

# New Jersey State Regulations



**New Jersey State Regulations  
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**CHAPTER 35**  
**BOARD OF MEDICAL EXAMINERS**

Authority

N.J.S.A. 26:6A-I et seq., specifically 26:6A-4, 45:1-15.1 and 45:9-2.

Source and Effective Date

R2011 d.155, effective May 3, 2011.

See: 42 N.I.R 13IO(a), 43 N.I.R 1359(b).

Chapter Expiration Date

Chapter 35, Board of Medical Examiners, expires on May 3, 2018.

**13:35-6.5 Preparation of patient records, computerized records, access to or release of information; confidentiality, transfer or disposal of records**

(a) The following terms shall have the following meanings unless the context in which they appear indicates otherwise:

**"Authorized representative"** means, but is not necessarily limited to, a person who has been designated by the patient or a court to exercise rights under this section. An authorized representative may be the patient's attorney or an employee of an insurance carrier with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement. If the patient is a minor, a parent or guardian who has custody (whether sole or joint) will be deemed to be an authorized representative, except where the condition being treated relates to pregnancy, sexually transmitted disease or substance abuse.

**"Examinee"** means a person who is the subject of professional examination where the purpose of that examination is unrelated to treatment and where a report of the examination is to be supplied to a third party.

**"Licensee"** means any person licensed or authorized to engage in a health care profession regulated by the Board of Medical Examiners.

**"Patient"** means any person who is the recipient of a professional service rendered by a licensee for purposes of treatment or a consultation relating to treatment.

(b) Licensees shall prepare contemporaneous, permanent professional treatment records. Licensees shall also maintain records relating to billings made to patients and third-party carriers for professional services. All treatment records, bills

and claim forms shall accurately reflect the treatment or services rendered. Treatment records shall be maintained for a period of seven years from the date of the most recent entry.

To the extent applicable, professional treatment records shall reflect:

- i. The dates of all treatments;
- ii. The patient complaint;
- iii. The history;
- iv. Findings on appropriate examination;
- v. Progress notes;
- vi. Any orders for tests or consultations and the results thereof;
- vii. Diagnosis or medical impression;
- viii. Treatment ordered, including specific dosages, quantities and strengths of medications including refills if prescribed, administered or dispensed, and recommended follow-up;
- ix. The identity of the treatment provider if the service is rendered in a setting in which more than one provider practices;
- x. Documentation when, in the reasonable exercise of the physician's judgment, the communication of test results is necessary and action thereon needs to be taken, but reasonable efforts made by the physician responsible for communication have been unsuccessful; and
- xi. Documentation of the existence of any advance directive for health care for an adult or emancipated minor, and associated pertinent information. Documented inquiry shall be made on the routine intake history form for a new patient who is a competent adult or emancipated minor. The treating doctor shall also make and document specific inquiry of or regarding a patient in appropriate circumstances, such as when providing treatment for a significant illness, or where an emergency has occurred presenting imminent threat to life, or where surgery is anticipated with use of general anesthesia.

2. Corrections/additions to an existing record can be made, provided that each change is clearly identified as such, dated and initialed by the licensee.

3. A patient record may be prepared and maintained on a personal or other computer only when it meets the following criteria:

- i. The patient record shall contain at least two forms of identification, for example, name and record number or any other specific identifying information;
- ii. An entry in the patient record shall be made by the physician contemporaneously with the medical service and shall contain the date of service,

date of entry, and full printed name of the treatment provider. The physician shall finalize or "sign" the entry by means of a confidential personal code ("epe") and include date of the **"signing"**;

iii. Alternatively, the physician may dictate a dated entry for later transcription. The transcription shall be dated and identified as "preliminary" until reviewed, finalized and dated by the responsible physician as provided in (b)3ii above;

iv. The system shall contain an internal permanently activated date and time recordation for all entries, and shall automatically prepare a back-up copy of the file;

v. The system shall be designed in such manner that, after "signing" by means of the CPC, the existing entry cannot be changed in any manner. Notwithstanding the permanent status of a prior entry, a new entry may be made at any time and may indicate correction to a prior entry;

vi. Where more than one licensee is authorized to make entries into the computer file of any professional treatment record, the physician responsible for the medical practice shall assure that each such person obtains a epe and uses the file program in the same **manner**;

vii. A copy of each day's entry, identified as preliminary or final as applicable, shall be made available promptly:

(1) To a physician responsible for the patient's **care**;

(2) To a representative of the Board of Medical Examiners, the Attorney General or the Division of Consumer Affairs as soon as practicable and no later than 10 days after notice; and

(3) To a patient as authorized by this rule within 30 days of request (or promptly in the event of emergency); and

viii. A licensee shall maintain, as a permanent part of a patient record, any printout of computerized records maintained by the licensee while he or she modified a computer recordkeeping system, so that it complied with the requirements of (b )3i through vii above.

(c) Licensees shall provide access to professional treatment records, including records from other licensees or other health care providers that are part of a patient's record, to a patient or an authorized representative in accordance with the following:

I. No later than 30 days from receipt of a request from a patient or an authorized representative, the licensee shall provide a copy of the professional treatment record, and/or billing records as may be requested. The record shall include all pertinent objective data including test results and x-ray results, as applicable and subjective information.

2. Unless otherwise required by law, a licensee may elect to provide a summary of the record in lieu of providing a photocopy of the actual record, so long as that summary adequately reflects the patient's history and treatment. A licensee may charge a reasonable fee for the preparation of a summary which has been provided in lieu of the actual record, which shall not exceed the cost allowed by (c) 4 below for that specific record.

3. If, in the exercise of professional judgment, a licensee has reason to believe that the patient's mental or physical condition will be adversely affected upon being made aware of the subjective information contained in the professional treatment record or a summary thereof, with an accompanying notice setting forth the reasons for the original refusal, shall nevertheless be provided upon request and directly to:

- i. The patient's attorney;
- ii. Another licensed health care professional;
- iii. The patient's health insurance carrier through an employee thereof; or
- iv. A governmental reimbursement program or an agent thereof, with responsibility to review utilization and/or quality of care.

4. Licensees may require a record request to be in writing and may charge a fee for:

- i. The reproduction of records, which shall be no greater than \$1.00 per page or \$100.00 for the entire record, whichever is less. (If the record requested is less than 10 pages, the licensee may charge up to \$10.00 to cover postage and the miscellaneous costs associated with retrieval of the record.) If the licensee is electing to provide a summary in lieu of the actual record, the charge for the summary shall not exceed the cost that would be charged for the actual record; and/or
- ii. The reproduction of x-rays or any other material within a patient record which cannot be routinely copied or duplicated on a commercial photocopy machine, which shall be no more than the actual cost of the duplication of the materials. or the fee charged to the licensee for duplication, plus an administrative fee of the

lesser of \$10.00 or 10 percent of the cost of reproduction to compensate for office personnel time spent retrieving or reproducing the materials and overhead costs.

5. Licensees shall not charge a patient for a copy of the **patient's record when:**

- i. The licensee has affirmatively terminated a patient from practice in accordance with the requirements of N.J.A.C. 13:35-6.22; or
- ii. The licensee leaves a practice that he or she was formerly a member of, or associated with, and the patient requests that his or her medical care continue to be provided by that licensee.

6. If the patient or a subsequent treating health care professional is unable to read the treatment record, either because it is illegible or prepared in a language other than English, the licensee shall provide a transcription at no cost to the patient.

7. The licensee shall not refuse to provide a professional treatment record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

**(d) Licensees shall maintain the confidentiality of professional treatment records, except that:**

I. The licensee shall release patient records as directed by a subpoena issued by the Board of Medical Examiners or the Office of the Attorney General, or by a demand for statement in writing under oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All x-ray films and reports maintained by the licensee, including those prepared by other health care professionals, shall also be provided.

