

SUBCHAPTER 14. INDEMNITY BENEFITS OFFERED BY A HEALTH MAINTENANCE ORGANIZATION

11:24-14.3 General standards

(a)-(d) (No change.)

(e) Submission of forms and rates to the Department shall be made [to and accompanied by the appropriate service fee, if any, specified at N.J.A.C. 11:1-32]:

Health Bureau
Life and Health Division
New Jersey Department of Banking and Insurance
PO Box 325
20 West State Street
Trenton, NJ 08625-0325] **electronically, pursuant to N.J.A.C. 11:4-40.4.**

(f)-(h) (No change.)

11:24-14.6 POS under a group health contract master policy arrangement

(a) The master policy form, certificate form, and any other form that becomes a part of the group health contract, as applicable, shall be submitted by the carrier [in duplicate in accordance with N.J.S.A. 17B:27-26 et seq., 17:48-1 et seq., 17:48A-1 et seq., or 17:48E-1 et seq., and N.J.A.C. 11:4-40, for filing to:

Health Bureau
Life and Health Division
New Jersey Department of Banking and Insurance
PO Box 325
20 West State Street
Trenton, NJ 08625-0325] **electronically, pursuant to N.J.A.C. 11:4-40.4.**

(b)-(g) (No change.)

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

**Rules Pertaining to the Fair Chance in Housing Act
Adopted New Rules: N.J.A.C. 13:5**

Proposed: September 7, 2021, at 53 N.J.R. 1467(b).

Adopted: November 23, 2021, by the New Jersey Division on Civil Rights, Rosemary DiSavino, Deputy Director.

Filed: November 24, 2021, as R.2021 d.150, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 46:8-64.

Effective Date: January 3, 2022.

Expiration Date: January 3, 2029.

Summary of Public Comments and Agency Responses:

The official comment period ended on November 6, 2021. The Division on Civil Rights (DCR) received comments from the following individuals:

1. James C. Williams, Director of Racial Justice Policy, Fair Share Housing Center (FSHC)
2. Sarah Blaine, Lead Organizer, Religious Action Center of Reform Judaism (RAC-NJ)
3. Nicholas Kikis, Vice President, Legislative & Regulatory Affairs, New Jersey Apartment Association (NJAA)
4. Nicole Morella, Director of Policy and Education, New Jersey Coalition to End Domestic Violence, on behalf of the following organizations:
 - Access Family Services
 - Center for Family Services/ SERV Program
 - Community Affairs and Resource Center
 - Family Connections
 - JBWS

Manavi

New Jersey Coalition to End Domestic Violence
Partners for Women and Justice
SAFE in Hunterdon
Womanspace, Inc.
Women Aware
WomenRising, Inc.

5. Rebecca Schore, Chief Counsel, and Maura Sanders, Chief Counsel, Legal Services of New Jersey (LSNJ)

6. "Jean Pbuliee Jean," JXXXXX1@gmail.com (email truncated)

1. COMMENT: Jean Pbuliee Jean expresses concern that "housing applications are destroying" New Jersey's natural resources.

RESPONSE: The Division on Civil Rights ("DCR" or "Division") appreciates the comment, but wishes to clarify that the chapter does not set forth the medium in which an application must be submitted, nor does it involve natural resources in New Jersey. Rather, the chapter implements the Fair Chance in Housing Act (the Act), which concerns the housing rights of certain persons with criminal records.

2. COMMENT: Jean Pbuliee Jean expresses generalized concern that equitable housing of people with criminal histories will result in a decrease in housing safety.

RESPONSE: DCR respectfully disagrees with the commenter. The chapter implements the Act, which concerns the housing rights of persons with criminal records. N.J.S.A. 46:8-53 states the New Jersey Legislature's findings and declarations that, among other things, formerly incarcerated New Jerseyans are more likely to become reincarcerated when they lack access to stable housing. Therefore, the Legislature has determined that housing stability increases safety for all New Jerseyans, including those with criminal records. The chapter sets forth a nondiscriminatory procedure for analyzing applicants' criminal records as contemplated within the Act.

3. COMMENT: Fair Share Housing Center (FSHC) and Reform Action Council of New Jersey (RAC-NJ) recommend clarifying the nature of the written disclosure at proposed N.J.A.C. 13:5-1.5(b) that a housing provider is required to provide a housing applicant notifying of its intent to consider their potential criminal history following a conditional offer. They recommend requiring that the disclosure be a standalone document; that it be provided in size 12 font and in accordance with the Department of Community Affairs Language Access plan by county; that it include an attestation for the applicant to sign, whether physically or electronically; that it include the provider's eligibility criteria; that it include the applicant's right to provide evidence of inaccuracies or mitigating factors; and that it include the process by which applicants can file a complaint alleging a violation.

RESPONSE: DCR appreciates the comment. The chapter, as drafted, requires the housing provider to disclose that their eligibility criteria include the review and consideration of criminal history, the applicant's right to provide evidence of inaccuracies or mitigating factors, and their right to file a complaint. DCR agrees with clarifying certain specifications of its Model Disclosure that will be made available on its website: it will be a standalone document, in at least size 12 font, and include an acknowledgement that the applicant has received the notice. The Model Disclosure on the website will be translated into English, Spanish, and any other language that the Director deems appropriate, on a case-by-case basis, as required at N.J.S.A. 46:8-57(a)(1). As a result, upon adoption, DCR will change those specifications for its Model Disclosure. DCR will also clarify that a housing provider will be deemed to have satisfied the statutory requirements if it provides a "completed and signed version" of the Model Disclosure, including the housing provider's name and the applicant's name in the spaces provided on the form, as well as physical or electronic signature.

4. COMMENT: FSHC recommends amending proposed N.J.A.C. 13:5-1.11 to require housing providers to affirmatively state their compliance with the Act in their advertisements, notices, and publications, as well as on all housing applications. FSHC suggests specific language based on Seattle's Fair Chance housing ordinance (Seattle Municipal Code Sec. 14.09.020). RAC-NJ states its support for FSHC's comment.

RESPONSE: DCR appreciates the comment. DCR has determined that the chapter, as adopted, remains necessary, proper, reasonable, understandable, and responsive for the purposes for which it was

proposed, to fulfill the requirements of the Fair Chance in Housing Act. DCR may address the topic in future rulemaking, guidance, or technical assistance, if DCR deems it necessary or helpful.

5. COMMENT: FSHC and RAC-NJ recommend that the chapter require certain State and local agencies to post about the Act in plain view and distribute information about the Act, to ensure widespread awareness and understanding of its obligations for housing providers and protections for applicants. The commenters recognize that DCR may not have the authority to regulate or mandate such disseminations, and alternatively encourage DCR to include this as part of its outreach and education plan for the law's implementation.

