

# NEW JERSEY REGISTER



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See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 19, 1988

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Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **November 16, 1988**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

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## NEW JERSEY REGISTER

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# RULE PROPOSALS

## AGRICULTURE

### (a)

#### DIVISION OF RURAL RESOURCES

#### State Agriculture Development Committee

#### Acquisition of Farmland in Fee Simple

#### Proposed New Rules: N.J.A.C. 2:76-8.

Authorized By: State Agriculture Development Committee,  
Arthur R. Brown, Jr., Chairman.

Authority: N.J.S.A. 4:1C-5f.

Proposal Number: PRN 1988-501.

Submit comments by November 16, 1988 to:  
Donald M. Applegate, Executive Director  
State Agriculture Development Committee  
CN 330  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed new rules aid in the implementation of the Fee Simple Purchase Program authorized by recent amendments in P.L. 1988, c.4 to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.

The proposed rules explain the procedure by which a landowner may offer to sell his or her farmland in fee simple to the State. Under the statutory scheme, after the State acquires the farmland, it places a permanent deed restriction on the property restricting the use of the land for agricultural purposes. The land is then offered for resale with the proceeds of the sale being used to preserve additional farmland.

The proposed rules provide for both county and municipal input into the selection process. The State Agriculture Development Committee (SADC) considers these comments in addition to utilizing the criteria set forth in N.J.S.A. 4:1C-31.1 and proposed N.J.A.C. 2:76-6.16 (see 20 N.J.R. 1503(a)).

In addition, the new rules provide for the SADC's selection of two appraisers from among members of recognized organizations of real estate appraisers and a review appraiser.

#### Social Impact

The proposed new rules will have a positive impact on the preservation of New Jersey agriculture and affected groups. By providing structure to the fee simple programs, farmland owners will become aware of the procedure and criteria in making decisions regarding fee simple purchase. Citizens of New Jersey benefit from the benefits attendant to preserving agricultural land.

#### Economic Impact

The proposed new rules will have a positive economic impact on the citizens of the State and New Jersey agriculture. By requiring two independent appraisals for fee simple purchase and a review appraiser, the public is assured that State funds will be prudently spent. In addition, by utilizing the criteria set forth in the proposed new rules for preservation, it is assured that only viable agricultural lands will be preserved, thereby strengthening New Jersey's agricultural industry.

#### Regulatory Flexibility Statement

The majority of the land potentially subject to development easements is owned by small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules do not impose reporting, recordkeeping or other requirements on such farmland owners. A farmland owner's offer to sell is voluntary, as is his or her acceptance of any State offer.

Full text of the proposed new rules follows:

#### SUBCHAPTER 8. ACQUISITION OF FARMLAND IN FEE SIMPLE

##### 2:76-8.1 Applicability

This subchapter applies to all transactions in which the State Agriculture Development Committee purchases real property

pursuant to P.L.1988, c.4, N.J.S.A. 4:1C-31-1 and N.J.S.A. 4:1C-31.2 and all other relevant provisions of the Agriculture Retention and Development Act.

##### 2:76-8.2 Definitions

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

"Agricultural Development Area(s) (ADA)" means area(s) identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agricultural Development Committee (SADC).

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

"Agricultural deed restrictions for farmland preservation purposes" means a statement containing the conditions of the conveyances and the terms of the restrictions set forth in P.L. 1983, c.32 and as additionally determined by the committee on the use and development of the land which shall be recorded with the deed in the same manner as originally recorded.

##### 2:76-8.3 Landowner offer

(a) An owner of farmland within an agricultural development area may offer to sell to the Committee the fee simple absolute title to the farmland at a price which, in the opinion of the landowner, represents the fair market value of the property.

(b) The Committee shall forward copies of the offer to the respective board and municipality.

##### 2:76-8.4 Board and municipal comments

The respective board and municipality may submit comments regarding the pending offer to the Committee within 30 days of the date of application.

##### 2:76-8.5 Committee evaluation

(a) In determining the suitability of the purchase of farmland, the committee shall consider the criteria set forth in N.J.S.A. 4:1C-31.1 and any comments of the respective board and municipality.

(b) In addition to the factors set forth in (a) above, the committee shall evaluate the same criteria utilized for the evaluation of applications for development easement purchase set forth in N.J.A.C. 2:76-6.16.

##### 2:76-8.6 Appraisals

(a) If the Committee grants preliminary approval of the offer for fee simple purchase, it shall select two independent professional appraisers from among members of recognized organizations of real estate appraisers to perform appraisals on the offered farmland.

(b) Upon completion of the appraisals, the appraisers shall forward the appraisal reports to the Committee.

(c) The Committee shall appoint a review appraiser to evaluate the two appraisals and establish a recommended fair market value for the property.

##### 2:76-8.7 Final Committee action

(a) Upon receipt of the fair market value determination, the Committee shall either:

1. Approve the purchase of the parcel at a maximum purchase price; or

2. Disapprove the application and state the reasons for the denial.

(b) The Committee may authorize staff to negotiate with the landowner for a purchase price less than the appraised fair market value.

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### Bookkeeping and Accounting in Local School Districts

**Proposed Amendments: N.J.A.C. 6:20-2.5, 2.6 and 2.8 through 2.14.**

**Proposed Repeals and New Rules: N.J.A.C. 6:20-2.1, 2.2 and 2.3.**

**Proposed Repeals: N.J.A.C. 6:20-2.4 and 2.7.**

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:4-14, 18A:4-15, 18A:7A-19, 18A:7A-26, 18A:18A-4, 18A:18A-5, 18A:19-13, 18A:22-8, 18A:29-3, 18A:33-3, and 52:14-15.9(e).

Proposal Number: PRN 1988-512.

Submit comments by November 16, 1988 to:

Irene Nigro, Rules Analyst  
NJ Department of Education  
225 West State Street, CN 500  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed amendments and new rules are promulgated pursuant to P.L. 1987, c. 165 (the Act) concerning the use of generally accepted accounting principles (GAAP) in the fiscal operation of district boards of education. This act amended N.J.S.A. 18A:4-14 and requires the State Board of Education to "prescribe a uniform system of double entry bookkeeping consistent with the generally accepted accounting principles established by the Governmental Accounting Standards Board for use in all school districts and compel the maintenance and use of the same." All district boards of education shall conform to the uniform system of double entry bookkeeping by July 1, 1991.

The Act also requires the Commissioner of the Department of Education to develop and publish technical and training manuals and to establish training programs to instruct appropriate local district staff in the use and application of generally accepted accounting principles in the fiscal operations of district boards of education by July 1990. The manual and training program will be prepared by the accounting firm of Ernst and Whinney in conjunction with a committee consisting of school business officials, school district auditors, and county and State officials. Ernst and Whinney and the committee also assisted in the preparation of the proposed amendments and new rules. The training programs will be conducted by State and county officials. Under the Department's timelines, the manuals and training programs should be available by July, 1989, allowing for an additional year of training prior to implementation.

The Governmental Accounting Standards Board was established as an arm of the Financial Accounting Foundation in April of 1984 to promulgate standards of financial accounting and reporting with respect to activities and transactions of state and local governmental entities. As of October 1987, there were 27 states including New Jersey, that have statutory requirements for GAAP reporting for some or all governmental units. The Association of School Business Officials International supports the use of GAAP in financial accounting and reporting.

GAAP is a set of basic principles applicable to governmental accounting and reporting for and used by governmental units. These principles are specific fundamental tenets which, on the basis of reason, demonstrated performance, and general acceptance by public administrators, accountants, auditors, and others concerned with public financial operations, are generally recognized as essential to effective management control and financial reporting.

#### Social Impact

The maintenance of a double entry bookkeeping system in conformity with GAAP facilitates financial statement preparation, accountability, and financial control. Such a system will enhance district, public, and government access to a district board of education's financial information and will provide a uniform set of financial reporting standards for a clearer understanding of financial information on a Statewide basis. The

system will help ensure that funds are being safeguarded and utilized in the best interests of the students and the public.

#### Economic Impact

The proposed amendments and new rules will have a positive economic impact on district boards of education. These amendments and new rules will help reduce the cost of the annual school audit by mandating a uniform set of financial reporting standards in accordance with GAAP, which are consistent with requirements of the Single Audit Act of 1984, P.L. 98-502 and a double entry bookkeeping system which will facilitate accountability and financial statement preparation, and reduce the amount of time needed for the auditor to compile and test financial information required for financial statement presentation. The amendments and new rules will help safeguard district board of education assets against waste and mismanagement. Converting to GAAP provides the potential for higher bond ratings and, therefore, lower effective interest rates on debt.

While there will be a positive impact overall, the amendments and new rules may have a short term negative impact as the district boards of education adapt to the new requirements. There may be a short term cost to the district boards of education if they determine they have to purchase computers and software or hire additional personnel to handle the duties.

#### Regulatory Flexibility Statement

These proposed amendments and new rules will have no reporting, recording or compliance requirements for small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All requirements of the amendments and new rules impact upon New Jersey public school districts.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

#### 6:20-2.1 Prescribed system of bookkeeping and accounting

[(a) It shall be the purpose of the bookkeeping and accounting system prescribed herein to provide a sound plan of general accounts that will serve to safeguard the expenditure of public funds; effect proper budgetary control; establish uniformity in the classification of expenditures; and furnish adequate financial information for use of the public, the district board of education administration and the Commissioner of Education.

(b) It shall be comprised of three major parts: records of receipt and expenditure accounts in accordance with recognized governmental accounting procedures; detailed budget and cost distribution records; and a schedule of physical property.]

**(a) A uniform system of double entry bookkeeping shall be established, and such uniform system shall be utilized by all district boards of education.**

**(b) Accounting principles consistent with the "generally accepted accounting principles" (henceforth referred to as GAAP) promulgated by the Governmental Accounting Standards Board shall be applied by all district boards of education when preparing financial statements.**

#### 6:20-2.2 [Records of receipt and expenditure accounts] Summary statement of principles

[(a) The records of receipt and expenditure accounts shall be set forth in sufficient detail to determine the financial condition of the district board of education at any time.

(b) The major accounts shall be designated as follows:

1. Current expenses;
2. Capital outlay (sites, buildings and equipment).
3. Debt service (bonds, authorized notes and interest on same).

(c) The necessary supplementary accounts shall be provided for non-revenue receipts and expenditures as follows:

1. Reserve for unpaid orders;
2. Sale of permanent bonds to redeem temporary loan bonds;
3. Temporary loans;
4. Sinking funds to pay term bonds;
5. Clearing accounts.

(d) The forms to be prepared by the commissioner for use in district boards of education shall include but not be limited to the following classifications:

1. Appropriations;
2. Cash receipts;
3. Cash expenditures;

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4. Contractual order;
5. Tuition ledger;
6. Bond register;
7. Extra-curricular activities;
8. Food services.]

(a) The accounting and reporting objectives of a district board of education accounting system shall make it possible to:

1. Present fairly and with full disclosure the financial position and results of operations of the funds and the presentation of account groups of the district board of education in conformity with GAAP; and

2. Determine and demonstrate compliance with finance-related legal and contractual provisions.

(b) District board of education accounting systems shall be organized and operated on a fund basis. A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with the fund's special regulations, restrictions, or limitations.

(c) The following types of funds shall be used by district boards of education:

1. Governmental funds shall be established, when necessary as follows:

i. The general fund is used to account for all financial resources except those required to be accounted for in another fund. The general fund shall include, as necessary, major accounts (funds) as follows: general current expense; capital outlay; and other current expense categories designated by the Commissioner.

ii. Special revenue funds are used to account for the proceeds of specific revenue sources (other than expendable trusts or for major capital projects) that are legally restricted to expenditure for specified purposes.

iii. Capital projects funds are used to account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by general fund revenues such as property taxes, proprietary funds and trust funds).

iv. Debt service funds are used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest.

2. Proprietary funds shall be established, when necessary, as follows:

i. Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the intent of the district board of education is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or where the district board of education has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes.

ii. Internal service funds are used to account for the financing of goods or services provided by one department or office to other departments or offices of the district board of education, or to other district boards of education and governmental units, on a cost-reimbursement basis.

3. Fiduciary funds shall be established, when necessary, as follows:

i. Trust and agency funds are used to account for assets held by a district board of education in a trustee capacity or as an agent for individuals, private organizations, other governmental units, and/or other funds. These include expendable trust funds, nonexpendable trust funds, pension trust funds, and agency funds.

(d) District boards of education shall establish and maintain those funds required by law and sound financial administration. Only the minimum number of funds consistent with legal and operating requirements should be established.

(e) District boards of education shall maintain account groups for fixed assets and long-term liabilities.

1. A clear distinction shall be made between fund fiscal assets and general fixed assets.

i. Fixed assets related to specific proprietary funds or trust funds shall be accounted for through such funds.

ii. All other fixed assets of a district board of education not required to be accounted for in a proprietary or trust fund shall be accounted for through the general fixed assets account group.

2. A clear distinction shall be made between fund long-term liabilities and general long-term debt.

i. Long-term liabilities of proprietary funds and trust funds shall be accounted for through such funds.

ii. All other unmatured general long-term liabilities of the district board of education not required to be accounted for in a proprietary or trust fund shall be accounted for through the general long-term debt account group.

(f) Fixed assets shall be accounted for at cost or, if the cost is not practicably determinable, at estimated historical cost determined in accordance with GAAP. Donated fixed assets shall be recorded at their estimated fair value at the time received.

(g) The following shall apply to the depreciation of fixed assets:

1. Depreciation of general fixed assets accounted for through the general fixed assets account group shall not be recorded in the accounts of governmental funds. Depreciation of general fixed assets may be recorded in cost accounting systems or calculated for cost finding analyses, and accumulated depreciation may be recorded in the general fixed assets account group.

2. Depreciation of fixed assets accounted for in a proprietary fund shall be recorded in the accounts of such fund. Depreciation is also recognized in trust funds where expenses, net income, and/or capital maintenance are measured.

(h) The modified accrual or accrual basis of accounting as appropriate shall be used in measuring financial position and operating results.

1. Governmental fund revenues and expenditures shall be recognized on the modified accrual basis. Revenues shall be recognized in the accounting period in which they become available and measurable. Expenditures shall be recognized in the accounting period in which the fund liability is incurred, if measurable, except for unmatured interest on general long-term debt, which shall be recognized when due.

2. Proprietary fund revenues and expenses shall be recognized on the accrual basis. Revenues shall be recognized in the accounting period in which they are earned and become measurable; expenses shall be recognized in the period incurred, if measurable.

3. Fiduciary fund revenues and expenses or expenditures (as appropriate) shall be recognized on the basis consistent with the fund's accounting measurement objective. Nonexpendable trust and pension trust funds shall be accounted for on the accrual basis; expendable trust funds shall be accounted for on the modified accrual basis. Agency fund assets and liabilities shall be accounted for on the modified accrual basis.

4. Transfers shall be recognized in the accounting period in which the inter-fund receivable and payable arise.

(i) An annual budget(s) shall be adopted by each district board of education and shall be included in the minutes of the board.

1. A detailed school district budget statement which shall include the classification of expenditures by program and/or function shall be prepared on a fund basis and in accordance with N.J.S.A. 18A:22-8. The school district budget statement shall be submitted by each district board of education in a form prescribed by the Commissioner.

2. Detailed budgets for each special project, capital project and Federal or State grant shall be prepared and maintained along with all authorized revisions on file in the business office.

3. A district board of education shall take appropriate action, as necessary, to maintain a "balanced budget", that is, one in which budgeted anticipated revenues equal budgeted appropriations.

i. The board secretary shall notify the district board of education of any changes in anticipated revenue sources.

(j) The accounting system shall provide the basis for appropriate budgetary control.

(k) Budgetary comparisons shall be included in the appropriate financial statements and schedules for governmental funds for which an annual school district budget has been adopted.

(l) Transfer, revenue, expenditure, and expense account classification shall be maintained as follows:

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1. Interfund transfers and proceeds of general long-term debt issues shall be classified separately from fund revenues and expenditures or expenses.

2. Governmental fund revenues shall be classified by fund, character (major account) and source. Expenditures shall be classified by fund, program and/or function, organization unit, activity, character (major account), and principal classes of objects.

3. Proprietary fund revenues and expenses shall be classified in essentially the same manner as those of similar business organizations, functions, or activities.

(m) A common terminology and classification shall be used consistently throughout the budget, the accounts and the financial reports of each fund. District boards of education shall adopt a chart of accounts prepared in conformity with established guidelines as follows:

1. The Commissioner shall prepare, publish and distribute a uniform chart of accounts for use in the accounting systems of district boards of education utilizing the function oriented budget system and shall compel its use for financial reporting to the Department of Education.

2. The Commissioner shall publish and distribute Financial Accounting for Local and State School Systems, commonly referred to as Handbook 2R2 and developed by the National Center for Education Statistics, for use in the accounting systems of district boards of education utilizing the program oriented budget system and shall compel its use for financial reporting to the Department of Education. The first level of detail in the object codes of such systems shall be classified and identified as follows:

- |  |        |
|--|--------|
| i. Personal Services-Salaries                      | 1;     |
| ii. Personal Services-Employee Benefits            | 2;     |
| iii. Purchased Professional and Technical Services | 3;     |
| iv. Purchased Property Services                    | 4;     |
| v. Other Purchased Services                        | 5;     |
| vi. Supplies and Material                          | 6;     |
| vii. Property                                      | 7; and |
| viii. Other Miscellaneous                          | 8.     |

(n) Monthly and annual financial reports shall be prepared as follows:

1. Monthly financial statements and reports of financial condition, operating results and other pertinent information shall be prepared, in accordance with directions issued by the Commissioner, to facilitate management control of financial operations, legislative oversight and, where necessary or desired, for external reporting purposes.

2. A Comprehensive Annual Financial Report (annual audit), including General Purpose Financial Statements in compliance with Governmental Finance Officers Association (GFOA) standards, covering all funds and account groups of the district board of education, including introductory section; appropriate combined, combining, and individual fund statements; notes to the financial statements; required supplementary information; schedules; narrative explanations; and statistical tables, shall be prepared and published. The Commissioner shall prepare, publish and distribute a uniform program and shall compel its use for preparing the Comprehensive Annual Financial Report (annual audit).

3. General Purpose Financial Statements may be issued separately from the Comprehensive Annual Financial Report. Such statements shall include the basic financial statements and notes to the financial statements that are essential to fair presentation of financial condition and results of operations (and changes in financial position of proprietary funds and similar trust funds). Such statements may also be required to be accompanied by required supplementary information, essential to financial reporting.

#### 6:20-2.3 [Budget and cost distribution records] Conflicts between legal provisions and GAAP

(a) Detailed budget and cost distribution records shall be kept in the form prescribed by the commissioner to insure uniformity in the preparation of budgets and in the classification of costs in district boards of education.

(b) The budget and cost distribution records shall include but not be limited to the following classifications and such other classifications and sub-items as the commissioner may prescribe:

1. Administration;
2. Instruction;

3. Attendance and health services;

4. Pupil transportation services;

5. Operation of plant;

6. Maintenance of plant;

7. Fixed charges;

8. Sundry accounts:

i. Food services;

ii. Student-body activities;

iii. Community services;

iv. Special projects.

9. Capital outlay (sites, buildings and equipment);

10. Debt service (bonds, authorized notes and interest on same).

(c) The commissioner shall prepare directions to be used by school officials in the preparation of a program-oriented budget which will relate appropriations to the goals and objectives of the district board of education as established pursuant to N.J.S.A. 18A:7A-1 et seq.

(d) District boards of education may adopt, by district board of education resolution, the approved program-oriented budget format.

(e) The budget and cost distribution records of all district boards of education which adopt a program-oriented system of budget preparation shall include, but not be limited to, the following classifications:

1. Regular instruction;
2. Special instruction;
3. Adult/continuing instruction;
4. Other instruction;
5. Support services pupil;
6. Instructional staff;
7. General administration;
8. School administration;
9. Business/administrative;
10. Central;
11. Other support services;
12. Community services.]

(a) Where financial statements prepared in conformity with GAAP do not demonstrate finance-related legal and contractual compliance, the district board of education shall present such additional schedules and narrative explanations in the Comprehensive Annual Financial Report as may be necessary to report its legal compliance responsibilities and accountabilities.

(b) The accounting system shall be maintained on a legal-compliance basis, and shall include sufficient additional records to permit GAAP based reporting.

#### 6:20-2.4 Physical property records

(a) A record of the physical property of a district board of education shall be kept in the form prescribed by the commissioner.

(b) The physical property records shall include but not be limited to the following classifications:

1. Property records;
2. Inventory record;
3. Register of insurance.]

#### 6:20-[2.5] 2.4 Accounting [directions] and reporting directives

The [c] Commissioner shall prepare [directions] accounting and reporting directives to be used by school officials in keeping the double entry bookkeeping and accounting system [provided for] mandated in [these rules] this subchapter and shall from time to time prepare, publish and distribute books, materials or circulars for the guidance of school officials.

#### 6:20-[2.6] 2.5 Supplies and equipment

(a) The [c] Commissioner shall prescribe a list of articles to be regarded as supplies and equipment for accounting purposes.

(b) For the purpose of [these rules] this section, "food supplies" shall include only those supplies which are to be eaten or drunk and those substances which may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.

(c) Public notification of method of purchase:

1. Whenever any district board of education elects to purchase food supplies pursuant to [these rules] this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, designating a person or persons authorized to purchase

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food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education will solicit and accept quotations.

2. This policy shall be adopted before the opening of schools in September and shall be made known to the public.

(d) (No change).

(e) [Subsection] **Paragraphs** (d)1, 2 and 3 above shall not apply to food supplies purchased by advertising for bids.

**6:20-2.7 Bookkeeping and accounting forms**

The commissioner shall prepare and distribute the necessary forms for the bookkeeping and accounting system except to those districts boards of education which have received approval for mechanical or electronic data processing bookkeeping systems.]

**6:20-[2.8] 2.6 Mechanical bookkeeping systems**

(a) All mechanical or electronic data processing bookkeeping systems to be used by district boards of education shall be approved by the [c] Commissioner prior to usage.

(b) District boards of education which contract for electronic data processing bookkeeping services shall annually have an audit prepared or obtain a copy of an audit of the internal controls of the service company or agency as prescribed by **Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants** and maintain a copy of such audit on file [or obtain a copy of an audit of the internal controls of the service company or agency and maintain a copy of such audit on file].

**6:20-[2.9] 2.7 Employee organizational dues**

(a) (No change).

(b) Employees desiring payroll deductions of organizational dues should indicate, in writing, their choice of employee organization. Any such written authorization may be withdrawn at any time by filing a notice with the secretary of the district board of education, according to directions promulgated by the [c] Commissioner.

(c) (No change).

Renumber existing 6:20-2.10 through 2.12 as **2.8 through 2.10**. (No change in text.)

**6:20-[2.13] 2.11 Overexpenditure of funds**

(a) A district board of education shall not incur any obligation or approve any payment in excess of the appropriated by the district board of education in the applicable line item **account or program category account** pursuant to N.J.S.A. 18A:22-8 and 18A:22-8.1.

(b) [Whenever a] A district board of education [anticipates] **anticipating** an over-expenditure in either the current expense[s], capital outlay [(sites, buildings and equipment)] or debt service [account] **funds** as designated in N.J.A.C. 6:20-2.2[(b);] **(c)1 shall proceed in the following manner:**

1. (No change).

2. The county superintendent shall immediately notify the [c] Commissioner, in writing, if the projected amount of the over-expenditure exceeds [5] **five** percent of the district's current expense budget or \$100,000, whichever is lower.

3. (No change).

4. The county superintendent shall immediately notify the [c] Commissioner, in writing, should it appear that an over-expenditure may occur and the district board of education is not taking adequate action to avoid an overexpenditure.

(c) (No change).

(d) By August 15, the county superintendent shall report to the [c] Commissioner all overexpenditures as shown on the June report of the district board of education secretary filed pursuant to N.J.S.A. 18A:17-10.

(e) Should a district board of education fail to develop an acceptable remedial plan to eliminate the projected overexpenditure, the district may be disqualified for certification under the [s] State's monitoring procedure. In those cases where the [c] Commissioner determines that the failure to develop an acceptable remedial plan to eliminate the projected overexpenditure impacts the district's ability to meet its goals and objectives, the [c] Commissioner shall rec-

ommend to the State Board of Education that the district's certification be rescinded.

(f) In the year following the year in which a deficit occurs, the net current expense budget and the maximum support budget of a district board of education shall be reduced by an amount equal to the deficit in any major account when calculating [s] State aid entitlements for the second year following the year in which the deficit occurred.

**6:20-[2.14] 2.12 Appropriation of free balance**

(a) (No change).

(b) A district board of education, upon the advice of the chief school administrator, may request an exception, from the [c] Commissioner, to the provision of (a) above.

(c) Any balance allowed pursuant to (a) or (b) above shall be exempt from the [c] Commissioner's determination that a reallocation of resources is insufficient to meet the district board of education goals, objectives and standards.

**6:20-2.13 Conformance date**

**Pursuant to N.J.S.A. 18A:4-14.1, all school districts shall conform to the requirements of this subchapter by July 1, 1991.**

**(a)**

**STATE BOARD OF EDUCATION**

**Nonpublic School Asbestos Removal and Encapsulation State Aid**

**Proposed New Rule: N.J.A.C. 6:20-5.7**

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, and P.L. 1987, c.154.

Proposal Number: PRN 1988-513.

Submit comments by November 16, 1988 to:

Irene Nigro, Rules Analyst  
State Department of Education  
225 West State Street, CN 500  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Appropriations Act for Fiscal Year 1988, P.L. 1987, c.154, contained a \$1,000,000 appropriation for nonpublic school State aid for asbestos removal and encapsulation. This was a new State aid program which the Department of Education did not anticipate. The New Jersey Budget for Fiscal Year 1989 also contains a \$1,000,000 appropriation. In order to effectively continue this new State aid program, the following new rule, N.J.A.C. 6:20-5.7 regarding nonpublic school asbestos removal and encapsulation State aid, is proposed. The Department has been administering the program consistent with this proposed new rule.

The proposed new rule indicates which nonpublic schools are eligible for State aid reimbursement, defines the key terms which impact the priority for reimbursement, provides that a nonpublic school shall only be reimbursed for expenditures actually incurred, provides for reimbursement only for asbestos projects in buildings operated for direct education and educational support purposes, and requires a finding that a current or potential hazard exists or existed. This new rule also prohibits reimbursement under both the State and Federal program and requires adjustments in the event funds are recovered through a legal action. In addition, nonpublic schools are required to maintain accounting records and to submit reports as required by the Commissioner. Nonpublic schools would also have to comply with any requirements established by the Department of Health concerning asbestos removal or encapsulation.

Since the Appropriations Act for Fiscal Year 1988 and the New Jersey Budget for Fiscal Year 1989 contain only a footnote establishing this program, the proposed new rule repeats the provisions of the 75 percentage reimbursement and the priority for reimbursement contained in the footnote.

The proposed new rule is being presented now so that the Department can continue to implement the present State aid program effectively and ensure there will be enforceable standards to determine and award the State aid entitlements and make the necessary State aid payments.

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**Social Impact**

The proposed new rule will impact all nonpublic schools applying for or receiving State aid under this new State aid program. The rule defines which nonpublic schools may apply for reimbursement, defines the type of reimbursement for which a nonpublic school may apply and the requirements which will apply to a nonpublic school which receives State aid. In addition, the proposed new rule indicates when adjustments to State aid will be made. The provision of this State aid also acts to promote the public health and welfare as additional sources of asbestos can be removed through this funding.

**Economic Impact**

The proposed new rule has an immediate economic impact on nonpublic schools since the proposed new rule defines which nonpublic schools may apply for reimbursement, how a nonpublic school may apply for reimbursement and when adjustments will be made to State aid entitlements. On a whole, the economic impact is positive since the rule ensures that all nonpublic schools which are eligible for reimbursement receive State aid funds in an equitable manner.

**Regulatory Flexibility Statement**

All requirements of the proposed new rule impact New Jersey nonpublic schools. An undetermined number of these schools may qualify as small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All nonpublic schools seeking this State aid are required to make application, maintain accounting records for reimbursement approved expenditures and make progress reports. These minimal requirements cannot be reduced for small businesses and maintain an equitable program. That all applicable Federal and State requirements for encapsulation and removal must be complied with is mandated by those statutes and regulation themselves, and the further compliance compulsion of this rule is provided in furtherance of the public health, safety and welfare.

Full text of the proposal follows.

## 6:20-5.7 Nonpublic school asbestos removal and encapsulation State aid

(a) For the purpose of the State aid program for asbestos removal and encapsulation for nonpublic schools, the following words and terms shall have the following meanings, unless the context indicates otherwise:

"Completed project" means a project on which all of the work was finished and for which all of the cost of the project was incurred prior to July 1, 1987.