2. The licensee shall release information as required by law or regulation, such as the reporting of communicable diseases or gunshot wounds or suspected child abuse, etc., or when the patient's treatment is the subject of peer review.

3. The licensee, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or has been asked to provide treatment to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.

4. The licensee, in the exercise of professional judgment, who has had a good faith belief that the patient because of a mental or physical condition may pose an imminent danger to himself or herself or to others, may release pertinent information to a law enforcement agency or other health care professional in order to minimize the threat of danger. Nothing in this paragraph, however, shall be construed to authorize the release of the content of a record containing identifying information about a person who has AIDS or an HIV infection, without patient consent, for any purpose other than those authorized by N.J.S.A. 26:5C-8. If a licensee, without the consent of the patient, seeks to release information contained in an AIDS/HIV record to a law enforcement agency or other health care professional in order to minimize the threat of danger to others, an application to the court shall be made pursuant to N.J.S.A. 26:5C-5 et seq.

(e) Where the patient has requested the release of a professional treatment record or a portion thereof to a specified individual or entity, in order to protect the confidentiality of the records, the licensee shall:

I. Secure and maintain a current written authorization, bearing the signature of the patient or an authorized **representative**;

2. Assure that the scope of the release is consistent with the request; and

3. Forward the records to the attention of the specific individual identified or mark the material "Confidential."

(f) **Where a third party or entity has requested examination, or an evaluation of an examinee, the licensee rendering** those services shall prepare appropriate records and maintain their confidentiality, except to the extent provided by this section. The licensee's report to the third party relating to the examinee shall be made part of the record. The licensee shall:

1. Assure that the scope of the report is consistent with the request, to avoid the unnecessary disclosure of diagnoses or personal information which is not pertinent;



2. Forward the report to the individual entity making the request, in accordance with the terms of the examinee's authorization; if no specific individual is identified, the report should be marked "Confidential"; and
3. Not provide the examinee with the report of an examination requested by a third party or entity unless the third party or entity consents to its release, except that should the examination disclose abnormalities or conditions not known to the examinee, the licensee shall advise the examinee to consult another health care professional for treatment.

(g) (Reserved)

(h) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the licensee or designee shall:

1. Establish a procedure by which patients can obtain a copy of the treatment records or acquiesce in the transfer of those records to another licensee or health care professional who is assuming responsibilities of the practice. However, a licensee shall not charge a patient, pursuant to (c) 4 above, for a copy of the records, when the records will be used for purposes of continuing treatment or care.

2. Publish a notice of the cessation and the established procedure for the retrieval of records, and the location at which the records will be permanently maintained, in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation. Such notice shall be submitted to the Board after the first publication; and

3. Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation, providing information concerning the established procedure for retrieval of records.

### **13:35-6.11 Excessive fees**

(a) The Board of Medical Examiners shall review information and complaints concerning allegations of excessive fees charged by licensees of the Board and may establish Excessive Fee Review Committees to perform various aspects of the review function. This regulation is not intended to impinge upon the strong public policy in favor of a competitive, free enterprise economy embodied in the antitrust laws of the United States and of this State. Excessive Fee Review Committees shall consider comparable fees charged by licensees not under inquiry only to the

minimum extent necessary to render a determination as to whether a fee is excessive.

(b) A licensee of the Board of Medical Examiners shall not charge an excessive fee for services. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances.

(c) Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following:

1. The time and effort required;
2. The novelty and difficulty of the procedure or treatment;
3. The skill required to perform the procedure or treatment properly;
4. Any requirements or conditions imposed by the patient or by the circumstances;
5. The nature and length of the professional relationship with the patient;
6. The experience, reputation and ability of the licensee performing the services;
7. The nature and circumstances under which services are provided. Unless services are provided during an emergency or other circumstances where opportunity, custom and practice will preclude discussion prior to the rendition of such services, the licensee shall, in advance of providing services, specify or discuss and agree with the patient, the fee or basis for determination of the fee to be charged.

(d) Charging an excessive fee in violation of (b) above shall constitute professional misconduct subjecting the licensee to disciplinary action by the Board of Medical Examiners.

Amended by R.1989 d.532, effective October 16, 1989.  
See: 21 NJ.R 2226(b), 21 NJ.R 3307(a).

### **13:35-6.22 Termination of licensee-patient relationship**

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. "Emergency care or service" means the provision of medical care or services to an individual in circumstances where the individual's life or health may be threatened or compromised unless timely medical care is provided.

**"Licensee"** means any person licensed or authorized to engage in a health care profession regulated by the Board of Medical Examiners.

**"Licensee-patient relationship"** means an association between a licensee and patient wherein the licensee owes a continuing duty to the patient to be available to render professional services consistent with his or her training, experience and current scope of practice.

**"Patient"** means any person who is the recipient of a professional service rendered by a licensee for purposes of diagnosis, treatment or a consultation relating to treatment.

### **13:35-6.22**

(b) The licensee-patient relationship shall be deemed to exist where the licensee has provided services to the patient within one year proceeding the date on which care is to be terminated or in such other circumstances where a patient has indicated to the licensee that the patient anticipates that the licensee will provide continued professional services to the patient.

(c) In order to terminate a licensee-patient relationship, a licensee shall:

- I. Notify the patient, in writing, that the licensee shall no longer provide care to the patient as of a date certain. The notification required by this paragraph shall be made no less than 30 days prior to the date on which care is to be terminated, and shall be made by certified mail, return receipt requested, or other proof of delivery, sent to the patient's last known address;
2. Provide all necessary emergency care or services, including the provision of necessary prescriptions, until the date on which services are terminated. The provision of any such emergency care or services shall not be deemed to manifest any intention to reestablish a licensee-patient relationship; and
3. Comply with all requirements set forth in N.J.A.C.13:35-6.5 for access to and transfer of patient records.

(d) Notwithstanding (c) above, a licensee shall not terminate a licensee-patient relationship in the following circumstances:

- I. Where to do so would be for any discriminatory purpose and/or would violate any laws or rules prohibiting discrimination; or
2. Where the licensee knows, or reasonably should know, that no other licensee is currently able to provide the type of care or services that the licensee is providing to the patient.

(e) A licensee need not comply with the requirements set forth in (c) I above if:

1. The licensee-patient relationship has been terminated by the patient as evidenced by conduct manifesting a deliberate intention to terminate the relationship; or
2. The reason for the termination of an ongoing licensee-patient relationship is because the licensee has discontinued providing services to a particular managed care provider or health maintenance organization, in which the patient is enrolled and such managed care provider or HMO has discharged its notice obligation pursuant to N.J.S.A.26:2S-5a(1).

(I) When requested by the patient, the licensee shall make reasonable efforts to assist the patient in obtaining medical services from another licensee qualified to meet the patient's medical needs. These efforts may include, but are not limited to, providing referrals to the patient.

New Rule, R.2000 d.399, etTective October 2, 2000.  
See: 31 NJ.R. 2452(a), 32 NJ.R. 3574(b).  
Amended by R,2011 d.155, etTective June 6, 2011.

### **13:35-6.24 Reporting of communicable diseases by licensees**

(a) A licensee shall report a case of a communicable disease in accordance with Department of Health and Senior Services regulations at N.J.A.C. 8:57-1. **LAW AND PUBLIC SAFETY**

(b) A licensee shall report a case of Acquired Immunodeficiency Syndrome (AIDS) and infection with Human Immunodeficiency Virus (HIV) in accordance with Department of Health and Senior Services regulations at N.J.A.C. 8:57-2.

