

**ADOPTIONS SECTION**

**CORRECTIONS**

**HEALTH**

**THE COMMISSIONER**

**INTEGRATED HEALTH BRANCH**

**DIVISION OF BEHAVIORAL HEALTH SERVICES**

**SPECIAL TREATMENT UNIT**

**Notice of Readoption**

**Special Treatment Unit**

**Joint Notice of Readoption with Technical Changes and Recodification: N.J.A.C.**

**10:36A as 8:131 (10A:35)**

Authority: N.J.S.A. 30:1-12, 30:1B-6, 30:1B-10, and 30:4-27.24 et seq., specifically, 30:4-27.34; *R. M. v. The Northern Regional Unit*, 367 N.J.Super. 229 (App. Div. 2004); and Reorganization Plans Nos. 001-2017 and 001-2018.

Authorized By: Judith M. Persichilli, R.N., B.S.N., M.A., Commissioner, Department of Health, and Victoria Kuhn, Esq., Acting Commissioner, Department of Corrections, in consultation with Gurbir S. Grewal, Attorney General, Office of the Attorney General.

Effective Dates: August 9, 2021, Readoption;  
September 7, 2021, Technical Changes and Recodification.

New Expiration Date: August 9, 2028.

**Take notice** that, pursuant to N.J.S.A. 52:14B-5.1, the Commissioner of the Department of Health (Department) hereby readopts N.J.A.C. 10:36A (10A:35), Special Treatment Unit, with technical changes and with recodification as N.J.A.C. 8:131.

Reorganization Plan No. 001-2017, A Plan for the Transfer of Mental Health and Addiction Functions From the Department of Human Services to the Department of Health (Governor Christie, filed June 29, 2017, and effective August 28, 2017), at § 1, continued the Division of Mental Health and Addiction Services (DMHAS) of the Department of Human Services (DHS), and, in pertinent part, at § 2(x), transferred the DMHAS and all functions, powers, and duties associated with the Sexually Violent Predator Act (SVPA) at N.J.S.A. 30:4-27.4 et seq., and the Special Treatment Unit (STU) from the DHS and the DHS Commissioner to the Department and the Commissioner of the Department. 49 N.J.R. 2303(a).

Reorganization Plan No. 001-2018, A Plan for the Transfer of Certain Mental Health and Addiction Functions from the Department of Health to the Department of Human Services (Governor Murphy, issued June 21, 2018, effective August 20, 2018), at § 1, continued the Division of Mental Health and Addiction Services and at § 2(a) through (u) transferred from the Department and the Commissioner of the Department, to the DHS and the DHS Commissioner, specific established functions, powers, and duties. 50 N.J.R. 1517(a). Reorganization Plan No. 001-2018 states, “[to] the extent the functions, powers, and duties under the statutes are necessary or convenient for the Department of Health to continue operating the State psychiatric hospitals and the licensing of mental health and addiction services programs and facilities, and carry out its duties to the Special Treatment Unit, such functions, powers, and duties will continue within the Department of Health, and the Commissioner of Human Services shall provide such support as is needed to carry out those functions, including a proportionate share of personnel, support service or funds necessary to the objectives.” *Id.* at 1518. Additionally, Reorganization Plan No. 001-2018 at §

4 preserved the functions, powers, and duties of the Commissioner of the Department of Corrections or the Department of Corrections (DOC) as they relate to the authority and obligations of the Commissioner of the Department of Corrections or the DOC under the SVPA or to the Special Treatment Unit. *Id.*

The Department and the DOC jointly promulgate this notice of readoption to establish procedures for the care, custody, control, and treatment of individuals in New Jersey who are sexually violent predators pursuant to the SVPA. The Department of Human Services promulgated N.J.A.C. 10:36A as new rules in 2007. 38 N.J.R. 1984(a); 3095(a); 4622(a); 39 N.J.R. 2249(a). The Department of Human Services adopted Subchapter 10 pertaining to Resident Welfare Funds as new rules effective November 7, 2011. 43 N.J.R. 367(a); 3025(a). The chapter was readopted on November 24, 2014. 46 N.J.R. 1531(a); 47 N.J.R. 113(a). The chapter was scheduled to expire on November 24, 2021, pursuant to N.J.S.A. 52:14B-5.1.c.

Subchapter 1, General Provisions, establishes overarching principles of the chapter including authority, purpose, scope, definitions of words and terms the chapter uses, the requirement to develop STU internal management policies and procedures, and the requirement to develop, maintain, and distribute to STU residents a Resident Guide.

Subchapter 2, Rights of Residents, establishes the rights of STU residents subject to the SVPA and all applicable laws, delineates the rights that can and cannot be denied respectively, standards for continuation of rights denial and standards for denial of rights in emergency circumstances.