RESPONSE: DCR appreciates FSHC and RAC-NJ's comment, and agrees that such public outreach and education is an important component of the Act's effectiveness. DCR will not change the rule to include such a requirement, but will address the comment in its public outreach and education efforts. In addition, DCR may address this topic in future rulemaking, guidance, or technical assistance, if deemed necessary or helpful.

6. COMMENT: FSHC recommends amending proposed N.J.A.C. 13:5-1.8 to include limitations on the use of third-party vendors, and to clarify procedures and liability when they are used. Specifically, FSHC recommends that DCR prohibit housing providers from using third-party screening agencies to conduct criminal background checks altogether. Alternatively, FSHC recommends holding third-party vendors liable, and placing the burden on housing providers to show that they did not rely on impermissible information in certain instances. FSHC also recommends clarifying that third-party screening agencies are "agents" under the scope of the Act's definition of "housing provider," and, therefore, must comply with provisions of the Act. Finally, FSHC recommends that the chapter require housing providers who use third-party screening services to conduct individualized assessments pursuant to the Act, and the addition of a provision stating that the housing provider has the burden to prove that the provider did not rely on information that is impermissible for consideration in making a final determination about an applicant's tenancy. FSHC provides suggested language to replace N.J.A.C. 13:5-1.8(c). RAC-NJ states its support for FSHC's comment.

RESPONSE: DCR appreciates the comment and interprets proposed N.J.A.C. 13:5-1.8 and 1.9 to require housing providers to conduct individualized analyses, regardless of whether they used a third-party screening agency or not. DCR wishes to clarify that a housing provider will be liable for a third-party screening agency's criminal record check conducted on behalf of the housing provider, if the housing provider failed to take reasonable steps to ensure that the screening complied with the Act and the chapter. In addition, if a housing provider receives a criminal history inquiry conducted by a third-party screening agency or outside person or entity that is conducted in violation of the Act or the chapter, in that it reveals a record that is not permitted to be considered pursuant to the Act, the housing provider must show that the provider did not rely on that information in making a determination about an applicant's tenancy. As a result, upon adoption, DCR will change N.J.A.C. 13:5-1.8(c) to add a new final sentence indicating that if a housing provider receives a criminal history inquiry conducted by a vendor or outside person or entity that is conducted in violation of the Act or this chapter, in that it reveals a record that is not permitted to be considered pursuant to the Act, the housing provider must show that the provider did not rely on that information in making a determination about an applicant's tenancy.

DCR appreciates the recommendations regarding prohibiting housing providers from using third-party screening agencies to conduct criminal background checks altogether or holding third-party vendors liable directly. DCR has determined that the rule, as adopted, remains necessary, proper, reasonable, understandable, and responsive for the purposes for which it was proposed, to fulfill the requirements of the Fair Chance in Housing Act. DCR may address the topic in future rulemaking, guidance, or technical assistance, if DCR deems it necessary or helpful.

7. COMMENT: FSHC and RAC-NJ recommend creating a clearer timeframe for conducting a background check and considering supporting documents at proposed N.J.A.C. 13:5-1.9. Specifically, they recommend establishing a 10-day time limit during which housing providers may conduct a criminal background check, after making a conditional offer, including notifying applicants of a withdrawal within that 10-day

timeframe, at which time the applicant can submit supporting documents for housing providers' reconsideration. They also recommend clarifying that the Model Notice of Withdrawal must inform applicants that they may be asked for supporting documents to contest a withdrawal.

RESPONSE: DCR appreciates the comment and notes that N.J.A.C. 13:5-1.9(e), as proposed, requires the Model Notice of Withdrawal to inform applicants of their appeal rights, and that they may be asked for supporting information to contest a withdrawal. DCR appreciates the comment regarding a timeframe for conducting a criminal background check, but does not believe it is necessary at this point in time. DCR has determined that the rule, as adopted, remains necessary, proper, reasonable, understandable, and responsive for the purposes for which it was proposed, to fulfill the requirements of the Fair Chance in Housing Act. DCR may address the topic in future rulemaking, guidance, or technical assistance, if DCR deems it necessary or helpful.

8. COMMENT: FSHC recommends amending proposed N.J.A.C. 13:5-1.4(c) to clarify that housing applicants need only provide evidence of inaccuracies, rehabilitation, or other mitigating factors, regarding aspects of an applicant's criminal background that are permissible for consideration under the Act, and not beyond that scope. RAC-NJ states its support for FSHC's comment.

RESPONSE: DCR appreciates the comment and agrees with the recommendation. As a result, DCR will clarify upon adoption by adding N.J.A.C. 13:5-1.4(c)1 that subsection (c) only applies to aspects of a criminal record which may be considered under the Act and that an applicant need not provide further information regarding elements of their criminal record, evidence of rehabilitation, or other mitigating factors, related to offenses that are ineligible for consideration under the Act.

9. COMMENT: FSHC recommends that the rule create a process for housing providers to request assistance from DCR in interpreting criminal background checks. RAC-NJ reiterates its support for FSHC's comment.

RESPONSE: DCR appreciates the comment; however, it does not find that the chapter is the most appropriate place to include such information. DCR intends to make clear in its guidance documents that it remains available to provide technical assistance to housing providers in interpreting such records.

10. COMMENT: FSHC recommends that the rule make clear that all dispositions, including those that are unsubstantiated, are public records and may be requested through the Open Public Records Act (OPRA) or another appropriate process. RAC-NJ states its support for FSHC's comment.

RESPONSE: DCR appreciates the comment, and interprets N.J.A.C. 13:5-2.7, as proposed, to make clear that all dispositions pursuant to the Act are public records and may be requested through OPRA or another appropriate process.

11. COMMENT: FSHC recommends that the rule define "inaccuracies" as the term relates to an applicant's criminal record. FSHC also recommends that the rule provide guidance to housing providers for their evaluation of the criminal history information they receive when conducting a background check, requiring them to follow specific processes or to comply with model policies in their consideration of inaccuracies in the applicant's record, as well as in consideration of mitigating factors or evidence of rehabilitation. Additionally, FSHC recommends that proposed N.J.A.C. 13:5-1.9(f) include suggested language to clarify that a housing provider who relies on an inaccurate criminal record will be liable pursuant to the Act, if the provider fails to act with reasonable care to confirm the accuracy of the information relied upon. RAC-NJ states its support for FSHC's comment.