(c) Failure to report pursuant to the requirements of this section shall constitute professional misconduct subjecting the licensee to disciplinary action by the Board.

New Rule, R,2005 d.120, etTective April 18, 2005.  
See: 36 NJ.R, 4633(a), 37 NJ.R, 1203(a).

### **13:35-7.2 Requirements for issuing written prescriptions for medicines**

(a) A practitioner, acting within the scope of lawful practice and after an examination or evaluation of the patient's condition, may issue a written prescription for a drug to a patient, guardian or authorized representative in the form authorized by this section. The practitioner shall assure that appropriate

follow-up is provided and that the effects of the drug are properly evaluated and integrated into the treatment plan for the patient.

(b) (Reserved)

(c) Written prescriptions shall be issued only on New Jersey Prescription Blanks (NJPB), secured from an approved vendor and subject to the required security mandates of the prescription blank program.

(d) A practitioner shall include the following information on each written prescription:

1. The prescribing practitioner's full name, address, telephone number, license number, and proper academic degree or identification of professional practice for which **licensed**;

2. The full name, age and address of the patient;

3. The date of issuance;

4. The name, strength and quantity of the drug prescribed;

5. Words, in addition to numbers, to indicate the drug quantity authorized if the prescription is for a Schedule II controlled substance, for example: ten (IO) Percodan; or five (5) Ritalin 5 mg;

6. The number of refills permitted or time limit for refills, or both;

7. The handwritten original signature of the prescribing **practitioner**;

8. An explicit indication, by initials placed next to "do not substitute" (see (e) below), if it is the prescribing practitioner's intention that a specified brand name drug be dispensed;

9. The prescribing practitioner's D.E.A. number, if the drug is a controlled substance; and

10. Adequate instruction for the patient as to frequency; **a direction of "p.r.n." or "if needed" alone may be used if** appropriate.

(e) A prescribing practitioner shall advise each patient by adequate notice, for example, by a sign or pamphlet in the waiting room of the office that the patient may request the practitioner to substitute a generic drug for any brand name drug prescribed.

(f) Each practitioner shall use only written prescription blanks which shall be imprinted with the words "substitution permissible" and "do not substitute," with a space for the prescribing practitioner's initials next to the chosen option, and which shall not include preprinted information designed to discourage or prohibit substitution.

(g) When using health care facility or multi-prescriber prescription blanks, the full name and license number of the prescribing practitioner shall be legibly printed at

the top of the prescription or the identity of the prescriber shall be designated by a checkmark or other legible means.

(h) Each prescription for a controlled substance shall be written on a separate NJPB.

I. An NJPB that contains prescriptions for two or more controlled substances shall be invalid.

2. An NJPB that contains a prescription for only one controlled substance and contains other prescription(s) other than another controlled substance shall be valid.

Amended by R.2000 d.400, effective October 2,2000.

See: 31 NJ.R. 2454(a), 32 NJ.R. 3576(a).

### **13:35-7.4A Electronically transmitted prescriptions**

(a) A practitioner, acting within his or her scope of lawful practice and after an examination of the patient's condition, consistent with the requirements of N.J.A.C. 13:35-7.1A, may transmit, or have an authorized agent transmit, an electronic prescription to a pharmacy that has been approved by a patient, a patient's guardian or a patient's authorized representative, consistent with the requirements of this section. For **purposes of this section, "electronic prescription" means a 13:35-7.4A prescription, which is transmitted by a computer device in a secure manner, including computer-to-computer and computer- to-facsimile transmissions.**

(b) A practitioner shall comply with all requirements set forth in this subchapter, and shall ensure that all information required to be included on a written prescription pursuant to N.J.A.C. 13:35-7.2(d) is provided in each electronic prescription, except that a handwritten original signature and an NJPB shall not be required for the prescription.

(c) A practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription unless the prescription is transmitted by an authorized agent as provided in (e) below.

**(d) To maintain confidentiality of electronic prescriptions, the practitioner shall ensure that the electronic system used to transmit the electronic prescription has adequate security and system safeguards designed to prevent**

**and detect unauthorized access, modification or manipulation of such records, and shall include, at a minimum, electronic encryption.**

(e) A practitioner may authorize an agent to electronically transmit a prescription provided that the full name and title of the transmitting agent is included on the transmission, and provided that the practitioner's authorized agent does not sign the electronic prescription.

(f) A practitioner shall provide verbal verification of an electronic prescription upon request of the pharmacy when the pharmacist has a question regarding the authenticity, accuracy or appropriateness of the prescription. A practitioner's authorized agent may provide verbal verification of the electronic prescription to the pharmacy when the pharmacist has a question regarding the authenticity or legibility of the prescription.

(g) A practitioner or the practitioner's authorized agent may transmit an electronic prescription to a pharmacy for a Schedule II controlled substance, provided that the original signed prescription is presented to the pharmacist prior to the dispensing of the controlled substance. If permitted by Federal law, and in accordance with Federal requirements, the electronic prescription shall serve as the original signed prescription and the practitioner shall not provide the patient, the patient's guardian, or the patient's authorized representative with a signed, written prescription.

(h) A practitioner or his or her authorized agent may transmit an electronic prescription to a pharmacy for a Schedule III, IV, or V controlled substance, provided that the original signed prescription for presentation at the pharmacy, an oral prescription, or a facsimile prescription is provided. If permitted by Federal law, and in accordance with Federal requirements, the electronic prescription shall serve as the original signed prescription and the practitioner shall not provide the patient, the patient's guardian, or the patient's authorized representative with a signed, written prescription.

(i) A practitioner shall not enter into any agreement with a pharmacy which requires that electronic prescriptions be transmitted to a particular pharmacy or in any way denies a patient the right to have his or her prescription transmitted electronically to a pharmacy of the patient's choice.

New Rule. R.2003 d.372, eTective September 15,2003.

See: 34 N.J.R. 3059(a), 35 N.J.R. 4287(a).

Amended by R.2011 d.155, eTective June 6, 2011.

See: 42 N.J.R. 131O(a), 43 N.J.R. 1359(b).

## **NJRE 506 Patient and Physician Privilege Evidence**

(a) N.J.S. 2A: 84A-22.1:As used in this act,

**"patient"** means a person who, for the sole purpose of securing preventive, palliative, or curative treatment, or a diagnosis preliminary to such treatment, of his physical or mental condition, consults a physician, or submits to an examination by a physician;

**"physician"** means a person authorized or reasonably believed by the patient to be authorized, to practice medicine in the State or jurisdiction in which the consultation or examination takes place;

**"holder of the privilege"** means the patient while alive and not under the guardianship of the guardian of the person of an incompetent patient, or the personal representative of a deceased patient;

**"confidential communication between physician and patient"** means such information transmitted between physician and patient, including information obtained by an examination of the patient, as is transmitted in confidence and by a means which, so far as the patient is aware, discloses the information to no third persons other than those reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it is transmitted.

(b) N.J.S. 2A:84A-22.2:

Except as otherwise provided in this act, a person, whether or not a party, has a privilege in a civil action or in a prosecution for a crime or violation of the disorderly persons law to refuse to



disclose, and to prevent a witness from disclosing, a communication, if he claims the privilege and the judge finds that

(a) the communication was a confidential communication between patient and physician, and

(b) the patient or the physician reasonably believed the communication to be necessary or helpful to enable the physician to make a diagnosis of the condition of the patient or to prescribe or render treatment therefore, and

(c) the witness is the holder of the privilege.