Subchapter 3, Personal Property, establishes minimum standards for handling permissible and non-permissible personal property held by STU residents and a process for

addressing confiscated personal property.

Subchapter 4, Searches of Residents and Special Treatment Units by DOC Custody Staff, establishes standards and procedures for searches of STU residents and facilities in furtherance of therapeutic goals and deterrence of contraband; inspection of security devices for safety; standards for the use of scanning or testing devices; canine searches; and prohibited substance testing.

Subchapters 5 through 9 are reserved.

Subchapter 10, Resident Welfare Funds, establishes the sources of income for resident welfare funds and provisions for accountability and spending of the funds.

The Department has reviewed N.J.A.C. 10:36A (10A:35) and has determined that, subject to the technical changes and recodification described below, the existing chapter remains necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which it was originally promulgated, as amended and supplemented over time, and should be readopted as recodified N.J.A.C. 8:131 (10A:35).

In addition to readopting and recodifying the existing rules, the Department is making the technical changes throughout recodified N.J.A.C. 8:131 (10A:35) to:

1. Delete references to the “Department of Human Services,” “DHS,” “Division of Mental Health and Addiction Services,” and “DMHAS,” and add in place thereof, references to the “Department of Health” or “DOH” and “Division of Behavioral Health Services” or “DBHS.”

2. Correct cross-references, grammar, and the employment title of Correction Officers to Correctional Police Officers.

Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), N.J.A.C. 10:36A (10A:35) is

readopted as N.J.A.C. 8:131 (10A:35), and shall continue in effect for seven years.

**Full text** of the technical changes and recodification follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## CHAPTER [36A] **131** (10A:35)

### SPECIAL TREATMENT UNIT

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### [10:36A]**8:131**-1.1 (10A:35-1.1) Authority

(a) The Commissioners of the Department of [Human Services] **Health** and the Department of Corrections hereby establish regulations regarding the custody, care, control, and treatment of sexually violent predators who have been involuntarily civilly committed to a secure facility pursuant to the Sexually Violent Predator Act (SVPA) at N.J.S.A. 30:4-27.24 et seq.

(b) The Division of [Mental] **Behavioral** Health [and Addiction] Services [(DMHAS)] (**DBHS**) in the Department of [Human Services] **Health** shall provide or arrange for sex offender treatment of persons committed pursuant to the SVPA.

(c) (No change.)

(d) Appropriate representatives of the Departments of [Human Services] **Health** and Corrections shall participate in an interagency oversight board to facilitate the coordination of the internal management procedures and policies of the facility.

##### [10:36A]**8:131**-1.2 (10A:35-1.2) Purpose

(a) The rules in this chapter are jointly promulgated by the Department of [Human Services]

**Health** and the Department of Corrections to implement N.J.S.A. 30:4-27.24 et seq., **and** to establish provisions for:

1. The custody, care, control, and treatment of involuntarily civilly committed sexually violent predators who are housed in a secure facility operated by the Department of Corrections, with custodial care provided or arranged for by the DOC and sex offender treatment services provided by, or arranged for by the [DMHAS] **DBHS** in the Department of [Human Services] **Health**;

2.-9. (No change.)

[10:36A]8:131-1.3 (10A:35-1.3) (No change in text.)

[10:36A]8:131-1.4 (10A:35-1.4) Definitions

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

...

“Clinical staff” means employees of the Department of [Human Services] **Health**, Division of [Mental] **Behavioral** Health [and Addiction] Services, **who are** assigned to the Special Treatment Unit, who are members of treatment teams, or who work in rehabilitation services or discipline-specific supervisory positions including, but not limited to, psychiatry, psychology, and social work.

...

“Custody staff,” except as otherwise provided, means Custody Supervisors, Senior [Correction] **Correctional Police** Officers and [Correction] **Correctional Police** Officer

Recruits who have been sworn as peace officers.

**“DBHS Clinical Director”** means the administrator employed by the Department of Health, Division of Behavioral Health Services, who has oversight responsibilities for DOH/DBHS staff.

...

“Department of [Human Services (DHS)] **Health**” means the New Jersey Department of [Human Services] **Health**.

“Division of [Mental] **Behavioral** Health [and Addiction] Services [(DMHAS)]” **“or (DBHS)”** means the Division in the Department of [Human Services] **Health** responsible for providing or arranging for treatment of persons committed pursuant to the SVPA.

...

“DMHAS Clinical Director” means the administrator employed by the Department of Human Services, Division of Mental Health and Addiction Services, who has oversight responsibilities for DHS/DMHAS staff.]