RESPONSE: DCR appreciates the comment and agrees that a housing provider who relies on an inaccurate criminal record will be liable pursuant to the Act if the applicant provides evidence that the criminal record is inaccurate and the housing provider fails to take additional action to confirm the accuracy of the information relied upon. However, N.J.A.C. 13:5-1.9(g), as proposed, already provides for the requested change. Upon adoption, DCR will delete the term "check" after "criminal record," to clarify that the housing provider will be held liable for relying on an inaccurate criminal record. DCR has determined that the rule, as adopted, remains necessary, proper, reasonable, understandable, and responsive for the purposes for which it was proposed, to fulfill the requirements of the Fair Chance in Housing Act. DCR may address the

topic in future rulemaking, guidance, or technical assistance, if DCR deems it necessary or helpful.

12. COMMENT: FSHC recommends that the rule strengthen the Act's protections by (1) prohibiting inquiry into any initial application to join a housing lottery or wait list, such as those often used in affordable housing processes; and (2) applying the Act's requirements to any individuals added to a lease, thereby prohibiting consideration of any criminal history beyond that which can be considered pursuant to the Act. RAC-NJ states its support for FSHC's comment.

RESPONSE: DCR appreciates the comment, and wishes to clarify that it interprets the Act's protections to cover any type of housing application, including those conducted by lottery or wait list. DCR has determined that the rule, as adopted, remains necessary, proper, reasonable, understandable, and responsive for the purposes for which it was proposed, to fulfill the requirements of the Fair Chance in Housing Act. DCR may address the topic in future rulemaking, guidance, or technical assistance, if DCR deems it necessary or helpful.

13. COMMENT: FSHC recommends that proposed N.J.A.C. 13:5-1.14 be amended to prohibit all drug testing, including non-mandatory, voluntary testing. RAC-NJ states its support for FSHC's comment.

RESPONSE: DCR appreciates the comment, and notes that N.J.A.C. 13:5-1.14 directly mirrors N.J.S.A. 46:8-60. DCR, therefore, lacks authority to change the prohibition.

14. COMMENT: FSHC recommends that proposed N.J.A.C. 13:5-2.2(c) implement a two-tiered system within the mediation process to bypass mediation for housing providers who commit clear or deliberate violations. FSHC further recommends that proposed N.J.A.C. 13:5-2.2(d) include language setting a limit on the number of times that a housing provider may cure or resolve a complaint before it can be considered a violation of the Act, and, therefore, subject to penalties and other remedies under the text of the law. RAC-NJ states its support for FSHC's comment.

RESPONSE: DCR appreciates the comment, but notes that N.J.S.A. 46:8-63(a) requires DCR to offer housing providers the opportunity to mediate following a complaint. DCR, therefore, lacks authority to refuse the opportunity to mediate.

15. COMMENT: FSHC recommends that proposed N.J.A.C. 13:5-2.2(f) clarify how the DCR Director may become aware of a breach of written agreement after an alleged violation. RAC-NJ states its support for FSHC's comment.

RESPONSE: DCR appreciates the comment, and wishes to clarify that housing providers may be required to submit proof of compliance with the written agreement, in order to determine whether the housing provider has complied with the agreement. As a result, DCR will clarify upon adoption by changing N.J.A.C. 13:5-2.2(f) to add that the respondent may be required to submit proof of compliance with the written agreement electronically.

16. COMMENT: RAC-NJ recommends that DCR publish models for all forms referenced in the chapter. They further recommend that DCR create a standardized complaint form.

RESPONSE: DCR appreciates the comment and reiterates that it will make available on its website the two model forms required at N.J.S.A. 46:8-57. Upon receiving an intake form alleging a violation of the Act, DCR will work with the complainant to draft a complaint that the complainant will then sign.

17. COMMENT: The New Jersey Apartment Association (NJAA) recommends removing the phrase "or perpetuate historical discrimination" from the definition of a "substantial, legitimate, and nondiscriminatory interest" from proposed N.J.A.C. 13:5-1.9(b) in order not to deviate from the U.S. Department of Housing and Urban Development's (HUD) "Discriminatory Effects Standard" and established case law.

RESPONSE: DCR appreciates the comment and clarifies that the definition was not intended to go beyond HUD standards and established case law. As a result, DCR will clarify the definition upon adoption by removing the phrase "or perpetuate historical discrimination" at N.J.A.C. 13:5-1.9(b).

18. COMMENT: NJAA recommends that proposed N.J.A.C. 13:5-1.11(c) be deleted or, alternatively, revised to comport with the Act's prohibition on housing advertisements that "explicitly" assert that they will not consider any applicant with any criminal history.

RESPONSE: DCR appreciates the comment and clarifies that the provision was not intended to go beyond the scope of the Act. As a result, DCR will clarify N.J.A.C. 13:5-1.11(c) upon adoption by replacing the phrase "tends to" with the term "explicitly."

19. COMMENT: NJAA recommends amending proposed N.J.A.C. 13:5-2.2(c) to include communication methods, such as in-person or remote meeting platforms, to ensure that the mediation process is "genuine." NJAA further recommends clarifying the mediation timeframe to comport with the statutory text, rather than implying that mediation must be completed within 14 days of service of a complaint.

RESPONSE: DCR believes that N.J.A.C. 13:5-2.2(c), as proposed, provides a genuine mediation process, and clarifies that the methods of communication listed are a non-exhaustive list of examples by which communication may take place; this means they do not exclude in-person or virtual meetings. DCR clarifies that the mediation timeframe was not intended to go beyond the scope at N.J.S.A. 46:8-63. As a result, DCR will clarify the timeframe by mirroring N.J.S.A. 46:8-63, changing N.J.A.C. 13:5-2.2(c), appropriately. This language mirrors the statutory text. In response to this comment, DCR will also change N.J.A.C. 13:5-2.2(d) to further clarify the mediation timeframe to cross-refer to subsection (c).

20. COMMENT: NJAA recommends the deletion of proposed N.J.A.C. 13:5-1.9(f), which provides: "A landlord who relies on an inaccurate criminal record check will be liable under the Act if the applicant provides evidence that the criminal record check is inaccurate and the housing provider fails to take additional action to confirm the accuracy of the information relied upon." According to NJAA, "it should be the responsibility of the applicant to provide information that refutes that record or more specifically, make contact with the court to correct that record."

RESPONSE: DCR appreciates the comment, and clarifies that if an applicant provides evidence that a criminal record the housing provider initially relied upon is inaccurate, the housing provider cannot continue to rely on that record without confirming its accuracy. Upon adoption, DCR will clarify N.J.A.C. 13:5-1.9(f) to indicate that liability will apply to the housing provider who fails to confirm the accuracy of information before continuing to rely upon it.