"Currently planned project" means a project for which no funds have been expended and no work was undertaken prior to July 1, 1987.

"Nonpublic school" means an elementary or secondary school within the State other than a public school, offering education for grades kindergarten through 12, or any combination thereof, wherein any child may legally fulfill compulsory school attendance requirements and which complies with the requirements of Title VI of the Civil Rights Act of 1964. Nonpublic school shall not mean a nursery school or child care center.

"Project undertaken" means a project on which work was begun prior to July 1, 1987 which is not substantially completed and for which 50 percent or less of the estimated cost of the project was expended prior to July 1, 1987.

"Substantially completed project" means a project on which work was begun prior to July 1, 1987 and for which more than 50 percent of the estimated cost of the project was expended prior to July 1, 1987.

(b) A State aid entitlement for asbestos removal and encapsulation projects under this aid program shall equal 75 percent of the cost of the removal and encapsulation work as shown on the application submitted by the nonpublic school and is subject to the availability of funds.

(c) A nonpublic school shall be reimbursed under the State aid program only for asbestos removal and encapsulation projects in buildings operated for direct education and educational support purposes. No reimbursement shall be made for the repair of roofs, the repair of exterior walls, the repair of windows and window frames and for work in buildings rented by a nonpublic school.

(d) Reimbursement shall only be made to a nonpublic school upon a finding by an accredited assessor recognized by the Department of Health that a current or potential hazard exists or existed, and upon receipt of an application and approval by the State Board of Education.

(e) Reimbursements to nonpublic schools for asbestos removal and encapsulation projects will be made in the order in which applications are received by the Commissioner, of the Department of Education. Applications of nonpublic schools currently planning or undertaking asbestos removal or encapsulation shall be granted priority over applications of nonpublic schools that have completed or substantially completed projects.

(f) A nonpublic school shall only be reimbursed for asbestos removal or encapsulation for 75 percent of the expenditures actually incurred. State aid payments for projects currently planned, undertaken, and substantially completed shall be adjusted when actual expenditures are known. Adjustments to payments in excess of the State aid entitlement shall be made only to the extent State aid funds are available.

(g) A nonpublic school shall not be reimbursed for more than the actual expenditures for an asbestos removal or encapsulation project under both the State program and the Federal Asbestos School Hazard Abatement Program.

(h) A nonpublic school which recovers funds expended for asbestos removal or encapsulation through a legal action shall have its State aid reimbursement adjusted for any such funds recovered.

(i) A nonpublic school shall maintain accounting records which identify all expenditures for which reimbursement is approved.

(j) A nonpublic school receiving a State aid reimbursement shall submit reports as required concerning work progress, expenditures or any other factors which the Commissioner shall deem necessary.

(k) A nonpublic school shall comply with all applicable Federal and State statutes and regulations concerning asbestos removal or encapsulation. State aid funds may be withheld for noncompliance.

(l) A nonpublic school receiving State aid reimbursement for asbestos removal and encapsulation which is a private school for the handicapped, referred to in N.J.S.A. 18A:46-21, shall have its allowable costs for the purpose of determining the "actual cost per pupil" in accordance with N.J.A.C. 6:20-4 reduced by the amount of reimbursement received under this or any other State aid program.

(m) Expenditures by a private school for the handicapped for asbestos removal and encapsulation eligible for reimbursement shall only include the costs related to pupils whose tuition is determined in accordance with N.J.A.C. 6:20-4. When it is necessary to determine costs on a prorated basis because the private school for the handicapped facilities are also used by pupils or programs where tuition is not determined in accordance with N.J.A.C. 6:20-4, such prorations shall be made in accordance with directions prepared by the Commissioner.

**HIGHER EDUCATION****(a)****EDUCATIONAL OPPORTUNITY FUND****Administrative Policies and Procedures Program Support****Proposed Re Adoption with Amendments: N.J.A.C. 9:11 and 9:12**

Authorized By: Board of Directors, Educational Opportunity Fund, T. Edward Hollander, Chairman.

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Proposal Number: PRN 1988-519.

Submit comments by November 16, 1988 to:

Grey J. Dimenna, Esq.  
Administrative Practice Officer  
Department of Higher Education  
20 West State Street  
CN 542  
Trenton, New Jersey 08625

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**INSURANCE**

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 9:11, Administrative Policies and Procedures, and 9:12, Program Support, expire on January 19, 1989. The Educational Opportunity Fund Board is statutorily charged with establishing policies and procedures governing the operation of the Educational Opportunity Fund Program.

This proposed re adoption makes technical and other more substantive changes in the rules governing the program. These technical and other changes serve to update the rules, clarifying and refining particular areas.

The rules establish requirements for student status and eligibility, program services and administrative procedures of campus-based programs. N.J.A.C. 9:11-1 establishes the financial aid guidelines for the Educational Opportunity Fund, and N.J.A.C. 9:11-2 sets forth the requirements of the Martin Luther King Physician-Dentist Scholarship Program. N.J.A.C. 9:12-1 and 2 establish the program support guidelines for both academic year and summer, respectively.

**Social Impact**

The Educational Opportunity Fund Program provides supportive services and awards based upon financial need to enable economically and educationally disadvantaged students to obtain undergraduate and graduate degrees from both public and private institutions of higher education in the State of New Jersey. The proposed amendments will serve to clarify and improve the administration of the program on a Statewide and campus basis. Specifically, the amendments would have the following impact on the following areas:

**Financial Eligibility:** The amendments eliminate references to a parental contribution of \$625.00 as determined by the College Scholarship Service, Uniform Methodology, because the Federal methodology to determine financial aid has eliminated Uniform Methodology and replaced it with Congressional Methodology. In addition, verification of a background of historical poverty (upon initial entry into the program) for independent students will be satisfied if the student meets one of the criteria set forth in N.J.A.C. 9:11-1.5(e)1 through 5.

**Summer Programs:** The amendments clarify renewal student's eligibility for summer program funding.

**Economic Impact**

The proposed amendments represent qualitative standards which do not involve additional costs to the institutions or students in the program. The rules themselves provide the administrative framework for the provision of supportive services and awards based upon financial need to enable economically and educationally disadvantaged students to pursue degrees at New Jersey institutions of higher education, providing a direct economic benefit to those who otherwise might not be able to afford such advanced educational benefit from the economic enhancement that education can provide.

**Regulatory Flexibility Statement**

The proposed re adoption and amendments do not require a regulatory flexibility analysis, since they do not impose any requirements on small businesses. The re adoption and amendments set forth standards and requirements for the receipt of financial and other sources of aid under the Educational Opportunity Fund Program.

**Full text** of the re adoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:11 and 9:12.

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

9:11-1.5 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial E.O.F. grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth below in the E.O.F. Income Eligibility Scale [, and said parent(s) or guardian(s) cannot contribute more than \$625.00 toward educational expenses as determined by the College Scholarship Service, Uniform Methodology]. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1.-3. (No change)

(b) A dependent student who comes from a family with both parent(s) or guardian(s) working and whose combined income exceed

the applicable amount set forth in the E.O.F. Income Eligibility Scale above, [but whose Parents' Contribution does not exceed \$625.00] may be eligible for E.O.F., only if:

1.-2. (No change)

(c) An independent student is financially eligible for an E.O.F. grant if the gross income of his or her parent(s) or guardian(s) does not exceed income limits set forth for dependant students.

1.-3. (No change)

4. Notwithstanding any other provisions herein, an independent student shall, in lieu of specific financial information concerning his or her parent(s) or guardian(s) income, [(] provide upon entry into the program [)], [other] evidence that he or she is from a background of historical poverty [(e.g., an affidavit from a respected member of the community such as a clergyman.)] **by meeting one of the criteria set forth in N.J.A.C. 9:11-1.5(e)1 through 5.**

5. (No change)

(d)-(g) (No change)

9:11-1.17 Grant awarding cycle

(a) An E.O.F. grant is available for an academic year which usually includes two terms.

1. (No change)

2. In no case will an initial E.O.F. award be given for the student's last **two** terms of study.

9:12-2.3 Student eligibility

(a) Any student deemed eligible for admission and matriculation to the E.O.F. program by the institution in the academic year (pursuant to N.J.A.C. 9:11-1 [et seq.]) is qualified to receive additional grants funds to support enrollment and full participation in the summer program in accordance with the following procedures:

1. (No change)

2. Depending on the availability of funds, renewal students may be permitted to attend summer programs [for a maximum of two summer after initial enrollment.

3. Priority for funding should be given to those students who] **as long as they meet one of the following priority funding categories:**

i.-ii. (No change)

iii. Are able to graduate by the end of the summer session; [and]

iv. Need to stay in academic sequence [.];

v. **Need to remove academic probation standing; or**

vi. **Need to repeat courses not successfully completed (F, Incomplete, etc.).**

[4. Student enrolled in highly technical and/or pre-professional programs (pre-law, pre-med) shall be eligible for three summer school programs to increase preparation for post-graduate placement.

5. Special exceptions for students with unique problems may be granted upon written request by the campus E.O.F. Director and approval by the Executive Director.]

**INSURANCE**

**(a)**

**DIVISION OF ADMINISTRATION**

**New Jersey Insurance Development Fund  
FAIR Plan Surcharge**

**Proposed Repeal: N.J.A.C. 11:1-5.1**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:37A-18 through 21.

Proposal Number: PRN 1988-504.

Submit comments by November 16, 1988 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, NJ 08625

**INSURANCE****PROPOSALS**

The agency proposal follows:

**Summary**

The New Jersey Legislature created the New Jersey Insurance Development Fund (Fund) for the purpose of providing a financial back-up for the plan of operation of the New Jersey Insurance Underwriting Association (Association), pursuant to N.J.S.A. 17:37A-18. The Fund is used to reimburse any insurer or the Association for losses sustained in excess of the amount of retention of such losses as provided for by the Commissioner, except that in any given calendar year the total amount of all such reimbursement must not exceed five percent of the insurance premiums written on the basic property insurance in New Jersey in the most recent full calendar year. For the privilege of doing property insurance business in New Jersey, every insurer authorized to write such insurance in New Jersey is obligated to collect from the insured, under any policy of basic property insurance, a reasonable surcharge upon the premium paid for said policy in an amount which will be annually determined by the Commissioner and collected by the insurer, the aggregate amount of which cannot exceed a sum equal to five percent of the insurance premiums written on basic property insurance in New Jersey in the most recent full calendar year.

Since July 1, 1977 for commercial business and March 1, 1978 for dwelling business, a two percent surcharge upon the premium paid for basic property insurance has existed, such surcharge having previously been determined by the Commissioner to be reasonable pursuant to N.J.S.A. 17:37A-19 and 17:37A-20. However, pursuant to N.J.S.A. 17:37A-21, the Commissioner has now determined that the net value of the Fund in calendar year 1987 reached an amount equal to five percent of the premiums written on basic property insurance in New Jersey. Pursuant to N.J.S.A. 17:37A-21, the Legislature has provided that upon the occurrence of this determination, no further surcharge on said premiums and no further payment to the Fund will be made.

Consistent with the Legislature's mandate, the Commissioner has issued an Order, dated August 3, 1988, terminating the current New Jersey Insurance Development Fund Surcharge on all policies issued or renewed after September 1, 1988 and ordering every insurer authorized to write basic property insurance in New Jersey to cease collecting from an insured a surcharge upon the premium paid for a policy issued or renewed on or after September 1, 1988.

The rule proposed for repeal codifies the amount of the surcharge established by Order and provides the procedures for the collection and implementation of the surcharge which has now, by administrative order, been repealed. Accordingly, the rule is proposed for repeal in the New Jersey Administrative code.

**Social Impact**

The repeal of this rule will have no social impact since the rule merely provides an administrative procedure to collect and implement a surcharge which has previously been repealed by administrative order.

**Economic Impact**

The repeal of this rule will have no economic impact for the reason noted in the Social Impact statement above.

**Regulatory Flexibility Statement**

The proposed repeal will not impose any recordkeeping, reporting or other compliance requirements on small businesses as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since the proposed repeal removes rather than imposes collection requirements on insurers.

**Full text** of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-5.1.

**(a)****DIVISION OF ACTUARIAL SERVICES****Policy Constants****Proposed New Rules: N.J.A.C. 11:3-24**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6, 17:29A-37.1.

Proposal Number: PRN 1988-529.

Submit comments by November 16, 1988 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
New Jersey Department of Insurance  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The purpose of the proposed new rules is to establish guidelines for identifying the specific types of motor vehicles which are subject to "policy constants". Policy constants are flat dollar charges which are applied to various types of automobile insurance policies on a per car per coverage basis.

Policy constants were initially authorized by the Commissioner of Insurance (hereafter "Commissioner") by letter dated November 14, 1980, which approved filings for rate increases for the New Jersey Automobile Insurance Plan, (hereafter "Plan"), effective November 18, 1980 for new business, and January 1, 1981 for renewal business. This letter approving policy constants permitted a subscriber company to the Plan to include such policy constants in rates charged in the voluntary market when such company, or the rating bureau representing such company, made an appropriate filing with the Department of Insurance (hereafter "Department") for prior approval of the manner and effective date it wished to implement the inclusion of the policy constants.

It should be noted that the Commissioner's 1980 letter authorizing the imposition of policy constants did not expressly address the issue of the types of vehicles subject to the policy constants.

Neither was the issue addressed when, in 1984, the Plan was superseded by the New Jersey Full Automobile Insurance Underwriting Association (hereafter "Association") with respect to the provision of a personal lines residual market to provide private passenger automobile coverages to individuals who are unable to obtain coverage in the voluntary market. Pursuant to N.J.S.A. 17:29A-37.1 (P.L. 1984, c.1), all policy constants authorized by the Commissioner and collected on a per car per coverage basis on automobile insurance policies written in both the voluntary and residual market are to be paid to the Association for its use to carry out its purposes.

N.J.S.A. 17:29A-37.1 was amended twice in 1987 to include certain commercial and self-insured motor vehicles to which the policy constants apply, and also to grant the Commissioner of Insurance the authority to include or exclude other types of vehicles.

The Department has by order dated January 30, 1987 directed that policy constants be charged on "private passenger type automobiles" insured in the commercial as well as personal lines markets. Thereafter, it has come to the Department's attention that there may be lack of uniformity regarding the types of motor vehicles to which these policy constants apply.

In order to ensure that the same types of vehicles receive policy constants in the personal and commercial markets, the Department by these rules makes provision for their specific identification. Also, because these rules extend application of the policy constants to self-insured private passenger type vehicles, it will ensure uniformity in the imposition of flat charges in the self-insured market. A summary of the proposed new rules follows:

N.J.A.C. 11:3-24.1 sets forth the purpose and scope of the proposed new rules.

N.J.A.C. 11:3-24.2 contains the definitions of terms used throughout this subchapter.

N.J.A.C. 11:3-24.3 sets forth collection and remittance requirements for those insurers and self-insureds to which this subchapter applies.

N.J.A.C. 11:3-24.4 sets forth verification requirements for those insurers and self-insureds to which this subchapter applies.

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**Social Impact**

The proposed new rules will assist the Association in remaining a viable and stabilizing influence in the automobile market and to continue to service and pay the claims on which it remains liable. The proposed new rules will also ensure that all motor vehicles of a private passenger type, as deemed by the Commissioner and in accordance with the intent of the Legislature, are subject to the policy constants regardless of which segment of the insurance market such motor vehicles are covered. In addition the application of the policy constants to the broadest possible base of insureds is consistent with the above-mentioned objectives of the Association.

**Economic Impact**

The proposed new rules will not result in any significant adverse economic impact upon insurers or self-insureds. Insurers and self-insureds may experience a minimal increase in costs by having to remit the collected policy constants to the Association and to file certain specified information annually with the Department and the Association.

The insureds and self-insureds which fall within the scope of the proposed new rules will experience an adverse economic impact in that the imposition of the flat charges (policy constants) will result in each insured and self-insured being responsible for a reflective increase in premium amounts. The Department estimates that approximately 211,000 additional motor vehicles (above the estimated 4,000,000 motor vehicles currently charged) will be affected, at an estimated \$15,000,000 additional charge to the motor vehicle population.

The Department does not expect to incur any additional expenses as a result of the proposed new rules.

**Regulatory Flexibility Statement**

Some insurers and self-insurers affected by the proposed new rules may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The compliance requirements imposed upon insurers, including small businesses, are that they collect a flat charge along with the policy premium, remit such to the Association within 10 days after the close of each month of receipt thereof and annually file with the Department and the Association specified information regarding the collected and remitted flat charges. None of the above requirements is expected to have any significant adverse economic impact on insurer small businesses. In addition, the compliance requirements for self-insureds, that is, forwarding the full amount of the policy constant to the Association before receiving a certificate of self-insurance from the Department, will have no significant adverse economic impact on self-insured small businesses. To provide for uniform and consistent applicability of these rules, and to avoid granting any advantage to insurers or self insureds which are small businesses, no differential treatment is accorded to them by these proposed new rules.

Full text of the proposal follows:

**SUBCHAPTER 24. POLICY CONSTANTS**

**11:3-24.1 Purpose and scope**

(a) This subchapter is intended to provide guidelines, pursuant to N.J.S.A. 17:29A-37.1, for the imposition and collection of flat charges known as "policy constants," which are imposed on private passenger automobiles as defined in this subchapter, written under a private passenger automobile insurance policy, or self-insured; and on private passenger type automobiles written under a commercial automobile insurance policy, or self-insured.

(b) This subchapter shall be applicable to all private passenger insurers that insure private passenger automobiles as defined in this subchapter, to all commercial automobile insurers that insure automobiles of a private passenger type and to all self-insureds which own or lease self-insured automobiles of a private passenger type and licensed under a certificate of self-insurance issued by the Department of Insurance pursuant to N.J.S.A. 39:6-52.

**11:3-24.2 Definitions**

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

"Owned" includes an automobile leased under contract for a continuous period of at least six months.

"Policy constants" mean flat charges imposed on the following, but in no event shall be deemed to include a residual market equalization charge levied pursuant to N.J.S.A. 17:30E-8.

1. Certain private passenger automobiles as defined in this subchapter, written on private passenger automobile insurance policies in the voluntary and residual markets;

2. Private passenger type automobiles written on commercial automobile policies in the voluntary and residual markets; and

3. Private passenger type automobiles which are self-insured under a certificate of self-insurance issued by the Department of Insurance pursuant to N.J.S.A. 39:6-52.

"Principally garaged" means located within the boundaries of the State of New Jersey for a period of at least three months per year, whether consecutive or non-consecutive.

"Private passenger automobile" means an automobile, principally garaged in the State of New Jersey, of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; or a motor vehicle with a pick-up body, a van, a delivery sedan, a panel truck or a motorized camper type vehicle, principally garaged in the State of New Jersey and owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, professional or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile. All motor vehicles owned or leased by a governmental entity or agency thereof shall not be considered a private passenger automobile for the purposes of this subchapter.

**11:3-24.3 Collection of flat charges; remittance**

(a) All private passenger insurers, commercial automobile insurers and self-insurers which are subject to the provisions of this subchapter are to collect flat charges, pursuant to N.J.S.A. 17:29A-37.1, on private passenger automobiles as defined in this subchapter on a per car per coverage basis, unless otherwise indicated elsewhere in this subchapter, in the following annual amounts:

Bodily Injury Liability	\$12.00
Property Damage Liability	4.00
Personal Injury Protection	28.00
Collision	8.00
Comprehensive	18.00

(b) The following motor vehicles which meet the definitions of private passenger automobile for the purposes of this subchapter shall, unless otherwise indicated, also be subject to the policy constants in accordance with (a) above:

1. A pickup, panel truck, or van used in the business of the United States Government, by an employee of the Government, which shall be considered a private passenger automobile, if

i. It is owned by an individual or by a husband and wife who are residents of the same household;

ii. Not customarily used in any other occupation, profession or business of the insured other than farming or ranching; and

iii. Liability coverage is limited in accordance with the Federal employee's use of the automobile in government business endorsement.

2. A motor vehicle issued a certificate of self-insurance by the Department of Insurance pursuant to N.J.S.A. 39:6-52, as authorized by N.J.S.A. 17:29A-37.1;

3. A dune buggy, but only if it is registered for street use;

4. A classic automobile;

5. An electric automobile;

6. An amphibious vehicle;

7. A motor vehicle which shares its license plate(s) with an inventory of other motor vehicles for eventual sale by a person engaged in the business of selling such motor vehicles; for purposes of this subparagraph, the policy constants shall be imposed on a per-plate per-coverage basis;

8. A motor vehicle in which the insurance policy, covering the lender's and borrower's interest in the motor vehicle, has lapsed and is reissued to the lender pursuant to the financing agreement between such lender and borrower;

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9. A motor vehicle, owned by a corporation, which is assigned to one or more corporate officers or employees; and

10. Any other motor vehicle, as determined by the Commissioner, which is available for private passenger use and not wholly related to business use.

(c) The flat charges which have been collected by an insurer subject to the provisions of this subchapter shall be transferred to the New Jersey Automobile Full Insurance Underwriting Association (Association) within 10 days after the close of each month.

1. All monies collected from the flat charges, net of a pro rata portion of any producer commissions and all premium taxes payable thereon, shall be transferred to the Association. No other expenses shall be payable to or deductible from the flat charges transferable to the Association.

2. In the case of policy premiums paid pursuant to a payment plan or installment plan, the insurer shall, within 10 days after the close of each month of receipt thereof, transfer to the Association a proportionate share of the total flat charge on the policy, based on the payment schedule or amount of payment received.

3. The flat charges shall be collected, where applicable, on all private passenger automobile liability and physical damage policies, and all commercial automobile liability and physical damage policies that insure automobiles of a private passenger type, issued or renewed in the voluntary and residual market with an effective date of December 24, 1987 or later.

(d) The flat charges applicable to the self-insured subject to the provisions of this subchapter shall be forwarded to the Association before the Department of Insurance shall issue a certificate of self-insurance.

(e) The flat charges shall be collected, where applicable, to the fullest extent of coverage possible in the voluntary and residual markets, on all self-insured, private passenger automobiles as defined in this subchapter, which are intended to be covered under a certificate of self-insurance issued by the Department of Insurance pursuant to N.J.S.A. 39:6-52. The flat charges shall be collected beginning December 24, 1987.

**11:3-24.4 Verification statement**

(a) On December 31 of each year, all private passenger automobile insurers, commercial automobile insurers and self-insureds under which the provisions of this subchapter apply shall provide to the Commissioner of Insurance, and the Manager of the Association, a certified statement containing the name, title, address and telephone number of the individual responsible for certifying and sending flat charges to the Association.

(b) The statement shall be sent to:

Actuarial Services  
State of New Jersey  
Department of Insurance  
20 West State Street  
CN 325  
Trenton, New Jersey 08625

**11:3-24.5 Penalty**

Failure to comply with the provisions of this subchapter will result in the imposition of sanctions by the Department pursuant to N.J.S.A. 17:33-2 and N.J.S.A. 17:29A-37.1.

**(a)**

**DIVISION OF ACTUARIAL SERVICES**

**Medicare Supplement Insurance Benefits Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions**

**Proposed Amendments: N.J.A.C. 11:4-16.6, 16.8; 11:4-23.6, 23.8 and 11:4 Appendix, Medicare Deductibles and Copayments**

**Proposed New Rules: Appendices to Subchapters 16 and 23 (Information Concerning Changes to the Medicare Program Effective January 1, 1989) and (Notice on Changes in Medicare Supplement Insurance)**

Authorized By: Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:35C-1 et seq., 17B:26-1, 17B:26A-1 et seq., and 17B:26-45.

Proposal Number: PRN 1988-515.

Submit comments by November 16, 1988 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The purpose of the proposed amendments and new rules is to facilitate and incorporate changes to existing Medicare Supplement insurance policies and Medicare Supplement policies to be issued on or after January 1, 1989 in response to Federal revisions to the Medicare program to be effective January 1, 1989. Specifically, the proposed amendments and new rules will: (1) Assure the orderly implementation and conversion of Medicare Supplement insurance benefits and premiums due to changes in the Federal Medicare program; (2) Provide for the reasonable standardization of the coverage, terms and benefits of Medicare supplement policies or contracts; (3) Facilitate public understanding of such policies or contracts; (4) Eliminate provisions contained in such policies or contracts which may be misleading or confusing in connection with the purchase of such policies or contracts; (5) Eliminate policy or contract provisions which may duplicate Medicare benefits; (6) Provide full disclosure of policy or contract benefits and benefit changes; and (7) Provide for refunds of premiums or premium credits associated with benefits duplicating Medicare program benefits.

In response to revisions by Congress to the Medicare program, the National Association of Insurance Commissioners (NAIC) prepared and adopted a model regulation which would require and facilitate changes to existing Medicare Supplement insurance policies. The model regulation provides for standardization of the coverage, terms and benefits of Medicare Supplement insurance policies. It requires insurers to eliminate any duplication of Medicare benefits from insurance policies and contracts; provide annual notice to insureds of changes in Medicare benefits, and the effects of those changes on insurance premiums and benefits; and make appropriate premium adjustments.

The proposed amendments and new rules are designed to incorporate the model regulation adopted by the NAIC and to facilitate changes to Medicare Supplement insurance policies in New Jersey, in conformity with revisions at the Federal level.

Proposed N.J.A.C. 11:4-16.6(j)1 and 2 and 23.6(c) outline the minimum benefit standards for Medicare Supplement policies issued prior to and on or after January 1, 1989. Following the Federal revisions to Medicare, Medicare Supplement insurance policies issued on or after January 1, 1989 will continue to cover Part B Medicare eligible expenses to the extent that these are not covered by Medicare. In no instance, however, may Medicare Supplement policies duplicate benefits provided by Medicare.

Proposed N.J.A.C. 11:4-16.6(j)3 and 23.6(b) outline the standards with which all Medicare Supplement insurance policies and contracts issued

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in New Jersey must comply. Beyond the standards already provided by these sections, proposed N.J.A.C. 11:4-16(j)3 and 23.6(b) mandate that the Medicare Supplement policies must be amended to eliminate benefit duplications with Medicare as Medicare benefits change. These provisions also stipulate that appropriate premium adjustments be effected to reflect benefit changes resulting from the Medicare Catastrophic Coverage Act of 1988, at rates which will produce loss ratios at least equal to those originally anticipated. Amended riders or endorsements, premium rate changes and supporting documentation are required to be submitted to the Commissioner within 45 days after the effective dates of Medicare benefit changes for review before formal filing.

Furthermore, proposed N.J.A.C. 11:4-16.6(j)3 and 23.6(b) mandate that notices conforming to the format set forth in the proposed new Appendix, "Notice on Changes in Medicare Supplement Insurance", be distributed by the insurer to its New Jersey insureds at least 30 days prior to the effective dates of any Medicare benefit changes. Such notices will describe Medicare program revisions and resulting Medicare Supplement coverage modifications. Premium reductions resulting from the benefit changes required by the Medicare Catastrophic Coverage Act of 1988, either as refunds or credits, are to be distributed within 60 days after the effective date of Medicare benefit changes.

Proposed amendments to N.J.A.C. 11:4-16.8 and 23.8 concern required disclosure provisions. The fundamental thrust of the proposed amendments is to alert insurers to the changes which will occur to the Buyer's Guide Booklet: "Bridging the Medicare Gaps: A Guide to Medicare Supplements". Insurers must continue to distribute these booklets in their present form, but with enclosures in the back pocket entitled "Information Concerning Changes to the Medicare Program Effective January 1, 1989" and "Medicare Deductibles and Copayments for 1989", until such time as the booklet has been fully updated.

#### Social Impact

In addition to establishing compliance with the changes made in the Medicare program through the Medicare Catastrophic Coverage Act of 1988, the proposed amendments and new rules will provide New Jersey purchasers and owners of Medicare Supplement insurance with a better understanding of such policies. New Jersey purchasers and owners of Medicare Supplement insurance policies must be notified of modifications made to their policies due to changes in Medicare benefits at least 30 days prior to the effective dates of any such Medicare benefit changes. These notices are to be in a specified format and may not contain or be accompanied by any solicitation. The format must be that proscribed by the proposed rules.

The proposed amendments and rules also include other consumer safeguards. The Commissioner will review amended riders or endorsements to Medicare supplement insurance policies so as to ensure that Medicare benefits are not being duplicated. The Commissioner will also review premium adjustments occurring due to the changes in Medicare benefits so as to ensure that adjustments are appropriate and commensurate with the benefit changes involved. Further, updated Buyer's Guides, and/or Buyer's Guides with updated enclosures, accurately outlining current Medicare benefits, must be distributed to all Medicare supplements participants and applicants.