### **9:2-4.2 Parental access to children's records.**

a. Every parent, except as prohibited by federal and State law, shall have access to records and information pertaining to his or her unemancipated child, including, but not limited to, medical, dental, insurance, child care and educational records, whether or not the child resides with the parent, unless that access is found by the court to be not in the best interest of the child or the access is found by the court to be sought for the purpose of causing detriment to the other parent.

b. The place of residence of either parent shall not appear on any records or information released pursuant to the provisions of this section.

c. A child's parent, guardian or legal custodian may petition the court to have a parent's access to the records limited. If the court, after a hearing, finds that the parent's access to the record is not in the best interest of the child or that the access sought is for the purpose of causing detriment to the other parent, the court may order that access to the records be limited.

### **6:3-6.1 Definitions**

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

"Access" means the right to view, to make notes, and/or to have a reproduction of the pupil record made.

"Adult pupil" means a person who is at least 18 years of age, or is attending an institution of postsecondary education, or is an emancipated minor.

"Parent" means the natural parent(s) or legal guardian(s), foster parent(s) or parent surrogate(s) of a pupil. Where parents are separated or divorced, "parent" means the person or agency who

has legal custody of the pupil, as well as the natural or adoptive parents of the pupil, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

"Parent surrogate(s)" means an individual or individuals approved by the district board of education in accordance with N.J.A.C. [6:28-2.2] 6A:14-2.2 to act on behalf of a pupil whose parents are not available to assure the pupil's educational rights.

"Pupil" means a person who is or was enrolled in a public school.

"Pupil record" means information related to an individual pupil gathered within or outside the school system and maintained within the school system, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record. Therefore, information recorded by any certified school personnel solely as a memory aid, not for the use of a second party, is excluded from this definition.

### **6:3-6.2 General considerations**

(a) This subchapter applies to all district boards of education or private agencies which provide educational services by means of public funds. District boards of education shall include, but not be limited to, all county boards of special services school districts, county vocational boards of education, jointure commissions, educational services commissions, education programs operated by county residential facilities and State-operated special education programs.

(b) Each district board of education shall have the responsibility to compile and maintain pupil records and to regulate access, disclosure or communication of information from educational records in a manner that assures the security of such records in accordance with this subchapter.

(c) Pupil records shall contain only such information as is relevant to the education of the pupil and is objectively based on the personal observations or knowledge of the certified school personnel who originate(s) the record.

(d) The district board of education shall notify parents and adult pupils annually in writing of their rights in regard to pupil records and pupil participation in educational, occupational and military recruitment programs. Copies of the applicable State and Federal laws and local policies shall be made available upon request. District boards of education shall make every effort to notify parents and adult pupils in their dominant language.

(e) A nonadult pupil may assert rights of access only through his or her parents. However, nothing in these rules shall be construed to prohibit certified school personnel, in their discretion, from disclosing pupil records to nonadult pupils or to appropriate persons in connection with an emergency, if such knowledge is necessary to protect the health or safety of the pupil or other persons.

(f) The parent or adult pupil shall either have access to or be specifically informed about only

that portion of another pupil's record that contains information about his or her own child or him or herself.

(g) Each district board of education shall establish written policies and procedures for pupil records which:

1. Guarantee access to persons authorized under this subchapter within 10 days of the request, but prior to any review or hearing conducted in accordance with the State Board of Education rules;
2. Assure security of the records;
3. Enumerate and describe the pupil records collected and maintained by the district board of education;
4. Provide for the inclusion of educationally relevant information in the pupil record by the parent or adult pupil;
5. Allow for the designation, release and public notice of directory information as defined herein;
6. Provide the parent or adult pupil a 10-day period to submit a written statement to the chief school administrator prohibiting the institution from including any or all types of information about the student in any student information directory before allowing access to such directory and school facilities to educational, occupational and military recruiters pursuant to N.J.S.A. 18A:36-19.1;
7. Assure limited access to pupil records by secretarial and clerical personnel pursuant to N.J.A.C. 6:3-6.5; and
8. Provide for the access and security of pupil records maintained in a computerized system.

(h) All anecdotal information and assessment reports collected on a pupil shall be dated and signed by the individual who originated the data.

(i) The chief school administrator or his or her designee shall require all permitted pupil records of currently enrolled pupils to be reviewed annually by certified school personnel to determine the education relevance of the material contained therein. The reviewer shall cause data no longer descriptive of the pupil or educational situation to be deleted from the records except that prior notice must be given for classified students in accordance with N.J.A.C. [6:28] 6A:14. Such information shall be destroyed and not be recorded elsewhere. No record of any such deletion shall be made.

(j) No liability shall be attached to any member, officer or employee of any district board of education permitting access or furnishing pupil records in accordance with these rules.

**NJSA 9:6-8.30. Action by the division upon emergency removal.**

10. a. The division when informed that there has been an emergency removal of a child from his home without court order shall make every reasonable effort to communicate immediately with the child's parent or guardian that such emergency removal has been made and the location of the facility to which the child has been taken, and advise the parent or guardian to appear in the appropriate Superior Court, Chancery Division, Family Part within two court days. The division shall make a reasonable effort, at least 24 hours prior to the court hearing, to: notify the parent or guardian of the time to appear in court; and inform the parent or guardian of his right to obtain counsel, and how to obtain counsel through the Office of the Public Defender if the parent or guardian is indigent. The division shall also advise the party making the removal to appear. If the removed child is returned to his home prior to the court hearing, there shall be no court hearing to determine the sufficiency of cause for the child's removal, unless the child's parent or guardian makes application to the court for review. For the purposes of this section, "facility" means a hospital, shelter or child care institution in which a child may be placed for temporary care, but does not include a resource family home.

b. The division shall cause a complaint to be filed under this act within two court days after such removal takes place.

c. Whenever a child has been removed pursuant to section 7 or 9 of P.L.1974, c.119 (C.9:6-8.27 or 9:6-8.29), the division shall arrange for immediate medical screening of the child and shall have legal authority to consent to such screening. **If necessary to safeguard the child's health or life, the division also is authorized to arrange for and consent to medical care or treatment of the child. Consent by the division pursuant to this subsection shall be deemed legal and valid for all purposes with respect to any person, hospital, or other health care facility screening, examining or providing care or treatment to a child in accordance with and in reliance upon such consent.**

Medical reports resulting from such screening, examination or care or treatment shall be released to the division for the purpose of aiding in the determination of whether the child has been abused or neglected. Any person or health care facility acting in good faith in the screening of, examination of or provision of care and treatment to a child or in the release of medical records shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such act.

L.1974, c.119, s.10; amended 1977, c.209, s.9; 1983, c.290; 1991, c.91, s.203; 2004, c.130, s.29; 2006, c.47, s.49.

## **26:5C ACQUIRED IMMUNE DEFICIENCY SYNDROME**

26:5C-5. Definitions As used in this act:

“**AIDS**” means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Services.

“**Commissioner**” means the Commissioner of Health.

“**Department**” means the Department of Health.

“**Diagnosis and treatment**” means services or activities carried out for the purpose of, or as an incident to, diagnosis, prevention and treatment of AIDS and HIV infection and includes interviewing and counseling.

“**HIV infection**” means infection the human immunodeficiency virus or any other related virus identified as a probable causative agency of AIDS.

“**HIV related illness**” means an illness that may result from, or may be associated with, HIV infection.

“**HIV related test**” means any laboratory test or series of tests for any virus, antibody, antigen or etiologic agent thought to cause or to indicate the presence of AIDS.

“**Identifying information**” means the name, address, Social Security number or similar information by which the identity of a person who has or is suspected of having AIDS of HIV infection may be determined with reasonable accuracy either directly or by reference to other publicly available information.

