**HUMAN SERVICES**

**DIVISION OF DEVELOPMENTAL DISABILITIES**

**Human Rights Committees**

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

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

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

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

Proposal Number: PRN 2017-078.

Submit written comments by July 14, 2017, electronically to

DDD-CO.LAPO@dhs.state.nj.us, or by regular mail or facsimile to:

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 The agency proposal follows:

**Summary**

 The Division of Developmental Disabilities (Division) proposes to readopt N.J.A.C. 10:41A, Human Rights Committees, with amendments. Chapter 41A establishes the guidelines and responsibilities for Human Rights Committees (HRCs). HRCs are objective advisory review boards designed to protect individual rights established under the Developmentally Disabled Rights Act, N.J.S.A. 30:6D-1 et seq. Services are provided to Division-eligible individuals in a variety of settings, such as group homes, supervised apartments, community care homes, developmental centers, and private institutions. Services are also provided to individuals who live in their own homes and include supported employment, personal care attendants and respite care. Individuals receiving services from the Division, Division staff, provider agency staff, parents, guardians, or other advocates may make referrals to an HRC. The HRC deliberates regarding issues that have been referred, and advises the Administrator, who makes the final decisions.

The Department of Human Services (Department) adopted Chapter 41A effective August 16, 2004, and then readopted the chapter effective May 24, 2010. Chapter 41A was scheduled to expire on May 24, 2017, pursuant to N.J.S.A. 52:14B-5.1. As the Division has filed this notice of proposal with the Office of Administrative Law prior to that date, the expiration date of the chapter was extended 180 days to November 20, 2017. The Division has reviewed this chapter, and has found that, with the proposed amendments, the rules are reasonable, necessary, and proper for the purpose for which they were originally promulgated.

 The proposed amendments primarily update language to reflect changes in Division structure and operations since the rules were last readopted in 2010. In addition, an amendment is proposed to add a definition for “meeting minutes” to ensure uniformity of HRC minutes. Proposed amendments would recognize that the title “Chief Executive Officer” is used within provider agencies; another amendment updates the name of the organization, “New Jersey Protection and Advocacy, Inc.,” to “Disability Rights New Jersey.”

A summary of the rules proposed for readoption with amendments follows.

**Subchapter 1. General Provisions**

 N.J.A.C. 10:41A-1.1 sets forth the purpose of the rules as establishing Human Rights Committees (HRCs) to act as objective review boards that promote the human and civil rights of individuals with developmental disabilities.

 N.J.A.C. 10:41A-1.2 sets forth the scope of the rules to establish the composition and operation of the Human Rights Committee in developmental centers, the Office of Community Services, and in the provider agencies and facilities under contract with the Division. The Division proposes to amend this section to reflect that community services are no longer structured by region.

 N.J.A.C. 10:41A-1.3 provides the definitions used in the chapter. The Division proposes to amend the definitions of “Administrator” and “Chief Executive Officer” (CEO), to reflect that the title Chief Executive Officer is frequently used in provider agencies. The Division also proposes to add the definition of “Community Services Administrator” and delete the definition of “Regional Administrator” to reflect titles currently in use within the Division.

In addition, the Division proposes to add a definition for the term “under contract.” At the time that the chapter was originally adopted, the Division funded services for individuals through traditional contracts with providers. Since that time, the Division has also funded services for individuals being served by providers who have been approved by the Division to provide disability services, but do not have a traditional contractual relationship with the Division. This amendment will clarify that the rules apply to these providers as well.

The Division also proposes to add a definition of “Committee meeting minutes” (minutes) to provide for consistent and complete documentation of HRC actions.

**Subchapter 2. Individual Rights**

 N.J.A.C. 10:41A-2.1 recognizes that individuals with developmental disabilities are entitled to exercise the same human and civil rights enjoyed by other citizens. This section also requires that documentation of any authorized restrictions of an individual's rights be maintained in the client record. This section also sets forth those individuals who may make referrals to the HRC.

**Subchapter 3. Membership of the HRC**

 N.J.A.C. 10:41A-3.1 sets forth the parameters for appointment of members of the HRC, including board size and representation.

N.J.A.C. 10:41A-3.2 sets forth the process for appointment of the chairperson and vice-chairperson. The Division proposes an amendment to reflect that community services are no longer structured by region.

 N.J.A.C. 10:41A-3.3 sets the method for filling vacancies created by unexpired terms of HRC members.

 N.J.A.C. 10:41A-3.4 sets forth the method for removing a Committee member for good cause.

 N.J.A.C. 10:41A-3.5 requires that Committee members receive an orientation and instructional materials to perform their duties. The Division proposes an amendment to reflect that community services are no longer structured by regional offices.