#### Economic Impact

Insurers offering Medicare supplement insurance will incur the costs of analyzing and amending their existing policies so as to bring them into conformance with the Medicare Catastrophic Act of 1988 and the amended rules governing the insurance industry in New Jersey. Insurers will also incur the cost of printing notices of modifications to their policies, and the cost of distributing these to their insureds. Further, insurers will incur the cost of printing updated material for the mandated Buyer's Guide: "Bridging the Medicare Gaps: A Guide to Medicare Supplements".

The Department of Insurance will incur the additional administrative expenses of reviewing filings mandated by these amendments. These costs will be covered by existing budgetary resources.

Most individuals presently purchasing Medicare Supplement insurance will see their premiums reduced as Medicare benefits change and insurers respond to these changes. Premium reductions should result in either credit(s) to premium payments or refunds. The effect of the amendments should be a reduction in the benefits provided by Medicare Supplement policies corresponding to the increase in benefits provided by Medicare.

#### Regulatory Flexibility Statement

There do not appear to be any insurers to which the proposed amendments will apply which are "small businesses" as this term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In the event that resident insurers are, by definition, "small businesses," they must comply with the proposed amendments and proposed new rules without exception. The amendments and new rules respond to Federally-imposed requirements.

These insurers can expect to incur added costs for revising and filing documents and printing copies of the proposed new and revised appendices. The Department believes that all insurers employ, or otherwise provide for, as a normal function of their business enterprise, those individuals whose professional services would be required to achieve compliance with the proposed amendments and rules. Accordingly, it is anticipated that all affected insurers will have the ability to absorb these administrative expenses quickly, minimizing any potential adverse economic impact.

The Federally-initiated changes to the Medicare program apply to all insurers without regard to business size. In order to fully facilitate the intent of the requirements imposed by these changes, the implementing State rules cannot be tailored to the size of the insurer or the economic impact which particular insurers may incur.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

11:4-16.6 Minimum standards for benefits

(a)-(i) (No change.)

(j) "Medicare supplement coverage" is a health insurance policy sold to a Medicare eligible person, which is designed primarily to supplement Medicare, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the following minimum benefit standards and rules:

#### 1. Policies issued prior to January 1, 1989 shall include:

[1.] i. Coverage of the Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

[2.] ii. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges to the extent not covered by Medicare during use of Medicare's lifetime hospital inpatient reserve days;

[3.] iii. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare for an additional period of not less than 365 days;

[4.] iv. Coverage of Part A Medicare eligible expenses for skilled nursing facility confinement to the extent not covered by Medicare from the 21st day through the 100th day in any Medicare benefit period; **and**

[5.] Coverage of 20 percent of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of \$200 of such expenses and to a maximum benefit of at least \$5,000 per calendar year;]

v. **Coverage of Part B Medicare eligible expenses to the extent not covered by Medicare, subject to a maximum calendar year out-of-pocket deductible of \$200.00 of such expenses and to a maximum calendar year benefit of at least \$5,000.**

**2. Policies issued on or after January 1, 1989 shall provide coverage of Part B Medicare eligible expenses to the extent not covered by Medicare, subject to a maximum calendar year out-of-pocket deductible of \$200.00 of such expenses and to a maximum calendar year benefit of at least \$5,000.**

#### 3. Medicare supplement coverage shall comply with the following:

[6.] i. Medicare supplement coverage shall not be subject to any exclusions, limitations, or reductions (other than as permitted in this [regulation] section and other applicable laws and regulations) which are not consistent with the exclusions, limitations, or reductions permissible under Medicare, other than a provision that coverage is not provided for any expenses to the extent of any benefit available to the insured person under Medicare;

[7.] ii. Medicare supplement coverage shall not indemnify losses resulting from sickness on a different basis than losses resulting from accidents;

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[8.] iii. Medicare supplement coverage shall provide that benefits designed to cover the cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount [and] , copayment percentage factors [.] , **and out-of-pocket maximums** [Premiums may be changed to correspond with such changes];

[9.] iv. Terms used in Medicare supplement coverage shall be defined at least as favorably as the corresponding Medicare terms;

[10.] v. Notwithstanding N.J.A.C. 11:4-16.4(a)3 [.] and 16.5(j) and (1), preexisting condition limitations shall not exclude coverage for more than six months after the effective date of coverage under the policy for a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of the coverage;

[11.] vi. The term "Medicare eligible expenses" shall mean health care expenses of the kind covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to Medicare claims.

vii. At least 30 days prior to the effective dates of any Medicare benefit changes, notice shall be provided to New Jersey insureds describing the revisions to the Medicare program and the resulting modifications made to the Medicare supplement coverage to eliminate duplication of Medicare benefits, as required by N.J.A.C. 11:4-16.5(d);

viii. The notices mandated by the Medicare Catastrophic Coverage Act of 1988 shall be in the format set forth in the Appendix to this subchapter (Notice on Changes in Medicare and Your Medicare Supplement Insurance), which is incorporated herein as part of this rule, and shall not contain or be accompanied by any solicitation. No modifications shall be made to an existing Medicare supplement policy as the result of the Medicare Catastrophic Coverage Act of 1988 except those necessary to eliminate duplication of Medicare benefits;

ix. Existing Medicare supplement policies shall be appropriately amended or endorsed to eliminate benefit duplications with Medicare which are caused by Medicare benefit changes. Any riders or endorsements shall specify the benefits deleted, or shall otherwise result in a clear description of the Medicare supplement benefits provided by the policy. Such riders or endorsements shall be submitted to the commissioner for filing within 45 days after the effective dates of Medicare benefit changes;

x. Appropriate premium adjustments for existing Medicare supplement policies shall be made to reflect the benefit changes required by the Medicare Catastrophic Coverage Act of 1988. The revised rates shall produce loss ratios at least equal to those originally anticipated. The premium rates and supporting documentation required by N.J.A.C. 11:4-18.4 shall be submitted to the Commissioner for filing within 45 days after the effective dates of Medicare benefit changes specified in the Act. Rate revisions to reflect any other required Medicare benefit changes may be made; and

xi. Premium reductions resulting from benefit changes required by the Medicare Catastrophic Coverage Act of 1988 shall be made in the form of premium refunds or premium credits no later than 60 days after the effective date of Medicare benefit changes.

(k) (No change.)

11:4-16.8 Required disclosure provisions

(a) General [rules include the following]: disclosure requirements are as follows:

1. (No change.)

2. Except for riders or endorsements by which the insurer effectuates a request made in writing by the policyholder [or] , exercises a specifically reserved right under the policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a policy after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term , [must] shall be agreed to in a written instrument signed by the insured, except if the increased benefits or coverage is required by law.

3.-14. (No change.)

15. To ensure uniformity in the content, form and printing of the guide, each insurer shall comply with the following requirements:

i.-ii. (No change.)

iii. A chart entitled "Medicare Deductible and Copayments for [1986] 1989" [must] shall be included in the back pocket of each guide. A sample copy of this chart appears as an Appendix to [Chapter 4] this chapter.

(1) To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of Public Affairs will provide sample copies of the chart to insurers. Insurers must adhere exactly to the format of the chart, and must include the chart in the back pocket of each guide.

[2 Certain dollar amounts, such as the copayments, are updated every January 1. These figures will be published by the Department in a Public Notice in the New Jersey Register as they become available.]

iv. Information explaining the changes to the Medicare program effective January 1, 1989, shall be included in the back pocket of each guide. A copy of this information appears as an Appendix to subchapters 16 and 23 of this chapter and is entitled: "Information Concerning Changes to the Medicare Program Effective January 1, 1989."

16. (No change.)

(b)-(o) (No change.)

11:4-23.6 Minimum benefit standards

(a) (No change.)

(b) The following general standards apply to Medicare Supplement policies and are in addition to all other requirements of this [regulation] subchapter:

1.-2. (No change.)

3. A Medicare Supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amounts and copayment percentage factors [. Premiums or subscription charges may be modified to correspond with such changes] and out-of-pocket maximums;

4.-5. (No change.)

6. At least 30 days prior to the effective dates of any Medicare benefit changes, notice shall be provided to New Jersey insureds describing the revisions to the Medicare program and the resulting modifications made to the Medicare Supplement coverage to eliminate duplication of Medicare benefits, as required by N.J.A.C. 11:4-23.5(d).

7. The notices mandated by the Medicare Catastrophic Coverage Act of 1988 shall be in the format set forth in the Appendix to this subchapter (Notice on Changes in Medicare and your Medicare Supplement Insurance), which is incorporated herein as part of this rule, and shall not contain or be accompanied by any solicitation. No modifications shall be made to an existing Medicare supplement policy as the result of the Medicare Catastrophic Act of 1988 except those necessary to eliminate duplication of Medicare benefits.

8. Existing Medicare supplement policies shall be appropriately amended or endorsed to eliminate benefit duplications with Medicare which are caused by Medicare benefit changes. Any riders or endorsements shall specify the benefits deleted, or shall otherwise result in a clear description of the Medicare supplement benefits provided by the policy. Such riders or endorsements shall be submitted to the commissioner for filing within 45 days after the effective dates of Medicare benefit changes.

9. Appropriate premium adjustments for existing Medicare supplement policies shall be made to reflect the benefit changes required by the Medicare Catastrophic Coverage Act of 1988. The revised rates shall produce loss ratios at least equal to those originally anticipated. The premium rates and supporting documentation shall be submitted to the Commissioner within 45 days after the effective dates of Medicare benefit changes specified in the Act. Rate revisions to reflect any other required Medicare benefit changes may be made.

10. Premium reductions resulting from benefit changes required by the Medicare Catastrophic Coverage Act of 1988 shall be made in the form of premium refunds or premium credits no later than 60 days after the effective date of Medicare benefit changes.

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(c) The minimum benefit standards prescribed for Medicare Supplement policies are:

**1. For policies issued prior to January 1, 1989:**

[1.] i. Coverage of the Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

[2.] ii. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges to the extent not covered by Medicare during use of Medicare's lifetime hospital inpatient reserve days;

[3.] iii. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

[4.] iv. Coverage of Part B Medicare eligible expenses to the extent not covered by Medicare, subject to a maximum calendar year out-of-pocket deductible of \$200.00 of such expenses and to a maximum calendar year benefit of at least \$5,000.

**2. For policies issued on or after January 1, 1989, coverage of Part B Medicare eligible expenses to the extent not covered by Medicare, subject to a maximum calendar year out-of-pocket deductible of \$200.00 of such expenses and to a maximum calendar year benefit of at least \$5,000.**

11:4-23.8 Required disclosure provisions

(a) General rules concerning required disclosure provisions include the following:

1. (No change.)

2. Except for riders or endorsements by which the insurer or hospital or medical service corporation effectuates a request made in writing by the insured or subscriber [or], exercises a specifically reserved right under a Medicare Supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage shall require signed acceptance by the insured or subscriber. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium or subscription charge during the policy term, [must] shall be agreed to in writing signed by the insured or subscriber, except if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth clearly.

3.-6. (No change.)

7. To ensure uniformity in the content, form and printing of the guide, each insurer shall comply with the following requirements:

i.-ii. (No change.)

iii. A chart entitled "Medicare Deductibles and Copayments for [1986] 1989" [must] shall be included in the back pocket of each guide. A sample copy of this chart appears as an Appendix to [Chapter 4] this chapter.

(1) To ensure uniform design, content and printing of the chart, the Department of Insurance, Division of Public Affairs will provide sample copies of the chart to insurers. Insurers [must] shall adhere exactly to the format of the chart, and must include the chart in the back pocket of each guide.

(2) Certain dollar amounts, such as the copayments, are updated every January 1. These figures will be published by the Department in a Public Notice in the New Jersey Register as they become available.]

iv. Information explaining the changes to the Medicare program effective January 1, 1989, shall be included in the back pocket of each guide. A copy of this information appears as an Appendix to subchapters 16 and 23 of this chapter and is entitled: "Information Concerning Changes to the Medicare Program Effective January 1, 1989."

8.-9. (No change.)

(b)-(c) (No change.)

**APPENDIX TO SUBCHAPTERS 16 and 23  
BRIDGING THE MEDICARE GAPS:  
A GUIDE TO MEDICARE SUPPLEMENT  
(INFORMATION CONCERNING CHANGES TO  
THE MEDICARE PROGRAM  
EFFECTIVE JANUARY 1, 1989)**

**BASIC STRUCTURE OF MEDICARE**

Medicare is divided in two parts: Part A—hospital insurance, and Part B—medical insurance.

Part A, the hospitalization portion of Medicare, is free, and most senior citizens participate automatically.

Part B, the medical portion, is not free. It requires a monthly premium, which, for most people, is deducted from the Social Security check. You're automatically enrolled in Part B when you enroll in Medicare Part A, unless you specifically state you don't want it. If you choose not to enroll in Part B when you sign up for Medicare, you can join the program later. But if you wait, the premiums will be higher.

Medicare does not pay for all your health care costs. Each part has a deductible, an amount you have to pay before Medicare pays anything, and a co-payment, a part of each bill you're required to pay.

The deductibles and co-payments can change from year to year. The chart in the back pocket of this booklet shows this year's deductible and co-payment amounts.

**MEDICARE PART A—HOSPITAL INSURANCE**

The hospital insurance portion of Medicare, Part A, pays hospital room and board fees for an unlimited period of time after you pay the deductible once each year. It also pays for some goods and services (such as laboratory costs, physical therapy and drugs) while you're a patient in the hospital.

Part A also pays for three less expensive alternatives to hospitalization—skilled nursing facility care, home health care and hospice care.

Let's say you don't need the intensive care a hospital provides but you do need daily professional nursing care or rehabilitation therapy. Your doctor may refer you to a skilled nursing facility. Beginning January 1, 1989, Medicare covers most of the costs—a co-payment for each of the first eight days you're there. Medicare then pays all the bills for days 9-150 each year in a Medicare-certified facility.

Medicare also will pay for home health care to help you leave a hospital or skilled nursing facility if your condition meets certain requirements, among them a need for part-time skilled nursing care or therapy. Until January 1, 1990, Medicare will cover intermittent home health care up to four days per week for an unlimited period of time. If such care is needed five or more days per week, Medicare will cover only three weeks per illness. As of January 1, 1990, Medicare will cover up to six days a week of intermittent home health care for as long as your doctor prescribes, and up to 38 days of daily home health care.

In addition, Medicare covers hospice care for terminally ill patients who want to stay home during their final weeks of life. Hospices (special organizations which help dying patients and their families) will supply doctors' services, nursing care, home health aides, homemaker services, counseling, and medical appliances and supplies. There are some restrictions and some minimal co-payments for a few services, but Medicare will pick up the majority of the bills.

**When Will Medicare Refuse to Pay?**

Medicare covers time in skilled nursing facilities, which are sometimes called nursing homes. But Medicare does not cover custodial nursing home care that provides only a place to live and help with personal needs such as bathing, feeding, dressing and taking medicine.

Usually Medicare pays hospitalization, skilled nursing facility and home health agency fees only when the facility or agency is Medicare-approved. Although all New Jersey hospitals are approved, some hospitals and treatment centers in other states may not be. And even if a skilled nursing facility or home health agency is licensed by the State, it may not be Medicare-approved.

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Medicare also may refuse to pay for experimental or controversial procedures.

Except under certain very limited conditions in Canada and Mexico, Medicare will not cover care received outside the United States.

If you plan to travel, or if you're not sure whether the treatment or hospital you're considering has Medicare approval, check ahead of time with your local Social Security office to see if benefits are available.

#### MEDICARE PART B—MEDICAL INSURANCE

Medicare Part B, medical insurance, is the section that helps to pay your doctor, whether you are in or out of the hospital. It also serves as a catch-all for the wide range of services people use when they are not patients in hospitals—outpatient visits to hospitals, physical therapy, laboratory tests, medical equipment (like wheelchairs or oxygen), and medically necessary home health visits.

The medical insurance portion, Part B, has an annual deductible, an amount which you must pay once each year before Medicare will pay any bills related to Part B. The deductible can change, so the chart in the pocket on the back page shows the amount for this year.

#### How Much Does It Pay?

The medical insurance portion of Medicare was designed to pay 80 percent of the cost of most covered services. You pay the other 20 percent, which is the Part B co-payment.

You could wind up paying more than 20 percent. Fees charged by doctors, therapists, suppliers and hospitals may vary, even within one town. But Medicare has a fixed schedule of fees, known as the "approved amount," for procedures done in your area. Medicare will pay only 80 percent of the approved amount. So, if your bill from the doctor of hospital outpatient clinic is higher than the approved amount, you must pay the difference.

Example: Suppose the Medicare approved amount for a medical procedure is \$40, but your doctor charges you \$100. Medicare will pay 80 percent of the \$40 approved amount, or \$32; you pay the 20 percent co-payment, or \$8. But you also make up the difference between the \$100 bill and Medicare's \$40 approved amount (\$60). So the total out-of-pocket cost to you is \$68.

Some doctors "accept assignment." This means the doctor agrees to accept the Medicare-approved amount for the services provided. You still have to pay the 20 percent co-payment, or \$8.

Some doctors accept assignment some of the time, some accept it all the time, while others never accept it at all. Find out, before treatment, whether your doctor will accept assignment. Each year, doctors and medical service suppliers can sign agreements to become Medicare-participating doctors or suppliers. This means they agree in advance to accept assignment on all Medicare claims. The "Medicare-Participating Physician/Supplier Directory," which is available in Social Security offices and county Offices on Aging, gives the names and addresses of Medicare-participating doctors and suppliers. You can also get this directory from Blue Shield of Pennsylvania, the Medicare carrier of New Jersey.

#### Limit on Out-of-Pocket Expenses

Beginning January 1, 1990, Medicare will pay 100 percent of Part B allowable costs after your out-of-pocket expenses have reached Medicare's "catastrophic limit." The Part B deductible, 20 percent of Medicare's approved amounts and the Part B blood deductible will be applied to the catastrophic limit. None of the difference between Medicare's approved amounts and the actual amounts of bills will count toward the catastrophic limit. The limit will change each year.

#### Other Covered Services

The Medicare Catastrophic Coverage Act of 1988 expanded Medicare to include coverage for some items and services that Medicare has not covered in the past.

#### Outpatient Prescription Drugs

Beginning January 1, 1991, Medicare will cover some of the costs for all prescription drugs that you need to take when you're not in a hospital. There will be a deductible each year that you'll be required to pay before Medicare will cover a portion of the costs. After you've satisfied the deductible, Medicare will pay some of the costs and you'll pay a portion—a co-payment—for each prescription. The deductible will change each year and the percent co-payment will change until 1993.

#### Respite Care

If you are chronically disabled and are receiving the help of a volunteer care-giver, Medicare will pay for 80 hours per year of in-home care so the volunteer can have a rest. To be eligible for respite care coverage, you will first have to satisfy either the Part B catastrophic limit or the prescription drug deductible. This benefit will become available January 1, 1990.

#### Mammography Screening

Also in 1990, Medicare will help to pay for a mammography exam. Your age and medical history will determine how often Medicare will pay.

For a detailed description of the Medicare program, ask your local Social Security office for a free copy of Your Medicare Handbook.

#### MEDICARE SUPPLEMENT POLICIES

The phrase "Medicare Supplement" is a special term reserved in New Jersey for policies that meet minimum standards set by the state. New Jersey's minimum standards have required that Medicare supplements pay benefits to cover specific gaps in Medicare. With the enactment of the Medicare Catastrophic Coverage Act of 1988, the gaps in Medicare have changed. As a result, New Jersey's requirements for Medicare supplements must also change.

Until the state modifies its benefits requirements for Medicare supplements, insurance companies are required to eliminate benefits from existing policies that duplicate Medicare's new catastrophic benefits.

#### APPENDIX TO SUBCHAPTERS 16 and 23

(COMPANY NAME)

#### NOTICE ON CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT INSURANCE—1989

Your health care benefits provided by the Federal Medicare Program will change beginning January 1, 1989. Additional changes will occur on medical benefits in following years. The major changes are summarized below. These changes will affect hospital, medical and other services and supplies under Medicare. Because of these changes your Medicare supplement coverage provided by (Company Name) will change also. The following outline briefly describes the modifications in Medicare and in your Medicare supplement coverage. Please read carefully!

(A brief description of the revisions to Medicare parts A & B with a parallel description of supplemental benefits with subsequent changes, including dollar amounts, provided by the Medicare supplement coverage in substantially the following format.)

**PROPOSALS**

Interested Persons see Inside Front Cover

**INSURANCE**

Services	Medicare Benefits	Your Medicare Supplement Coverage		
	Medicare Now Pays Per Benefit Period	Effective January 1, 1989 Medicare Will Pay Per Calendar Year	Your 1988 Coverage Per Benefit Period	Effective January 1, 1989 Your Coverage Will Pay Per Calendar Year
<b>MEDICARE PART A SERVICES AND SUPPLIES</b>	<p>First 60 Days— All but \$540</p> <p>61st to 90th day— All but \$135 a day</p> <p>91st to 150th day— All but \$270 a day</p> <p>Beyond 150th day— Nothing</p>	<p>Unlimited number of hospital days after \$564 deductible.</p>		
<b>POSTHOSPITAL SKILLED NURSING CARE</b>	<p>Requires a 3 day prior stay and enter the facility within 14 days after hospital discharge.</p> <p>First 20 days— 100% of costs</p> <p>21st through 100th day— All but \$67.50 a day</p> <p>Beyond 100 days— Nothing</p>	<p>There is no prior confinement require- ment for this benefit.</p> <p>First 8 days— All but \$( ) a day</p> <p>9th through 150th day— 100% of costs</p> <p>Beyond 150 days— Nothing</p>		

SERVICES	MEDICARE BENEFITS	YOUR MEDICARE SUPPLEMENT COVERAGE		
	Medicare Now Pays Per Calendar Year	In 1989 Medicare Part B Pays the Same as in 1988	Your Policy Now Pays	Effective January 1, 1989 Your Policy Will Pay
<b>MEDICARE PART B SERVICES AND SUPPLIES</b>	<p>80% of allowable charges (after \$75 deductible)</p>	<p>NOTE: Medicare Benefits change on January, 1990 as follows: 80% of allowable charges (after \$75 deductible until an annual Medicare Catastrophic limit is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1990 is \$1370* and will be ad- justed on an annual basis.</p>		
<b>PRESCRIPTION DRUGS</b>	<p>Inpatient prescription drugs only</p>	<p>In 1989 Medicare covers inpatient prescription drugs only</p> <p>Effective January 1, 1990 Per Calendar Year 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs after (\$550 in 1990) calendar year deductible is met.</p> <p>Effective January 1, 1991 Per Calendar Year Inpatient prescription drugs. 50% of allowable charges for all other outpatient prescrip- tion after a \$600 deductible, (The deductible will change) calendar year deductible is met. Coverage will increase to 60% of allowable charges in 1992 and to 80% of allowable charges from 1993 on.</p>		

\*Expenses that count toward the Part B Medicare Catastrophic Limit includes: the Part B deductible and copayment charges and the Part B blood deductible charges.

**INSURANCE**

**PROPOSALS**

**(ANY ADDITIONAL BENEFITS)**

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about premium adjustments that may be necessary due to changes in Medicare benefits or when premium charges information will be sent.)

This chart summarizing the changes in your Medicare benefits and in your Medicare supplement provided by (Company), only briefly describes such benefits. For information on your Medicare benefits contact your Social Security Office of the Health Care Financing Administration. For information on your Medicare Supplement (Policy) contact:

(Company or for an Individual Policy—Name of Agent) (Address/Phone Number)

(COMPANY NAME)

**NOTICE ON CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE—1990**

Your health care benefits provided by the Federal Medicare Program will change beginning January 1, 1990; additional changes will occur in medical benefits in following years. The major changes are summarized below. These changes will affect hospital, medical and other services and supplies provided under Medicare. Because of these changes your Medicare Supplement coverage provided by (Company Name) will change, also. The following outline briefly describes the modification in Medicare and in your medicare supplement coverage. Please read this carefully!

(A brief description of the revisions to Medicare Parts A & B with a parallel description of supplemental benefits with subsequent changes, including dollar amounts, provided by the Medicare Supplement coverage in substantially the following format.)

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1990 Your Coverage Will Pay Per Calendar Year
<b>MEDICARE PART A SERVICES AND SUPPLIES</b>	Unlimited number of hospital days after [\$564] deductible.			
<b>POSTHOSPITAL SKILLED NURSING CARE</b>	There is no prior confinement requirement for this benefit.			
	First 8 days— All but \$( ) a day			
	9th through 150th day— 100% of costs			
	Beyond 150 days— Nothing			

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	Medicare Now Pays Per Calendar Year	Effective January 1, 1990, Medicare Will Pay Per Calendar Year	Your Coverage Now Pays Per Calendar Year	Effective January 1, 1990 Your Coverage Will Pay Per Calendar Year
<b>MEDICARE PART B SERVICES AND SUPPLIES</b>	80% of allowable charges (after \$75 deductible) until an annual Medicare Catastrophic Limit is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1990 is \$1370 and will be adjusted on an annual basis.			
<b>PRESCRIPTION DRUGS</b>	Inpatient prescription drugs. 80% of allowable charges for home intravenous (IV) therapy drugs and 50% of allowable charges for immunosuppressive drugs after (\$550 in 1990) calendar year deductible is met.			

\*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and copayment charges and the Part B blood deductible charges.

**(Any Additional Benefits)**

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about premium adjustments that may be necessary due to changes in Medicare benefits or when premium charges information will be sent.)

This chart summarizing the changes in your Medicare benefits and in your Medicare supplement provided by (company), only briefly describes such benefits. For information on your Medicare benefits contact your Social Security Office or the Health Care Financing Administration. For information on your Medicare supplement (policy) contact:

(Company or for an Individual Policy—Name of Agent) (Address/Phone Number)

(COMPANY NAME)

NOTICE ON CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE—1991

Your health care benefits provided by the Federal Medicare Program will change beginning January 1, 1991, additional changes will occur in medical benefits in following years. The major changes are summarized below. These changes will affect hospital, medical and other services and supplies provided under Medicare. Because of these changes your Medicare supplement coverage provided by (company name) will change, also. The following outline briefly describes the modification in Medicare and in your Medicare supplement coverage. Please read this carefully!

(A brief description of the revisions to Medicare Parts A & B with a parallel description of supplemental benefits with subsequent changes, including dollar amounts, provided by the medicare supplement coverage in substantially the following format.)

SERVICES	MEDICARE BENEFITS	YOUR MEDICARE SUPPLEMENT COVERAGE	
		Your Coverage Now Pays Per Calendar Year	Effective January 1, 1991 Your Coverage Will Pay Per Calendar Year
MEDICARE PART A SERVICES AND SUPPLIES	Unlimited number of hospital days after [ \$ ] deductible.		
POSTHOSPITAL SKILLED NURSING CARE	There is no prior confinement requirement for this benefit. First 8 days— All but \$( ) a day 9th through 150th day— 100% of costs Beyond 150 days— Nothing		

SERVICES	MEDICARE BENEFITS	YOUR MEDICARE SUPPLEMENT COVERAGE	
		Your Coverage Now Pays Per Calendar Year	Effective January 1, 1991 Your Coverage Will Pay Per Calendar Year
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after \$75 deductible) until an annual Medicare Catastrophic Limit is met. 100% of allowable charges for the remainder of the calendar year. The limit in 1991 is \$[ ] and will be adjusted on an annual basis.		
PRESCRIPTION DRUGS	Inpatient prescription drugs. 50% of allowable charges for all other outpatient prescription drugs, until \$600 calendar year deductible is met.	Inpatient prescription drugs 60% of allowable charges for all other outpatient prescription drugs, until \$652 calendar year deductible is met. Coverage will increase to 80% of allowable charges from 1993 on, and deductible will be adjusted on an annual basis.	

\*Expenses that count toward the Part B Medicare Catastrophic Limit include: the Part B deductible and copayment charges and the Part B blood deductible charges.

(Any Additional Benefits)

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about premium adjustments that may be necessary due to changes in Medicare benefits or when premium charges information will be sent.)