“**Informed consent**” means consent obtained pursuant to policies and procedures prescribed in 42 C.F.R. 2.31.

“**Minor**” means either person under the age of 12.

“**Program**” means either an individual or an organization furnishing diagnosis and treatment of AIDS and conditions related to HIV infection.

L.1989, c. 303, 1, eff. Jan 12, 1990.

**26:5C-6. Report of diagnosed cases of AIDS or HIV infection anonymous testing**

All diagnosed cases of AIDS and all diagnosed cases of HIV infection shall be reported to the department along with the identifying information for the person diagnosed. However, the department may select up to six counseling and testing sites throughout the State to offer anonymous testing. These sites shall be required to report all diagnosed cases of AIDS and all diagnosed cases of HIV infection but shall not be required to request or report identifying information. The commissioner shall determine those individuals who shall be required to make the reports and the manner in which the report shall be made to the department.

L.1989, c. 303, 2, eff. Jan. 12, 1990.

**26.5C-7. Record of identifying information; confidentiality**

A record maintained by:

- a. the department;
- b. a local health department
- c. an organization pursuant to a contract with, grant from, or regulation by the department in connection with this act;
- d. a provider of health care or a health care facility as defined by section 2 of P.L.1971, c. 136 (C.26:2H-2);
- e. a laboratory;
- f. a blood bank;
- g. a third-party payer; or
- h. any other institution or person; which contains identifying information about a person who has or is suspected of having AIDS or HIV infection is confidential and shall be disclosed only for the purpose authorized by this act.

L.1989, c. 303, 3, eff. Jan 12, 1990.

**26:5C-8. Disclosure of content of record; consent; conditions**

a. The content of a record referred to in section 3 of this act may be disclosed in accordance with the prior written informed consent of the person who is the subject of the record or if the person is legally incompetent or deceased, in accordance with section 8 of this act.

b. If the prior written consent of the person who is the subject of the record is not obtained, the person's records shall be disclosed only under the following conditions:

1. To qualified personnel for the purpose of conducting scientific research, but a record shall be released for research only following review of the research protocol by an Institutional Review Board constituted pursuant to federal regulation 45 C.F.R. 46.101 et seq. The person who is the subject of the record shall not be identified, directly or indirectly, in any report of the research and research personnel shall not disclose the person's identity in any manner.

2. To qualified personnel for the purpose of conducting management audits, financial audits or program evaluation, but the personnel shall not identify, directly or indirectly, the person who is the subject of the record in a report of an audit or evaluation, or otherwise disclose the person's identity in any manner. Identifying information shall not be related to the personnel unless it is vital to the audit or evaluation.
3. To qualified personnel involved in medical education or in the diagnosis and treatment of the person who is the subject of the record. Disclosure is limited to only personnel directly involved in medical education or in the diagnosis and treatment of the person.
4. To the department as required by State or federal law.
5. As permitted by rules and regulations adopted by the commissioner for the purposes of disease prevention and control.
6. In all other instances authorized by State or federal law.

L.1989, c.303, 4, eff. Jan.12, 1990.  
Section 26:5C-7. Section 26.5C-12.

#### **26:5C-9. Disclosure by order of court pursuant to showing of good cause**

- a. The record of a person who has or is suspected of having AIDS or HIV infection may be disclosed by an order of a court of competent jurisdiction which is granted pursuant to an application showing good cause therefore. At a good cause hearing the court shall weigh the public interest and need for disclosure against the injury to the person who is the subject of the record, to the physician-patient relationship, and to the services offered by the program. Upon the granting of the order, the court, in determining the extent to which a disclosure of all or any part of a record is necessary, shall impose appropriate safeguards to prevent an unauthorized disclosure.
- b. A court may authorize disclosure of a person's record for the purpose of conducting an investigation of, or a prosecution for a crime of which the person is suspected, only if the crime is a first-degree crime and there is a reasonable likelihood that the record is question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.
- c. Except as provided in subsections a. and b. of this section, a record shall not be used to initiate or substantiate any criminal or civil charges against the person who is the subject of the record or to conduct any investigation or prosecution.
- d. The court shall deny an application for disclosure of a person's record unless the court makes a specific finding that the program was afforded the opportunity to be represented at the hearing. A program operated by a federal, State or local government agency or department shall be represented at the hearing.
- e. Nothing in this section shall be construed to authorize disclosure of any confidential communication which is otherwise protected by stature, court rule or common law.

L. 1989, c. 303, 5, eff. Jan. 12, 1990.

### **NJSA 26:1A-37.3. Liability for furnishing information or data**

No person may be held liable for damages or otherwise prejudiced in any manner by reason of furnishing information or data pertaining to the health of any person to the State Department of Health for use in connection with research studies described in section 1 of this act.

## **CHAPTER 226-Identity Theft Prevention Act**

**AN ACT** concerning identity theft, amending P.L.1997, c.172 and supplementing various parts of the statutory law.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.56:11-44 Short title.

1. This act shall be known and may be cited as the "Identity Theft Prevention Act."

C.56:11-45 Findings, declarations relative to identity theft.

2. The Legislature finds and declares that:
  - a. The crime of identity theft has become one of the major law enforcement challenges of the new economy, as vast quantities of sensitive, personal information are now vulnerable to criminal interception and misuse; and
  - b. A number of indicators reveal that, despite increased public awareness of the crime, incidents of identity theft continue to rise; and
  - c. An integral part of many identity crimes involves the interception of personal financial data or the fraudulent acquisition of credit cards or other financial products in another person's name; and
  - d. Identity theft is an act that violates the privacy of our citizens and ruins their good names: victims can suffer restricted access to credit and diminished employment opportunities, and may spend years repairing damage to credit histories; and
  - e. Credit reporting agencies and issuers of credit should have uniform reporting requirements and effective fraud alerts to assist identity theft victims in repairing and protecting their credit; and
  - f. The Social Security number is the most frequently used record keeping number in the United States. Social Security numbers are used for employee files, medical records, health insurance accounts, credit and banking accounts, university ID cards and many other purposes; and
  - g. Social Security numbers are frequently used as identification numbers in many computer files, giving access to information an individual may want kept private and allowing an easy way of linking data bases. Therefore, it is wise to limit access to an individual's Social Security number whenever possible; and



h. It is therefore a valid public purpose for the New Jersey Legislature to ensure that the Social Security numbers of the citizens of the State of New Jersey are less accessible in order to detect and prevent identity theft and to enact certain other protections and remedies related thereto and thereby further the public safety.

C.2C:21-17.6 Report of identity theft to local law enforcement agency.

3. a. A person who reasonably believes or reasonably suspects that he has been the victim of identity theft in violation of N.J.S.2C:21-1, section 1 of P.L.1983, c.565 (C.2C:21-2.1) or N.J.S.2C:21-17 may contact the local law enforcement agency in the jurisdiction where he resides, which shall take a police report of the matter and provide the complainant with a copy of that report. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and may refer the complaint to a law enforcement agency in that different jurisdiction.

b. Nothing in this section shall interfere with the discretion of a local law enforcement agency to allocate resources for investigations of crimes. A complaint filed under this section is not required to be counted as an open case for purposes such as compiling open case statistics.

4. Section 3 of P.L.1997, c.172 (C.56:11-30) is amended to read as follows:

C.56:11-30 Definitions relative to consumer credit reports.

3. As used in this act:

"Adverse action" has the same meaning as in subsection (k) of section 603 of the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681a.

"Consumer" means an individual.

"Consumer report" (1) means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- (a) credit or insurance to be used primarily for personal, family or household purposes;
- (b) employment purposes; or
- (c) any other purpose authorized under section 4 of this act.