**Subchapter 4. Responsibilities of the HRC**

 N.J.A.C. 10:41A-4.1 outlines the role of the HRC as an advisor to the Administrator and as a proactive body.

N.J.A.C. 10:41A-4.2 outlines the Committee’s standard meeting practices.

N.J.A.C. 10:41A-4.3 describes the HRC’s general committee functions.

N.J.A.C. 10:41A-4.4 provides the procedures for review of issues referred to the HRC. The Division proposes to replace the term “will” with “shall” for grammar.

N.J.A.C. 10:41A-4.5 provides that a member of the HRC may not participate in deliberations that constitute a conflict of interest and sets the guidelines for identifying conflicts of interest. The Division proposes an amendment to clarify that a conflict exists for any HRC member who refers a matter to the HRC, rather than solely the case manager. The Division also proposes an amendment to make clear that the chairperson makes the final determination of whether a conflict of interest exists. In addition, the Division proposes to update the reference to “New Jersey Protection and Advocacy” with “Disability Rights New Jersey,” to reflect the current name of this organization.

N.J.A.C. 10:41A-4.6 provides a dispute resolution process if an individual, guardian, or advocate disagrees with the decision of an Administrator. The rule also provides for an appeal if dispute resolution is unsuccessful. The Division proposes to amend the rule to reassert that it is mandatory that any disagreements and resolutions of an Administrator’s decision on issues before an HRC shall be maintained in the client record.

**Subchapter 5. Responsibilities of the HRC Chairperson**

N.J.A.C. 10:41A-5.1 delineates the responsibilities of the HRC chairperson, including presiding over the committee meetings, developing agendas, and educating HRC members on their responsibilities. The Division proposes an amendment to remove the HRC chairperson’s authority to call emergency HRC meetings. N.J.A.C. 10:41A-4.4 provides the procedures for emergent review of issues referred to the HRC.

N.J.A.C. 10:41A-5.2 sets the process for the HRC chairperson to maintain and transmit meeting minutes. The Division proposes amendments to reflect that community services are no longer structured by region and to update the title “Division Director” to “Assistant Commissioner.”

**Subchapter 6. Responsibilities of Agencies Under Contract with or Regulated by the Division**

N.J.A.C. 10:41A-6.1 encourages provider agencies to develop an HRC to respond to the needs of the individuals served by those agencies. However, if unavailable, the rule provides access to an HRC established by the Division. The Division proposes to amend language to reflect that community services are no longer structured by region.

N.J.A.C. 10:41A-6.2 requires an agency that uses its own HRC to have procedures regarding the composition and operation of the HRC that are consistent with this chapter.

N.J.A.C. 10:41A-6.3 provides that a CEO or executive director of an agency shall appoint members of an agency HRC. The Division proposes an amendment to reflect that community services are no longer structured by region.

N.J.A.C. 10:41A-6.4 requires an agency administrator to provide the Division with notice of any HRC meetings. The Division proposes to update language to reflect that community services are no longer structured by region.

N.J.A.C. 10:41A-6.5 establishes the procedures for distribution of agency HRC meeting minutes. The Division proposes to update language to reflect that community services are no longer structured by region.

The Division has provided a 60-day comment period on this notice of proposal. Therefore, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

**Social Impact**

 Readoption of these rules with amendments will have a positive social impact, as they provide for the protection and exercise of the human and civil rights of individuals with developmental disabilities served by the Division. Through its deliberative process the HRCs provide important advice to Administrators within the Division and provider community.

**Economic Impact**

 The Division does not anticipate any significant economic impact as a result of the rules proposed for readoption with amendments. The production and distribution of HRC meeting notices, minutes, and related correspondence historically generates a negligible administrative cost. The use of electronic mail and storage has further reduced these minimal costs.

**Federal Standards Statement**

 The rules proposed for readoption with amendments are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is not required.

**Jobs Impact**

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

**Agriculture Industry Impact**

 The rules proposed for readoption with amendments would have no impact on agriculture in the State of New Jersey.

**Regulatory Flexibility Analysis**

 The rules proposed for readoption with amendments will apply to those provider agencies that have an HRC; some of these provider agencies may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments continue to require recordkeeping, namely the minutes of the HRC. However, the rules will not impose costs for agencies, beyond the minimal administrative costs discussed in the Economic Impact above and no professional services are required to be employed. Due to the purpose of the rules to protect the human and civil rights of individuals with developmental disabilities and the importance of documenting HRC activities, a lesser requirement or exemption cannot be provided to agencies that qualify as small businesses.

**Housing Affordability Impact Analysis**

 Because the rules proposed for readoption with amendments concern Human Rights Committees for individuals served by the Division, there is an extreme unlikelihood that the rules proposed for readoption with amendments will evoke a change in the average costs associated with housing or with the affordability of housing.