This chart summarizing the changes in your medicare benefits and in your medicare supplement provided by (company), only briefly describes such benefits. For information on your medicare benefits contact your Social Security Office or the Health Care Financing Administration. For information on your medicare supplement (Policy) Contact:

(Company or for an Individual Policy—Name of Agent) (Address/Phone Number)

**INSURANCE**

**PROPOSALS**

**APPENDIX  
MEDICARE DEDUCTIBLES AND CO-PAYMENTS FOR [1986] 1989**

**[MEDICARE PART A**

Service	Length of Stay	You Pay	Medicare Pays
Hospitalization	First 60 days	\$492 deductible	Balance
	61st-90th day	\$123 co-payment per day	Balance
	91st-150th day	\$246 co-payment per day	Balance
Post-hospital Skilled Nursing Facility Care	First 20 days	Nothing	All Costs
Home Health Care	21st-100th day	\$61.50 co-payment per day	Balance
		Nothing	All Costs
		*provided all conditions are met (see Your Medicare Handbook)	
Hospital Care		Nothing	All Costs
*Nursing care, physician's services, physician/occupational therapy, medical supplies, home health aide services, counseling services (except for bereavement counseling).			
*Drugs and Biologicals		5% co-payment	Balance
*Respite Care		5% co-payment	Balance
<b>MEDICARE PART B</b>			
Medical Expenses		\$75 annual deductible 20% of Medicare-approved amount after deductible	80% of Medicare approved amount after deductible]

**MEDICARE PART A**

Service	Length of Stay	You Pay	Medicare Pays
Hospitalization	Unlimited	\$564 annual deductible	Balance
Skilled Nursing Facility	First 8 days	20% co-payment	Balance
	Days 9-150	Nothing	All Costs
		*Provided all conditions are met (see Your Medicare Handbook)	
Home Health Care		Nothing	All Costs
Visiting nurse; physical or speech therapist; home health aides; occupational therapy; medical social services; medical supplies and equipment	• Up to 4 days/week • 5 or more days/week up to 3 weeks per illness	*Provided all conditions are met (see Your Medical Handbook)	
Hospice Care	Unlimited	Nothing	All Costs
Nursing care, physicians' services, physical/occupational therapy, medical supplies, home health aide services, counseling services (except for bereavement counseling).		*Provided all conditions are met (see Your Medicare Handbook)	
• Drugs and biologicals		5% co-payment	Balance
• Respite Care		5% co-payment	Balance
<b>MEDICARE PART B</b>			
Medical expenses: doctors' services; outpatient hospital care, outpatient physical therapy and speech pathology		\$75 annual deductible 20% of Medicare-approved amount after deductible	80% of Medicare approved amount after deductible

## LABOR

### CHAPTER 3 CONTRACTS

The following proposals are authorized by Charles Serraino, Commissioner, Department of Labor.

Submit comments by November 16, 1988 to:

Alfred B. Vuocolo, Jr.  
Chief Legal Officer  
New Jersey Department of Labor  
CN 110  
Trenton, New Jersey 08625-0110

#### (a)

### DIVISION OF WORKPLACE STANDARDS

#### Debarment from Contracting; Conflict of Interest

#### Proposed Repeal and New Rules: N.J.A.C. 12:3-1.

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); 34:11-56.37, and the Governor's Executive Orders Number 34 (1976) and Number 189 (1988).

Proposal Number: PRN 1988-522.

The agency proposal follows:

##### Summary

The Department has decided that the existing subchapter at N.J.A.C. 12:3-1, adopted in 1976, does not adequately address Departmental concerns with regard to debarment from contracting with the Department. Specifically, the rules were determined to be too broad in scope, and too vague with regard to whether the Department's ability to bar contractors or subcontractors extends to officers of debarred corporations. Thus, the Department proposes to repeal the existing rules, and propose new rules which will enable the Department to debar all individuals responsible for violations of any laws governing hours of labor, minimum wage standards, discrimination in wages, child labor or other labor laws. Pursuant to Executive Order No. 189 (1988), proposed N.J.A.C. 12:3-1.6 sets forth prohibited conflicts of interests between contractors and State personnel.

N.J.A.C. 12:3-1.1 is a purpose and scope section which outlines the applicability of the subchapter.

N.J.A.C. 12:3-1.2 is a definition section which includes a definition for contractor that includes corporate officers and directors.

N.J.A.C. 12:3-1.3 addresses the causes and conditions for debarment, the cause being a violation of any labor law.

N.J.A.C. 12:3-1.4 sets forth the procedures and period of debarment. N.J.A.C. 12:3-1.5 requires the Department to provide to the State Treasurer a list of names of all persons debarred and the period thereof.

N.J.A.C. 12:3-1.6 outlines conflict of interest situations between contractors and State officials which are prohibited.

##### Social Impact

The proposed amendments to the subchapter will benefit the public by ensuring that persons who are debarred for violating the State labor laws will be prevented from contracting with the Department for other services. Persons debarred will be negatively impacted, but as a result of their own misdeeds.

##### Economic Impact

The regulation will help to further reduce the amount of violations of State labor laws, which benefits the general public. The Department does not anticipate any economic impact with regard to its operations. Persons debarred will, to varying degrees, sustain a negative economic impact from the proposed new rules, but due to their own actions.

##### Regulatory Flexibility Statement

The proposed new rule does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that are not already required under existing State labor laws. Thus, a regulatory flexibility analysis is not required.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12:3-1.

Full text of the proposed new rules follows:

### SUBCHAPTER 3. DEBARMENT FROM CONTRACTING; CONFLICT OF INTEREST

#### 12:3-1.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the causes and conditions which constitute grounds for debarment and to notify individuals of the Departmental policies and procedures concerning debarment.

(b) The provisions of this subchapter shall be applicable to all persons supplying goods or services to the Department or performing contracts with the assistance of and subject to the approval of the Department.

#### 12:3-1.2 Definitions

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

"Commissioner" means the Commissioner of the Department of Labor or his or her designee.

"Contracting" means any arrangement giving rise to an obligation to supply any thing or to perform any service for the Department, other than by virtue of State employment, or to supply any thing to or perform any service for a private person where the State provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or services or the persons who may supply or perform the same.

"Contractor" means a person who undertakes to perform a job or piece of a contract retaining control of the means, method and manner of accomplishing the desired result. Contractor includes the officers and directors of a corporate contractor.

"Debarment" means the inclusion on a Statewide list of individuals who are prohibited from contracting within the State, on the basis of a lack of responsibility evidenced by an offense as set forth in this subchapter.

"Department" means the New Jersey Department of Labor.

"Person" means any natural person, company corporate officer or principal, firm, association, corporation, contractor, subcontractor or other entity engaged in contracting.

#### 12:3-1.3 Cause and conditions for debarment

(a) The Commissioner may debar a person from contracting with the Department or any agency within the control or jurisdiction of the Department for a definitely stated period of time for the violation of any labor law including but not limited to wage and hour, minimum wage, discrimination in wages and child labor laws.

1. Debarment from contracting with the Department shall be made only by the Commissioner except as otherwise provided by law.

(b) A violation of the State labor laws shall not necessarily require that a person be debarred. In each case, the decision to debar shall be made at the discretion of the Commissioner unless otherwise provided by law.

(c) The Commissioner may consider the following factors as material in each decision to debar:

1. The record of previous violations by the person with the Office of Wage and Hour Compliance;

2. Previous cases of debarment by the Commissioner;

3. The frequency of violations by the person discovered in previous or still pending cases;

4. The significance or scale of the violations;

5. The existence of outstanding audit(s) or failure(s) to pay;

6. Failure to respond to a request to produce records, forms, documents, or proof of payments; and

7. Submission of falsified or altered records, forms, documents, or proof of payment.

(d) A violation of any labor law shall be determined by the Commissioner. In the event an appeal taken from such determination results in a reversal, the debarment shall be removed unless the Commissioner determines that another cause for debarment exists.

**LABOR**

**PROPOSALS**

12:3-1.4 Procedures and period of debarment

(a) When the Department seeks to debar a person, the person or persons shall be furnished with a written notice stating:

1. That debarment is being considered;
2. The specific details concerning the violations; and
3. That the person shall have the right to a hearing upon written notification to the Commissioner requesting such a hearing within 20 days of receipt of the notice of intent to debar.

(b) The notice of intent to debar shall be mailed, by regular mail and return receipt requested, to each corporate officer of record, partner, individual proprietor or other involved person.

(c) If, after confirmation that the person has been mailed the notice of intent to debar, the person has not requested a hearing to contest the debarment, the person shall be deemed to have forfeited the right to apply for injunctive relief in the Superior Court against the listing as a debarred person.

(d) All hearings pursuant to this section shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 54:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Where any other State Department or agency has already imposed debarment upon a party, the Commissioner may also impose a similar debarment without affording an opportunity for a hearing, provided the Commissioner furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(e) Debarment shall be for a period of three years.

12:3-1.5 Lists

The Department shall provide the State Treasurer with the names of all persons debarred and the effective date and period of debarment, if any.

12:3-1.6 Conflict of interest prohibited

(a) No contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13(b) and (e), in the Department of the Treasury or any other agency with which such contractor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13(i), of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).

(b) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State contractor shall be reported in writing by the contractor to the Attorney General and the Executive Commission on Ethical Standards.

(c) No contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such contractor to, with any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or instrumentality, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationships subject to this subsection shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

(d) No contractor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of the officer or employee.

(e) No contractor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the contractor or any other person.

(f) The provisions in (a) through (e) above shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with contractors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

**(a)**

**DIVISION OF WORKPLACE STANDARDS**

**Debarment from Contracting for Public Works and EDA Projects**

**Proposed New Rules: N.J.A.C. 12:60-8.**

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); 34:11-56.37, and the Governor's Executive Orders Number 34, (1976).

Proposal Number: PRN 1988-518.

The agency proposal follows:

**Summary**

The State Supreme Court has ruled that regulations are needed, pursuant to N.J.S.A. 34:11-56.37, to adequately address Departmental concerns with regard to debarment from public works contracting (see *Department of Labor v. Titan Construction Co.*, 102 N.J. 1 (1985)). Specifically, rules are required to provide for the Department's ability to debar contractors, subcontractors, and other persons involved in public works or Economic Development Authority (EDA) projects, and extend the debarment to officers of debarred corporations. Thus, the Department is proposing new rules which will enable the Department to debar all persons responsible for violations of the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

N.J.A.C. 12:60-8.1 is a purpose and scope section which outlines the applicability of the subchapter.

N.J.A.C. 12:60-8.2 is a definition section including a definition for contractor, which includes corporate officers and directors.

N.J.A.C. 12:60-8.3 addresses the causes and conditions for debarment, the cause being a violation of the Prevailing Wage Act.

N.J.A.C. 12:60-8.4 sets forth the procedures for and the period of debarment.

N.J.A.C. 12:60-8.5 requires the Department to provide to the State Treasurer a list of names of all persons debarred.

**Social Impact**

The proposed new rules will benefit the public by ensuring that contractors, subcontractors, officers of corporations, and other persons who are debarred for prevailing wage violations will be prevented from performing public works projects under different corporate entities. Persons debarred will be negatively impacted, but as a result of their own misdeeds.

**Economic Impact**

The proposed new rules will help to further reduce the amount of violations of the prevailing wage law, which benefits the general public. The Department does not anticipate any economic impact with regard to its operations. Persons debarred will, to varying degrees, sustain a negative economic impact from the proposed new rules, but due to their own actions.

**Regulatory Flexibility Statement**

The proposed new rules do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that are not already required under the prevailing wage law. Thus, a regulatory flexibility analysis is not required.

Full text of the proposal follows:

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**LABOR**

**SUBCHAPTER 8. DEBARMENT FROM CONTRACTING**

**12:60-8.1 Purpose and scope**

(a) The purpose of this subchapter is to set forth the conditions which constitute grounds for debarment from public works and Economic Development Authority (EDA) contracts, and to notify individuals of the departmental policies and procedures concerning debarment.

(b) The provisions of this subchapter shall be applicable to all contractors, subcontractors, and other persons who perform public works for any public body and EDA projects in New Jersey.

**12:60-8.2 Definitions**

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

"Commissioner" means the Commissioner of the Department of Labor or his or her designee.

"Contractor" means a person who undertakes to perform a job or piece of a public works project or EDA project and who retains control of the means, method and manner of accomplishing the desired result. Contractor includes the officers and directors of a corporate contractor.

"Debarment" means the inclusion on a Statewide list of persons who are prohibited from performing public works or EDA projects, on the basis of a lack of responsibility evidenced by an offense as set forth in this subchapter.

"Department" means the New Jersey Department of Labor.

"Person" means any natural person, company corporate officer or principal, firm, association, corporation, contractor, subcontractor or other entity engaged in public works or EDA projects.

"Public body" means the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions.

"Public work" means constructions, reconstruction, demolition, alteration, or repair work or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.

**12:60-8.3 Conditions of debarment**

(a) Debarment from public works or EDA contracts shall be made only with the approval of the Commissioner, except as otherwise provided by law.

(b) The Commissioner may debar a person, after an investigation or determination that the person has:

1. Violated prevailing wage standards; or
2. Failed or refused to pay the prevailing wage rate.

(c) A violation as listed in (b) above shall not necessarily require that a person be debarred. In each case, the decision to debar shall be made at the discretion of the Commissioner unless otherwise provided by law. The Commissioner may consider the following factors as material in each decision to debar:

1. The record of previous violations by the person with the Office of Wage and Hour Compliance;
2. Previous cases of debarment by the Commissioner;
3. The frequency of violations by the person discovered in previous or still pending cases;
4. The significance or scale of the violations, consisting of short-falls in wages or fringe benefits computed in audits;
5. The existence of outstanding audit(s) or failure(s) to pay;
6. Failure to respond to a request to produce records, forms, documents, or proof of payments; and
7. Submission of falsified or altered records, forms, documents, or proof of payment.

(d) A violation of the prevailing wage standards shall be determined by the Commissioner. In the event an appeal taken from such determination results in a reversal, the debarment shall be removed unless the Commissioner determines that another cause for debarment exists.

**12:60-8.4 Notification of debarment**

(a) When the Department seeks to debar a person, the person or persons shall be furnished with a written notice stating:

1. That debarment is being considered;
2. The provisions of N.J.S.A. 34:11-56.37 and 34:11-56.38;
3. The specific details of the violations referring to employees involved by name, job classifications, dates of violations and any amount found due;
4. The public work or EDA project involved during which performance of the violations cited occurred; and
5. That the person shall have right to a hearing upon written notification to the Commissioner requesting such a hearing within 20 days of receipt of the notice of intent to debar.

(b) The notice of intent to debar shall be mailed, by regular mail and return receipt requested, to each corporate officer of record, partner, individual proprietor or other involved person.

(c) If, after confirmation that the person has been mailed the notice of intent to debar, the person has not requested a hearing to contest the debarment, the person shall be deemed to have forfeited the right to apply for injunctive relief in the Superior Court against the listing as a debarred person.

(d) All hearings pursuant to this section shall be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Where any other State department or agency has already imposed debarment upon a party, the Commissioner may also impose a similar debarment without affording an opportunity for a hearing, provided the Commissioner furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his or her behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(e) In the event that an appeal taken from a judgment results in a reversal, the debarment shall be removed.

(f) Debarment shall be for a period of three years.

**12:60-8.5 Lists**

The Department shall provide the State Treasurer with the names of all persons debarred and the effective date and period of debarment, if any.

**(a)**

**DIVISION OF WORKPLACE STANDARDS**

**Ski Lifts**

**Proposed Readoption with Amendments: N.J.A.C. 12:175**

Authority: N.J.S.A. 34:1-2a, 34:1A-3(e) and 34:4A-4 et seq., specifically 34:4A-4.

Proposal Number: PRN 1988-517.

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:175 will expire on December 9, 1988. The Department of Labor has reviewed the rules, and has determined that they are necessary, reasonable and proper for setting forth standards for the design, construction and operation of ski lifts for the protection of the public. The Department proposes that the existing chapter be readopted with minor substantive technical amendments.

N.J.A.C. 12:175 first became effective on December 17, 1975, and was amended on October 1, 1979 and on December 9, 1983. It was promulgated to implement the purposes of the Ski Lift Safety Act, N.J.S.A. 34:4A-1 et seq. This Act mandates that the Department of Labor adopt rules for the safe installation, repair, maintenance, use, operation, and inspection of all ski lifts for the protection of the public.

The chapter provides an indispensable set of standards for the ski lift industry and the Division of Workplace Standards. The chapter codifies the purposes of the Act, and enables the Division of Workplace Standards to administer an effective safety program.

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N.J.A.C. 12:175-1 sets forth the general provisions of the chapter, and contains rules relating to the purpose, scope and validity of the contents of the chapter.

N.J.A.C. 12:175-2 provides definitions of terms used in this chapter. N.J.A.C. 12:175-3 addresses compliance, registration, maintenance and inspection of records, reporting of accidents, and submittal of plans and specifications for approval. The proposed amendment to N.J.A.C. 12:175-3.2(c) providing for Office of Safety Compliance inspection of a passenger tramway found hazardous or unsafe, and repaired before re-suming operation.

N.J.A.C. 12:175-4 provides standards applicable to the design, construction, installation, operation, and maintenance of ski lifts. The proposed amendment to N.J.A.C. 12:175-4.2(a) adopts the most recent ANSI Passenger Tramways standards as safety standards.

N.J.A.C. 12:175-5 concerns the evacuation of passengers from passenger tramways.

N.J.A.C. 12:175-6 lists the standards and publications which are referenced in this chapter.

**Social Impact**

The proposed readoption with amendments will enable the Department to continue to maintain adequate safety standards for ski lifts, which will prevent safety hazards. This will continue to benefit both the operators of ski lifts and the general public who use the lifts.

**Economic Impact**

The proposed readoption with amendments will create no additional economic burden on the ski lift operators. The proposed readoption will continue to provide economic advantage to the public and the operators and owners of ski lifts by reducing the risk exposure to accidents and potentially expensive injuries.

**Regulatory Flexibility Statement**

The proposed readoption, N.J.A.C. 12:175, establishes recordkeeping, reporting, and other compliance requirements applicable to ski lift operators and owners, which include some small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, uniform application of the rules to all operators is necessary to maintain adequate safety standards.

**Full text** of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:175.

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

12:175-3.2 Compliance

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

(c) The Office of Safety Compliance shall order in writing, a temporary cessation of operation of a passenger tramway, if it has been determined after inspection to be hazardous or unsafe. Operation shall not be resumed until [such conditions are corrected] **the passenger tramway has been reinspected by a designee of the Office of Safety Compliance and it is determined by the designee to be safe for operation.**

12:175-4.2 Standards adopted by reference

(a) The standards prescribed by Passenger Tramways, ANSI B77.1-1982 **and B77.1b-1988** are adopted as safety standards and shall apply according to their provisions, except that the following sections and subsections shall not apply:

1.-4. (No change.)

(b)-(d) (No change.)

12:175-6.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publication referred to in this chapter are as follows:

1. (No change.)

**2. ANSI B77.1b-1988 Passenger Tramways—Aerial Tramways and Lifts, Surface Lifts, and Tows.**

[2].3. N.J.S.A. 34:4A-1 et seq., **The Ski Lift Safety Act.**

12:175-6.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office

of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days.

New Jersey Department of Labor  
 Division of Workplace Standards  
 [Labor and Industry Building, Room 1103C]  
**Third Floor, Station Plaza, Building 4,**  
**South Clinton Avenue and East State Street**  
 Trenton, New Jersey

**(a)**

**DIVISION OF WORKERS' COMPENSATION**

**Surcharge Collection Procedures**

**Proposed New Rules: N.J.A.C. 12:235-13.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:15-94, 34:15-120.1 et seq., specifically 34:15-120.7, P.L. 1988, c. 25 and P.L. 1988, c. 26.

Proposal Number: PRN 1988-516.

The agency proposal follows:

**Summary**

P.L. 1988, c. 25 and P.L. 1988, c. 26 require the Department of Labor and the Department of Insurance to promulgate regulations to establish surcharge collection procedures to maintain the Uninsured Employers' Fund and the Second Injury Fund.

The Uninsured Employers' Fund, P.L. 1988, c. 25, requires the Department to establish procedures which will be used to collect an annual surcharge upon each workers' compensation policyholder, each employer's liability insurance policyholder and each self-insured employer insured pursuant to N.J.S.A. 34:15-77.

P.L. 1988, c. 26 eliminates the annual assessment for the Second Injury Fund and requires the Department to establish procedures to collect an annual surcharge from all workers' compensation policyholders, employer's liability policyholders and self-insured employers. Those surcharges will be used to finance the Second Injury Fund.

N.J.A.C. 12:235-13.1 sets forth the purpose and scope of the proposed new subchapter.

N.J.A.C. 12:235-13.2 is a definitions section.

N.J.A.C. 12:235-13.3 addresses the procedures for reporting compensation paid to the Department.

N.J.A.C. 12:235-13.4 outlines the procedure to be followed for notifying insurers of the surcharge and the method to be used for calculating the surcharge collection procedure.

N.J.A.C. 12:235-13.5 states the surcharge collection procedure.

N.J.A.C. 12:235-13.6 lists the verification and audit procedures used to assure that the surcharges remitted are correct.

N.J.A.C. 12:235-13.7 provides that insurers must notify the Department of Insurance of the annual amount of earned premiums.

N.J.A.C. 12:235-13.8 provides the method for obtaining forms, and N.J.A.C. 12:235-13.9 is a penalty section.

**Social Impact**

The proposed new subchapter will ensure that sufficient funds exist in the Uninsured Employers' Fund and the Second Injury Fund, which will be used to provide compensation to employees or their beneficiaries in the event of job-related injury.

**Economic Impact**

The proposed new subchapter will require all workers' compensation policyholders, employer's liability insurance policyholders and self-insured employers to pay an annual surcharge to the Uninsured Employers' Fund and the Second Injury Fund. The benefits provided by these Funds are thought to outweigh the cost to the employers.

The Department will experience some additional administrative costs, but these costs are expected to be absorbed in the existing budget.

**Regulatory Flexibility Statement**

The proposed new rules place reporting and compliance requirements on workers' compensation policyholders, employer's liability policyholders and self-insured employers. An undetermined number of such policyholders and employers may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules do not impose reporting or compliance requirements beyond those enumerated in P.L. 1988 c. 25 and c. 26. As no business size related

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differentiation for reporting or compliance is provided under those acts, the Department is without authority to promulgate rules creating such varying requirements. Those required to meet the requirements of these rules, however, should not have to employ additional professional services or incur significant cost in fulfilling their regulatory obligations.

Full text of the proposal follows:

**SUBCHAPTER 13. SURCHARGE COLLECTION PROCEDURES**

**12:235-13.1 Purpose and scope**

(a) The purpose of this subchapter is to establish surcharge collection procedures to fund the Uninsured Employers' Fund and the Second Injury Fund.

(b) The surcharges shall be levied against all workers' compensation policyholders, employer's liability policyholders and self-insured employers.

**12:235-13.2 Definitions**

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

"Department" means the New Jersey Department of Labor.

"Director" means the Director of the Division of Workers' Compensation for the Department of Labor.

"Earned premium" means the portion of the standard premium that is earned on a pro-rata basis of the policy term.

"Insurer" means a domestic, foreign, or alien mutual association or stock company writing workers' compensation or employer's liability insurance on risks located in this State who is subject to premium taxes pursuant to N.J.S.A. 54:18A-1 et seq.

"Policyholder" means a holder of a policy of workers' compensation or employer's liability insurance issued by an insurer, exclusive of any workers' compensation endorsement requirement pursuant to N.J.S.A. 17:36-5.29.

"Report of compensation paid" is a report of the total amount of workers' compensation paid pursuant to N.J.S.A. 34:15-1 et seq., adjusted for the amounts paid for funeral expenses and for disputed claims pursuant to N.J.S.A. 34:15-20.

"Second Injury Fund" means a fund established pursuant to N.J.S.A. 34:15-95 which is designed to provide funds for workers who have experienced two disability injuries.

"Self-insured employer" means an employer which self-insures for workers' compensation or employer's liability pursuant to N.J.S.A. 34:15-77.

"Standard premium" means the premium earned after application of any experience modification and prior to the application of the expense constant, premium discounts, or retrospective rating plans.

"Uninsured Employers' Fund" means a fund to provide for the payment of awards against uninsured defaulting employers pursuant to N.J.S.A. 34:15-120.1 et seq.

**12:235-13.3 Reporting compensation paid**

(a) Report forms for the report of compensation paid shall be mailed by the Department to the respective insurers or self-insured employers by June 15 of each calendar year.

(b) Insurers and self-insured employers shall file the report of compensation paid for the calendar period July 1 to June 30 with the Department by July 31 following the end of the report year to be filed.

**12:235-13.4 Calculation and notification of surcharge**

(a) Insurers will include the surcharge percentages as provided by the Department of Insurance, for both the Second Injury Fund and the Uninsured Employers' Fund, respectively, on each policyholder's premium notice.

(b) The surcharge amounts shall be calculated by multiplying the surcharge rate by the standard premium.

(c) The resulting surcharge amounts shall be stated by the insurer separately on the premium notice.

(d) The surcharge shall be remitted to the insurer with the first premium installment that is payable by the policyholder, for the annual policy term.

(e) Self-insured employers shall be notified of their share of the surcharge by September 15 of the calendar year that precedes the year for which the surcharge applies.

**12:235-13.5 Surcharge collection procedure**

(a) The Department shall provide each insurer and self-insured employer with the appropriate form for calculating the surcharge remittance. The form shall contain express instructions for the completion of the items pertaining to the calculation of the surcharge remittance.

1. For insurers, the following apply:

i. The amount of the remittance shall be proportionate to the earned premium at the end of the calendar quarter of remittance, less any supplemental benefits and special adjustments that have been paid;

ii. The quarterly calculation of the surcharge amount due shall be adjusted for changes in prior quarter earned premiums, if any. For example, in 1989, the maximum number of prior quarters that may need earned premium adjustment will be three. In 1993, the maximum number of prior quarters that may need earned premium adjustment will be 19. In 1994, and thereafter, the maximum number of quarters that may need earned premium adjustment will vary from 16 to 19; and

iii. Surcharges collected shall be remitted within 30 days following the end of each calendar quarter ending March 31, June 30, September 30, and December 31.

2. For self-insured employers, the following apply:

i. The amount of the remittance shall be equal to one-quarter of the annual surcharge, adjusted for supplemental benefits and special adjustments paid during the calendar quarter of remittance; and

ii. One-quarter of the annual surcharge shall be remitted within 30 days of the end of each calendar quarter ending March 31, June 30, September 30, and December 31.

(b) The surcharge remittance form shall be returned with the surcharge remitted to the Department.

**12:235-13.6 Verification and audit procedures**

(a) Insurers and self-insured employers shall submit a quarterly detailed report that supports the amount of credits, supplemental benefits and special adjustment payments claimed on the quarterly remittance.

1. The form and manner of completion shall be as directed by the Director.

(b) Claims for credits for supplemental benefits and special adjustment payments are subject to review and approval by the Director.

1. Any credits claimed that are not approved by the Director shall result in the insurer or self-insured employer being liable for the surcharge in the amount of the disallowed claim for credit.

(c) Insurers and self-insured employers that fail to submit the support of the credits claimed on their quarterly remittance shall be liable for the total amount of the quarterly surcharge due without credit for the amount of supplemental benefits and special adjustment payments.

(d) Earned premiums and reports of compensation paid are subject to audit and verification by the Department.

1. Adjustments resulting from incorrectly reported earned premiums or reports of compensation paid shall result in a recalculation of the surcharge due from the insurer or self-insured employer who filed the incorrect information.

(e) Any amounts of surcharges due as the result of disallowed claims for credit or incorrect reports of earned premiums or reports of compensation paid shall be subject to interest on the portion of the surcharge that is due as the result of the disallowance or adjustment made by the Department.

**12:235-13.7 Earned premium notification**

Insurers are required to notify the Department of Insurance of the amount of earned premiums for the period January 1 to December 30 of each calendar year by August 30 of the immediately following year.

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12:235-13.8 Forms

Forms referred to in this subchapter are available from the Department, and may be requested in writing from:

Office of the Controller  
Trust Fund Accounting  
New Jersey Department of Labor  
CN 394  
Trenton, New Jersey 08625-0394

12:235-13.9 Penalties

(a) Any insurer or self-insured employer who fails to submit a completed report of compensation paid by July 31 of any calendar year shall be subject to a penalty of \$100.00 for each 30 day period that the report is delinquent, up to a maximum of \$500.00.

(b) Any insurer or self-insured employer who fails to remit a quarterly surcharge by the due date shall be subject to a penalty of one-half of one percent (0.5%) of the surcharge remittance amount for each 30 day period, or portion thereof, that the remittance is delinquent, up to a maximum of five percent.

(c) Surcharges and penalties which are delinquent are subject to collection proceedings pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1.

**COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT**

**(a)**

**THE COMMISSIONER**

**Local Development Financing Fund**

**Proposed New Rule: N.J.A.C. 12A:12-2.10**

Authorized By: Borden R. Putnam, Commissioner, Department of Commerce, Energy and Economic Development.

Authority: N.J.S.A. 52:27H-6f and 34:1B-36.

Proposal Number: PRN 1988-499.

Submit comments by November 16, 1988 to:

Bernard J. McBride  
Administrative Practice Officer  
New Jersey Department of Commerce, Energy and Economic Development  
CN 825  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

A new rule, N.J.A.C. 12A:12-2.10, is proposed for the Local Development Financing Fund rules, N.J.A.C. 12A:12-2. The purpose of the new rule is to clarify the public accessibility of financial information and documents submitted to the Department as part of a Local Development Financing Fund application.