21. COMMENT: The New Jersey Coalition to End Domestic Violence (NJCEDV) recommends that the rulemaking clarify that housing providers may not engage in discrimination when withdrawing conditional offers. NJCEDV believes that the withdrawal factors at proposed N.J.A.C. 13:5-1.9(b) are subjective in nature and may uniquely impact survivors of domestic violence. NJCEDV is particularly concerned that proposed N.J.A.C. 13:5-1.9(b)6, which allows housing providers to consider whether a withdrawal-qualifying instance occurred on or was connected to property that was rented or leased by the applicant, will impact survivors of domestic violence. In so doing, NJCEDV notes that incidents of domestic violence often occur within, or on, an individual's residence. NJCEDV is similarly concerned that proposed N.J.A.C. 13:5-1.9(b)1, which allows housing providers to consider the nature and severity of a withdrawal-qualifying criminal offense, will impact survivors of domestic violence where "a landlord does not understand the dynamics of coercive control, the impact of trauma on survivors, or the way housing can help reduce risk factors for domestic violence." NJCEDV cautions that disqualifying someone from housing increases the risks faced by people who have experienced domestic violence.

RESPONSE: DCR appreciates the comment, and wishes to note that N.J.A.C. 13:5-1.9(e) allows applicants to provide evidence of "other mitigating factors," which may include information of the type to which NJCEDV refers. DCR also notes that all of the factors at N.J.A.C. 13:5-1.9 derive directly from N.J.S.A. 46:8-56(c)(3), therefore, they cannot be changed. DCR has determined that the rule, as adopted, remains necessary, proper, reasonable, understandable, and responsive for the purposes for which it was proposed, to fulfill the requirements of the Fair Chance in Housing Act. DCR may address the topic in future rulemaking, guidance, or technical assistance, if DCR deems it necessary or helpful.

22. COMMENT: NJCEDV recommends that proposed N.J.A.C. 13:5-1.9(b)4 clarify the type of documentation and information a housing provider may consider when determining an applicant's rehabilitation or good standing. NJCEDV voices concern that it may be difficult for

survivors of domestic violence to obtain relevant information and documentation. NJCEDV specifically notes that “survivors who were convicted of domestic violence” may have trouble providing such documentation because they are often prevented from “access[ing] victim based supportive service.”

RESPONSE: DCR appreciates the comment, and notes that proposed N.J.A.C. 13:5-1.9(b)4 refers to “any information produced by the applicant,” which can include material of any kind that the applicant is able to produce. DCR also notes that proposed N.J.A.C. 13:5-1.9(b)4 derives directly from N.J.S.A. 46:8-56(c)(3)(d), and, therefore, cannot be changed. DCR has determined that the rule, as adopted, remains necessary, proper, reasonable, understandable, and responsive for the purposes for which it was proposed, to fulfill the requirements of the Fair Chance in Housing Act. DCR may address the topic in future rulemaking, guidance, or technical assistance, if DCR deems it necessary or helpful.

23. COMMENT: NJCEDV recommends that DCR broaden the requisite complainant contact information at proposed N.J.A.C. 13:5-2.1(d) in recognition that housing applicants in transition may be unable to provide an address or telephone number. NJCEDV suggests that the rule be altered to allow complainants to either provide DCR with their address, telephone number, or email address, and to promptly notify DCR of any changes in their contact information as soon as possible.

RESPONSE: DCR appreciates the comment, and agrees with the clarification that contact information be provided as soon as possible. DCR notes the importance of a complainant providing their address, telephone number, and email address, where possible, so that DCR can effectively communicate with the complainant. However, DCR clarifies that it currently accepts complaints from survivors of domestic violence who are not able to provide an address or telephone number, and will continue to do so. DCR also wishes to note that, pursuant to N.J.A.C. 13:4-13.1, DCR’s investigatory records, including complainant contact information, are considered confidential and exempt from public access under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq. As a result, upon adoption, DCR will change N.J.A.C. 13:5-2.1(d), as noted.

24. COMMENT: Legal Services of New Jersey (LSNJ) recommends that the rule require DCR’s Model Disclosure Statement and Model Notice of Withdrawal to inform housing applicants of their right to seek free legal assistance by contacting LSNJ’s Statewide hotline either online (www.lsnjlawhotline.org) or by phone (1-888-LSNJ-LAW (1-888-576-5529)). LSNJ also recommends that these writings inform the applicant and housing provider of their right to seek representation by an LSNJ attorney.

RESPONSE: DCR appreciates the comment, but does not find that the chapter is the most appropriate place to include such information. DCR intends to notify applicants and providers, in writing, of their right to seek free legal assistance at any point in the application process through its guidance documents and technical materials, and will provide relevant contact information for free legal service providers in New Jersey.

25. COMMENT: LSNJ recommends that the rule require DCR to provide notice of the opportunity to mediate a resolution in writing. LSNJ further recommends that any resolution reached through mediation be memorialized, in writing, and enforceable in the Superior Court of New Jersey.

RESPONSE: DCR appreciates the comment but does not believe that every resolution reached through mediation must be memorialized in writing. Instead, N.J.A.C. 13:5-2.2(e) provides that the Division may require the respondent to memorialize the resolution in a written agreement that sets forth the equitable measures that were taken or will be taken to ensure compliance and the remedy, if any, to be provided to the individual who filed the complaint.

26. COMMENT: LSNJ states that the statute requires DCR to conduct an investigation and recommends that the rule require DCR’s investigatory decisions to be issued in writing; to include findings of fact and conclusions of law; and to advise the parties of their right to appeal and their right to retain counsel.

RESPONSE: DCR appreciates the comment. However, the statute explicitly does not require DCR to conduct an investigation; it leaves the decision of whether to conduct an investigation to DCR’s discretion. The chapter does so as well. The procedures set forth are intended to comply with the statute as written.

Summary of Agency-Initiated Changes Upon Adoption:

1. Disclosure, to its Model Notice of Withdrawal: it will be a standalone document, in at least size 12 font, and include an acknowledgment that the applicant has received the notice. The Model Notice on the website will be translated into English, Spanish, and any other language that the Director deems appropriate, as required at N.J.S.A. 46:8-57(a)(2). As a result, upon adoption, DCR will clarify these specifications for its Model Notice by adding the following language at N.J.A.C. 13:5-1.9(d) similar to N.J.A.C. 13:5-1.5(b).

2. DCR is clarifying N.J.A.C. 13:5-1.11(b) by replacing “they” with “the provider.”

Federal Standards Statement

The adopted rules are intended to clarify and interpret the Act, and are not intended to implement or comply with any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements. The Federal U.S. Department of Housing and Urban Development (HUD) issued a guidance document in 2016 stating that blanket criminal history-related bans likely violate the Federal Fair Housing Act (FHA) because of their racially disparate impact and because they are unnecessary to serve a substantial, legitimate, and nondiscriminatory interest. The Fair Chance in Housing Act, however, dictates clear rules and guidelines about criminal record inquiries that are either prohibited or permissible, before or after a conditional offer. To the extent that the proposed new rules provide rights or obligations that exceed similar guidance in Federal law, the Act mandates such provisions.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 5

RULES PERTAINING TO THE FAIR CHANCE IN HOUSING ACT

SUBCHAPTER 1. GENERAL PROVISIONS

13:5-1.1 Purpose

This chapter is designed to implement the provisions of the Fair Chance in Housing Act, P.L. 2021, c. 110 (the Act), which concerns the housing rights of certain persons with criminal records.