“Interagency Oversight Board” means a board of representatives appointed by the Commissioners of the Department of Corrections and the Department of [Human Services] **Health** that participate in oversight of the Special Treatment Unit in order to facilitate the coordination of STU policies and procedures pursuant to N.J.S.A. 30:4-27.34. Such representatives shall include Departmental administrative or executive staff and shall not be limited to or exclusively comprised of STU staff directly responsible for managing the day-to-day operations within an STU.

“Internal management procedures and policies” means procedures and policies issued and maintained by the [DMHAS] **DBHS** Clinical Director or designee for implementation of

the facility sex offender treatment program and the procedures and policies that are issued and maintained by the DOC Administrator or designee to provide specific operating procedures for the secure facility.

...

“Resident” means a person who has been temporarily involuntarily civilly committed or involuntarily civilly committed pursuant to N.J.S.A. 30:4-27.24 et seq. to a secure facility operated by the Department of Corrections with custodial care provided or arranged for by the Department of Corrections, and sex offender treatment services provided by, or arranged for by the [DMHAS] **DBHS** in the Department of [Human Services] **Health**.

...

“Special Treatment Unit [(],” “STU[)],” “facility,” or “unit” means a secure facility for involuntarily civilly committed residents, operated by the Department of Corrections, with custodial care provided or arranged for by the Department of Corrections, and sex offender treatment services provided by, or arranged for by the [DMHAS] **DBHS** in the Department of [Human Services] **Health**.

...

[10:36A]8:131-1.5 (10A:35-1.5) Special Treatment Unit internal management policies and procedures

The [DMHAS] **DBHS** Clinical Director and the DOC Administrator, or their designees, shall develop and maintain written policies and procedures for the operation of the program and facility, consistent with this chapter.

[10:36A]8:131-1.6 (10A:35-1.6) (No change in text.)

## SUBCHAPTER 2. RIGHTS OF RESIDENTS

[10:36A]8:131-2.1 (10A:35-2.1) Rights of residents

(a) (No change.)

(b) Every resident shall be entitled to all rights set forth in the SVPA and shall retain all rights not specifically denied in the SVPA.

1.-3. (No change.)

4. The resident shall acknowledge receipt of this notice in writing and a staff member shall place a copy of this written receipt in the resident's files maintained by the Departments of [Human Services] **Health** and Corrections. If the resident refuses to acknowledge receipt of the notice, the person delivering the notice shall make a notation of the refusal on the receipt and a copy of the receipt shall be placed in the resident's files maintained by the Departments of [Human Services] **Health** and Corrections.

[10:36A]8:131-2.2 (10A:35-2.2) Resident rights not subject to denial

(a) Each resident shall have the following rights which shall not be denied under any circumstances:

1. (No change.)

2. The right not to be subjected to experimental research or treatment except as provided by court order, consent decree, or other legal process and with the expressed and informed consent of the resident after consultation with counsel or interested party of the resident's choice. Such consent shall be made in writing, a copy of which shall be placed in

the appropriate file of the resident maintained by the Departments of [Human Services] **Health** and Corrections;

3.-5. (No change.)

[10:36A]8:131-2.3 (10A:35-2.3) Resident rights subject to denial

(a) Each resident shall have the following rights, which may be curtailed, suspended, or denied in accordance with internal management procedures and policies, and pursuant to N.J.A.C. [10:36A]8:131-2.4 (10A:35-2.4) when Department of [Human Services] **Health** clinical staff determines that such restrictions are consistent with the therapeutic goals of the resident, or when Department of Corrections staff determines that such restrictions are necessary to protect the resident, other residents, staff, general public, or property, or to ensure the safe, secure, and orderly operation of the facility, or for other good cause:

1. The right to privacy except as established at N.J.A.C. [10:36A]8:131-4 (10A:35-4) and the right to dignity;

2.-12. (No change.)

[10:36A]8:131-2.4 (10A:35-2.4) Denial of a resident right

(a) The denial of a right established at N.J.A.C. [10:36A]8:131-2.3 (10A:35-2.3) shall be effective upon the approval of the [DMHAS] **DBHS** Clinical Director or designee and/or the DOC Administrator or designee for a period not to exceed 30 calendar days, unless extended pursuant to N.J.A.C. [10:36A]8:131-2.5 (10A:35-2.5).

(b) The reason for the denial of the right shall be documented by the [DMHAS] **DBHS** Clinical Director or designee and/or by the DOC Administrator or designee. The reason shall be

provided to the resident, and entered in the resident's files maintained by the Departments of [Human Services] **Health** and Corrections as soon as practicable, within 72 hours after the denial is implemented.