The provisions of this new rule include what type of information shall be maintained in a confidential matter (see N.J.A.C. 12A:12-2.10(a)) and with whom the information may be shared (see N.J.A.C. 12A:12-2.10(b)).

**Social Impact**

The social impact of this proposed new rule should be positive. More potential loan applicants may apply for funding because of an assurance that certain information provided, as part of their application, shall be held in a confidential manner. Consequently, with more Local Development Financing Fund projects being developed, more urban distress can be eliminated.

**Economic Impact**

In general, the Local Development Financing Fund program impacts on the State in a positive economic manner, by providing low cost capital for certain industrial and commercial projects in areas of the State unable to acquire sufficient capital investment. By treating certain information provided by a loan applicant as confidential, more Local Development Financing Fund projects could result, because the applicant could apply for a loan without fear of disclosure of sensitive financial information.

**Regulatory Flexibility Statement**

Unless a defined small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., applies for project financing under this program, there will be no impact upon those businesses in New Jersey. However, if a defined small business were to apply for financing, their compliance, recordkeeping and reporting burden would be no different than that of business defined not to be a small business. For either business, the rule's only requirement is for the clear advisement to the Department of the confidential nature of application documents or information.

Full text of the proposal follows:

12A:12-2.10 Information confidentiality

(a) All information and documents submitted to the Department as part of a Local Development Financing Fund loan application relating to the financial status of a loan applicant or which is given to the Department with the expressed and implicit expectation of confidentiality shall only be disclosed with the permission of the loan applicant or at the discretion of the Director.

(b) Information and documents provided to the Department may be shared with assignees and/or agents of the Department for purposes of analysis of the credit worthiness of the applicant to receive a Local Development Financing Fund loan.

**URBAN DEVELOPMENT CORPORATION**

The following proposals are authorized by the New Jersey Urban Development Corporation, Elizabeth F. Defeis, Chair.

Submit comments by November 16, 1988 to:

Philip P. Rowan  
Executive Director  
New Jersey Urban Development Corporation  
150 West State Street, CN 834  
Trenton, New Jersey 08625

**(b)**

**Urban Small Business Incubator Program**

**Proposed New Rules: N.J.A.C. 12A:80-1**

Authority: N.J.S.A. 55:19-6(d).

Proposal Number: PRN 1988-508.

The agency proposal follows:

**Summary**

New rules are being proposed to implement the New Jersey Urban Development Corporation Act, N.J.S.A. 55:19-1 et seq. These rules are promulgated by the New Jersey Urban Development Corporation (UDC), which is given responsibility for implementing the Act and associated programs. The purpose of these rules is to encourage economic development in specified areas of the State. Through the establishment of special facilities for small businesses, the small business community should be expanded and strengthened.

Some key provisions of the proposed new rules include:

1. The definition of a small business incubator (see N.J.A.C. 12A:80-1.2);
2. Application standards for the establishment of a small business incubator wishing to receive UDC financial assistance (see N.J.A.C. 12A:80-1.3);
3. Terms of direct loans from the UDC to a small business incubator (see N.J.A.C. 12A:80-1.5); and
4. Terms of direct UDC investment in a small business incubator (see N.J.A.C. 12A:80-1.6).

**Social Impact**

The social impact of this program should be positive in the sense that the UDC small business incubator program will provide facilities for the expansion and stabilization of small business communities in depressed urban areas of the State. As a result, the conditions which categorize an urban area of the State as depressed should be relieved, through increased economic expansion and alleviation of unemployment.

**Economic Impact**

The UDC small business incubator program should economically impact on the State in a positive manner. By providing various kinds of

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low cost capital for the development of small business incubators, those incubators will be able to provide special assistance to new and growing small businesses. The cost of the program to the State is relatively minor, in that UDC's funding was established through the sale of bonds authorized by the 1982 Community Development Bond Act. The administrative cost of the program will be covered in part by fees provided by the applicants.

**Regulatory Flexibility Statement**

Unless a small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., applies for project financing under this program, there shall be no impact upon those businesses in New Jersey. The compliance, recordkeeping and reporting requirements required for a sponsor of a small business incubator is no different than that of the burden of a "large" business. Additionally, small business should benefit from the program because of the facilities that will be provided under these rules, that will help foster the growth and stabilization of small businesses in specified urban areas. In order to maintain proper monitoring and functioning of the program, differentiation in requirements based upon applicant/incubator size be workable.

Full text of the proposal follows:

**CHAPTER 80**

**URBAN SMALL BUSINESS INCUBATOR PROGRAM**

**SUBCHAPTER 1. URBAN SMALL BUSINESS PROGRAM REQUIREMENTS**

**12A:80-1.1 Applicability and scope**

(a) The rules in this subchapter are promulgated by the New Jersey Urban Development Corporation to implement a program in the Corporation for the purpose of creating small business incubator facilities in certain designated municipalities in the State.

(b) This program is established for the specific purpose of creating, through joint venture agreements, direct financing by the Corporation, indirect financing by the Corporation, and by other means to facilitate and/or manage the establishment and development of small business incubators in certain designated municipalities in the State.

(c) Applications and questions regarding participation in the program should be directed to:

New Jersey Urban Development Corporation  
150 West State Street  
CN 834  
Trenton, New Jersey 08625

**12A:80-1.2 Definitions**

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

"Board" or "Board of Directors" means the Directors of the New Jersey Urban Development Corporation, pursuant to N.J.S.A. 55:19-4.

"Civic project" means a project designed and intended to provide facilities for educational, cultural, health, recreational, community, or other civic purposes.

"Corporation" means the New Jersey Urban Development Corporation, established pursuant to N.J.S.A. 55:19-1 et seq.

"Cost of administration" means the cost of wages, salaries, or fees for the incubator management staff, as well as cost for supplies and maintenance for the incubator facility.

"Educational institution" means a private college or university, or a State sponsored and supported college or university.

"Eligible project costs" means the costs of developing, executing and making operational a Board approved project. Eligible project costs includes the cost:

1. Of purchasing, leasing, condemning, or otherwise acquiring land and/or other property, or an interest therein, in the designated project or as necessary for a right-of-way or other easement to or from the project area;
2. Incurred for or in connection with or incidental to acquiring the land, property, or interest;
3. Incurred for or in connection with the relocation and moving of persons displaced by acquisition;
4. Of developing or redevelopment, including:

i. The comprehensive renovation or rehabilitation of the land, property or interest;

ii. The cost of equipment and fixtures, which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project; and

iii. The disposition of land or other property for these purposes.

5. Of demolishing, removing, relocating, altering, constructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. Of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project;

7. Of planning and/or feasibility studies of proposed projects that are likely to result in UDC applications for financial assistance; and

8. Other incurred or incidental cost approved by the Board.

"Female business" means those female businesses duly approved pursuant to the New Jersey Set-Aside Act for Small Business, Female Businesses, Minority Businesses, N.J.S.A. 52:32-17 et seq. (See also N.J.A.C. 12A:10-1).

"Financial assistance" means, but is not limited to, direct loans, loan guarantees, equity investment, and/or stock underwriting purchases provided by the Corporation.

"For-profit corporation" means a corporation, organized and incorporated for the purpose of making a profit and as defined by N.J.S.A. 14A:1-2(g).

"Industrial project" means a project designed to provide facilities for manufacturing, industrial, commercial, wholesale, retail, warehousing, or research and development purposes.

"Minority business" means a minority business duly approved pursuant to the New Jersey Set-Aside Act for Small Business, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (See also N.J.A.C. 12A:10-1).

"Multi-purpose project" means a project combining the purposes of two or more project classifications enumerated in this chapter.

"Non-profit corporation" means a corporation organized and incorporated pursuant to N.J.S.A. 15A:1-2.

"Project" means specific work or improvement including lands, buildings, improvements, real and personal property or any interest therein (including lands under water, riparian rights, space rights, and air rights) acquired, owned, constructed, reconstructed, rehabilitated, or improved by the Corporation, a subsidiary of the Corporation, or by any other person, firm, or corporate entity under agreement with the Corporation or pursuant to the provisions of the New Jersey Urban Development Corporation Act.

"Qualified municipality" means any municipality which, at the time of the initiation of the project, was eligible to receive State aid and under P.L. 1977, c. 260 (N.J.S.A. 52:27D-162 et seq.); or any other municipality which in any year subsequent to the enactment of P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.); was eligible to receive State aid pursuant to the Act; or any municipality which has a population of 15,000 or less, according to the most recent Federal decennial census; population density of 5,000 or more per square mile; 100 or more children enrolled in the Aid to Family with Dependent Children Program, according to the data available to and utilized by the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs to determine eligibility for State aid and under the provisions of P.L. 1978, c. 14; an equalized tax rate which exceeds the State equalized tax rate; and an equalized valuation per capita which is less than the State equalized valuation per capita.

"Small business" means a business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Small business incubator" means a facility owned and/or operated by a sponsor with some type of financial assistance from the Corporation. The facility may provide any of the following services, or any others as approved by the Board:

1. Physical space in the incubator;

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2. Business and management assistance, which may include access to experts in professional areas such as:

- i. Bookkeeping and accounting;
- ii. Legal services;
- iii. Financing;
- iv. Product marketing; and
- v. Engineering.

3. Facility services, which may include, but are not limited to:

- i. Typing and reception work;
- ii. Cleaning and building security;
- iii. Conference facilities;
- iv. Laboratory and library facilities;
- v. Copy or duplication equipment;
- vi. Computers; and
- vii. Other electronic equipment.

"Sponsor" means an educational institution, local government unit, county government unit, economic development group, private-for-profit business, non-profit agency, or the Corporation.

"Subsidiary" means a corporation established by resolution of the Corporation, that has a majority of its outstanding voting shares owned by the Corporation or where the Corporation has the power to designate, and has so designated, a majority of the directors of such corporation.

**12A:80-1.3 Application for the establishment of a small business incubator**

(a) Each application for the establishment of a small business incubator shall be on forms prescribed by the Corporation and be accompanied by the following:

- 1. A non-refundable application fee of \$250.00;
- 2. Evidence of support of the municipality in which the small business incubator is to be located. For purposes of this chapter, evidence of municipal support shall mean:

- i. A certified copy of a resolution of the governing body of the local municipality;
- ii. A letter of support from the chief executive of the local municipality; and
- iii. Where applicable, a notarized letter from the local planning or zoning board which indicates that the project complies with local zoning requirements or has obtained the necessary variance.

3. A feasibility study of the incubator proposal which shall include:

- i. Total cost of the establishment of the incubator, such as necessary lease, purchase, renovation, or construction costs associated with the site and/or structure;
- ii. Cost of maintenance of the site and structures including utility costs and costs of financing;
- iii. A 10 year projection of operating expenses, including but not limited to:

- (1) Salary, wages, and compensation paid to the incubator manager and staff; and
- (2) Administrative cost associated with providing services and supervising the incubator;
- iv. A three-year projection of the sources of funding for operating expenses;
- v. A projection of income to be derived from the incubator, including but not limited to:
  - (1) Rental fees collected from leases;
  - (2) Annual local cash contributions;
  - (3) The value of in-kind services; and
  - (4) If applicable, grants from other sources other than the Corporation;

vi. Prospects of attracting suitable business to the incubator and the overall ability of the sponsor to develop and market the incubator;

vii. The ownership structure for the incubator, including the qualifications of the incubator principals and managers;

viii. Any policies for screening business tenants, concerning activities that tenants may or may not engage in, and a graduation policy, if applicable;

ix. A description of the services to be supplied to the tenants of the small business incubator;

x. A statement attesting that "but for" financial assistance from the Corporation, the project would not be possible;

xi. Evidence of all requisite Federal and/or State environmental permits, where necessary, for the incubator project; and

xii. A statement of the type and amount of financial assistance requested from the Corporation as well as the source(s) that will provide capital for the incubator project.

**12A:80-1.4 Time for application for establishment of a small business incubator**

A sponsor may apply to the Corporation at any time for financial assistance in establishing a small business incubator. However, the Corporation may establish deadlines for the receipt and approval of applications, if it is in the best interest of the program.

**12A:80-1.5 Direct loans from the Corporation to a small business incubator**

(a) No more than \$6 million shall be allocated to any one county from all of the Corporation's development programs during the period in which the Corporation is allocating any of the \$30 million provided by Community Development Bond Act, P.L. 1981, c. 486.

(b) The Corporation may provide financial assistance to a small business incubator in the form of a direct loan from the Corporation in an amount up to 50 percent of the total eligible project cost, or \$500,000, whichever is less. For purposes of this chapter, total eligible project cost shall be deemed to be the direct cost of the acquisition, construction, expansion, and/or renovation of a building or other structure. Eligible project cost shall also be deemed to be the direct cost for the purchase, lease, or otherwise acquisition of equipment and furnishing of the small business incubator facility.

(c) Terms for repayment of direct loans from the Corporation shall not exceed a period of 20 years.

(d) The Corporation may defer repayment of loans up to a period of two years for the purpose of easing project start-up cost. If a loan deferral is granted, it shall not mean a waiver of interest incurred on the loan for the period payments are deferred.

(e) Direct loans from the Corporation may not be used for operating costs for small business incubator.

(f) Direct loans from the Corporation may only be used to purchase or construct fixed assets.

(g) Direct loans from the Corporation will only be granted when the project sponsor has secured interim construction financing. Loan proceeds will be disbursed only upon project completion to the satisfaction of the Corporation.

(h) The minimum amount of financial assistance from the Corporation shall be \$50,000 for development proceeds, and \$10,000 for feasibility studies.

**12A:80-1.6 Direct Corporation investment in a small business incubator**

(a) The Corporation may directly invest in a small business incubator through the purchase of stock of the sponsor or a Corporation subsidiary formed for the purpose of investing in the incubator project or through the acquisition of other forms of ownership in the project.

(b) The sale of stock in the subsidiary of the Corporation shall be for the purpose of providing funds for capital investment in the small business incubator project.

(c) If the Corporation or its subsidiary assumes an equity interest in the small business incubator project, the owner, partner, or other business entity shall be required to comply with all Corporation rules and requirements.

**12A:80-1.7 Corporation grants to small business incubators**

Grants may be made by the Corporation to incubator sponsors, when determined by the Board of Directors to be necessary and appropriate.

**12A:80-1.8 Corporation seed venture fund investment**

(a) The Corporation may provide financial assistance to a small business incubator through participation in a seed venture fund.

(b) If the Corporation participates in a seed venture fund, it will be as a limited partner.

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(c) The purpose of the fund will be to invest in Corporation financed small business incubator tenant firms.

12A:80-1.9 Evaluation of application for financial assistance from the Corporation

(a) The Executive Director and the Corporation's Project Review Committee shall evaluate each application for financial assistance from the Corporation considering the following factors:

1. The distress level of the municipality in which the project is to be located, as well as the immediate area of the project;
2. The ratio of total Corporation financing to permanent jobs created as a result of the financing;
3. The amount of new tax ratables created within the municipality where the project is located;
4. The amount of financing from the project from sources other than the Corporation;
5. The impact the project will have in stimulating investment and development in the municipality and the immediate area in which the project is located;
6. The readiness of the project to proceed and the likely success of the project;
7. The return on the investment made by the Corporation in the project; and
8. The degree of support for, participation in, and/or consultation with the community and municipality in which the project is to be located.

(b) After the evaluation of projects by the Executive Director and the Project Review Committee is completed, the project will be presented to the Board for preliminary approval. The project will then be reviewed again by the Executive Director and Project Review Committee prior to the Board's final decision.

(c) The Corporation shall have 120 days in which to review the request for financial assistance and advise the sponsor that:

1. The request has been approved;
2. The request has been approved contingent on modification;
3. The request has been rejected; or
4. The request is continuing to be considered pending additional information being received.

12A:80-1.10 Small business, female business and minority business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Corporation shall set aside no less than 10 percent of the aggregate project construction cost of the project for the purpose of providing contract opportunities for small businesses, female businesses, and minority businesses.

(b) The sponsor of the project shall identify the small businesses, women-owned businesses and minority-owned businesses that will participate, by construction trade, together with the contract sum to be paid to each small business, female business and minority business.

(c) In determining compliance with these goals, a sponsor may only utilize those small businesses, women-owned businesses, and minority-owned businesses duly approved and registered pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (See N.J.A.C. 12A:10-1).

12A:80-1.11 Reporting and compliance

(a) Upon the receipt of Corporation financial assistance, the project sponsor shall be required to submit an annual report to the Corporation which shall include the following:

1. An annual audit of the small business incubator by a certified public accountant;
2. Changes in any incubator policies or marketing plans affecting incubator occupancy or the financial viability of the incubator;
3. Plans for capital investments;
4. Occupancy rate of the incubator;
5. A listing of all the tenants in the incubator during the year;
6. Number of employees utilized by each tenant;
7. Current and 10-year projected budgets; and
8. Any other information that the Corporation may require.

12A:80-1.12 Rescission of financial assistance from the Corporation

(a) The Board of the Corporation may, in its discretion, rescind all or part of the financial assistance to a small business incubator project when it has become reasonably evident that:

1. The commitment of financial resources from other sources has been withdrawn or amended in such a manner as to undermine the investment by the Corporation;
2. The project is judged no longer capable of repaying the Corporation;
3. The project is judged incapable of achieving its set-aside requirements, under N.J.A.C. 12A:80-1.10 or the project is not employing good faith efforts to achieve these requirements; or
4. The sponsors and/or other participants in the project are found not to be of good moral character. Lack of good moral character shall include, but not be limited to, convictions of offenses or crimes.

(b) Upon determination by the Corporation that financial assistance from the Corporation shall be rescinded, the Corporation shall send a certified letter to the sponsor informing of the rescission and the right of the sponsor to appeal the decision pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-10, and the uniform Administrative Practice Rules, N.J.A.C. 1:1.

### (a)

#### Urban Development Program

#### Proposed New Rules: N.J.A.C. 12A:81-1

Authority: N.J.S.A. 55:19-6(d).

Proposal Number: PRN 1988-509.

The agency proposal follows:

#### Summary

New rules are being proposed to implement the New Jersey Urban Development Corporation Act, N.J.S.A. 55:19-1 et seq. These rules are promulgated by the New Jersey Urban Development Corporation (UDC), which is given responsibility for implementing the Act through encouraging economic development in specified areas of the State by providing supplementary financial assistance for certain types of projects.

Some key provisions of the proposed new rules include:

1. What type of project costs are eligible for funding under UDC programs (see N.J.A.C. 12A:81-1.2);
2. Application standards for financial assistance from the UDC (see N.J.A.C. 12A:81-1.3); and
3. Types of financial assistance available from the UDC (see N.J.A.C. 12:81-1.5).

#### Social Impact

The social impact of urban development programs will be positive in the sense that the UDC will provide additional possibilities for accumulation of capital for the development of various projects by the UDC. Distressed urban areas of the State should be relieved of problems such as high chronic unemployment, and limited capital funds for economic revitalization and growth.

#### Economic Impact

UDC programs should impact on the State in a positive manner, by providing low cost capital for certain projects in areas unable to acquire sufficient capital investment. The cost of the program to the State is relatively minor in that UDC's funding was established through the sale of bonds authorized by the 1982 Community Development Bond Act. The administrative cost of the program will be covered in part by fees provided by the applicants.

#### Regulatory Flexibility Statement

Unless a small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., applies for project financing under this program, there shall be no impact upon those businesses in New Jersey. The compliance, reporting and recordkeeping required for a small business sponsor of a UDC financed project is no different than that of the burden of a "large" business. The application (N.J.A.C. 12A:81-1.3), set-aside (N.J.A.C. 12A:81-1.7) and reporting and compliance requirements (N.J.A.C. 12A:81-1.8) must be met by all sponsors. To reduce these requirements based upon the applicant/sponsor's size would reduce the UDC's ability to properly monitor and maintain the programs, and, thus, no such reduction in requirements is afforded by these rules.

Full text of the proposal follows:

CHAPTER 81  
URBAN DEVELOPMENT PROGRAM

SUBCHAPTER 1. URBAN DEVELOPMENT PROGRAM  
REQUIREMENTS

12A:81-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Urban Development Corporation to implement the Corporation's general urban development financing program.

(b) This program provides for the Corporation to fund specific types of development projects in certain qualified municipalities.

(c) Applications and questions regarding participation in this program should be directed to:

New Jersey Urban Development Corporation  
150 West State Street  
CN 834  
Trenton, New Jersey 08625

12A:81-1.2 Definitions

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

"Board" or "Board of Directors" means the directors of the New Jersey Urban Development Corporation, pursuant to N.J.S.A. 55:19-4.

"Civic project" means a project designed and intended to provide facilities for educational, cultural, health, recreational, community or other civic purposes.

"Corporation" means the New Jersey Urban Development Corporation, established pursuant to N.J.S.A. 55:19-1 et seq.

"Educational institution" means a private college or university, or a State sponsored and supported college or university.

"Eligible project cost" means the cost of developing, executing and making operational a Board-approved project. Eligible project cost includes the cost:

1. Of purchasing, leasing, condemning, or otherwise acquiring land and/or other property, or an interest therein, in the designated project or as necessary for a right-of-way or other easement to or from the project area;

2. Incurred for or in connection with or incidental to acquiring the land, property, or interest;

3. Incurred for or in connection with the relocation and moving of persons displaced by acquisition;

4. Of development or redevelopment, including:

i. The comprehensive renovation or rehabilitation of the land, property or interest;

ii. The cost of equipment and fixtures, which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project; and

iii. The disposition of land or other property for these purposes.

5. Of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;

6. Of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project;

7. Of planning and/or feasibility studies of proposed projects that are likely to result in UDC applications for financial assistance; and

8. Other incurred or incidental cost approved by the Board.

"Female business" means those female-owned businesses duly approved pursuant to the New Jersey Set Aside Act for Small Businesses and Female Businesses, Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Financial assistance" means, but is not limited to, direct loans, loan guarantees, equity investment, and/or stock underwriting purchases provided by the Corporation.

"For-profit corporation" means a corporation, organized and incorporated for the purpose of making a profit and as defined by N.J.S.A. 14A:1-2(g).

"Industrial project" means a project designed to provide facilities for manufacturing, industrial, commercial, wholesale, retail, warehousing or research and development purposes.

"Land use project" means a project for the clearance, replanning, reconstruction, rehabilitation, renewal, redevelopment, conservation, restoration, or improvement of an area, in cooperation or under agreement with a qualified municipality which has designated the area blighted or in need of rehabilitation.

"Minority business" means a minority business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Multi-purpose project" means a project combining the purposes of two or more project classifications enumerated in this chapter.

"Non-profit corporation" means a corporation organized and incorporated pursuant to N.J.S.A. 15A:1-2.

"Project" means a specific work or improvement including lands, buildings, improvements, real and personal property or any interest therein (including lands under water, riparian rights, space rights, and air rights) acquired, owned, constructed, reconstructed, rehabilitated, or improved by the Corporation, a subsidiary of the Corporation, or by any other person, firm, or corporate entity under agreement with the Corporation or subsidiary of the Corporation pursuant to the provisions of the Urban Development Corporation Act.

"Qualified municipality" means any municipality which, at the time of the initiation of a project, was eligible to receive State aid under P.L. 1977, c. 260, N.J.S.A. 52:27D-162 et seq.; or any other municipality which in any year subsequent to the enactment of P.L. 1978, c. 14, N.J.S.A. 52:27D-178 et seq., was eligible to receive State aid pursuant to that Act; or any municipality which has a population of 15,000 or less, according to the most recent Federal decennial census; a population density of 5,000 or more per square mile; 100 or more children enrolled in the Aid to Families with Dependent Children Program, according to the data available to and utilized by the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs to determine eligibility for State aid under the provisions of P.L. 1978, c. 14; an equalized tax rate which exceeds the State equalized tax rate; and an equalized valuation per capita which is less than the State equalized valuation per capita.

"Small business" means a business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Sponsor" means an educational institution, local government unit, county government unit, economic development group, private-for-profit business, non-profit agency, or the Corporation.

"Subsidiary" means a corporation established by resolution of the Corporation, that has a majority of its outstanding voting shares owned by the Corporation or where the Corporation has the power to designate, and has so designated, a majority of the directors of such corporation.

"Utility project" means a project designed and intended to provide facilities for provision of water, sewer, solid-waste disposal, transportation, utility or other public services necessary for the accommodation of a project of another classification undertaken pursuant to this chapter; but accommodation of needs greater than those of the other project may be encompassed.

12A:81-1.3 Application for Corporation financial assistance

(a) Each application for financial assistance shall be on forms prescribed by the Corporation and be accompanied by the following:

1. A non-refundable application fee of \$250.00;

2. Evidence of support of the municipality in which the project is located. For purposes of this section, evidence of municipal support shall mean:

i. A certified copy of a resolution of the governing body of the local municipality;

ii. A letter of support from the chief executive of the local municipality; and

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iii. Where applicable, a notarized letter from the local planning or zoning board which indicates that the project complies with local zoning requirements or has obtained the necessary variance;

3. A feasibility study of the proposed project;

4. Evidence of private resources or other public sector financing commitments;

5. Evidence of all requisite Federal and/or State environmental permits where necessary for the project; and

6. A Small Business, Female Business, and Minority Business Set-Aside Plan. (See N.J.A.C. 12A:81-1.7).

### 12A:81-1.4 Time for application for financial assistance from the Corporation

A sponsor may apply to the Corporation at any time for financial assistance. However, the Corporation may establish deadlines for receipt and approval of applications, if it is in the best interest of the program.

### 12A:81-1.5 Financial assistance

(a) No more than \$6 million shall be allocated to any one county from all of the Corporation's development programs during the period in which the Corporation is allocating any of the \$30 million provided by Community Development Bond Act, P.L. 1981, c. 486.

(b) The Corporation may provide financial assistance to a project in any of the following manners:

1. Direct loans from the Corporation in the form of permanent mortgage financing for eligible project costs at Corporation designated rates. Terms of direct loans from the Corporation shall not exceed a period of 20 years.

2. Loan guarantees by the Corporation which guarantee Loans for no more than 90 percent of the eligible project cost. Terms of a loan guarantee shall not be for more than 10 years;

3. Equity investments by the Corporation through forming joint ventures with private or public sector entities, by providing venture capital, purchase of stock, or other forms of equity investment as may be offered by the specific project or the sponsor in general; or

4. Grants may be made by the Corporation to projects, when determined by the Board to be necessary and appropriate.

(c) The sponsor shall secure interim financing for all projects, unless the Corporation, by Board resolution, agrees otherwise. The interim lender shall assume full responsibility for monitoring the timely completion of a project.

(d) The minimum amount of financial assistance from the Corporation shall be \$50,000 for development projects, and \$10,000 for feasibility studies.

(e) The sponsor shall certify in writing that it is unable to provide additional funds for the project beyond its stated commitments and that "but for" assistance from the Corporation the project would be economically infeasible and unable to proceed.

### 12A:81-1.6 Evaluation of applications for financial assistance from the Corporation

(a) The Executive Director and the Corporation's Project Review Committee shall evaluate each application for financial assistance from the Corporation considering the following factors:

1. The distress level of the municipality in which the project is to be located, as well as the immediate area of the project;

2. The ratio of total Corporation financing to permanent jobs created as a result of the financing;

3. The amount of new tax ratables created within the municipality where the project is located;

4. The amount of financing from the project from sources other than the Corporation;

5. The impact the project will have in stimulating investment and development in the municipality and the immediate area in which the project is located;

6. The readiness of the project to proceed and the likely success of the project;

7. The return on the investment made by the Corporation in the project; and

8. The degree of support for, participation in, and/or consultation with the community and municipality in which the project is to be located.

(b) After an evaluation of the project by the Executive Director and the Project Review Committee is completed, the project will be presented to the Board for preliminary approval. The project will then be reviewed again by the Executive Director and Project Review Committee prior to the Board's final decision.

(c) The Corporation shall have 120 days in which to review a request for financial assistance and advise an applicant sponsor that:

1. The request has been approved;

2. The request has been approved contingent on modification;

3. The request has been rejected; or

4. The request is continuing to be considered pending additional information being received.

### 12A:81-1.7 Small business, female business and minority business set-aside plans and requirements

(a) Each project approved to receive financial assistance from the Corporation shall set-aside no less than 10 percent of the aggregate project construction cost of the project for the purpose of providing contract opportunities for small businesses, female businesses, and minority businesses.

(b) The sponsor of the project shall identify the small businesses, female businesses and minority businesses that will participate, by construction trade, together with the contract sum to be paid to each small business, female business, and minority business.

(c) In determining compliance with these goals, a sponsor may only utilize those small businesses, women businesses, and minority businesses duly approved and registered pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (See N.J.A.C. 12A:10-1).