13:5-1.2 Construction

(a) Consistent with the public policy underlying the Act and with firmly established principles for the interpretation of such remedial legislation, the remedial provisions of the statute will be given a broad construction and its exceptions construed narrowly.

(b) The provisions of this chapter are severable. If any provision or the application of any provisions of this chapter to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

13:5-1.3 Definitions

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

“Applicant” means any person considered for, or who requests to be considered for, tenancy within a rental dwelling unit.

“Complainant” means any person filing a complaint alleging a violation of the Act.

“Conditional offer” means an offer to rent or lease a rental dwelling unit to an applicant that is contingent on a subsequent inquiry into the applicant’s criminal record, or any other eligibility criteria that the housing provider may lawfully utilize.

“Criminal record” means information about an individual collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests, detentions, indictments, criminal complaints, or other formal criminal charges, and any disposition arising therefrom, including, acquittal, sentencing, correctional supervision, release, or conviction, including, but not limited to, any sentence arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of probation, or a sentence of conditional discharge.

“Director” means the Director of the Division on Civil Rights.

“Division” means the Division on Civil Rights in the Department of Law and Public Safety.

“Electronically” means through the New Jersey Bias Investigation Access System (NJBias), which is currently available at <https://bias.njcivilrights.gov>, or through another electronic means specified by the Director.

“Housing provider” means a landlord, an owner, lessor, sublessor, assignee or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental dwelling unit.

“Position statement” means a legal brief or other writing that, in narrative fashion, responds to the allegations in a complaint, as well as, explains the respondent’s version of the facts and identifies specific documents and witnesses supporting the respondent’s position.

“Rental dwelling unit” means a dwelling unit offered for rent by a housing provider for residential purposes, other than a dwelling unit in an owner-occupied premises of not more than four dwelling units.

“Respondent” means any party charged in a complaint with a violation of the Act.

13:5-1.4 Initial application inquiries

(a) A housing provider shall not require an applicant to complete any housing application that includes any inquiries regarding an applicant’s criminal record prior to a conditional offer of housing, except for a limited inquiry of whether an applicant has ever been convicted of criminal activity for the manufacture or production of methamphetamine on the premises of Federally assisted housing, and whether the applicant is subject to a lifetime registration requirement under a State sex offender registration program.

(b) A housing provider shall not make any oral or written inquiry regarding an applicant’s criminal record prior to making a conditional offer.

(c) An applicant may provide evidence to the housing provider demonstrating inaccuracies within the applicant’s criminal record, evidence of rehabilitation, or other mitigating factors.

1. This subsection only applies to aspects of a criminal record that may be considered under the Act; an applicant need not provide further information regarding elements of their criminal record, evidence of rehabilitation, or other mitigating factors, related to offenses that are ineligible for consideration under the Act.

13:5-1.5 Application fees

(a) Prior to accepting any application fee, a housing provider shall disclose, in writing, to the applicant:

1. Whether the eligibility criteria of the housing provider includes the review and consideration of criminal history; and
2. A statement that the applicant may provide evidence demonstrating inaccuracies within the applicant’s criminal record or evidence of rehabilitation or other mitigating factors.

(b) The Model Disclosure form made available by the Division on its website must be a standalone document, written in at least size 12 font, and must include an acknowledgement that the applicant has received the notice, whether physically or electronically. This form shall be made available in English, Spanish, and in any other language the Director deems appropriate.

[(b)]* *(c) A housing provider that provides the applicant with a ***[written disclosure that is consistent with]* *completed and signed version of*** the Model Disclosure form made available by the Division on its website at the time the disclosure is provided will be deemed to have satisfied the requirements of this section.

13:5-1.6 Prohibition on discrimination

A housing provider shall apply the standards established by the Act to each applicant in a nondiscriminatory manner.

13:5-1.7 Criminal records prohibited from consideration irrespective of conditional offer

(a) A housing provider shall not at any point, either before or after a conditional offer of tenancy, evaluate an applicant based on any of the following types of criminal records:

1. Arrests or charges that have not resulted in a criminal conviction;
2. Expunged convictions;

3. Convictions erased through executive pardon;
4. Vacated and otherwise legally nullified convictions;
5. Juvenile adjudications of delinquency; and
6. Records that have been sealed.

13:5-1.8 Criminal records that can be considered only after a conditional offer

(a) Before the issuance of a conditional offer to an applicant, a housing provider may not consider any criminal record in the applicant’s history, except for a conviction for the manufacture or production of methamphetamine on the premises of Federally assisted housing and whether the applicant is subject to a lifetime registration requirement under a State sex offender registration program.

(b) After the issuance of a conditional offer to an applicant, a housing provider may only consider a criminal record in the applicant’s history that:

1. Resulted in a conviction for murder, aggravated sexual assault, kidnapping, arson, human trafficking, sexual assault in violation of N.J.S.A. 2C:14-2, causing or permitting a child to engage in a prohibited sexual act or in the simulation of such an act in violation of paragraph (3) of subsection b of N.J.S.A. 2C:24-4, or any crime that resulted in lifetime registration in a State sex offender registry, or their equivalents under Federal law or the laws of another state;

2. Is for an indictable offense of the first degree that was issued, or if the conviction resulted in a prison sentence that sentence concluded, within the six years immediately preceding the issuance of the conditional offer, or their equivalents under Federal law or the laws of another state;

3. Is for an indictable offense of the second or third degree that was issued, or if the conviction resulted in a prison sentence that sentence concluded, within the four years immediately preceding the issuance of the conditional offer, or their equivalents under Federal law or the laws of another state; or

4. Is for an indictable offense of the fourth degree that was issued, or if the conviction resulted in a prison sentence that sentence concluded, within one year immediately preceding the issuance of the conditional offer, or their equivalents under Federal law or the laws of another state.