**Smart Growth Development Impact Analysis**

 The rules proposed for readoption with amendments concern Human Rights Committees for individuals served by the Division. Therefore, there is an extreme unlikelihood that the rule will evoke a change in housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The Division does not anticipate the rules proposed for readoption with amendments will have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

 **Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:41A.

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

SUBCHAPTER 1. GENERAL PROVISIONS

10:41A-1.2 Scope

The rules in this chapter establish the composition and operation of the Human Rights Committee in developmental centers, [regions of] the Office of Community Services, and in the provider agencies and facilities under contract with or regulated by the Division.

10:41A-1.3 Definitions

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

"Administrator" means the Chief Executive Officer **(CEO)** of a developmental center, the [Regional] **Community Services** Administrator [of Community Services], or the Executive Director **or CEO** of a provider agency under contract with**,** or regulated by**,** the Division.

…

"Chief Executive Officer (CEO)" means the person having administrative authority over, and responsibility for**,** **a** **provider agency under contract with the Division,** a State-operated developmental center, or a private residential facility licensed under N.J.A.C. 10:47.

…

**“Committee meeting minutes” or “minutes” means a tangible record of the HRC meeting. Minutes shall include, but are not limited to: the date and time of meeting, who called it to order, who attended, all motions made, any conflicts of interest or abstentions from voting, when the meeting ended, and who drafted the minutes. Minutes shall include a brief summary of each matter addressed, the discussions conducted, a short statement of each recommendation made by the Committee, and a brief explanation of the rationale for the recommendation.**

**“Community services administrator” means a person or his or her designee having administrative authority and responsibility over a community services unit.**

 …

"Human Rights Committee (HRC)" means a group comprised of affiliated and nonaffiliated professionals, individuals served, advocates and/or interested persons from the community at large who function as an advisory body to the CEO, Executive Director, or [Regional] **Community Services** Administrator, on issues directly or indirectly affecting the rights of individuals served. At least two members are impartial outsiders, in that they would not have an interest represented by any other of the required members or the facility itself.

…

"Non-affiliated member" means a member of a committee who is not employed by the service component, facility**,** or agency. This includes members of the **New Jersey Council on** Developmental Disabilities [Council] or former residents and staff of the facility.

…

["Regional Administrator" means the person having administrative authority and responsibility over a region of Community Services.]

…

**“Under contract” means a provider under a written agreement with the Division or a provider approved by the Division to provide disability services to individuals who are eligible to receive services from the Division.**

SUBCHAPTER 3. MEMBERSHIP OF THE HUMAN RIGHTS COMMITTEE

10:41A-3.2 Appointment of chairperson and vice-chairperson

(a) (No change.)

(b) The chairperson and vice-chairperson may be staff members or individuals from outside the developmental center, [region] **Community Services unit**, agency**,** or facility.

(c)-(d) (No change.)

10:41A-3.5 Orientation to the Human Rights Committee

Individuals who are appointed to the HRC shall receive, from the developmental center, [regional office] **Community Services unit**, facility or agency, at a minimum, informational and instructional material relevant to the services provided by the HRC.

SUBCHAPTER 4. RESPONSIBILITIES OF THE HRC

10:41A-4.4 HRC procedures

(a) The chairperson [will] **shall** determine if the issues addressed in the referrals constitute an actual or potential infringement upon the free exercise of an individual's rights. If the chairperson determines that the referral should not be reviewed by the Committee, he or she shall draft an explanation for the next Committee minutes and [will] **shall** review **it** with the full Committee, which [will] **shall** be the final arbitrator of any concerns regarding the relevancy of referral issues. If the request for HRC review was initiated by the individual or his or her legal guardian, the chairperson shall provide a written explanation why the referral should not be reviewed by the HRC.

(b) The HRC chairperson [will] **shall** immediately review emergency referrals with the Administrator. Such referrals [will] **shall** be reviewed expeditiously during emergency meetings of the Committee. Routine referrals will be addressed during the next scheduled Committee meeting. The Administrator or guardians serving individuals may approve necessary emergency treatments. Such issues shall be reviewed by the HRC at a subsequent meeting.

(c) (No change.)

(d) The individuals with potential rights restrictions and their guardians [will] **shall** be invited to attend the meeting.

(e) The individuals listed on the agenda [will] **shall** have their client records made available for the meeting, if necessary.

(f) (No change.)

(g) The HRC members shall carefully review each issue and the data presented to analyze risk, evaluating alternatives and assuring rights are not recommended for restriction due to staff convenience. They [will] **shall** provide a consensus based upon this discussion. If necessary, the HRC [will] **shall** include recommendations for further actions to the respective Administrator.

(h) The HRC [will] **shall** provide, in writing, to the Administrator, a copy of all recommendations within 10 working days of the meeting. The HRC chairperson may provide a verbal recommendation to the Administrator if immediate implementation is deemed necessary.