### 12A:81-1.8 Reporting and compliance

(a) Upon the receipt of Corporation financial assistance, the project sponsor shall be required to submit an annual report to the Corporation which shall include the following:

1. An annual audit of the sponsor prepared by a certified public accountant;

2. A report on the number of employees working at the project location;

3. Current and 10-year projected budgets of the approved project;

4. Plans for capital investments; and

5. Any other information that the Corporation may require.

### 12A:81-1.9 Rescission of financial assistance from the Corporation

(a) The Corporation may, at its discretion, rescind all or part of the financial assistance from the Corporation when it has become reasonably evident that:

1. The commitment of financial resources has been withdrawn or amended in such a manner as to undermine the investment by the Corporation;

2. The project is judged no longer capable of repaying the Corporation;

3. The project is judged incapable of achieving its set aside requirement, under N.J.A.C. 12A:81-1.7, or the project is not employing good faith efforts to achieve these requirements; or

4. The sponsor and/or participants in the project are found not to be of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.

(b) Upon determination by the Corporation that financial assistance from the Corporation shall be rescinded, the Corporation shall send a certified letter to the sponsor informing of the rescission and the right of the sponsor to appeal the decision pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-10, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**(a)**

**Neighborhood Development Corporation**

**Proposed New Rules: N.J.S.A. 12A:82-1**

Authority: N.J.S.A. 55:19-6(d).

Proposal Number: PRN 1988-510.

The agency proposal follows:

**Summary**

New rules are being proposed to implement the New Jersey Urban Development Corporation Act, N.J.S.A. 55:19-1 et seq. These rules are promulgated by the New Jersey Urban Development Corporation (UDC), which is given responsibility for implementing the Act and associated programs. The purpose of these rules is to encourage particular economic development in specified areas of the State. In particular, economic development in these areas will be achieved through the use of community owned and controlled projects.

Some key provisions of the proposed new rules include:

1. The definition of a neighborhood development corporation (NDC) (see N.J.A.C. 12A:82-1.2);
2. Application standards for a NDC to receive financial assistance from the UDC (see N.J.A.C. 12A:82-1.3); and
3. Terms of the financial assistance available from the UDC (see N.J.A.C. 12A:82-1.5).

**Social Impact**

The social impact of this program should be positive in the sense that the UDC's support and financial assistance to NDC's will enable community based groups to guide and determine what type of development will occur within their own community or neighborhood.

**Economic Impact**

The UDC's support and financial assistance of NDC's should impact on the State in a positive manner, by providing various kinds of low cost capital for the development of community based economic development projects unable to acquire sufficient capital investment. The cost of the program to the State is relatively minor in that UDC's funding was established through the sale of bonds authorized by the 1982 Community Development Bond Act. The administrative cost of the program will be covered in part by fees provided by the applicants.

**Regulatory Flexibility Statement**

Unless a small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 51:14B-16 et seq., applies for project financing under this program, there shall be no impact upon those businesses in New Jersey. The compliance, recordkeeping and reporting requirements required for a small business NDC is no different than that of the burden of a "large" business NDC. Each applicant for NDC status must go through the same application process (see N.J.A.C. 12A:82-1.3), comply with the set-aside plans and requirements (see N.J.A.C. 12A:82-1.7) and meet the compliance and reporting requirements of N.J.A.C. 12A:82-1.8. To reduce these requirements based upon the applicant/NDC's size would reduce the UDC's ability to properly monitor and maintain the program, and, thus no such reduction in requirements is afforded by these rules.

Full text of the proposal follows:

**CHAPTER 82**

**NEIGHBORHOOD DEVELOPMENT CORPORATION**

**SUBCHAPTER 1. NEIGHBORHOOD DEVELOPMENT CORPORATION REQUIREMENTS**

**12A:82-1.1 Applicability and scope**

(a) The rules in this subchapter are promulgated by the New Jersey Urban Development Corporation to implement the Corporation's Neighborhood Development Corporation Program.

(b) The purpose of the program is to provide technical and/or financial assistance to Neighborhood Development Corporations in certain qualified municipalities.

(c) Applicants and questions regarding participation in this program should be directed to:

New Jersey Urban Development Corporation  
150 West State Street  
CN 834  
Trenton, New Jersey 08625

**12A:82-1.2 Definitions**

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

"Board" or "Board of Directors" means the Directors of the New Jersey Urban Development Corporation pursuant to N.J.S.A. 55:19-4.

"Civic project" means a project designed and intended to provide facilities for educational, cultural, health, recreational, community or other civic purposes.

"Corporation" means the New Jersey Urban Development Corporation established pursuant to N.J.S.A. 55:19-1 et seq.

"Eligible project cost" means the cost of developing, executing and making operational a Board-approved neighborhood development corporation project. Eligible project cost includes the cost:

1. Of purchasing, leasing, condemning, or otherwise acquiring land and/or other property, or an interest therein, in the designated project area or as necessary for a right-of-way or other easement to or from the project area;
2. Incurred for or in connection with, or incidental to acquiring the land, property, or interest;
3. Incurred for, or in connection with the relocation and moving of persons displaced by acquisition;
4. Of development or redevelopment, including:
  - i. The comprehensive renovation or rehabilitation of the land, property or interest;
  - ii. The cost of equipment and fixtures, which are part of the real estate, and the cost of production machinery and equipment necessary for the operation of the project; and
  - iii. The disposition of land or other property for these purposes.
5. Of demolishing, removing, relocating, renovating, altering, constructing, reconstructing, installing or repairing any land or any building, street, highway, alley, utility, service or other structure or improvement;
6. Of acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements necessary to the project;
7. Of planning and/or feasibility studies of proposed projects that are likely to result in UDC applications for financial assistance; and
8. Other incurred or incidental cost approved by the Board.

"Female business" means those female businesses duly approved pursuant to the New Jersey Set Aside Act for Small Businesses, Female Businesses, Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Financial assistance" means, but is not limited to, direct loans, loan guarantees, equity investment, and/or stock underwriting purchases provided by the Corporation.

"For-profit corporation" means a corporation, organized and incorporated for the purpose of making a profit and as defined by N.J.S.A. 14A:1-2(g).

"Industrial project" means a project designed to provide facilities for manufacturing, industrial, commercial, wholesale, retail, warehousing or research and development purposes.

"Land use project" means a project for the clearance, replanning, reconstruction, rehabilitation, renewal, redevelopment, conservation, restoration, or improvement of an area, in cooperation or under agreement with a qualified municipality which has designated the area blighted or in need of rehabilitation.

"Minority business" means a minority business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

"Multi-purpose project" means a project combining the purposes of two or more project classifications enumerated in this subchapter.

"Neighborhood" means an area designated within a qualified municipality and approved by the Board.

"Neighborhood development corporation" or "NDC" means a corporation formed for the sole purpose of owning, supervising, and managing a specific Board-approved project within the designated neighborhood area.

"Non-profit corporation" means a corporation organized and incorporated pursuant to N.J.S.A. 15A:1-2.

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“Project” means a specific work or improvement including lands, buildings, improvements, real and personal property or any interest therein (including lands under water, riparian rights, space rights, and air rights) acquired, owned, constructed, reconstructed, rehabilitated or improved by the Corporation, a subsidiary of the Corporation, or by any person, firm, or corporate entity under agreement with the Corporation or subsidiary of the Corporation pursuant to the provisions of the Urban Development Corporation Act.

“Qualified municipality” means any municipality which, at the time of the initiation of the project was eligible to receive State aid under P.L. 1977, ch. 260 (N.J.S.A. 52:27D-162 et seq.); or any other municipality which in any year subsequent to the enactment of P.L. 1978, ch. 14 (N.J.S.A. 52:27D-178 et seq.) was eligible to receive State aid pursuant to that Act; or any municipality which has a population density of 5,000 or more per square mile; 100 or more children enrolled in the Aid to Family with Dependent Children Program according to the data available to and utilized by the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs to determine eligibility for State aid and under the provisions of P.L. 1978, ch. 14, an equalized tax rate which exceeds the State tax rate; and an equalized valuation per capita which is less than the State equalized valuation per capita.

“Small business” means a business duly approved pursuant to the New Jersey Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses, N.J.S.A. 52:32-17 et seq. (see also N.J.A.C. 12A:10-1).

“Subsidiary” means a corporation established by resolution of the Corporation, that has a majority of its outstanding voting shares owned by the Corporation or where the Corporation has the power to designate, and has so designated, a majority of the directors of such corporation.

“Technical assistance” means, but shall not be limited to, organizational development, incorporation, project feasibility, development and project administration.

“Utility project” means a project designed and intended to provide facilities for provision of water, sewer, solid-waste disposal, transportation, utility or other public services necessary for the accommodation of a project of another classification undertaken pursuant to this subchapter, but accommodation of needs greater than those of the other project may be encompassed.

**12A:82-1.3 Application for Corporation financial assistance**

(a) Each application for financial assistance shall be on forms prescribed by the Corporation and be accompanied by the following:

1. A non-refundable application fee of \$250.00;
2. Evidence of support of the municipality in which the project is located. For purposes of this section, evidence of municipal support shall mean the following:
  - i. A certified copy of a resolution of the governing board of the local municipality;
  - ii. A letter of support from the chief executive of the local municipality; and
  - iii. Where applicable, a notarized letter from the local planning or zoning board which indicates that the project complies with local zoning requirements or has obtained the necessary variance.
3. A feasibility study of the proposed project;
4. Evidence of private resources and other public sector financing commitments;
5. Evidence of all required Federal and/or State environmental permits where necessary for the project;
6. A Small Business, Female Business, and Minority Business Set-Aside Plan (See N.J.A.C. 12A:82-1.7);
7. A copy of the NDC's bylaws and certification of incorporation;
8. A listing of all the principals in the NDC, which shall include: names, addresses, social security numbers, dates of birth, and resumes. For purposes of this section, principal shall mean any officer, director, or individual who directly or indirectly holds any beneficial ownership of the securities or property of the NDC. It shall also mean any employee of the NDC who is empowered by title or by explicit assignment to authorize the procurement, purchase, or contracting of equipment, goods, services or supplies involving an expenditure of \$1,000 or greater for NDC use; and

9. A listing of stockholders' who own two and one-half percent or more of issued shares. The stockholders listing shall disclose the names, addresses, social security numbers, dates of birth, class of stock owned, approximate voting power of stock owned, and number of shares owned.

**12A:82-1.4 Time for application for financial assistance from the Corporation**

An NDC may apply to the Corporation at any time for financial assistance. However, the Corporation may establish receipt deadlines and approval dates.

**12A:82-1.5 Financial assistance**

(a) No more than \$6 million shall be allocated to any one county from all of the Corporation's development programs during the period in which the Corporation is allocating any of the \$30 million provided by the Community Development Bond Act, P.L. 1981, c. 486.

(b) The Corporation may provide financial assistance to an NDC in any following manners:

1. Direct loans from the Corporation in the form of permanent mortgage financing for eligible project cost at Corporation designated rates. The term of repayment of direct loans shall not exceed a period of 20 years.
2. Equity investments by the Corporation in the NDC through the purchase of stock of the NDC, and other methods of equity investment.
3. Grants may be made by the Corporation to projects, when determined by the Board to be necessary and appropriate.

(c) The applicant must secure interim financing on all projects, unless the Corporation by Board resolution, agrees otherwise. The interim lender shall assume full responsibility for monitoring the timely completion of a project.

(d) The minimum amount of financial assistance from the Corporation shall be \$50,000 for development projects, and \$10,000 for feasibility studies.

(e) The applicant shall certify in writing that it is unable to provide additional funds in the project beyond its stated commitments and that “but for” the assistance from the Corporation the project would be economically infeasible and unable to proceed.

**12A:82-1.6 Evaluation of applications for financial assistance from the Corporation**

(a) The Executive Director and the Corporation's Project Review Committee shall evaluate each application for financial assistance from the Corporation considering the following factors:

1. The distress level of the municipality in which the project is to be located, as well as the immediate area of the project;
2. The ratio of total Corporation financing to permanent jobs produced as a result of the financing;
3. The amount of new tax ratables created with the municipality where the project is located;
4. The amount of financing from the project from sources other than the Corporation;
5. The impact the project will have in stimulating investment and development in the municipality and the immediate area in which the project is located;
6. The readiness of the project to proceed and the likely success of the project;
7. The return on the investment made by the Corporation in the project;
8. The degree of support for, participation in, and/or consultation with the community and municipality in which the project is to be located;
9. Whether the ownership of the NDC is broad and representation of the neighborhood in which the project is to be located; and
10. The amount of technical assistance that will be needed by NDC from the Corporation.

(b) After the evaluation of projects by the Executive Director and the Project Review Committee is completed, the project will be presented to the Board for preliminary approval. The project will be reviewed again by the Executive Director and Project Review Committee prior to the Board's final decision.

(c) The Corporation shall have 120 days in which to review a request for financial assistance and advise an applicant sponsor that:

1. The request has been approved;
2. The request has been approved contingent on modification;
3. The request has been rejected; or
4. The request is continuing to be considered pending additional information being received.

12A:82-1.7 Small business, female business and minority business set-aside plans and requirements

(a) Each NDC project approved to receive financial assistance from the Corporation shall set-aside no less than 10 percent of the aggregate project construction cost of the project for the purpose of providing contract opportunities for small businesses, female businesses, and minority businesses.

(b) The NDC shall identify the small businesses, female businesses and minority businesses that will participate, by construction trade, together with the contract sum to be paid to each small business, female business, and minority business.

(c) In determining compliance with these goals, an NDC may only utilize those small businesses, female businesses and minority businesses duly approved and registered pursuant to the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, N.J.S.A. 52:32-17 et seq. (See N.J.A.C. 12A:10-1).

12A:82-1.8 Reporting and compliance

(a) Upon the receipt of Corporation financial assistance, the NDC shall be required to submit an annual report to the Corporation which shall include the following:

1. An annual audit of the Neighborhood Development Corporation by a certified public accountant;
2. A report on the number of employees working at the project location;
3. Current and 10-year projected budgets of the approved project;
4. Plans for capital investments; and
5. Any other information that the Corporation may require.

12A:82-1.9 Rescission of financial assistance from the Corporation

(a) The Corporation may at its discretion rescind part or all of the financial assistance from the Corporation when it has become reasonably evident that:

1. The commitment of financial resources has been withdrawn or amended in such a manner as to undermine the investment by the Corporation;
2. The project is judged no longer capable of repaying the Corporation;
3. The project is judged incapable of achieving its set aside requirement, under N.J.A.C. 12A:82-1.7, or that the project is not employing good faith efforts to achieve these requirements;
4. The sponsors and/or participants in the project are found not to be of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes;
5. That any one individual, without prior Board approval, has directly or indirectly purchased, obtained or otherwise acquired more than 10 percent ownership of NDC issued stock;
6. That any one individual, without prior Board approval, has directly or indirectly acquired more than 15 percent voting control of the NDC; or
7. That any one family, without prior Board approval, has directly or indirectly purchased, obtained or otherwise acquired more than 30 percent ownership of NDC issued stock. For purposes of this section, family shall be defined as relatives of husband-wife, father, mother, brother, and sister whether or not residing in the same household.

(b) Upon determination by the Corporation that financial assistance from the Corporation shall be rescinded, the Corporation shall send a certified letter to the sponsor informing of the rescission and the right of the sponsor to appeal the decision pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-10 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

## LAW AND PUBLIC SAFETY

(a)

### BOARD OF ACCOUNTANCY

#### Continuing Professional Education

#### Proposed New Rules: N.J.A.C. 13:29-6

Authorized By: State Board of Accountancy,  
Richard W. Culbertson, CPA, President.  
Authority: N.J.S.A. 45:2B-17.1 and 45:2B-38 et seq.  
Proposal Number: PRN 1988-506.

Submit comments by November 16, 1988 to:

John J. Meade, Executive Director  
Board of Accountancy, Room 507A  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

The Board of Accountancy proposes comprehensive provisions relating to continuing professional education which include, but are not limited to, credit hour requirements, qualifying and non-qualifying subject matter, continuing education programs and other sources of continuing education credit.

The credit hour requirements for Certified Public Accountants (CPA's) have been prorated since their next biennial registration is on October 1, 1989. Eighteen credit hours, including, where applicable, at least six hours in the area of auditing must be taken prior to June 30, 1989. Thereafter, 48 credit hours must be taken within the subsequent biennial registration periods.

Public accountants and Registered Municipal Accountants (RMA's) are required to complete 48 credit hours including, where applicable, at least 16 credit hours in the area of auditing prior to June 30, 1990 for the biennial registration on October 1, 1990 and September 1, 1990 (RMA's) and each subsequent biennial registration period.

#### Social Impact

The proposed new rules will apply to all licensees registered by the Board of Accountancy. The public and licensees will benefit from these rules since the professional competency of licensees will be enhanced.

#### Economic Impact

The cost of compliance with the proposed requirements will be borne solely by the licensee. Pursuant to these rules, the licensee is required to complete credit hour requirements during the biennial period preceding license renewal. There will be no economic impact on the public.

#### Regulatory Flexibility Statement

It is unclear whether the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., was intended to cover individual practicing professionals, but on the assumption that it is applicable, the following statement is relevant:

The Board of Accountancy currently licenses approximately 1,100 accounting entities, 14,000 CPA's, 2,150 public accountants and 330 RMA's.

With the one-time exception of the prorated credit hour requirements for certified public accountants, during the shortened time period prior to their next biennial registration, the proposed rules are uniformly applicable to all licensees, without distinction as to the size of the professional practice. The imposition of reporting, recording and compliance requirements are minimal, yet carry out the Board's intended purpose of protecting the public's best interests. Requirements relating to licensees include the reporting of continuing education credits and the retention of records related thereto. Additional requirements apply to program developers and sponsors, who may or may not be licensees.

Any costs for compliance will be borne by licensees; therefore, there is no need to minimize any adverse economic impact on small businesses, pursuant to the Regulatory Flexibility Act. The necessity to engage professional services, instructional in nature, will be uniformly applicable to all licensees.

Full text of the proposal follows.

## SUBCHAPTER 6. CONTINUING PROFESSIONAL EDUCATION

### 13:29-6.1 Coverage

All licensees under N.J.S.A. 45:2B-1 et seq. shall comply with the provisions of this subchapter relating to continuing professional education (CPE).

### 13:29-6.2 Credit-hour requirements

(a) Each applicant for a biennial license renewal is required to complete, during the preceding biennial period, 48 credit hours of continuing education. The types of continuing education programs and other sources of continuing education for which credit hours may be obtained are set forth in N.J.A.C. 13:29-6.5. The 48 hours of continuing education shall include at least 16 credit hours in the areas of auditing, review or completion for persons who are engaged in the practice of public accounting or are involved with the attest function in issuing audit, review or compilation reports. This subsection is applicable to licensees seeking to renew their licenses for the next biennial renewal period. Mandatory CPE will commence for licensees upon the final adoption of this subchapter by the State Board of Accountancy which is anticipated by no later than January 1, 1989.

1. For Certified Public Accountants (CPA's) the following requirements apply:

i. Eighteen credit hours (including, where applicable, at least six credit hours in the area of auditing, including, but not limited to, review, compilation and attest standards) must be taken for the biennial registration on October 1, 1989. Such credits shall be taken between the period beginning October 1, 1988 and ending June 30, 1989, and reported to the Board, on official reporting forms, in a manner and at a time to be prescribed by the Board.

ii. Forty-eight credit hours (including, where applicable, at least 16 credit hours in the area of auditing, including, but not limited to, review, compilation and attest standards) must be taken for the biennial registration on October 1, 1991 (and subsequent biennial registrations). Such credit shall be taken between July 1, 1989 and June 30, 1991 (and subsequent biennial periods) and reported to the Board, on official reporting forms, in a manner and at a time to be prescribed by the Board.

2. For Public Accountants, the following requirements apply:

i. Forty-eight hours (including, where applicable, at least 16 credit hours in the area of auditing, including, but not limited to, review, compilation and attest standards) must be taken for the biennial registration on October 1, 1990. Such credits shall be taken between October 1, 1988 and June 30, 1990 and reported to the Board, on official reporting forms, in a manner and at a time to be prescribed by the Board.

ii. Forty-eight credit hours (including, where applicable, at least 16 credit hours in the area of auditing, including, but not limited to, review, compilation and attest standards) must be taken for the biennial registration on October 1, 1992 (and subsequent biennial registrations). Such credits shall be taken between July 1, 1990 and June 30, 1992 (and subsequent biennial periods) and reported to the Board, on official reporting forms, in a manner and at a time to be prescribed by the Board.

3. For Registered Municipal Accountants (RMA's), the following requirements apply:

i. Forty-eight hours (including, where applicable, at least 16 credit hours in the area of auditing, including, but not limited to, review, compilation and attest standards) must be taken for the biennial registration on September 1, 1990. Such credits shall be taken between October 1, 1988 and June 30, 1990 and reported to the Board, on official reporting forms, in a manner and at a time to be prescribed by the Board.

ii. Forty-eight credit hours (including, where applicable, at least 16 credit hours in the area of auditing, including, but not limited to, review, compilation and attest standards) must be taken for the biennial registration on September 1, 1992 (and subsequent biennial registrations). Such credits shall be taken between July 1, 1990 and June 30, 1992 (and subsequent biennial periods) and reported to the Board, on official reporting forms, in a manner and at a time to be prescribed by the Board.

(b) Persons failing to meet the continuing education requirements for a biennial renewal period will not be issued a current license until such requirements have been satisfied. The Board may modify this policy on an individual basis under circumstances specified under N.J.S.A. 45:2B-39. Failure to meet biennial continuing education requirements may subject a licensee to disciplinary action by the Board.

(c) The Board may, in its discretion, waive requirements for continuing professional education on an individual basis for reasons of hardship such as military service, or other due cause. Inactive or retired accountants who desire to remain licensed may apply for a waiver of continuing education requirements.

(d) An applicant, upon successful completion of the Uniform CPA Examination, shall be exempt from the requirements of (a) above for only the biennial period during which the applicant successfully completed such examination.

### 13:29-6.3 Qualifying subject matter

(a) The following subjects are acceptable for continuing education:

1. Accounting;
2. Auditing, including, but not limited to, review, compilation and attest standards;
3. Business law;
4. Computer Science;
5. Economics;
6. Finance;
7. Management advisory services;
8. Mathematics, statistics, etc.;
9. SEC practice;
10. Taxation; and
11. Professional ethics.

(b) Any of the subjects in (a) above may be in specialized areas, such as governmental, not-for-profit organizations, film industry, real estate, and farming.

(c) Auditing, review and compilation includes the body of knowledge that deals with the basic service of the public accounting profession, that is, examination and reporting on financial statements. Also included in this area is the examination or review of internal and administrative controls, operations and government programs. Relevant program offerings could include audit theory and philosophy; generally accepted auditing standards; study and evaluation of internal control; substantive audit procedures; audit sampling; reporting on financial statements; review services; and computer and government auditing.

(d) Subjects other than those listed in (a) above may be acceptable for continuing education credit if the licensee can demonstrate to the satisfaction of the Board that such subject or specific program contributes to the maintenance of the licensee's professional competence.

### 13:29-6.4 Non-qualifying subject matter

In general, studies related to personal, as opposed to professional, development of the license, or studies directly associated with the development and administration of the licensee's practice, will not be accepted towards meeting continuing education requirements. Included in this category are subjects that concentrate on the practice management areas, such as organizational structure, marketing of services, human resource management and other administrative matters. Study which relates to a licensee's personal skills such as speaking, leadership and managing people or organizations would also be excluded.

### 13:29-6.5 Continuing education programs and other sources of continuing education credit

(a) The following qualify as continuing education programs provided they contain the subject areas enumerated in N.J.A.C. 13:29-6.3 and meet the continuing education program criteria requirements as set forth in N.J.A.C. 13:29-6.6.

1. Continuing education programs of Federal or State accounting organizations: Continuing education credit will be granted at the rate of one credit hour for every 50 minutes of in-class participation.
2. University or college courses: Continuing education credit will be granted for university or college courses in accordance with the following:

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i. Applicants will receive 15 credit hours continuing education credit for each semester credit hour earned; and

ii. Applicants attending noncredit courses will be granted continuing education credit at the rate of one credit hour for every 50 minutes of in-class participation.

3. In-firm educational programs of public accounting firms: Continuing education credit will be granted at the rate of one credit hour for every 50 minutes of in-firm participation.

4. Correspondence programs and other individual study programs: Continuing education credit will be granted for correspondence programs and other individual study programs in accordance with the following:

i. The amount of credit to be allowed for approved correspondence and individual study programs, including taped study programs, shall be recommended by the program sponsor based upon one-half the average completion time calculated by the sponsor after it has conducted appropriate "field tests." Although the program sponsor must make recommendations concerning the number of credit hours to be granted, the number of credit hours granted shall be as determined by the Board;

ii. Credit for correspondence and other individual study programs will only be given in the renewal period in which the course is completed; and

iii. Maximum continuing education credit per biennium for approved correspondence courses will be limited to 50 percent of the biennial requirement.

(b) In addition to the continuing education programs enumerated in (a) above, continuing education credit will also be awarded for the following if they fall within the subject matter areas enumerated in N.J.A.C. 13:29-6.3 and meet the continuing education program criteria as set forth in N.J.A.C. 13:29-6.6.

1. Technical meetings: Licensees who participate in committee meetings of professional accounting organizations will be awarded continuing education credit for that portion of the meeting which is structured as a continuing education program. Continuing education credit will be granted at the rate of one credit hour for every 50 minutes of the licensee's participation.

2. Professional accounting meetings, conferences, seminars: Licensees who participate in meetings of professional accounting organizations will be awarded continuing education credit if the meeting is structured as an approved continuing education program. Continuing education credit will be granted at the rate of one credit hour for every 50 minutes of the licensee's participation in the meeting.

3. Firm meetings: Licensees who participate in firm meetings for staff or for management groups of professional accounting organizations will be awarded continuing education credit if the meeting is structured as an approved continuing education program. Continuing education credit will be granted at the rate of one credit hour for every 50 minutes of the licensee's participation in the meeting.

(c) In addition to the continuing education programs enumerated in (a) and (b) above, continuing education credit will also be granted for the following if they involve subject matter enumerated in N.J.A.C. 13:29-6.3:

1. Service as a lecturer, instructor, discussion leader, or speaker: Continuing education credit will be awarded for service as a lecturer, instructor, discussion leader, or speaker in accordance with the following:

i. One credit hour will be given for each 50 minute period of service provided the discussion is one which meets the continuing education subject matter requirements of N.J.A.C. 13:29-6.3. For the lecturer's, instructor's, discussion leader's, or speaker's preparation time, there will be awarded two additional hours of continuing education credit for each credit hour of instruction. Requests for credit shall be accompanied by an outline of the instruction, discussion, or presentation.

ii. The instructor or discussion leader will be given no credit for subsequent sessions in the same year involving substantially identical subject matter, except that after one year has elapsed the Board may give one additional credit hour for each 50 minute period of service as an instructor, lecturer, discussion leader, or speaker for the initial presentation provided the original material has been updated; and

iii. The maximum credit given for service as an instructor, lecturer, discussion leader, or speaker may not exceed 50 percent of the continuing education for any biennium.

2. Publications: Continuing education credit for publications will be awarded in accordance with the following:

i. Credit may be claimed for published articles and books by the authors of those works. These publications must contribute to the professional competence of accountants;

ii. Credit will be given for each 50 minute period of preparation time on a self-declaration basis normally not to exceed 25 percent of the biennial requirement. A copy of the publication article shall be submitted to the Board with a request for continuing education credit;

iii. In exceptional circumstances, a licensee may request additional credit by submitting the article or book to the Board with an explanation of the circumstances which he or she believes justify an award of greater credit. When licensees request more than 25 percent of the biennial requirement, credit hours awarded will be determined by the Board on a case-by-case basis. Factors such as complexity of subject matter, length of publication, and the amount of preparation time will be considered;

iv. The maximum credit for publication in exceptional circumstances shall not exceed 50 percent of the continuing education requirement for any biennium; and

v. Quality enhancement, technical review or peer review program committee participation will qualify for not more than 50 percent of the biennial requirement for each 50 minutes of participation.