(2) The term "consumer report" does not include:

- (a) any:
  - (i) report containing information solely on transactions or experiences between the consumer and the person making the report;
  - (ii) communication of that information among persons related by common ownership or affiliated by corporate control; or
  - (iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among those persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that the information not be communicated among those persons;

(b) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(c) any report in which a person, who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer, conveys his decision with respect to that request, if the third party advises the consumer of the name and address of the person to whom the request was made, and the person makes the disclosures to the consumer required under 15 U.S.C. s.1681m; or

(d) communication excluded from the definition of consumer report pursuant to subsection (o) of section 603 of the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681a.

"Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility for the purpose of preparing or furnishing consumer reports.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Employment purposes" means, when used in connection with a consumer report, a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

"File" means, when used in connection with information on any consumer, all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

"Investigative consumer report" means a consumer report or a portion thereof in which information on a consumer's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with neighbors, friends or associates of the consumer who is the subject of the report or with others with whom the consumer is acquainted or who may have knowledge concerning any of those items of information. However, this information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

"Medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

"Security freeze" means a notice placed in a consumer's consumer report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing the report or any information from it without the express authorization of the consumer, but does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.

C.56:11-46 Election of placement of security freeze on consumer report, procedure.

5. a. A consumer may elect to place a security freeze on his consumer report by:

(1) making a request in writing by certified mail or overnight mail to a consumer reporting agency; or

(2) making a request directly to the consumer reporting agency through a secure electronic mail connection, if an electronic mail connection is provided by the consumer reporting agency.

b. A consumer reporting agency shall place a security freeze on a consumer report no later than five business days after receiving a written request from the consumer.

c. The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his credit for a specific party or period of time.

d. If the consumer wishes to allow his consumer report to be accessed for a specific party or period of time while a freeze is in place, he shall contact the consumer reporting agency via certified or overnight mail or secure electronic mail and request that the freeze be temporarily lifted, and provide all of the following:

(1) Information generally deemed sufficient to identify a person;

(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection c. of this section; and

(3) The proper information regarding the third party who is to receive the consumer report or the time period for which the consumer report shall be available to users of the consumer report.

e. A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection d. of this section shall comply with the request no later than three business days after receiving the request.

f. A consumer reporting agency shall develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection d. of this section in an expedited manner. The director shall promulgate regulations necessary to allow the use of electronic media to receive and process a request from a consumer to temporarily lift a security freeze pursuant to subsection d. of this section as quickly as possible, with the goal of processing a request within 15 minutes of that request.

g. A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report only in the following cases:

(1) Upon consumer request, pursuant to subsection d. or j. of this section; or

(2) If the consumer report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing at least five business days prior to removing the freeze on the consumer report.

h. If a third party requests access to a consumer report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his consumer report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

i. (1) At any time that a consumer is required to receive a summary of rights required under section 609 of the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681g, the following notice shall be included:

**New Jersey Consumers Have the Right to Obtain a Security  
Freeze**

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a “security freeze” on your credit report pursuant to New Jersey law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties or period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

- (i) The unique personal identification number or password provided by the consumer reporting agency;
- (ii) Proper identification to verify your identity; and
- (iii) The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days or less, as provided by regulation, after receiving the request.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, a few days before actually applying for new credit.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report.

(2) If a consumer requests information about a security freeze, he shall be provided with the notice provided in paragraph (1) of this subsection and with any other information, as prescribed by the director by regulation, about how to place, temporarily lift and permanently lift a security freeze.

j. A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides the following:

- (1) Proper identification; and
- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection c. of this section.

k. A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

l. The provisions of this section do not apply to the use of a consumer report by the following:

(1) A person, or subsidiary, affiliate, or agent of that person, or an assignee of a financial obligation owing by the consumer to that person, or a prospective assignee of a financial obligation owing by the consumer to that person in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection d. of this section, for purposes of facilitating the extension of credit or other permissible use;

(3) Any State or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena;

(4) The Division of Taxation in the Department of the Treasury for the purpose of enforcing the tax laws of this State;

(5) A State or local child support enforcement agency;

(6) The use of credit information for the purposes of prescreening as provided for by the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq.;

(7) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed; or

(8) Any person or entity for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

m. (1) A consumer reporting agency shall not charge a consumer any fee to place a security freeze on that consumer's consumer report.

(2) A consumer reporting agency may charge a reasonable fee, not to exceed \$5, to a consumer who elects to remove or temporarily lift a security freeze on that consumer's consumer report.

(3) A consumer may be charged a reasonable fee, not to exceed \$5, if the consumer fails to retain the original personal identification number provided by the consumer reporting agency and must be reissued the same or a new personal identification number.

C.56:11-47 Actions of consumer reporting agency relative to security freeze.

6. If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name; date of birth; Social Security number; or address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

C.56:11-48 Inapplicability of sections 4 through 9 of act of resellers.

7. The provisions of sections 4 through 9 of this amendatory and supplementary act shall not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the data base of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a permanent data base of credit information from which new consumer reports are produced, except that such a reseller of credit information shall honor any security freeze placed on a consumer report by another consumer reporting agency.

C.56:11-49 Entities not required to place security freeze in consumer report.

8. The following entities are not required to place a security freeze in a consumer report, pursuant to section 5 of this amendatory and supplementary act:

a. A check services company or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; and

b. A demand deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

C.56:11-50 Noncompliance, liability.

9. a. Any person who willfully fails to comply with the requirements of sections 4 through 9 of this amendatory and supplementary act shall be liable to a consumer as provided in section 11 of P.L.1997, c.172 (C.56:11-38).

b. Any person who is negligent in failing to comply with the requirements of sections 4 through 9 of this amendatory and supplementary act shall be liable to a consumer as provided in section 12 of P.L.1997, c.172 (C.56:11-39).

C.56:8-161 Definitions relative to security of personal information.

10. As used in sections 10 through 15 of this amendatory and supplementary act:

"Breach of security" means unauthorized access to electronic files, media or data containing personal information that compromises the security, confidentiality or integrity of personal information when access to the personal information has not been secured by encryption or by any other method or technology that renders the personal information unreadable or unusable. Good faith acquisition of personal information by an employee or agent of the business for a legitimate business purpose is not a breach of security, provided that the personal information is not used for a purpose unrelated to the business or subject to further unauthorized disclosure.

"Business" means a sole proprietorship, partnership, corporation, association, or other entity, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this State, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution.

"Communicate" means to send a written or other tangible record or to transmit a record by any means agreed upon by the persons sending and receiving the record.

"Customer" means an individual who provides personal information to a business.

"Individual" means a natural person.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Personal information" means an individual's first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number; (2) driver's license number or State identification card number; or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account. Dissociated data that, if linked, would constitute personal information is personal information if the means to link the dissociated data were accessed in connection with access to the dissociated data.

For the purposes of sections 10 through 15 of this amendatory and supplementary act, personal information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media.

"Private entity" means any individual, corporation, company, partnership, firm, association, or other entity, other than a public entity.

"Public entity" includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State. For the purposes of sections 10 through 15 of this amendatory and supplementary act, public entity does not include the federal government.

"Publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

"Records" means any material, regardless of the physical form, on which information is recorded or preserved by any means, including written or spoken words, graphically depicted, printed, or electromagnetically transmitted. Records does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed.

#### C.56:8-162 Methods of destruction of certain customer records.

11. A business or public entity shall destroy, or arrange for the destruction of, a customer's records within its custody or control containing personal information, which is no longer to be retained by the business or public entity, by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable, undecipherable or nonreconstructable through generally available means.