(c) If a housing provider utilizes any vendor or outside person or entity to conduct a criminal record check ***on their behalf***, the housing provider shall take reasonable steps to ensure that the vendor or outside person or entity is conducting the criminal record check consistent with the Act and this chapter. A housing provider will be liable under the Act for relying on a criminal history inquiry conducted by a vendor or outside person or entity that is conducted in violation of the Act or this chapter if the housing provider failed to take reasonable steps to ensure compliance with the Act or this chapter. ***Specifically, if a housing provider receives a criminal history inquiry conducted by a vendor or outside person or entity that is conducted in violation of the Act or this chapter, in that it reveals a record that is not permitted to be considered under the Act, the housing provider must show that the provider did not rely on that information in making a determination about an applicant’s tenancy.***

13:5-1.9 Withdrawal of conditional offer

(a) A housing provider may withdraw a conditional offer based on an applicant’s criminal record only if the criminal record check is conducted consistent with the requirements at N.J.A.C. 13:5-1.8, and only if the housing provider determines, by preponderance of the evidence, that the withdrawal is necessary to fulfill a substantial, legitimate, and nondiscriminatory interest.

1. The determination of whether an interest is substantial, legitimate, and nondiscriminatory requires a case-specific, fact-based inquiry, where “substantial interest” means a core interest of the entity that has a direct relationship to the function of that entity, “legitimate” means that a justification is genuine and not false or pretextual, and “nondiscriminatory” means that the justification for a challenged practice or policy does not itself discriminate ***[or perpetuate historical discrimination]*** based on a protected class.

(b) Should the applicant have a criminal record of an offense that may be taken into consideration, the housing provider shall perform an individualized assessment of the application in light of the following factors:

1. The nature and severity of the criminal offense;
2. The age of the applicant at the time of the occurrence of the criminal offense;
3. The time that has elapsed since the occurrence of the criminal offense;
4. Any information produced by the applicant, or produced on the applicant's behalf, in regard to the applicant's rehabilitation and good conduct since the occurrence of the criminal offense;
5. The degree to which the criminal offense, if it reoccurred, would negatively impact the safety of the housing provider's other tenants or property; and
6. Whether the criminal offense occurred on or was connected to property that was rented or leased by the applicant.

(c) A housing provider must establish, by a preponderance of the evidence, that the withdrawal is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests.

(d) If a housing provider withdraws a conditional offer, the housing provider shall provide the applicant with written notification that includes, with specificity, the reason or reasons for the withdrawal and an opportunity to appeal the denial by providing evidence to the housing provider demonstrating inaccuracies within the applicant's criminal record, evidence of rehabilitation, or other mitigating factors. ***The Model Notice of Withdrawal made available by the Division on its website must be a standalone document, written in at least size 12 font, and must include an acknowledgment that the applicant has received the notice, whether physically or electronically. This form shall be made available in English, Spanish, and in any other language the Director deems appropriate.*** A housing provider that provides the applicant with a **[written notice that contains the information in]** ***completed and signed version of*** the Model Notice of Withdrawal of Conditional Offer form made available by the Division on its website at the time the notice is provided will be deemed to have satisfied the requirements of this subsection, provided that such information includes, with specificity, the reason or reasons for the withdrawal of the applicant's conditional offer.

(e) If an applicant provides a housing provider with evidence demonstrating inaccuracies within the applicant's criminal record or evidence of rehabilitation or other mitigating factors, the housing provider shall review the information and reconsider the decision based on the evidence provided. A determination after reconsideration should be provided to the applicant within 30 days.

(f) A landlord who relies on an inaccurate criminal record **[check]** will be liable **[under]** ***pursuant to*** the Act if the applicant provides evidence that the criminal record **[check]** is inaccurate and the housing provider fails to **[take additional action to]** confirm the accuracy of the information **[relied upon]** ***before continuing to rely upon it***.

13:5-1.10 Provision of information concerning withdrawal

(a) The applicant may request, within 30 days after the housing provider's notice of the withdrawal, a copy of all information that the housing provider relied upon in considering the applicant, including criminal records.

(b) A housing provider shall provide the information requested free of charge, within 10 days of receipt of the request.

13:5-1.11 Advertisements

(a) A housing provider shall not print, publish, circulate, issue, display, post, or mail, or cause to be printed, published, circulated, issued, displayed, posted, or mailed any statement, advertisement, publication, or sign, or use any form of application for the rental, lease, or sublease of any real property, or part or portion thereof, or make any record or inquiry in connection with the prospective rental, lease, or sublease of any real property, or part or portion thereof, that expresses, directly or indirectly, any unlawful limitation, specification, or discrimination as to criminal record.

(b) A housing provider shall not advertise that **[they]** ***the provider*** will not consider any applicant who has been arrested, charged with, or convicted of a crime or offense, nor shall a housing provider make any statement in connection with a housing opportunity that **[they]** ***the provider*** will not consider any applicant who has been arrested, charged with, or convicted of a criminal offense.

(c) A housing provider shall not use any word, term, phrase, or expression that **[tends to]** ***explicitly*** influence^s, dissuade^s, discourage^s, or repel^s any person or persons from seeking housing because of a prior criminal history.

(d) The provision of this section shall not preclude a housing provider from making limited inquiries concerning drug-related criminal activity for the manufacture or production of methamphetamine on the premises of Federally assisted housing, or whether the applicant is subject to a lifetime registration requirement under a State sex offender registration program, or engaging in any advertising or making any statement that it will not consider an applicant who has engaged in drug-related criminal activity for the manufacture or production of methamphetamine on the premises of Federally assisted housing, or an applicant who is subject to a lifetime registration requirement under a State sex offender registration program.

13:5-1.12 Prohibition on dissemination of criminal record

(a) Unless otherwise required by law, a housing provider shall not:

1. Distribute or disseminate an applicant's criminal record to any person who is not expected to use the criminal record for the purpose of evaluating the applicant in a manner consistent with the Act or this chapter; or

2. Use an applicant's criminal record for a purpose that is not consistent with the Act or this chapter.

13:5-1.13 Immunity from civil liability

(a) To encourage residential landlords to provide housing opportunities to formerly incarcerated individuals, landlords subject to the provisions of the Act or this chapter shall be immune from liability in any civil action arising as a result of the landlord's decision to rent to individuals with a criminal record or who were otherwise convicted of a criminal offense, or as a result of a landlord's decision to not engage in a criminal background screening.

(b) Nothing at (a) above shall be construed to affect, in any way, the immunity from liability conferred by law upon a landlord who rents an apartment to a person with a conviction for murder, aggravated sexual assault, kidnapping, arson, human trafficking, sexual assault in violation of N.J.S.A. 2C:14-2, causing or permitting a child to engage in a prohibited sexual act, or in the simulation of such an act in violation of paragraph (3) of subsection b. of N.J.S.A. 2C:24-4, or any crime that resulted in lifetime registration in a State sex offender registry.

(c) Nothing in this section shall be construed to grant immunity to a housing provider for failure to take reasonable action or refusal to take reasonable action in connection with actual conduct by a tenant during the tenancy, or to excuse a housing provider from stopping, preventing, or remedying a hostile housing environment created by a tenant's actual conduct during the tenancy.

