

*E means “Endangered,” S means “Secure-stable,” SC means “Special concern,” T means “Threatened,” and U means “Undetermined-unknown.” These terms are defined at N.J.A.C. 7:25-4.1

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Records Confidentiality and Access to Client, Division, and Provider Records

Readoption with Amendments: N.J.A.C. 10:41

Proposed: October 7, 2024, at 56 N.J.R. 1929(a).

Adopted: March 28, 2025, by Sarah Adelman, Commissioner, Department of Human Services.

Filed: April 1, 2025, as R.2025 d.052, **without change**.

Authority: N.J.S.A. 9:6-8.10a, 30:1-12, 30:4-24.3, 30:6D-4(f), and 47:1A-1 et seq.; 34 CFR 361.38, 42 CFR Part 2 and 45 CFR Parts 160 and 164; and 42 U.S.C. §§ 3601 et seq.

Effective Dates: April 1, 2025, Readoption;
May 5, 2025, Amendments.

Expiration Date: April 1, 2032.

Summary of Public Comments and Agency Responses:

The Division of Developmental Disabilities (Division) received comments from Carolyn Hayer, Executive Co-Director, and Lauren Agoratus, Family Voices NJ Coordinator, of SPAN Parent Advocacy Network. A summary of the comments and the Division’s response follows:

1. COMMENT: The commenters agreed with the general provisions of the Records Confidentiality and Access to Client, Division, and Provider Records rule (Records Confidentiality rule) and voiced strong appreciation for the application of the rule to all components of the Division and all service provider agencies.

RESPONSE: The Division thanks the commenters for this comment.

2. COMMENT: The commenters supported the confidentiality guidelines for photographing, audiotaping, and videotaping of individuals served by the Division pursuant to the rules and agreed that individual identifying information and community service addresses must be redacted.

RESPONSE: The Division thanks the commenters for these comments.

3. COMMENT: The commenters supported the proposed amendments for the disclosure of records and reports of certain investigations, which can be released to an individual or guardian pursuant to Stephen Komminos’ Law, but the commenters recommended similar access to people who act as part of an individual’s supported decision-making team, and to public child and adult protective service agencies, or an ombudsman.

RESPONSE: The Division thanks the commenters for the comment. The provision that permits disclosure of certain investigation records to the individuals and guardians was enacted pursuant to the Stephen Komminos’ Law. The Division does not have the authority to expand the scope of the statute. The Division notes, however, that the Records Confidentiality rule provides for the release of certain client records to an agency authorized to investigate allegations of abuse or neglect of an individual, including the Department of Children and Families, Adult Protective Services, and other agencies pursuant to N.J.A.C. 10:41-5.2(d)7.

4. COMMENT: The commenters also addressed a provision in the rulemaking that was updated to reflect recent amendments to the Department of Human Services licensing rules that allow video and audio recording in common areas of licensed residential settings, under certain circumstances. The commenters encouraged such video and audio to be applied judiciously to protect individual rights and the rights of others in the community.

RESPONSE: The Division thanks the commenters for the comment. The Division agrees that administrators must remain vigilant to ensure

that the rights of the individuals served by the Division and other agencies remain protected.

Federal Standards Statement

The rules readopted with amendments are consistent with the Federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (HIPAA), 45 CFR Parts 160 and 164, and the Federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq., as they relate to access to and disclosure of protected health information. The rules readopted with amendments do not impose any greater requirements than those imposed pursuant to Federal statutes and regulations.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:41.

Full text of the adopted amendments follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10:41-1.3 Definitions

The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise.

...
“Community Services Office” means a location housing components of Division community services operations. An individual’s Community Services Office contact is determined by the county in which he or she resides. Community Services Office contact information can be found at https://www.nj.gov/humanservices/dd/about/contactus/community_services/.
...

SUBCHAPTER 3. CLIENT AND AGENCY RECORDS

10:41-3.2 Public and non-public Division and provider records

(a) (No change.)

(b) The following Division and provider records are not public and can only be released upon judicial order, except that records and reports of an investigation can be released to an individual or guardian pursuant to N.J.S.A. 30:6D-76. These Division and provider records include:

1.-7. (No change.)

10:41-3.3 Photographing, audio, and videotaping of individuals

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

(c) Audio taping and videotaping of individuals is prohibited for other than treatment purposes or health care operations unless written authorization is obtained from the individual or legal guardian, except that agencies may use audio or video monitoring in accordance with N.J.A.C. 10:44A-2.2(b)21.

(d) (No change.)

(b)

DIVISION OF DEVELOPMENTAL DISABILITIES

Human Rights Committees

Readoption with Amendments: N.J.A.C. 10:41A

Proposed: October 7, 2024, at 56 N.J.R. 1931(a).

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Authority: N.J.S.A. 30:6D-1 et seq.

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Expiration Date: March 28, 2032.

Summary of Public Comments and Agency Responses:

The Division of Developmental Disabilities (Division) received comments from Carolyn Hayer, Executive Co-Director, and Lauren Agoratus, Family Voices NJ Coordinator, of SPAN Parent Advocacy