) Dental staff in each correctional facility shall follow and comply with the Health [Services] **Compliance** Unit guidelines for dental priority treatment as established in the internal management procedures (see N.J.A.C. 10A:16-1.9). Dental treatment classifications for which priority treatment may apply includes, but is not limited to:

1.- 2. (No change.)

10A:16-3.11 Routine dental treatment

(a) Excluding emergency treatment, dental treatment shall be rendered in accordance with the written Health [Services] **Compliance** Unit dental classifications and priority treatment guidelines as established in the internal management procedures (see N.J.A.C. 10A:16-1.9).

(b) (No change.)

10A:16-3.13 Preventive dentistry

(a) A dental cleaning (prophylaxis) and dental examination shall be offered to all inmates every two years (biennially) unless such cleaning and dental examination is determined to be clinically indicated on a more frequent basis.

1. (No change.)

2. The inmate who refuses a dental cleaning or examination shall sign a form provided by the Health [Services] **Compliance** Unit indicating his or her refusal of such dental treatment. In the event the inmate refuses to sign the form, the following shall be indicated in the EHR along with the date and name of the dental staff member: “Inmate refuses to sign (date and name of dental staff member).”

3. (No change.)

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

#### SUBCHAPTER 4. MENTAL HEALTH SERVICES

##### 10A:16-4.2 Correctional facility staff, structure, and licensure

(a) A New Jersey licensed psychologist shall be designated by the mental health care provider as the Director of Psychology of each correctional facility and the Director of Psychology shall be administratively responsible to the Administrator or designee. The Division of Operations and the Health [Services] **Compliance** Unit shall be immediately notified, in writing, if the designee is changed.

(b) The Director of Psychology of each correctional facility shall be responsible for:

1.- 3. (No change.)

4. Conducting a biannual review of license and certification validation and providing a written report of such to the Health [Services] **Compliance** Unit, Director of Mental Health Services (see N.J.A.C. 10A:16-2.4); and

5. Reporting all disciplinary actions(s), license suspension(s), and/or resignation(s) of mental health services staff to the Health [Services] **Compliance** Unit, Director of Mental Health Services, and other State regulatory bodies as required by law.

(c) It shall be the responsibility of the mental health services staff to provide proof of license(s) and certificate(s) renewal to the Health [Services] **Compliance** Unit, Director of Mental Health Services, through the health care provider.

(d) (No change.)

##### 10A:16-4.4 Inmate/therapist confidentiality

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

(c) When a mental health practitioner receives information concerning the exception categories listed [in] **at** (b) above, the mental health practitioner shall immediately confer with the correctional facility Director of Psychology who will also contact the Health [Services] **Compliance** Unit, Director of Mental Health Services, to determine whether disclosure is necessary. Relevant considerations, in addition to the information given to the mental health practitioner, may include, but are not limited to, whether:

1.-5. (No change.)

(d) In any case in which the mental health practitioner, the correctional facility Director of Psychology, and the Health [Services] **Compliance** Unit, Director of Mental Health Services, agree and conclude that the information does not fall within the scope of the exception categories listed [in] **at** (b) above, no disclosure need be made.

(e) If the mental health practitioner, the correctional facility Director of Psychology and the Health [Services] **Compliance** Unit, Director of Mental Health Services, believe that the subject matter falls within the scope of an exception category(ies) listed [in] **at** (b) above, the correctional facility Director of Psychology shall immediately make this information known to

the correctional facility Administrator **by** providing the facts and background information that are necessary to give the Administrator a clear understanding of the case.

(f) In any case in which the mental health practitioner, the correctional facility Director of Psychology, and the Health [Services] **Compliance** Unit, Director of Mental Health Services, disagree as to whether disclosure should be made, the person who believes that the matter should be disclosed shall notify the correctional facility Administrator immediately, providing the facts and background information that are necessary to give the Administrator a clear understanding of the case.

(g)-(i) (No change.)

(j) Questions concerning the interpretation of the policy on inmate/therapist confidentiality shall be addressed to the Health [Services] **Compliance** Unit, Director of Psychological Services.

#### SUBCHAPTER 8. EXECUTIVE CLEMENCY AND MEDICAL PAROLE

##### 10A:16-8.5 Eligibility requirements for compassionate release

(a) A medical diagnosis to determine an inmate's eligibility for compassionate release may be initiated by the administrator, superintendent, a staff member of a correctional facility, or by the inmate, a member of the inmate's family, or the inmate's attorney by submitting the Compassionate Release Request Form to the Health [Services] **Compliance** Unit. The form will be available from members of the custody staff or health services in all correctional facilities. The medical diagnosis required for compassionate release shall be made by two health services licensed physicians designated by the Commissioner of the Department of Corrections and shall include, but not be limited to:

1.-4. (No change.)

##### 10A:16-8.6 Medical diagnosis and Certificate of Eligibility for Compassionate Release

(a) The two designated physicians will complete the required examinations and forward their attestations, and all related medical records, to the [health services unit] **Health Compliance Unit** medical director for review. Following review of the medical records, the medical director shall make a medical determination of eligibility or ineligibility and issue a memo to the Commissioner of the Department of Corrections detailing the same.

(b) (No change.)

(c) The [health services unit] **Health Compliance Unit** shall compile a compassionate release package (that is, medical records, attestations, Compassionate Release Request Form) for further review and processing.

(d)-(e) (No change.)

#### SUBCHAPTER 13. COMMITMENT FOR PSYCHIATRIC TREATMENT

##### 10A:16-13.5 Screening service commitment of inmates

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

(f) The Health [Services] **Compliance** Unit shall maintain an up-to-date listing of designated local mental health screening services, approved to perform inmate screenings, which shall be available to all correctional facilities within the Department of Corrections.