**13:29-6.6 Criteria for continuing education sponsors**

(a) In order to qualify as a continuing education sponsor, the sponsors must offer courses which meet the following requirements:

1. Be a formal course of learning which contributes directly to the maintenance of professional competence of a licensee;

2. Be at least one credit hour, 50-minute period, in length;

3. Be conducted by a qualified instructor or discussion leader; and

4. Offer subject matter enumerated in N.J.A.C. 13:29-6.3.

(b) A continuing education sponsor may receive prior approval for a course of acceptable subject matter and be assigned a designated number of continuing education credits by the Board if the program sponsor provides, in writing and on a form provided by the Board, information required by the Board to document the elements of (a) above, and, in addition thereto, certifies that the sponsor will:

1. Maintain and retain accurate records of attendance for a five-year period.

2. Retain a written outline of course materials for a five-year period; and

3. Comply with the requirements of N.J.A.C. 13:29-6.12 relative to the responsibilities of program sponsors.

(c) Prior approval of a continuing education program and the continuing education credit must be renewed every two years and at such other times as the program is to be substantially altered. Applications for preapproval of continuing education programs must be submitted by the program sponsor at least 45 days prior to the date the continuing education program is to be offered.

**13:29-6.7 Credit-hour calculations**

(a) The minimum measurement for continuing education credit will be a whole credit hour. Except for those sources of continuing education for which another system of credit hour calculation is set forth in this subchapter, a continuing education credit hour is equivalent to 50 minutes of acceptable continuing education.

(b) Unless otherwise provided, only in-class participation, not student time devoted to preparation, will be counted.

**13:29-6.8 Reporting of continuing education credit hours**

(a) Licensees must provide, at a time prescribed and on forms approved by the Board, a signed statement certifying that continuing education requirements have been met and must document their certification, which shall include the following:

1. Dates attended;

2. Credit hours claimed;

3. Title of course and description of content;

4. School, firm, or organization sponsoring course;

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5. Instructor; and
6. Location of course.

(b) Falsification of any information required may result in the suspension or renovation of the licenses held by the falsifier.

### 13:29-6.9 Retention of continuing education records

(a) Primary responsibility for documenting the continuing education requirements rests with the licensee. Evidence to support fulfillment of those requirements shall be maintained for a period of five years after the completion of educational courses. This data shall be subject to periodic audit by the Board. Satisfactory documentation of the necessary information, including the retention of attendance records and written outlines, shall be accomplished as follows:

1. For courses taken for scholastic credit in accredited universities or colleges, a certified transcript or notarized statement of appropriate school authority shall constitute evidence of satisfactory completion of the course. For noncredit courses taken, a statement of the hours of attendance signed by the instructor, shall be obtained by the licensee.

2. For correspondence and independent study courses, written evidence of completion shall be submitted by the licensee.

i. Acceptable evidence of the completion of a correspondence course shall be a certificate of satisfactory completion acquired by the licensee from the program sponsor.

ii. Acceptable evidence of the completion of an independent study course shall be a summary of the program material drafted by the licensee.

3. If the program sponsor retains a copy of the course materials and a record of attendance, the licensees shall merely maintain a record of the information listed in N.J.A.C. 13:29-6.8(a). The licensee is responsible for determining whether or not the program sponsor retains these records. If there is a dispute concerning whether claimed activity should be granted credit and if the dispute could be resolved by the production of documented information to support the claim of the licensee, the dispute will be resolved against the licensee if he or she fails to produce evidence sufficient to document his or her claim.

4. If the licensee determines that the program sponsor does not retain the information discussed in (a)3 above, the licensee shall maintain a record of that information and a copy of the course outline prepared by the program sponsor.

### 13:29-6.10 Continuing education requirements: reciprocity or reentry

(a) An individual who holds a valid and unrevoked license issued by any state or other political subdivision of the United States and who receives a license to practice in New Jersey under the appropriate provisions of N.J.S.A. 45:2B-1 et seq. will be required to comply with the continuing education requirements applicable to all other licensees.

(b) All qualified persons who wish to apply for a license to reenter public practice in New Jersey must meet the same continuing education requirements applicable to all other licensees for the biennial period in which they wish to reenter.

### 13:29-6.11 Responsibilities of program developers

(a) Regarding program level difficulty, program developers shall specify the level of knowledge to be imparted under the program. Such levels of knowledge may be expressed in a variety of ways, all of which should be informative to potential participants and sponsors. As an illustration, a program may be described as having the objective of imparting technical knowledge at such levels as basic, intermediate, advanced, or overview, which might be defined as follows:

1. A basic level program teaches fundamental principles or skills to participate having no prior exposure to the subject area;

2. An intermediate level program builds on a basic level program in order to relate fundamental principles or skills to practical situations and extend them to a broader range of applications;

3. An advanced level program teaches participants to deal with complex situations; and

4. An overview program enables participants to develop perspective as to how a subject area relates to the broader aspects of

accounting or brings participants up-to-date on new developments in the subject area.

(b) Program developers shall clearly identify what prerequisites are suggested for enrollment. If no prerequisite is necessary, a statement to this effect should be made. Prerequisites should be specified in precise language so potential participants can readily ascertain whether the program would be beneficial to them or whether the program is above or below their level of knowledge or skill.

(c) Programs shall be developed by individuals qualified in the subject matter and in instructional design. This subsection is not intended to require that an individual program developer be both technically competent and competent in instructional design. Its purpose is to ensure that both types of competency are represented in the program's development, whether one or more persons are involved in that development. Mastery of the technical knowledge or skill in instructional design may be demonstrated by appropriate experience or educational credentials.

(d) The program developer shall review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued where appropriate, and obsolete material should be deleted; however, between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes. If, for example, a new accounting standard is issued, a program will not be considered current unless the ramifications of the new standard have been incorporated into the materials or the instructor appropriately informs the participants of the new standard.

### 13:29-6.12 Responsibilities of program sponsors

(a) In addition to other responsibilities imposed on program sponsors, they must comply with the following:

1. Disclosure to prospective participants: Program sponsors must disclose in advance to prospective participants the objective, prerequisites, experience level, content, required advanced preparation, teaching method, and number of continuing education credits involved in the program.

2. Selection and review of instructors: The program sponsor has the obligation for selecting and assigning qualified instructors for the continuing education program. Although it is expected that instructors will be selected with great care, sponsors should evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors in the future.

3. Number of participants and adequacy of physical facilities: The program sponsor is responsible for assuring that the number of participants and the physical facilities are consistent with the teaching methods to be utilized. Because the learning environment is affected by the number of participants and by the quality of the physical facilities, sponsors have an obligation to pay serious attention to both of these factors. The maximum number of participants for a case-oriented discussion program, for example, should be considerably less than for a lecture program. The seating arrangement is also very important. For discussion presentation, learning is enhanced as seating is arranged so that participants can easily see and converse with each other. If small group sessions are an integral part of the program format, appropriate facilities should be made available to encourage communication within a small group.

4. Program evaluation: Program evaluation shall be in accordance with the following:

i. The sponsor shall provide some means of program evaluation. Evaluations shall be solicited from both the participants and instructors. The objective of evaluations is to encourage sponsors to strive for increased program effectiveness. Programs should be evaluated to determine whether:

- (1) Objectives have been met;
- (2) Prerequisites were necessary or desirable;
- (3) Facilities were satisfactory;
- (4) The instructor was effective;
- (5) Advanced preparation materials were satisfactory; and
- (6) The program content was timely and effective.

ii. Evaluations might take the form of pretests for advanced preparation, post-tests for effectiveness of the program, questionnaires completed at the end of the program or later, oral feedback to the instructor or sponsor, and so forth. Instructors should be informed of their performance, and sponsors should systematically review the evaluation process to insure its effectiveness.

13:29-6.13 Sponsor's failure to comply with continuing education responsibilities

Failure of the sponsor to comply with the requirements relating to criteria for continuing education programs and responsibilities of program sponsors may result in the suspension of the preapproved status for programs offered by the sponsor.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules  
Registration of Colors

Proposed Amendment: N.J.A.C. 13:70-5

Proposed Repeal: N.J.A.C. 13:70-5.1

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1988-505.

Submit comments by November 16, 1988 to:

Charles K. Bradley, Deputy Director  
New Jersey Racing Commission  
200 Woolverton Street  
CN 088  
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to the heading of subchapter 5 will more accurately depict the type of entities that are required to be licensed by the New Jersey Racing Commission. Previous amendments to the rules have allowed for multiple-ownership of horses and an application that is necessary to depict the actual owners of the horses.

In addition, the proposed repeal of N.J.A.C. 13:70-5.1 results in all racing colors being registered and approved by the Jockey Club, the national registrant of all thoroughbred horses. There are provisions on the owner's application to the Club for registering the colors; therefore, it is unnecessary to require separate registration of racing colors with the Racing Commission.

Social Impact

There is a minimal social impact on the proposed repeal since all owners must register their proposed racing colors with the Jockey Club, and the Jockey Club will not allow identical colors to be registered to any one entity. All owners have distinctive silks which the jockeys wear when they are racing the owner's horse in races.

Economic Impact

There is no economic effect on the industry from the proposed repeal.

Regulatory Flexibility Statement

Many owners of thoroughbred horses are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This proposed repeal places no compliance, reporting or recordkeeping requirements on such owners. Instead, the repeal deletes the requirement for registration of colors with the Racing Commission.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

SUBCHAPTER 5. [COLORS,] STABLE NAMES, [AND PARTNERSHIPS] CORPORATIONS AND MULTIPLE OWNERSHIPS

13:70-5.1 [Registering racing colors](Reserved)

[All racing colors shall be registered annually with the Racing Commission.]

TRANSPORTATION

(b)

THE COMMISSIONER

102-Inch Standard Trucks

Route NJ 47 Access

Proposed Amendments: N.J.A.C. 16:32-3.5, 3.6 and Appendix A

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:3-84.

Proposal Number: PRN 1988-500.

Submit comments by November 16, 1988 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

Summary

The proposed amendments will add a portion of Route NJ 47 to the 102-inch standard truck network. Based upon requests from National Freight, Inc., and the New Jersey Motor Carrier Association for the addition of a portion of Route NJ 47, which in their opinion met the criteria established, the Department's Bureau of Transportation Data Development conducted an engineering investigation. The investigation showed that Route NJ 47 roadway improvements met the geometric criteria for the 102-inch standard truck network. Additionally, this amendment effects changes in titles which reflect the Department's Reorganization Plan (see 20 N.J.R. 937).

Social Impact

The proposed amendments will have no impact beyond addressing safety concerns related to the use of 102-inch standard trucks and the suitability of specific highways and streets for wide trucks.

Economic Impact

The proposed amendments will provide substantial economic benefits to New Jersey shippers and motor carriers by permitting them to utilize 102-inch-wide equipment more widely. The Department expects that the amendments will not lead to any increase in highway construction and maintenance costs because existing truck weight limits are not affected and the shippers and motor carriers most likely to use 102-inch-wide equipment are those moving "light and bulky" cargo which is normally well within legal weight limits.

Regulatory Flexibility Statement

Since the proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. Shippers and motor carriers, regardless of business size, benefit from the amendment to Appendix A, which increases the amount of Route NJ 47 accessible to 102-inch standard trucks.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

16:32-3.5 Addition and deletion of through routes

(a) (No change.)

(b) The Department encourages interested parties to submit proposals for additions and deletions to the system. Submissions should be made in writing to the [Chief, Bureau of Traffic Engineering] **Manager, Bureau of Transportation Data Development**, New Jersey Department of Transportation, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625. Submissions should be specific as possible in regard to:

1.-3. (No change.)

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

16:32-3.6 Maps

(a) (No change.)

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Interested Persons see Inside Front Cover

**TREASURY-GENERAL**

(b) Subject to their availability, maps and graphic depictions of the 102-inch standard truck designated through network may be obtained for a charge of \$5.00 each from the Department. Requests should be submitted to the [Director, Division of Data Base Generation] **Manager, Bureau of Transportation Data Development**, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625. Payments should be made to the New Jersey Department of Transportation.

**APPENDIX A**

The following State highway routes are not designated as through routes for wide trucks, although some of these routes may be usable by wide trucks under the access provisions of N.J.A.C. 16:32-3.4:

Route	Description	Mileage
US 9 to NJ 45 (No change.)		
NJ 47 between Atlantic Ave. in Wildwood City, Cape May Co. .... 0.00		
and Co. 636 in Wildwood City, Cape May Co. .... 0.75		
and between the Maurice River Twp./Millville City Corporate Line, Cumberland Co. .... 36.08		
<b>and NJ 55 in Millville City, Cumberland Co. .... 42.20</b>		
<b>and between Park Ave. in Vineland City, Cumberland Co. .... 46.75</b>		
and US 40 in Franklin Twp., Gloucester Co. .... 52.36		
and between US 322 in Glassboro Boro., Gloucester Co. .... 62.29		
and Rt. 551 in Westville Boro., Camden Co. .... 74.75		
Total NJ 47 [29.49]		<b>24.94</b>
NJ 49 to NJ 444 (No change.)		
NJ 495 between the NJ Turnpike in Jersey City, Hudson Co. .... 0.00		
and the New York State Line ..... 3.58		
Total NJ 495		3.58
Total mileage of ineligible sections: [292.76]		<b>288.21</b>

**TREASURY-GENERAL**

**(a)**

**DIVISION OF PENSIONS**

**Consolidated Police and Firemen's Pension Fund  
Proposed Readoption: N.J.A.C. 17:6**

Authorized By: Consolidated Police and Firemen's Pension Fund Commission, Anthony Ferrazza, Secretary.  
Authority: N.J.S.A. 43:16-7.  
Proposal Number: PRN 1988-498.

Submit comments by November 16, 1988 to:  
Peter J. Gorman, Esq.  
Administrative Practice Officer  
Division of Pensions  
20 West Front Street  
CN 295  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Consolidated Police and Firemen's Pension Fund Commission and the Division of Pensions are constantly reviewing N.J.A.C. 17:6 which governs the Consolidated Police and Firemen's Pension Fund and which is scheduled to expire on February 19, 1989, under the provisions of Executive Order No. 66(1978). When the Division of Pensions becomes aware of a change in the laws or a court decision that possibly could affect the Consolidated Police and Firemen's Retirement System, steps are taken to propose amendments to the rules in N.J.A.C. 17:6 to conform to the new laws or court decisions. Additionally, the rules have been periodically reviewed within the Division of Pensions to ascertain if the current rules are necessary and/or cost efficient.

After careful scrutiny of the current rules in N.J.A.C. 17:6, the Division of Pensions and the Consolidated Police and Firemen's Pension Fund Commission are satisfied that the rules are necessary for the efficient

operation of the Consolidated Police and Firemen's Pension Fund. Accordingly, the Consolidated Police and Firemen's Pension Fund Commission proposes to readopt without changes the current rules within N.J.A.C. 17:6 and extend the expiration date for those rules to February 19, 1994.

The current rules within N.J.A.C. 17:6 et seq. outline the procedures governing administration, membership, retirement and transfers within the Consolidated Police and Firemen's Pension Fund.

**Social Impact**

Since this retirement system has been closed to new members for some time, this proposed readoption will only affect current and past members of the Consolidated Police and Firemen's Pension Fund and their beneficiaries in continuing the orderly provision of benefits to them. Since public funds are utilized to pay for a portion of the benefits within this system, the taxpaying public also can be affected by these administrative rules.

**Economic Impact**

While the readoption of these rules in itself will not present any adverse economic impact to the public, the payment of the benefits and claims mandated by the statutes are funded by public employer contributions and thus indirectly by the taxpayers. If the administrative rules are not readopted, the benefits and claims that are mandated in the laws must still be paid. Without the administrative rules to provide for the efficient operation of the system, financial chaos would occur.

**Regulatory Flexibility Statement**

Since the rules of the Division of Pensions only impact upon public employers and/or employees, this proposed readoption will not have any adverse effect upon small businesses or private industry in general.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:6.

**(b)**

**OFFICE OF THE STATE TREASURER  
COMMUNITY AFFAIRS  
DIVISION OF LOCAL GOVERNMENT SERVICES**

**Collection of Debts  
Debts Owed to New Jersey Higher Education  
Assistance Authority by State, County, and  
Municipal Employees**

**Proposed Amendments: N.J.A.C. 17:25**

Authorized By: Feather O'Connor, State Treasurer, and Barry Skokowski, Director, Division of Local Government Services.  
Authority: N.J.S.A. 18A:72-23, 24, 25 and 25.2; N.J.S.A. 52:18A-30; 52:27BB-8 and 10.  
Proposal Number: PRN 1988-511.

Submit comments by November 16, 1988 to:  
Stephen M. Sylvester, Manager  
Administration/Debt Collection  
Office of Financial Management  
One West State Street  
3rd Floor, CN 214  
Trenton, N.J. 08625

The agency proposal follows:

**Summary**

The proposed amendments are being promulgated pursuant to N.J.S.A. 18A:72-25.2 to provide for a system whereby the New Jersey Higher Education Assistance Authority (N.J.H.E.A.A.) in conjunction with the Department of the Treasury and the Division of Local Government Services in the Department of Community Affairs, shall cooperate in identifying county and municipal employees who are delinquent in payments to the N.J.H.E.A.A. on any note or obligation held by the New Jersey Higher Education Assistance Authority pursuant to N.J.S.A. 18A:72-16. Under the existing rules, procedures are provided to make deductions from the wages of State employees. The Department of the Treasury and the Department of Community Affairs consider N.J.A.C. 17:25 proper as originally adopted. The provisions regarding State employees have not been altered. The changes incorporated herein only affect county and municipal employees. These amendments extend the

original procedures to include the deducting from the wages of county and municipal employees the sum of any such debt owed to the New Jersey Higher Education Assistance Authority.

#### Social Impact

The proposed amendments will provide for the deduction by the Chief Financial Officer of 10 percent of the gross wages of those county and municipal employees who are delinquent in payments to the New Jersey Higher Education Assistance Authority. These deductions will be forwarded to N.J.H.E.A.A. and applied to the loan accounts of the affected county or municipal employee.

#### Economic Impact

Any county or municipal employee who is delinquent in his or her payments to the New Jersey Higher Education Assistance Authority on educational loans will have his or her payroll checks decreased, possibly by the amount of the outstanding debt. This will assist in the collection of debts owed to the New Jersey Higher Education Assistance Authority.

#### Regulatory Flexibility Statement

The proposed amendments have no effect on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (P.L. 1986, c.169).

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

### CHAPTER 25 COLLECTION OF DEBTS

#### SUBCHAPTER 1. DEBTS OWED TO N.J.H.E.A.A. BY STATE, COUNTY OR MUNICIPAL EMPLOYEES

##### 17:25-1.1 Purpose

The purpose of this subchapter is to establish a policy and to provide a system whereby the New Jersey Higher Education Assistance Authority (N.J.H.E.A.A.) in conjunction with the Department of Treasury shall cooperate in identifying State [of New Jersey], **county or municipal** employees who are delinquent in payments to the N.J.H.E.A.A. on any note held pursuant to N.J.S.A. 18A:72-16. It is also the intent of this subchapter to establish procedures for deducting from the wages of such State, **county or municipal** employees the sum of any such debt owed to the New Jersey Higher Education Assistance Authority, pursuant to N.J.S.A. 18A:72-23 and 18A:72-25.2. The procedures contained in this subchapter afford the State, **county or municipal** employee the opportunity to assert any legal rights he or she may have prior to the deduction from the wages.

##### 17:25-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Debtor" means any New Jersey State, **county or municipal** employee or officer on the [Centralized Regular Bi-weekly Payroll] **State, county or municipal payroll(s)** owing money to or having a note or obligation to the Authority in which payments are more than 60 days delinquent, which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Financial officer" means the Chief Financial Officer (or equivalent) of the appropriate county or municipal local unit having authority over the county or municipal payroll system(s).

"Net proceeds collected" means gross proceeds collected through total deductions from a debtor's State, **county or municipal** payroll checks minus any collection fee charged by the Department or local unit to provide for any expenses of the collection effort.

"Payroll check" means the wages received by New Jersey State, **county or municipal** employees and officers paid by the [Centralized Regular Bi-weekly Payroll] **State, county or municipal payroll** in return for services provided to the employee's or officer's respective State, **county or municipal** agency, department, office or other entity using the State [Centralized Payroll System], **county or municipal payroll system** by which the employee or officer is employed.

##### 17:25-1.3 Procedure for deduction from wages

(a) For State employees, the [The] Authority shall notify the Department in writing and supply the Department with a list of persons currently in default on notes held by the Authority. The Department shall notify the Authority of those persons currently in default on notes held by the Authority who are currently receiving wages as New Jersey State employees or officers. Upon notification by the Department, and after the liquidated sum due is finally established by Authority records, the Authority shall forward a list to the Department as to those debtors for which the Authority requests deductions to be made.

(b) For county and municipal employees, the Authority shall notify the financial officer in writing and supply the financial officer with a list of persons currently in default on notes held by the Authority. The financial officer shall notify the Authority of those persons currently in default on notes held by the Authority who are currently receiving wages as county or municipal employees or officers. Upon notification by the financial officer, and after the liquidated sum due is finally established by Authority records, the Authority shall forward a list to the financial officer as to those debtors for which the Authority requests deductions to be made.

##### 17:25-1.5 Notice to debtor

Within 10 days after the notification to the Authority that the employee or officer is receiving wages from the State [Payroll System,], **county or municipal payroll system**, the Authority shall notify the alleged debtor by regular mail of the proposed deduction and inform the alleged debtor of the right to make a request to the Authority within 30 days after the date of notice, for a hearing on the alleged debt and the proposed deduction.

##### 17:25-1.6 Authority proceedings

No later than 45 days from the date of the Authority's notice to the alleged debtor of the proposed deduction, the Authority shall notify the Department or financial officer to begin deductions for the repayment of the debt from the payroll check where the debtor has not responded to the notice provided pursuant to N.J.A.C. 17:25-1.5 within 30 days of the notice date.

##### 17:25-1.9 Finalization of deduction by Authority

(a) Upon either final agreement arrived at an administrative resolution or final determination of the debt due and owing the Authority or exhaustion of time in which an appeal may be filed, the Authority shall forthwith certify the finalized debt to the Department or financial officer.

(b) Upon receipt by the Department or financial officer of a certified finalized debt from the Authority, the Department or financial officer shall make the [deduction] deduction(s) and transfer the net proceeds collected for payment to the Authority.

(c) At regular intervals the Authority shall notify the Department or financial officer of any adjustments to be made in the amount of the finalized debt, due to accrued interest or payments received by the Authority outside of these procedures.

##### 17:25-1.10 Notice to debtor of final [deduction] determination

Upon the final determination of the debt due and owing, the Authority shall notify the debtor in writing of the action taken along with its intent to begin deductions.

##### 17:25-1.11 Disposition of proceeds collected; collection assistance fees

(a) Upon effecting deductions, the Department or financial officer shall transfer to the Authority, the net proceeds collected on its behalf.

(b) From the gross proceeds collected by the Department or financial officer through deductions, the Department or local unit shall retain one percent, which amount shall be charged to the Authority as a collection assistance fee.

##### 17:25-1.12 Accounting to the Authority; credit to debtor's obligation

(a) Simultaneously with the transmittal of the net proceeds collected to the Authority, the Department or financial officer shall

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provide the Authority with an accounting of the deductions finalized for which payment is being made.

(b) (No change).

(c) Upon receipt by the Authority of the net proceeds collected on the Authority's behalf by the Department or financial officer and an account of the proceeds as specified under this section, the Authority shall credit the debtor's obligation with the net proceeds collected.

(d) For State employees, under [Under] special circumstances and subject to the approval of the Director of the Division of Budget and Accounting, the Department may employ such alternative method of payment and billing as may be agreed upon with the Authority.

(e) For county and municipal employees, under special circumstances and subject to the approval of the appropriate local government official, the financial officer may employ such alternative method of payment as may be agreed upon with the Authority.

**OTHER AGENCIES**

(a)

**CASINO CONTROL COMMISSION**

**Applications; Fees**

**Proposed Amendments: N.J.A.C. 19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12 and 9.20**

**Proposed Repeal: N.J.A.C. 19:41-9.18**

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and (d), 5:12-69, 5:12-70(e), 5:12-139 and 5:12-141.

Proposal Number: PRN 1988-507.

Submit comments by November 16, 1988 to:

John H. Trzaka, Deputy Director  
Casino Control Commission  
3131 Princeton Pike Office Park  
Building No. 5, CN-208  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments to N.J.A.C. 19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12, and 9.20 are designed to adjust the hourly billing rates for services provided by the Casino Control Commission and the Division of Gaming Enforcement (Division). They are necessitated due to increases in the combined budgets of both agencies since the last revisions to the hourly billing rates became effective on July 2, 1984.

The proposed repeal of N.J.A.C. 19:41-9.18 is designed to eliminate a rule adopted pursuant to an amendment to the Casino Control Act, N.J.S.A. 5:12-153, that is no longer in effect.

**Social Impact**

Under the Casino Control Act (Act), the Commission and the Division are required to be financed exclusively from fees charged each fiscal year to applicants, licensees and registrants. Generally, the Act divides fees into two broad categories: those pertaining to casino licenses and those pertaining to all other forms of licensure or approval. Section 139 of the Act requires the Commission to establish, by regulation, fees for the issuance and renewal of casino licenses. The statutory basis for the casino license renewal fee is the cost of maintaining the control and regulatory activities of the Commission and the Division. In contrast, Sections 141 and 142 of the Act require the Commission to establish, by regulation, issuance and renewal fees for all non-casino licenses and work permits, but indicate no cost basis for establishing such fees.

The differing treatment of these categories reflects a Legislative recognition and judgement that casino applicants and licensees benefit directly or indirectly from all aspects of the regulatory process and are best suited to bear the largest share of the costs incurred by the agencies in implementing that process.

**Economic Impact**

The experience of the Commission and the Division reveals that the actual cost of investigating and considering applications for individual employee licenses and casino service industry licenses frequently exceeds the amount which those applicants and licensees may fairly be required to pay as fees. The fee structure established by the Commission is designed to respond to these policies and problems.

To the extent fairly possible, each applicant or licensee should pay the investigatory and regulatory costs attributable to that applicant or licensee. However, since individual employee and casino service industry enterprises cannot always be expected to cover the full amount expended and since a portion of the costs incurred by the agencies pertain to the industry generally, there will be an amount of the annual combined budgets of the agencies which will not be recoverable through specific fees for particular services. This amount cannot be predicted with precision because of the necessarily variable allocation of Commission and Division efforts.

Given the mandate of the Act to recover the cost of maintaining control and regulatory activities from casino license renewal fees and given the fact that all such activities are undertaken for the direct or indirect benefit or protection of casino operations, the obligation to supply additional funds necessary to recover the otherwise uncollected expenditures of the agencies is spread among the licensed casino facilities.

Primarily, the effect of the proposed amendments is a closer matching of current costs with the services being provided. The amendments do not affect the total annual revenues the Commission must collect in order to finance its operations. That amount is dictated by the annual appropriations approved by the Legislature. The annual budgets of the Commission and the Division are presented to the Legislature for its approval and are available to the public. Therefore, the casino industry is aware of the annual budgets' economic impact on their operations. Since the fees collected by the Commission should not exceed the combined budgets of the Commission and the Division, the proposed amendments will not adversely affect the casino industry.

**Regulatory Flexibility Statement**

These proposed amendments and repeal will only affect the operations of New Jersey casino licensees and, therefore, will not impact on any business protected under the Regulatory Flexibility Act.

**Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).**

19:41-9.4 Casino license fees

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

(e) As a component of its initial license fee or renewal fee and as a condition of casino licensure, each applicant or licensee shall be required:

[1. To pay at the rate of \$40.00 per hour for efforts of professional staff members of the Commission and the Division on matters directly related to the applicant or licensee; and]

**1. To pay for the efforts of the Commission and the Division on matters directly related to the applicant or licensee at the rate of \$89.00 per hour for members of the Commission, \$54.00 per hour for professional staff members of the Commission, \$27.00 per hour for inspection staff members of the Commission, and \$56.00 per hour for professional staff members of the Division; and**

**2. To reimburse any unusual costs or out [or] of pocket expenses incurred by the [Commissioner] Commission or the Division in regard to such matters.**

(f) (No change.)

19:41-9.6 Slot machine fees

(a) (No change.)

(b) In accordance with Section 100(h) of the Act, no slot machine shall be used to conduct gaming unless it is identical to a model thereof which has been specifically tested by the Division and licensed for use by the Commission. Any person seeking to have a prototype slot machine so tested and licensed shall pay an initial minimum amount of \$500.00 which shall be applied to the total fee. Such person shall be required to pay [at the rate of \$40.00 per hour] for the efforts of [professional employees or agents of] the Commission and the Division [engaged in] **on matters directly related to the examination, testing and consideration of the prototype slot machine at the rate of \$89.00 per hour for members of the Commission, \$54.00 per hour**

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for professional staff members of the Commission, \$27.00 per hour for inspection staff members of the Commission, and \$56.00 per hour for professional staff members of the Division.

(c) (No change.)

19:41-9.7 Casino hotel alcoholic beverage licenses

(a) (No change.)