13:5-1.14 Prohibition on drug testing

A housing provider shall not require an applicant to submit to a drug or alcohol test or request the applicant's consent to obtain information from a drug abuse treatment facility.

13:5-1.15 Retaliation

(a) A person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the Act or this chapter.

(b) If the Division determines that a housing provider has engaged in one or more unlawful actions against a person with the intent of retaliating for the person's filing of an action against the housing provider under the Act, then each unlawful retaliatory action shall be enforced as a separate and distinct violation of the Act and this chapter.

SUBCHAPTER 2. ENFORCEMENT PROVISIONS

13:5-2.1 Complaints

(a) Any applicant or prospective applicant who believes that a housing provider has violated a provision of the Act may file a complaint with the Division by submitting a signed complaint to the Division electronically, by regular mail, or in person at any office of the Division. Any complaint that is submitted electronically may be signed electronically as well.

(b) Any complaint filed by an applicant or prospective applicant shall be filed with the Division within 180 days of the date of the alleged

violation. The filing of a complaint or any other pleading shall be proven by the time it was submitted electronically, or, for filings submitted by regular mail or in person, the official stamp of the Division or by the signature of any official, employee, or investigator and their written notation indicating the date of receipt.

(c) A complaint shall be filed in a format approved by the Director. The complaint shall set forth in separate numbered paragraphs the following:

1. The full name of all complainants;
2. The full name and address of all respondents, if known; and
3. A brief statement setting forth the facts deemed to constitute the alleged violation.

(d) Complainants shall*, **where possible***, electronically*[,] or by other means, provide the Division with their address, telephone number, and email address in connection with the filing of any complaint, and promptly notify the Division of any change in address, telephone number, or email address *[at all times]* **as soon as possible*** until the time for an appeal of a final order has expired.

(e) Any complainant may register with the Division, electronically, by providing their name, email address, and phone number. For any complainant registered with the Division electronically, the Division shall serve all filings electronically.

(f) The Director may file a complaint alleging a violation of the Act if the Director has reason to believe a housing provider may have violated the Act. The Director may also intervene or join as a complainant in any complaint pending before the Division.

(g) Where, based on review of a complaint, the Division believes the allegations may also constitute a violation of the Law Against Discrimination, the Division shall notify the complainant of the complainant's filing rights under that statute and shall, if the complainant so authorizes, generate a complaint that alleges a violation of the Law Against Discrimination, as well.

(h) The Division shall request demographic information, including, but not limited to, the race and ethnicity of the complainant, in connection with the filing of any complaint. The Division may use the collected demographic information for purposes of reporting in the aggregate on the demographic information of complainants.

13:5-2.2 Notice to respondents and opportunity to cure or resolve the complaint or answer

(a) Any housing provider may register with the Division, electronically, and identify an individual to electronically accept service in connection with any complaint filed with the Division by providing the name, email address, and phone number for the individual authorized to accept service. When the Division receives a complaint against a respondent that has not so registered, the Division will attempt to find the contact information, including, by contacting the respondent, and will ask the respondent to electronically register with the Division. For any respondent electronically registered with the Division, the Division shall serve any complaint and all other filings electronically, and the respondent may respond to the complaint and other inquiries by the Division electronically.

(b) Upon receipt of any complaint, the Division shall immediately serve a copy of the complaint on the respondent electronically. If the Division is unable to effectuate service electronically, the Division shall serve a copy of the complaint on the respondent by certified mail or overnight delivery by commercial courier, or, at the discretion of the Director, by personal delivery by an agent of the Division.

(c) For any complaint filed by an applicant*,* or prospective applicant, at the time of service of the complaint, the Division shall *[offer the respondent the opportunity to mediate, by curing or resolving the alleged violation, within 14 days of receiving the notice]* **make a good faith effort to notify the housing provider of the alleged violation and offer the housing provider the opportunity to mediate and address the complaint within 14 days of service of receiving the notice***. Mediation efforts may include, but not be limited to, telephone conversations, meetings, and written correspondence.

(d) The Division shall not subject a respondent to any penalty pursuant to N.J.A.C. 13:5-2.5 if the Division determines that the respondent has *[cured or resolved]* **mediated the complaint by curing or resolving*** the alleged violation *[within 14 days of receiving the notice]* **pursuant**

to the process specified at (c) above*, and provided the Division with evidence of same electronically.

(e) If the Division determines that the respondent has indeed cured or resolved the alleged violation, the Division may require the respondent to memorialize the resolution in a written agreement that sets forth the equitable measures that were taken or will be taken to ensure compliance, and the remedy, if any, to be provided to the individual who filed the complaint. Any agreement made pursuant to this section, and any complaint in connection therewith, shall not be published on the Division's website.

(f) ***The respondent may be required to submit proof of compliance with the written agreement electronically.*** If the Director finds that there has been a breach of a written agreement made pursuant to this section, the Director may, in their discretion, reopen the complaint for investigation or seek to enforce the agreement.

(g) If the respondent chooses not to cure the alleged violation within 14 days of receiving the notice, and provides the Division with evidence of same electronically, or if the Division determines that respondent's actions have not in fact cured or resolved the alleged violation, the respondent shall file an answer to the complaint, a position statement setting forth, in narrative form, why the respondent believes that no violation of the Act occurred, and a response to any additional request by the Division for documents and/or information within 20 calendar days of service of notice on the respondent that the matter is being transferred for investigation. The respondent shall file these responsive materials electronically.

(h) Respondents that fail to file an answer, position statement, and/or response to any request for documents and/or information within the time period provided by this section are subject to a demand by subpoena and/or entry of default.

(i) Extensions of time for filing an answer, position statement, and/or responding to any request for document and/or information may be authorized by the Director upon good cause shown. Requests for extensions of time shall be submitted electronically.

(j) Respondents shall promptly notify the Division of any change in contact information, including, mailing address, email address, phone number, and contact person, or other material change in the status of the respondent (such as bankruptcy filing or ceasing to operate as an ongoing concern) at all times until the time for an appeal of a final order has expired.

13:5-2.3 Investigation and findings

(a) Following review of the complaint and responsive documents filed by the respondent, the Director shall determine whether to conduct an investigation of a complaint.

(b) In conducting an investigation, the Division may exercise all investigative powers set forth at N.J.S.A. 10:5-8 and N.J.A.C. 13:4-4.

(c) If, following an investigation, the Division determines that the allegations in the complaint are not substantiated, the Division shall advise the parties of that determination and that such determination is the final agency action on the complaint.

(d) A complainant may appeal to the Appellate Division of the Superior Court, a determination pursuant to (c) above that a complaint is not substantiated, but the complainant may not appeal a decision by the Director not to investigate a complaint.