#### C.56:8-163 Disclosure of breach of security to customers.

12. a. Any business that conducts business in New Jersey, or any public entity that compiles or maintains computerized records that include personal information, shall disclose any breach of security of those computerized records following discovery or notification of the breach to any customer who is a resident of New Jersey whose personal information was, or is reasonably believed to have been, accessed by an unauthorized person. The disclosure to a customer shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection c. of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Disclosure of a breach of security to a customer shall not be required under this section if the business or public entity establishes that misuse of the information is not reasonably possible. Any determination shall be documented in writing and retained for five years.

b. Any business or public entity that compiles or maintains computerized records that include personal information on behalf of another business or public entity shall notify that business or public entity, who shall notify its New Jersey customers, as provided in subsection a. of this section, of any breach of security of the computerized records immediately following discovery, if the personal information was, or is reasonably believed to have been, accessed by an unauthorized person.

c. (1) Any business or public entity required under this section to disclose a breach of security of a customer's personal information shall, in advance of the disclosure to the customer, report the breach of security and any information pertaining to the breach to the Division of State Police in the Department of Law and Public Safety for investigation or handling, which may include dissemination or referral to other appropriate law enforcement entities.

(2) The notification required by this section shall be delayed if a law enforcement agency determines that the notification will impede a criminal or civil investigation and that agency has made a request that the notification be delayed. The notification required by this section shall be made after the law enforcement agency determines that its disclosure will not compromise the investigation and notifies that business or public entity.

d. For purposes of this section, notice may be provided by one of the following methods:

(1) Written notice;

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 101 of the federal "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. s.7001); or

(3) Substitute notice, if the business or public entity demonstrates that the cost of providing notice would exceed \$250,000, or that the affected class of subject persons to be notified exceeds 500,000, or the business or public entity does not have sufficient contact information. Substitute notice shall consist of all of the following:

(a) E-mail notice when the business or public entity has an e-mail address;

(b) Conspicuous posting of the notice on the Internet web site page of the business or public entity, if the business or public entity maintains one; and

(c) Notification to major Statewide media.

e. Notwithstanding subsection d. of this section, a business or public entity that maintains its own notification procedures as part of an information security policy for the treatment of personal information, and is otherwise consistent with the requirements of this section, shall be deemed to be in compliance with the notification requirements of this section if the business or public entity notifies subject customers in accordance with its policies in the event of a breach of security of the system.

f. In addition to any other disclosure or notification required under this section, in the event that a business or public entity discovers circumstances requiring notification pursuant to this section of more than 1,000 persons at one time, the business or public entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile or maintain files on consumers on a nationwide basis, as defined by subsection (p) of section 603 of the federal "Fair Credit Reporting Act" (15 U.S.C. s.1681a), of the timing, distribution and content of the notices.

C.56:8-164 Prohibited actions relative to display of social security numbers.

13. a. No person, including any public or private entity, shall:

(1) Publicly post or publicly display an individual's Social Security number, or any four or more consecutive numbers taken from the individual's Social Security number;



(2) Print an individual's Social Security number on any materials that are mailed to the individual, unless State or federal law requires the Social Security number to be on the document to be mailed;

(3) Print an individual's Social Security number on any card required for the individual to access products or services provided by the entity;

(4) Intentionally communicate or otherwise make available to the general public an individual's Social Security number;

(5) Require an individual to transmit his Social Security number over the Internet, unless the connection is secure or the Social Security number is encrypted; or

(6) Require an individual to use his Social Security number to access an Internet web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet web site.

b. Nothing in this section shall prevent a public or private entity from using a Social Security number for internal verification and administrative purposes, so long as the use does not require the release of the Social Security number to persons not designated by the entity to perform associated functions allowed or authorized by law.

c. Nothing in this section shall prevent the collection, use or release of a Social Security number, as required by State or federal law.

d. Notwithstanding this section, Social Security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the Social Security number. A Social Security number that is permitted to be mailed under this subsection may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been open.

e. Nothing in this section shall apply to documents that are recorded or required to be open to the public pursuant to Title 47 of the Revised Statutes. This section shall not apply to records that are required by statute, case law, or New Jersey Court Rules, to be made available to the public by entities provided for in Article VI of the New Jersey Constitution.

f. Nothing in this section shall apply to the interactive computer service provider's transmissions or routing or intermediate temporary storage or caching of an image, information or data that is otherwise subject to this section.

#### C.56:8-165 Regulations concerning security of personal information.

14. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Commissioner of Banking and Insurance, shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate sections 4 through 15 of this amendatory and supplementary act.

#### C.56:8-166 Unlawful practice, violation.

15. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) to willfully, knowingly or recklessly violate sections 10 through 13 of this amendatory and supplementary act.

16. This act shall take effect on January 1 next following enactment, except that section 3 of this act shall take effect immediately.

Approved September 22, 2005.

**56:8-161 Definitions relative to security of personal information.**

10. As used in sections 10 through 15 of this amendatory and supplementary act:

"Breach of security" means unauthorized access to electronic files, media or data containing personal information that compromises the security, confidentiality or integrity of personal information when access to the personal information has not been secured by encryption or by any other method or technology that renders the personal information unreadable or unusable. Good faith acquisition of personal information by an employee or agent of the business for a legitimate business purpose is not a breach of security, provided that the personal information is not used for a purpose unrelated to the business or subject to further unauthorized disclosure.

"Business" means a sole proprietorship, partnership, corporation, association, or other entity, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this State, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution.

"Communicate" means to send a written or other tangible record or to transmit a record by any means agreed upon by the persons sending and receiving the record.

"Customer" means an individual who provides personal information to a business.

"Individual" means a natural person.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Personal information" means an individual's first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number; (2) driver's license number or State identification card number; or (3) account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account. Dissociated data that, if linked, would constitute personal information is personal information if the means to link the dissociated data were accessed in connection with access to the dissociated data.

For the purposes of sections 10 through 15 of this amendatory and supplementary act, personal information shall not include publicly available information that is lawfully made available to the general public from federal, state or local government records, or widely distributed media.

"Private entity" means any individual, corporation, company, partnership, firm, association, or other entity, other than a public entity.

"Public entity" includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State. For the purposes of sections 10 through 15 of this amendatory and supplementary act, public entity does not include the federal government.

"Publicly post" or "publicly display" means to intentionally communicate or otherwise make available to the general public.

"Records" means any material, regardless of the physical form, on which information is recorded or preserved by any means, including written or spoken words, graphically depicted, printed, or electromagnetically transmitted. Records does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed.

L.2005,c.226,s.10.

#### **56:8-162 Methods of destruction of certain customer records.**

11. A business or public entity shall destroy, or arrange for the destruction of, a customer's records within its custody or control containing personal information, which is no longer to be retained by the business or public entity, by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable, undecipherable or nonreconstructable through generally available means.

L.2005,c.226,s.11.

#### **56:8-163 Disclosure of breach of security to customers.**

12. a. Any business that conducts business in New Jersey, or any public entity that compiles or maintains computerized records that include personal information, shall disclose any breach of security of those computerized records following discovery or notification of the breach to any customer who is a resident of New Jersey whose personal information was, or is reasonably believed to have been, accessed by an unauthorized person. The disclosure to a customer shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection c. of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system. Disclosure of a breach of security to a customer shall not be required under this section if the business or public entity establishes that misuse of the information is not reasonably possible. Any determination shall be documented in writing and retained for five years.

b. Any business or public entity that compiles or maintains computerized records that include personal information on behalf of another business or public entity shall notify that business or public entity, who shall notify its New Jersey customers, as provided in subsection a. of this section, of any breach of security of the computerized records immediately following discovery, if the personal information was, or is reasonably believed to have been, accessed by an unauthorized person.

c. (1) Any business or public entity required under this section to disclose a breach of security of a customer's personal information shall, in advance of the disclosure to the customer, report the breach of security and any information pertaining to the breach to the Division of State Police in the Department of Law and Public Safety for investigation or handling, which may include dissemination or referral to other appropriate law enforcement entities.