(i) The Administrator, or designee, will respond in writing to the HRC chairperson, as well as the individual or his or her legal guardian, within 10 working days on routine referrals, or immediately on emergency referrals, regarding the acceptance, qualified acceptance, or non-acceptance of the recommendations. The Administrator [will] **shall** explain the basis for the HRC review and the rationale for his or her decisions.

(j) The chairperson [will] **shall** incorporate the Administrator's decisions and comments into the minutes of the meeting, which will be distributed to the Committee members as the first agenda item of each meeting. The Committee [will] **shall** review the Administrator's responses and implementation plan. The chairperson [will] **shall** then outline the Administrator's decisions to the person or persons who presented the referral to the HRC.

(k) A copy of the notification of the decision to the individual or his or her legal guardian, as indicated in (i) above, [is to] **shall** be maintained in the client record.

(l)-(m) (No change.)

10:41A-4.5 Conflict of interest

(a) (No change.)

(b) A conflict of interest shall be determined to exist if the HRC member in question is the person who submitted the referral for review by the HRC[, that is, case manager]; the person is a member of the BSC and it is a recommendation of the BSC that is the matter before the HRC; or the HRC member is in any way directly involved in the matter before the HRC. [ Afinal determination of conflict of interest will be the decision of the chairperson.] **The chairperson shall make the final determination whether a conflict of interest exists.**

(c) Representatives of legal services, such as the **Disability Rights** New Jersey [Protection and Advocacy, Inc.,] or other agencies, who may represent future individual interests, shall not be appointed members of an HRC as defined in this chapter. Their role and authority exist independent of this advisory body.

10:41A-4.6 Dispute resolution

(a) Where the individual, guardian or advocate disagrees with the decision of the Administrator, the individual, guardian or advocate may submit a written statement of disagreement. This statement of disagreement shall be sent, prior to the next HRC meeting, to the Administrator for reconsideration and resolution. The Administrator shall notify the chairperson of the HRC, in writing, of any disagreements and resolutions. This statement [will] **shall** be maintained in the client record.

(b) (No change.)

SUBCHAPTER 5. RESPONSIBILITIES OF HRC CHAIRPERSON

10:41A-5.1 Responsibilities of the chairperson

(a) The chairperson of the Committee shall be responsible for the following:

1. Presiding at meetings and performing all duties relevant to the office of chairperson. The chairperson shall also appoint sub-committee chairpersons[. The chairperson shall have the power to call emergency HRC meetings];

2.–7. (No change.)

10:41A-5.2 Minutes of the meeting

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

 (c) Copies of the **HRC** minutes [of Human Rights Committees,] within the developmental centers and [the regional offices] **Community Services units**, shall be forwarded to the [Division Director] **Assistant Commissioner** within two weeks of the date of the meeting.

(d) [Regional] **Community Services** HRC meeting minutes shall be forwarded to the Supervisor of the DDD Quality Improvement Unit.

(e)-(g) (No change.)

SUBCHAPTER 6. RESPONSIBILITIES OF AGENCIES UNDER CONTRACT WITH OR REGULATED BY THE DIVISION

10:41A-6.1 Agency HRC

(a) Agencies should have their own HRC. Those agencies unable to establish an HRC may utilize an HRC within the Division Community Services [Regional] Office upon agreement with the [Regional] **Community Services** Administrator.

(b) Any concern about the general functioning of the Committee shall be resolved between the CEO or executive director of an agency and the chairperson of the Committee. If these concerns cannot be resolved, the matter shall be referred to the [Regional] **Community Services** Administrator for resolution.

10:41A-6.3 Membership of agency human rights committees

(a) (No change.)

(b) The Division may assign an observer who is not a voting member of the [committee] **Committee**. The observer shall be familiar with the agency or facility, its manual**,** and the general Committee functions.

1. Should the observer have concerns about the agency or facility, he or she shall bring these concerns to the CEO of a private residential facility or executive director of an agency and [Regional] **Community Services** Administrator.

(c) Any change in the membership of the Committee shall be reported to the [Regional] **Community Services** Administrator within 30 days.

10:41A-6.4 Notification of agency HRC meetings

The agencies shall provide a schedule of the agency HRC meetings to the [Regional] **Community Services** Administrator and shall notify the [Regional] **Community Services** Administrator immediately of any emergency meetings.

10:41A-6.5 Minutes of meetings

(a) The minutes of agency HRC meetings shall be forwarded to the [Regional] **Community Services** Administrator for review in accordance with N.J.A.C. 10:41A-5.2.

(b) A copy of the agency HRC minutes is to be available for review by Division staff as authorized by the [Division Director] **Assistant Commissioner**.

(c) (No change.)