(e) If, following an investigation, the Division determines that the allegations in the complaint are substantiated, it shall issue a notice of violation to respondent. The notice of violation shall notify the respondent of the nature of the violation and the acts or omissions supporting such violation. The notice of violation shall also include the proposed remedies and penalties imposed as a result of the violation. The respondent shall also be advised of its appeal rights as set forth at N.J.A.C. 13:5-2.4. The complainant shall also be advised of the results of the investigation.

(f) Upon receipt of a notice of violation, the respondent shall, within 15 days, respond to the Division, in writing, and either:

1. Acknowledge the violation and agree to the proposed remedies and penalties; or
2. Deny the allegation and request an appeal pursuant to N.J.A.C. 13:5-2.4.

(g) If a respondent fails to respond to a notice of violation in accordance with (f) above, the Director may issue a final order imposing the remedies and penalties set forth in the notice of violation.

13:5-2.4 Appeals by respondents

(a) When a notice of violation is issued by the Division pursuant to N.J.A.C. 13:5-2.3(e), the respondent shall have the right to file an appeal with the Director. Any appeal of a notice of violation shall be submitted electronically.

(b) An appeal must be received by the Director within 15 calendar days following receipt by the respondent of the notice of violation. The filing of an appeal under this section shall stay the enforcement of any remedies and penalties imposed pursuant to N.J.A.C. 13:5-2.3.

(c) The Director shall decide any appeal filed pursuant to (b) above on the written record or shall provide a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:5-2.5 Penalties

(a) A housing provider who violates a provision of the Act shall be liable for the following applicable penalties:

1. An amount not to exceed \$1,000, if the housing provider has not committed any prior violation within the five-year period ending on the date of the filing of the charge;

2. An amount not to exceed \$5,000, if the housing provider has committed one other violation within the five-year period ending on the date of the filing of the charge; and

3. An amount not to exceed \$10,000, if the housing provider has committed two or more other violations within the seven-year period ending on the date of the filing of the charge.

(b) A housing provider shall not be liable for penalties under this section in connection with a complaint if it enters into a written agreement pursuant to N.J.A.C. 13:5-2.2 on that complaint and abides by the terms of the agreement.

13:5-2.6 Remedies

(a) For any violation of the Act, the Director may require a housing provider to take one or more of the following actions upon a finding that the housing provider has violated a provision of the Act:

1. The Director may require a housing provider to cease and desist from continuing to violate the Act; to communicate, in writing, to the housing provider's employees and agents their obligations under the Act; and to report to the Director on the manner of compliance for a period not to exceed two years provided that the housing provider does not commit future violations of the Act;

2. The Director may require a housing provider to provide training to its employees and agents on their obligations under the Act;

3. If a housing provider has committed at least one other violation of the Act or this chapter within the preceding five-year period, the Director may require the housing provider to make a good faith effort to remedy the violation with respect to the applicant when a remedy is possible, by issuing a conditional offer, if the violation has resulted in a failure to issue a conditional offer, or by providing the same or a similar rental dwelling unit to the applicant on the same terms as the prior conditional offer if the same or a similar rental dwelling unit is currently or will become available, if the violation has resulted in the withdrawal of a conditional offer. Notwithstanding any provision of the Anti-Eviction Act, P.L. 1974, c. 49 (N.J.S.A. 2A:18-61.1 et seq.) to the contrary, if a respondent's appeal of a determination by the Director finding a violation is successful, and the court overturns a final decision of the Director that resulted in an order under this paragraph, then a determination that the housing provider did not violate the provisions of the Act, as evidenced by such successful appeal, shall be grounds for the housing provider to evict the former applicant if that person resides in a rental dwelling unit owned by the housing provider as the result of the Director's order, so long as the housing provider provides the applicant with at least 45 days' notice prior to the eviction;

4. Unless housing is provided to the applicant pursuant to (a)2 above, the Director may require that the applicant's rental application fee be returned; and

5. The Director may require that a portion of the sum owed by the housing provider pursuant to N.J.A.C. 13:5-2.5 be paid to the applicant in an amount not to exceed \$1,000.

(b) Nothing in this chapter shall bar, exclude, or otherwise affect any right, action, or remedy that may exist independently of any right or action created by the Act, including, but not limited to, any right or action under the Law Against Discrimination.

13:5-2.7 Confidentiality of Division's investigatory files

In addition to records designated as confidential pursuant to the provisions at N.J.S.A. 47:1A-1 et seq., any other law, rules promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation, or Federal order, and except as otherwise set forth in this subchapter, the Division's investigatory records shall be considered confidential and exempt from public access pursuant to N.J.S.A. 47:1A-1 et seq., other than any final agency disposition concerning an investigation or any notice of violation.

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
Dental Hygienist Scope of Practice in School
Settings and Sedation Office Inspection Period
Adopted Amendments: N.J.A.C. 13:30-1A.4, 8.2, and
8.3**

Proposed: November 18, 2019, at 51 N.J.R. 1648(a) (the notice of proposal would have expired on May 18, 2021, but was extended through the notice of substantial changes and by Executive Order No. 127 (2020) and P.L. 2021, c. 103, to January 1, 2022).

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments: April 19, 2021, at 53 N.J.R. 614(a) (the notice of proposal would have expired on May 18, 2021, but was extended by Executive Order No. 127 (2020) and P.L. 2021, c. 103, to January 1, 2022).

Adopted: July 7, 2021, by the State Board of Dentistry, John Edward Feeney, DDS, President.

Filed: December 2, 2021, as R.2022 d.003, **with substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-4.10, and **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:1-15 and 45:6-19.4.

Effective Date: January 3, 2022.

Expiration Date: October 11, 2024.

Summary of Public Comments and Agency Responses:

The official comment period to the original notice of proposed amendments ended January 17, 2020 (see 51 N.J.R. 1648(a)). The State Board of Dentistry (Board) received comments from:

1. Dorrie Gagnon, RDH, Kinder Smile Foundation;
2. Faith Occhiogrosso;
3. Michael A. Carey DMD;
4. Margarite Ramsey, RDH, MS;
5. Rebecca Welch Pugh, Executive Director for the New Jersey Coalition on Oral Health for the Aging (NJCOHA);
6. Kevin Heaney, DDS, MPH;
7. Robert McTaggart DMD;
8. Dr. John F. Miolo, Round Valley Family Dentistry;
9. Gary White, DDS;
10. Ari Krug, DMD, Krug Orthodontics;
11. Robert P Praisner, DMD;
12. Hillel Ephros, DMD, MD, OMS Program Director and Chairman, Department of Dentistry/OMS with full agreement and consensus of core faculty members: Richard P. Szumita, DDS, Associate Program Director,