(2) The notification required by this section shall be delayed if a law enforcement agency determines that the notification will impede a criminal or civil investigation and that agency has made a request that the notification be delayed. The notification required by this section shall be made after the law enforcement agency determines that its disclosure will not compromise the investigation and notifies that business or public entity.

d. For purposes of this section, notice may be provided by one of the following methods:

(1) Written notice;

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 101 of the federal "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. s.7001); or

(3) Substitute notice, if the business or public entity demonstrates that the cost of providing notice would exceed \$250,000, or that the affected class of subject persons to be notified exceeds 500,000, or the business or public entity does not have sufficient contact information. Substitute notice shall consist of all of the following:

(a) E-mail notice when the business or public entity has an e-mail address;

(b) Conspicuous posting of the notice on the Internet web site page of the business or public entity, if the business or public entity maintains one; and

(c) Notification to major Statewide media.

e. Notwithstanding subsection d. of this section, a business or public entity that maintains its own notification procedures as part of an information security policy for the treatment of personal information, and is otherwise consistent with the requirements of this section, shall be deemed to be in compliance with the notification requirements of this section if the business or public entity notifies subject customers in accordance with its policies in the event of a breach of security of the system.

f. In addition to any other disclosure or notification required under this section, in the event that a business or public entity discovers circumstances requiring notification pursuant to this section of more than 1,000 persons at one time, the business or public entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile or maintain files on consumers on a nationwide basis, as defined by subsection (p) of section 603 of the federal "Fair Credit Reporting Act" (15 U.S.C. s.1681a), of the timing, distribution and content of the notices.

L.2005,c.226,s.12.

**56:8-164 Prohibited actions relative to display of social security numbers.**

13. a. No person, including any public or private entity, shall:

(1) Publicly post or publicly display an individual's Social Security number, or any four or more consecutive numbers taken from the individual's Social Security number;

(2) Print an individual's Social Security number on any materials that are mailed to the individual, unless State or federal law requires the Social Security number to be on the document to be mailed;

(3) Print an individual's Social Security number on any card required for the individual to access products or services provided by the entity;

(4) Intentionally communicate or otherwise make available to the general public an individual's Social Security number;

(5) Require an individual to transmit his Social Security number over the Internet, unless the connection is secure or the Social Security number is encrypted; or

(6) Require an individual to use his Social Security number to access an Internet web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet web site.

b. Nothing in this section shall prevent a public or private entity from using a Social Security number for internal verification and administrative purposes, so long as the use does not require the release of the Social Security number to persons not designated by the entity to perform associated functions allowed or authorized by law.

c. Nothing in this section shall prevent the collection, use or release of a Social Security number, as required by State or federal law.

d. Notwithstanding this section, Social Security numbers may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend or terminate an account, contract or policy, or to confirm the accuracy of the Social Security number. A Social Security number that is permitted to be mailed under this subsection may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been open.

e. Nothing in this section shall apply to documents that are recorded or required to be open to the public pursuant to Title 47 of the Revised Statutes. This section shall not apply to records that are required by statute, case law, or New Jersey Court Rules, to be made available to the public by entities provided for in Article VI of the New Jersey Constitution.

f. Nothing in this section shall apply to the interactive computer service provider's transmissions or routing or intermediate temporary storage or caching of an image, information or data that is otherwise subject to this section.

L.2005,c.226,s.13.

## **56:8-165 Regulations concerning security of personal information.**

14. The Director of the Division of Consumer Affairs in the Department of Law and Public Safety, in consultation with the Commissioner of Banking and Insurance, shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate sections 4 through 15 of this amendatory and supplementary act.

L.2005,c.226,s.14.

## **34:15-128.2. Definitions relating to "Workers' Compensation Medical Information Confidentiality Act."**

For the purposes of section 1 of P.L. 1966, c. 164 (C. 34:15-128) and sections 6 through 9 of this amendatory and supplementary act [34:15-128.2 -- 34:15-128.5]:

"Disclose" means to release, transfer, open for inspection, make available for copying or otherwise divulge information to any person other than the individual who is the subject of the information.

"Division" means the Division of Workers' Compensation.

"Medical information" means information, whether oral or recorded in any form or medium, that is created or received by a health care provider regarding an individual which is or may be used in connection with a workers' compensation case, or that is provided to the employer or its workers' compensation insurer or their agents in connection with the case, and relates to an individual's past, present or future physical or mental health or condition, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual.

"Workers' compensation case" or "case" means any case in which an individual seeks workers' compensation benefits, whether or not the individual files a formal claim with the division.

HISTORY: L. 2001, c. 362, § 6.

## **34:15-128.3. Disclosure of medical information**

a. In any case of an individual seeking workers' compensation from an employer, it shall be unlawful for the employer, the workers' compensation insurance carrier of the employer, a health care provider treating or evaluating the individual in connection with the case, or a third party in the case, or their agents, to disclose any medical information regarding the individual to any person other than a participant in that workers' compensation case, a reinsurer, the health care

provider, medical and non-medical experts retained in connection with the case, the division, or the Compensation Rating and Inspection Bureau, except under the following circumstances:

(1) The information is disclosed in a manner that makes it impossible to ascertain the identity of the individual;

(2) The information is collected, used or disclosed to or from an insurance support organization, provided that the information is used only to perform the insurance functions of claims settlement, detection and prevention of fraud, or detection and prevention of a misrepresentation or nondisclosure which is material to an insurance claim;

(3) Records containing the information are subpoenaed by the Commissioner of Banking and Insurance pursuant to section 10 of P.L. 1983, c. 320 (C. 17:33A-10) or by a court of competent jurisdiction in a civil or criminal proceeding; or

(4) The information is disclosed to another employer or insurance carrier of that employer for the sole purpose of determining the credit to be given to the other employer or carrier pursuant to subsection d. of *R.S. 34:15-12* if the individual seeks compensation from the other employer or insurance carrier.

b. The Commissioner of Banking and Insurance shall have the power to examine and investigate the affairs of every insurance support organization that receives information pursuant to this section in order to determine whether the insurance support organization has been or is engaged in any conduct in violation of sections 6 through 9 of this amendatory and supplementary act [34:15-128.2 -- 34:15-128.5].

HISTORY: L. 2001, c. 362, § 7.

#### **34:15-128.4. Withholding information unlawful in certain circumstances**

Except for medical or non-medical evaluations performed for the purposes of evaluating the permanency of an employee's disability requested by the employer or its insurance carrier, in any case of an individual seeking workers' compensation from an employer, it shall be unlawful for the employer, the workers' compensation insurance carrier of the employer, a health care provider treating or evaluating the individual in connection with the case, or a third party in the case, or their agents, to withhold from the individual any medical information they have regarding that individual which is requested by the individual, and if an individual requests the

medical information, the individual shall not be charged fees in excess of the cost of providing copies of the information.

HISTORY: L. 2001, c. 362, § 8.

**34:15-128.5. Violations; fine and penalty**

Any person who violates any provision of section 7 or 8 of this amendatory and supplementary act [34:15-128.2 -- 34:15-128.5] shall be subject to a fine of not less than \$ 100 nor more than \$ 1,000 or imprisonment for not more than 60 days or both.

HISTORY: L. 2001, c. 362, § 9.