[10:36A]8:131-2.5 (10A:35-2.5) Continuation of the denial of a resident right

(a) The denial of any right may be continued for additional 30 calendar day periods when reviewed and approved by the [DMHAS] **DBHS** Clinical Director or designee. The DOC Administrator or designee may be consulted as deemed appropriate by the **DBHS** Clinical Director or designee.

(b) A written statement indicating the detailed reason(s) for the continuation of the denial of the right(s) shall be provided to the resident by the [DMHAS] **DBHS** Clinical Director or DOC Administrator or their designees, and entered in the resident's files maintained by the Departments of [Human Services] **Health** and Corrections as soon as practicable.

[10:36A]8:131-2.6 (10A:35-2.6) Emergency denial of a resident right

(a) Resident rights established at N.J.A.C. [10:36A]8:131-2.3 (10A:35-2.3) may be denied in an emergency situation for a period not to exceed 72 hours in any instance in which the [DMHAS] **DBHS** Clinical Director or DOC Administrator or their designees believe it is imperative to deny any right to avoid physical harm to the resident, other residents, staff, general public, property, or to ensure the safe, secure, and orderly operation of the facility.

(b) The emergency denial of a resident right shall take effect immediately. A written notice of the denial, which shall include an explanation of the reason for the denial, shall be given to the resident and placed in the resident's files maintained by the Departments of [Human

Services] **Health** and Corrections as soon as practicable.

(c) The [DMHAS] **DBHS** Clinical Director and DOC Administrator or their designees shall review each emergency denial of a right within 24 hours of the decision and shall place a written notice of the review in the resident's files maintained by the Departments of [Human Services] **Health** and Corrections within 24 hours of the review, excluding weekends and holidays.

### SUBCHAPTER 3. PERSONAL PROPERTY

[10:36A]8:131-3.1 (10A:35-3.1) (No change in text.)

[10:36A]8:131-3.2 (10A:35-3.2) Handling of personal property confiscated within a Special Treatment Unit

(a) (No change.)

(b) The staff member making the confiscation shall give the resident an itemized, signed, and dated receipt for the property confiscated, and shall notify the resident that such items are not permitted, and that the resident has three business days, from the date of the confiscation, to appeal the classification of any or all items as non-permissible by submitting a grievance to the individual designated to process grievances, with the DOC Administrator or [DMHAS] **DBHS** Clinical Director or their designees having final decision-making authority.

1.-2. (No change.)

3. If the resident fails to indicate the desired disposition, the property shall be disposed of at the option of the DOC Administrator or [DMHAS] **DBHS** Clinical Director.

SUBCHAPTER 4. SEARCHES OF RESIDENTS AND SPECIAL TREATMENT UNITS BY  
DOC CUSTODY STAFF

[10:36A]8:131-4.1 (10A:35-4.1) (No change in text.)

[10:36A]8:131-4.2 (10A:35-4.2) Searches of residents and facilities

(a) (No change.)

(b) Procedures to be utilized in conducting searches consistent with this subchapter shall be set forth in an internal management procedure prepared by the DOC Administrator or designee to be promulgated pursuant to the search plan required by N.J.A.C. [10:36A]8:131-4.1 (10A:35-4.1). Such procedures shall provide that a resident may be excluded from entry into an area being searched to facilitate the safe and effective performance of the search.

(c) (No change.)

[10:36A]8:131-4.3 through 4.6 (10A:35-4.3 through 4.6) (No change in text.)

SUBCHAPTER 10. RESIDENT WELFARE FUNDS

[10:36A]8:131-10.1 (10A:35-10.1) (No change in text.)

[10:36A]8:131-10.2 (10A:35-10.2) Accountability for and expenditure of resident welfare funds

(a) (No change.)

(b) The DOC Administrator and [DMHAS] **DBHS** Clinical Director, in consultation with the Interagency Oversight Board, shall be jointly responsible for the control and authorization of

all expenditures of resident welfare funds.

(c) (No change.)

(d) Resident welfare funds shall not be used for items that the Departments of Corrections or [HumanServices] **Health** are required to provide, the payment of employee salaries, or the purchase of any item or service, which is not intended for use by the population, such as, but not limited to, security equipment or automobiles.

(e) (No change.)

(f) Individuals, corporations, and charitable foundations that wish to donate gifts to the resident welfare account shall submit a notice containing information relative to the gift to the Interagency Oversight Board. Such gifts shall be spent as designated by the donor when such designation is consistent with the provisions set forth [in] **at** (c) and (d) above. When gifts are undesignated, such gifts shall be spent as designated by the DOC Administrator and the [DMHAS] **DBHS** Clinical Director in consultation with the Interagency Oversight Board. The monies from these gifts shall be identified separately in the resident welfare fund, so that expenditures can be directly related to the source offunds.

(g) (No change.)