(b) The fee for the issuance or renewal of a casino hotel alcoholic beverage license for a casino licensee conducting alcoholic beverage activity in a casino hotel shall be assessed as follows:

[1. Payment for the efforts of professional agents and employees of the Commission and Division on matters directly related to the casino hotel alcoholic beverage license or application at the rate of \$40.00 per hour; and]

**1. Payment for the efforts of the Commission and the Division on matters directly related to the casino hotel alcoholic beverage license or application at the rate of \$89.00 per hour for members of the Commission, \$54.00 per hour for professional staff members of the Commission, \$27.00 per hour for inspection staff members of the Commission, and \$56.00 per hour for professional staff members of the Division; and**

2. (No change.)

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

[e. The fees established by (b) and (c) above shall apply to any casino hotel alcoholic beverage license issued after July 1, 1986. Any casino licensee which paid a fee for a casino hotel alcoholic beverage license issued or renewed after July 1, 1986, which was greater than the fee established in (b) above shall be entitled to a credit toward the payment of additional fees incurred by that casino licensee pursuant to this subchapter. The credit shall be equal to the difference between the amount of casino hotel alcoholic beverage fees which were previously paid and the amount of fees imposed by (b) above. Any casino service industry licensee which paid a fee for a casino hotel alcoholic beverage license issued or renewed after July 1, 1986, which was greater than the fee established in (c) above shall be entitled to a refund of the excess fee payment. The refund shall be equal to the difference between the amount of casino hotel alcoholic beverage license fees which were previously paid and the amount of fees imposed by (c) above.]

19:41-9.11 Casino key employee license fees

(a) (No change.)

(b) The fee for the issuance of a casino key employee license shall be as follows:

1. (No change.)

[2. Payment for the efforts of professional agents and employees of the Commission and Division at the rate of \$40.00 per hour spent on matters directly related to the applicant; and]

**2. Payment for the efforts of the Commission and the Division on matters directly related to the applicant at the rate of \$89.00 per hour for members of the Commission, \$54.00 per hour for professional staff members of the Commission, \$27.00 per hour for inspection staff members of the Commission, and \$56.00 per hour for professional staff members of the Division; and**

3. (No change.)

(c) (No change.)

19:41-9.11A Junket representative license fees

(a) (No change.)

(b) The fee for the issuance or renewal of a junket representative license shall be as follows:

1. (No change.)

[2. Payment for the efforts of professional agents and employees of the Commission and Division at the rate of \$40.00 per hour spent on matters directly related to the applicant or licensee; and]

**2. Payment for the efforts of the Commission and the Division on matters directly related to the applicant or licensee at the rate of \$89.00 per hour for members of the Commission, \$54.00 per hour for professional staff members of the Commission, \$27.00 per hour for inspection staff members of the Commission, and \$56.00 per hour for professional staff members of the Division; and**

3. (No change.)

19:41-9.12 Gaming school resident director license fees

(a) (No change.)

(b) The issuance fee or renewal fee for a three-year resident director license shall be as follows:

1. (No change.)

[2. Payment for the efforts of professional agents and employees of the Commission and the Division at the rate of \$40.00 per hour spent on matters directly related to the applicant or licensee; and]

**2. Payment for the efforts of the Commission and the Division on matters directly related to the applicant or licensee at the rate of \$89.00 per hour for members of the Commission, \$54.00 per hour for professional staff members of the Commission, \$27.00 per hour for inspection staff members of the Commission, and \$56.00 per hour for professional staff members of the Division; and**

3. (No change.)

19:41-9.18 [Special assessment to operating casinos and casino license applicants] (Reserved)

[(a) Section 153 of the Act requires all outstanding loans to the Casino Control Fund, together with all interest thereon, as of July 1, 1980, to be repaid from a special assessment to all operating casinos and casino license applicants as of that date. The assessed amounts shall be paid in full by December 31, 1980. In accordance with the directive of the Act, the assessment shall be determined as follows:

1. Each operating casino and casino license applicant as of July 1, 1980, shall pay \$100,000; and

2. The amount of the Casino Control Fund deficit which exceeds the amount collectible under (1) shall be apportioned among all operating casinos and casino license applicants in proportion to the number of hours expended by the professional staff members of the Commission and the Division, exclusive of Commission inspectors and Division enforcement personnel, on matters directly related to each such casino or applicant from the creation of the Commission and the Division until July 1, 1980.]

19:41-9.20 Fees for services provided to other governmental bodies

(a) Whenever the Commission or Division is authorized by law to provide services to any State, county or municipal department, board, bureau, commission, authority or agency, and to receive compensation for the performance of such services, the Commission shall assess fees for the cost and expense of providing these services as follows:

[1. Payment for the efforts of professional agents and employees of the Commission and Division at the rate of \$40.00 per hour; and]

**1. Payment for the efforts of the Commission and the Division on matters directly related to other governmental bodies at the rate of \$89.00 per hour for members of the Commission, \$54.00 per hour for professional staff members of the Commission, \$27.00 per hour for inspection staff members of the Commission, and \$56.00 per hour for professional staff members of the Division; and**

2. (No change.)

## HEALTH

The following proposals are authorized by Molly Joel Coye, Commissioner, Department of Health; with the approval of the Health Care Administration Board.

### HOSPITAL REIMBURSEMENT

For the proposed amendments to N.J.A.C. 8:31B-3.19, 8:31B-3.43, 8:31B-3.44, and 8:31B-3, Appendix II, submit written comments by November 16, 1988 to:

Alan N. Rosenberg, Director  
Hospital Reimbursement  
New Jersey State Department of Health  
CN 360, Room 601  
Trenton, New Jersey 08625

**PROPOSALS**

Interested Persons see Inside Front Cover

**HEALTH**

**(a)**

**Procedural and Methodological Regulations  
Burn Care Unit Reporting**

**Proposed Amendment: N.J.A.C. 8:31B-3.19**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1988-523.

The agency proposal follows:

**Summary**

N.J.A.C. 8:31B-3.19(b) calculates measures of resource use in order to determine a hospital's case-mix. Currently, data relating to the Burn Care Unit (BCU) cost center are combined with the Intensive Care Unit (ICU) and the Coronary Care Unit (CCU) cost center data. The proposed amendment will separate the reporting of data for BCU from ICU and CCU. Separating BCU from the other cost centers will be more reflective of a hospital's reimbursement, related to the treatment of burn patients.

**Social Impact**

This amendment will allocate costs between BCUs and ICUs and will have a minimal impact on hospitals and consumers because at present, only one hospital has a BCU.

**Economic Impact**

The proposed amendment will allow Burn Care Unit (BCU) costs to be identified separately from Intensive Care Unit (ICU) costs. Currently, reimbursement related to burn care is distorted, since BCU costs are included in the ICU Cost Center. This amendment will provide for a cost

allocation between BCUs and ICUs. Currently, there is one hospital under the Chapter 83 system that will be affected by this proposal.

**Regulatory Flexibility Statement**

The proposed amendment applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees, and, therefore, does not fall into the category of small business as defined in section 2 of the New Jersey Regulatory Flexibility Act (P.L. 1986, c.169). Therefore, a regulatory flexibility analysis is not required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

8:31B-3.19 Patient care cost findings: Direct costs per case, physician and non-physician

(a) (No change.)

(b) Measures of resource use **are as follows**:

1. For each patient with a UB-PS, measures of resource use are calculated. These measures of resource use per patient with [an acceptably] a reliable [records] **record** are [then] multiplied by the estimated number of cases determined in (a) above, and the total inpatient estimate of each measure of resource use is then adjusted to the actual amount of each measure. Hospitals shall make reasonable efforts to correct unacceptable data. Outpatient case-mix measures of resource use are then obtained in the aggregate from data reported to the New Jersey State Department of Health (until outpatient information is available under a Rule on Hospital Reporting of Uniform Bill-Patient Summaries (outpatient)).

	Center	Measure of Resource Use	Calculation of Inpatients
<b>ROUTINE SERVICES</b>			
MSA &	Medical-Surgical Acute Care Units	Patient Days <sup>1</sup>	Total LOS less ICU, CCU, NBN and OBS LOS ACU
PED &	Pediatrics		
PSA &	Psychiatric Acute Care Units		
PSY &	Psychiatric/Psychological Services		
OBS	Obstetrics		
BCU	Burn Care Unit		<b>BCU LOS</b>
[&]			
ICU &	Intensive Care Unit	Patient Days <sup>1</sup>	ICU + CCU LOS
CCU	Coronary Care Unit		
NNI	Neo-Natal Intensive Care Unit	NNI Patient Days	Total ICU LOS for Newborn DRGs
NBN	Newborn Nursery	NBN Patient Days	Total LOS for Newborn DRGs less ICU LOS
[OTH]	[Other]	[Patient Days]	[Total LOS]
<b>AMBULATORY SERVICES</b>			
EMR	Emergency Service	EMR Charges	EMR Admissions (In-patient EMR Revenue EMR Admissions)
CLN	Clinics	CLN Charges	None <sup>2</sup>
HHA	Home Health Agency	OHS Charges	None
<b>ANCILLARY SERVICES</b>			
ANS	Anesthesiology	ANS Charges	Direct
CCA	Cardiac Catheterization	CCA Charges	Direct
DEL	Delivery and Labor Room	DEL Charges	Direct
DIA	Dialysis	DIA Charges	Direct
DRU	Drugs Sold to Patients	PHM Charges (DRU)	Direct
EKG &	[electrocardiology] <b>Electrocardiology</b> and Diagnostic	EDG Charges	Direct
NEU	Neurology		
LAB	Laboratory	BBK Charges & LAB Charges	Direct

**HEALTH**

**PROPOSALS**

MSS	Medical Surgical Supplies		
	Sold to Patients	CSS Charges (MSS)	Direct
NMD	Nuclear Medicine	NMD Charges	Direct
OCC	Occupational and		
&	Recreational	OPM Charges	Direct
SPA	Therapy & Speech		
	Pathology and Audiology		
ORG	Organ Acquisition &	ORR Charges	Direct
&	Operating and		
ORR	[Recover] Recovery Rooms		
PHT	Physical Therapy	PHT Charges	Direct
RAD	Diagnostic Radiology	RAD Charges	Direct
RSP	Respiratory Therapy	RSP Charges	Direct
THR	Therapeutic Radiology	THR Charges	Direct

2. (No change.)  
 (c) (No change.)

<sup>1</sup>Patient days will be employed as the Measures of Resource Use to allocate MSA, PED, PSA, and OBS nursing costs until such time as Relative Intensity Measures (RIMs) for Case-mix Nursing Performance Study will be used. A RIM is a Measure of Resource Use which is derived from nursing activity, and is used to distribute reported general nursing costs based upon the relationship between nursing activity and costs. While patient days are used, the MSA, PED, PSA, OBS centers will be combined into ACU and ICU, and CCU [and BCU] will be combined into ICU. All other routine centers will remain as above. Effective when RIMs are implemented, patients [that are] cared for in the ICU, CCU, or NNI will have the Special Care Unit Days used as the cost calculation for Measure of Resource Use for the Length of Stay (LOS) in the Special Care Unit and the appropriate Relative Intensity Measure (RIM) equation will be utilized for all additional days.

<sup>2</sup>(No change.)  
<sup>3</sup>(No change.)

**(a)**

**Procedural and Methodological Regulations  
 Adjustment of Charges**

**Proposed Amendment: N.J.A.C. 8:31B-3.43**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1988-526.

The agency proposal follows:

**Summary**

The purpose of this proposed amendment is to require General Acute Care Hospitals to implement their proposed Schedule of Rates on the first day of the month within 30 working days after receipt of the Schedule of Rates from the Department of Health. Prior to this proposed amendment, hospitals implemented the Schedule of Rates within 45 working days. Certain actions have been required of the hospitals 30 working days prior to implementation of the proposed schedule of rates. This is being changed to 15 working days, to correspond with the change in the implementation date from 45 days to 30 days. The purpose of this amendment is to allow the Department of Health additional time to review and prepare hospital rates as well as to promote implementation of hospital rates in the system on a more timely basis.

**Social Impact**

This proposed amendment will modify the current reimbursement practices regarding the implementation of the Schedule of Rates and will have minimal impact on the hospitals and consumers.

**Economic Impact**

There will be minimal economic impact on patients admitted to General Acute Care Hospitals, or health care insurers currently reimbursing hospitals for acute care services.

**Regulatory Flexibility Statement**

The proposed amendment applies only to hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and, therefore, does not fall into the category of small business as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

**Full text** of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

8:31B-3.43 Adjustment of charges

(a) Unless otherwise ordered by the Commission, the proposed Schedule of Rates shall be implemented on the first day of the month [(within)] following [45] **30** working days after receipt of the Schedule of Rates. [Thirty] **Fifteen** working days prior to this implementation a hospital shall:

1.-3. (No change.)  
 (b)-(d) (No change.)

**(b)**

**Procedural and Methodological Regulations  
 Billing Exceptions**

**Proposed Amendment: N.J.A.C. 8:31B-3.44**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1988-525.

The agency proposal follows:

**Summary**

The Procedural and Methodological Regulations cite two references regarding the reimbursement methodology for outliers. Currently, there exists an inconsistency between the two references.

N.J.A.C. 8:31B-3.44 (Billing exceptions) states that DRG outliers will be reimbursed based upon total charges. In 1985, N.J.A.C. 8:31B-3.38 (Derivation from Preliminary Cost Base) was amended to establish reimbursement based upon rates and/or per diems for the following outlier categories: High Length of Stay, Low Length of Stay, Low Volume, Clinical Outlier, and Transfer Patients. The proposed amendment to N.J.A.C. 8:31B-3.44 eliminates all references to outlier reimbursement based upon charges. This amendment will provide consistency for the treatment of DRG outliers.

**Social Impact**

This proposed amendment will allow for the continuation of the current reimbursement practices regarding the provision for payment relating to DRG outliers, and no social impact will be experienced by the hospital or the consumer.

**Economic Impact**

There will be no economic impact to patients, Chapter 83 hospitals or payers, since the proposed amendment is intended to provide consistency with the current reimbursement methodology and practice.

**PROPOSALS**

Interested Persons see Inside Front Cover

**HEALTH**

**Regulatory Flexibility Statement**

The proposed amendment applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and therefore, does not fall into the category of small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

8:31B-3.44 Billing exceptions

(a) Pursuant to N.J.A.C. 8:31B-3.71 through 3.86, reconciliation with respect to institution's [payors] payers, insofar as practical and equitable, shall be based upon the Schedule of Rates contained in the Rate Order, for each institution, as approved or modified by the Commission and on actual case mix. In order to minimize reconciliation adjustment and to stabilize cash flow, any [payor] payer may implement a case-mix adjusted periodic intermittent payment (PIP) system as adjusted to include [payor] payer differentials, working capital and uncompensated care described in N.J.A.C. 8:31B-3.39 through 3.41, and any automatic adjustment described in N.J.A.C. 8:31B-3.71 through 3.86. Disagreements between [payors] payers and the institution may be brought to the attention of the Commissioner by either party for resolution. [However, unless a substantial inequity shall result, interim charges as established above, subject to the provisions in N.J.A.C. 8:31B-3.71 through 3.86, shall become final patient settlement for the following purposes:] Reimbursement shall be subject to provisions in N.J.A.C. 8:31B-3.38, and 3.71 through 3.86 for the final patient settlement for the following purposes:

1.-2. (No change.)

3. Outpatient ancillary services and all [outpatient emergency] Outpatient Emergency Room, Clinic, [Renal Dialysis, Home Dialysis,] Home Health Services, Ambulatory Surgery, Same Day Psychiatry, [and] Private Outpatient Services, and Same Day Surgery Services, if approved by the Commission, will be reconciled in the same manner as outpatient visits.

4. (No change.)

[5. Patients admitted during the year prior to the hospital receiving a rate established in accordance with these regulations, but discharged during the first year the hospital entered into the system will receive charges as payment for those patients days in the rate year for which the schedule of rate applies.]

[6.]5. Payment for [Patients] patients in a DRG with poorly defined clinical characteristics[:] will be consistent with N.J.A.C. 8:31B-3.38(c)2iv.

[i. Payment for patients in a DRG with poorly defined clinical characteristics will be at charges;

ii. Payment, for those cases in any DRG which has a distribution of equalized costs that implies an unacceptable billing comparability across patients, will be at controlled charges, but this revenue will be reconciled to the hospital's payment rate.]

**(a)**

**Procedural and Methodological Regulations  
Cost Components and Proxies for the Economic  
Factor**

**Proposed Amendment: N.J.A.C. 8:31B-3,  
Appendix II**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26H:2H-18d.

Proposal Number: PRN 1988-524.

The agency proposal follows:

**Summary**

The proposed amendment changes the proxy used to inflate the supplies and contracted services costs in the Laundry and Linen cost center. These changes are necessary because the Bureau of Labor Statistics (BLS) no longer calculates the Household Linen price inflation index. It will be replaced with Textile House Furnishings.

**Social Impact**

By modifying the proxy for the Laundry and Linen cost center, the rates will continue to be adjusted for inflation in this area.

**Economic Impact**

Changing the proxy for Laundry and Linen Supplies and contracted services will have minimal economic impact. In 1986, the new base year, the Consumer Price Index Textile House Furnishings index was .94 percent higher than the Household Linen index it replaces. Statewide, this results in a \$32,911 increase in Laundry and Linen Supplies and a \$32,481 increase in Laundry and Linen contracted services.

**Regulatory Flexibility Statement**

The proposed amendment applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and, therefore, does not fall into the category of small business as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

8:31B-3, Appendix II

**APPENDIX II  
COST COMPONENTS AND PROXIES  
FOR THE ECONOMIC FACTOR**

LABOR 1.-LABOR 3. (No change.)

SUPPLIES 1.-SUPPLIES 4. (No change.)

SUPPLIES 5.

COST COMPONENT: Laundry and Linen Supplies

SHARE COST CENTER: Supply costs reported in  
L & L Cost Center

PROXIES: PPI: 0671 Soap and Synthetic Detergents (60%)

CPI: [Household Linens (40%)] **Textile House  
Furnishings (40%)**

SOURCE: BLS, Producer Price Index and Consumer Price Index

SUPPLIES 6.-SUPPLIES 10. (No change.)

OTHER 1. (No change.)

OTHER 2.

COST COMPONENT: Contracted Laundry and Linen

SHARE COST CENTER: Contracted service costs reported in  
L & L Cost Center

PROXIES: CPI: Laundry and dry cleaning other than coin oper-  
ated (80%)

CPI: [Household Linens (20%)] **Textile House  
Furnishings (20%)**

SOURCE: BLS, Consumer Price Index

OTHER 3.-OTHER 6. (No change.)

**(b)**

**HEALTH FACILITIES EVALUATION AND LICENSING  
Long Term Care Licensing Standards  
Fire and Emergency Plan**

**Proposed Amendment: N.J.A.C. 8:39-41.3 and 42.2**

Authority: N.J.S.A. 26:2H-1 and 14.3.

Proposal Number: PRN 1988-527.

Submit comments by November 16, 1988 to:

Neil Weisfeld, Director  
Licensure Reform Project  
New Jersey State Department of Health  
CN 367  
Trenton, New Jersey 08625-0367

The agency proposal follows:

**Summary**

The Department proposes to amend N.J.A.C. 8:39-41.3 and 42.2 to make nursing homes' submission of annual heat emergency action plans mandatory, rather than advisory. N.J.S.A. 26:2H-14.1, 14.2 and 14.3 (P.L. 1984, c.114), require nursing homes to establish heat emergency action plans. Heat emergencies are defined as a duration of four hours

or longer of indoor air temperatures of 85 degrees Fahrenheit or higher. The Department has been vigorously enforcing this legislation by reviewing these plans, advising nursing homes of the elements to include in such plans, and monitoring temperatures in nursing homes through routine inspections.

Because the law requires annual submission of these plans, it is misleading to include the plans in the advisory rather than the mandatory portions of the nursing home licensure manual. The Department now proposes to correct this situation.

Subsequent to the drafting of these proposed amendments, the Commissioner of Health received a petition on the topic from the Ombudsman for the Institutionalized Elderly. The Ombudsman's petition, dated August 2, 1988, asked the Department to adopt a rule making it mandatory for nursing homes to establish a written heat emergency action plan and to submit that plan to the Department. That is the very purpose of these amendments, which the Commissioner of Health is proposing to adopt, with the approval of the Health Care Administration Board.

**Social Impact**

Excessively high air temperatures can, over a period of time, lead to dehydration and other effects that seriously jeopardize health and quality of life. By establishing and adhering to formal plans to assure that patients have sufficient fluids, are frequently monitoring, and are shielded from the most intense sources of heat, nursing homes will avoid harm to patients.

**Economic Impact**

Because these plans already are required by law, there is no new cost associated with their development and implementation. In any event, the costs of preparing such plans, following guidelines distributed by the Department, are minimal. Costs of implementing the plans conceivably could involve purchase and installation of air conditioning equipment, short-term utilization of extra staff or consultants, and other measures to abate an emergency, but these costs easily would be offset by benefits in preventing illness and intolerable discomfort on the part of patients and staff.

**Regulatory Flexibility Statement**

The law already applies to nursing homes that are small businesses. Consequently, the proposed amendments do not impose any new cost or hardship on smaller facilities.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

8:39-41.3 Mandatory fire and emergency preparedness

(a)-(n) (No change.)

**(o) The facility shall establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is 85 degrees Fahrenheit or higher for a continuous period of four hours or longer. These procedures shall include the immediate notification of the New Jersey State Department of Health. The facility shall submit such a plan to the Department of Health for approval at least once per year.**

8:39-42.2 Advisory fire and emergency preparedness

(a)-(c) (No change.)

**(d) The facility should establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is 85 degrees Fahrenheit or higher for a continuous period of four hours or longer. These procedures should include the immediate notification of the New Jersey State Department of Health. The facility should submit such a plan to the Department of Health for approval at least once per year.**

**(e)(d)** (No change.)

**(a)**

**HEALTH FACILITIES EVALUATION AND LICENSING**

**Hospital Licensing Standards  
Anesthesia Care**

**Proposed New Rules: N.J.A.C. 8:43B-18.**

Authority: N.J.S.A. 26:2H-5.  
Proposal Number: PRN 1988-528.

Submit comments by November 16, 1988 to:  
Neil Weisfield, Director  
Licensure Reform Project  
New Jersey State Department of Health  
CN 367  
Trenton, New Jersey 08625-0367

The agency proposal follows:

**Summary**

The Department of Health is proposing new rules to assure patient safety and quality of care, related to administration of anesthesia in hospitals. Proposed new N.J.A.C. 8:43B-18 was developed through the regulatory innovations of the Department's Licensure Reform Project, which included extensive meetings with interested parties and a comprehensive written opinion survey of all proposed standards that involved all hospitals in the State. This survey included distribution to all hospitals of comprehensive draft hospital licensure standards in 31 areas, including anesthesia. The standards were formatted as a survey, so that respondents could evaluate each proposed standard on a five-point scale of importance to patient care and also could indicate whether the proposed standard should be mandatory or merely advisory. Presumably, proposed standards that received generally high ratings of importance and were generally recommended for mandatory status have been validated by the regulated community as bearing on quality of care.

The proposed subchapter originated in large measure with the New Jersey State Society of Anesthesiology, which has participated extensively in the development and refinement of these rules.

The proposed new rules contain the following major provisions:

**Board-certified director:** Proposed N.J.A.C. 8:43B-18.2(a) would require each hospital to have a physician director of anesthesia services who either is board-certified in anesthesiology or obtained a fellowship in anesthesiology before 1972. This provision would assure a high level of knowledge and clinical skill on the part of chiefs of anesthesia, who therefore would be qualified to make important decisions related to safety and quality.

**Continuous presence in operating suite:** Proposed N.J.A.C. 8:43B-18.2(e) would require the administrator of anesthetic agents to be continuously present in the operating room to monitor the patient. This provision would assure that patients are not left unattended.

**Anesthesiologist on-call:** Proposed N.J.A.C. 8:43B-18.3 would require each hospital to have an anesthesiologist on duty or on call and able to reach the hospital within 30 minutes at all times. This provision would assure access to anesthesia services for patients requiring emergency surgery.

**Record-keeping:** Proposed N.J.A.C. 8:43B-18.4(a) would require an anesthesiologist to enter a preanesthesia note, based on an examination of the patient, into the patient's medical record before surgery. Proposed N.J.A.C. 8:43B-18.4(c) and (e) would require entries into the patient's medical record postoperatively and upon conclusion of anesthesia surveillance, respectively. These provisions would assure surveillance of the patient before and after surgery.

**Safety systems:** Proposed N.J.A.C. 8:43B-18.5 would establish multiple requirements for anesthesia equipment. These provisions would assure the presence of such safety features as so-called "fail safe" systems and alarm systems.

**Equipment inspections:** Proposed N.J.A.C. 8:43B-18.6 would require inspection of all anesthesia equipment at the beginning of each day and before each use. These provisions would protect patients from the hazards of equipment malfunctions.

**Pulse oximetry:** Proposed N.J.A.C. 8:43B-18.7(d) would require continuous monitoring of all patients under anesthesia through pulse oximetry, when technically feasible. Pulse oximetry determines blood oxygen levels noninvasively by measuring the amount of light passing through the patient's earlobe or finger, and thus protects against an inadequate flow of oxygen to the lungs and consequently the brain.

**End-tidal carbon dioxide monitoring:** Proposed N.J.A.C. 8:43B-18.7(e) would require continuous monitoring of all patients under anesthesia through end-tidal carbon dioxide measurement, when technically feasible. This monitoring of pulmonary circulation protects patients from hypoxia, a potentially fatal condition caused by esophageal intubation when ventilation is directed into the stomach instead of the lungs. A buildup of carbon dioxide in the blood can lead to respiratory acidosis, which can cause cardiac arrhythmias.

The provisions on pulse oximetry and end-tidal carbon dioxide patient monitoring are considered by the Department to be of paramount importance in reducing unnecessary risks of mortality during surgery.

The Department is exploring the issue of physician supervision of nurse anesthetists. The Department, however, is not yet prepared to propose a rule on this issue.

The Department also supports, although the proposed rules do not address, other measures that hospitals can take to improve safety and quality of care. These measures, which were proposed as advisory standards in the Statewide written opinion survey noted above, include: a system to control conflicting alarms on anesthesia equipment; computerized anesthesia records for selected patients; and availability of mass spectrometry or infrared analysis in the operating suite. The proposed rules are mandatory standards and do not include advisory standards.

Concern may be raised that new equipment, mandated by these rules, could not be obtained after the date of adoption of the rules and before their implementation. The Department would afford hospitals sufficient time to acquire the equipment, although hospitals would be expected to show evidence of a purchase order or other commitment to purchase the equipment.

Results of the written opinion survey supported the proposed rules. On 87 valid responses to the anesthesiology questionnaire, the mean average ratings on each item ranged from 4.04 to 4.83 on a five-point scale of importance to patient care, where "5" was "extremely important" and "4" was "very important".

The written opinion survey also produced 48 sets of comments on the proposed anesthesiology standards. The proposed provision that drew the highest number of comments was N.J.A.C. 8:43B-18.6(c), which would require inspection of equipment before each use. Of 11 comments on this standard, eight were opposed to the requirement that results of the inspection be recorded in the patient's medical record, although these commenters may not have understood that a single-line entry into the record would be sufficient.

The proposed rules provide protections that otherwise are not contemplated by current rules. These measures are particularly important in view of the fact that accreditation standards of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), a private national agency that also surveys hospitals, are vague on many of the points that the proposed rules address. For example, the JCAHO standards require not board-certification, but rather "appropriate clinical and administrative experience" on the part of the physician director. They further require not specific forms of monitoring, but rather "appropriate" monitoring of patients during anesthesia.

In 1986, the American Society of Anesthesiology adopted new monitoring standards that encourage the use of pulse oximetry, end-tidal carbon dioxide monitoring, and other measures to safeguard patients' health. Similar and stronger standards, developed by the Department of Anesthesia of Harvard Medical School as "fundamental minimal standards that are available in the smallest rural community hospital", are being used in Massachusetts. The Harvard standards require pulse oximetry and strongly recommend end-tidal carbon dioxide monitoring.

Despite the increasing national attention on anesthesia monitoring and equipment standards, and despite incidents of anesthesia-related mortality involving children in New Jersey hospitals that lacked the monitoring systems prescribed by these proposed rules, New Jersey remains without meaningful anesthesia standards in the State's licensure program. The proposed rules would redress this deficit.

#### Social Impact

Anesthesia-related deaths and injuries are a serious problem. An anesthesia-related death occurs once in about every 10,000 surgical operations, or about 2,000 times annually in the United States. (Extrapolating these figures to New Jersey would indicate that approximately 60 of these deaths occur in the State annually.) The large majority of these deaths occur in patients younger than 60 years old, and about half involve relatively minor surgical procedures.

Recent research supports the need for proper monitoring. A study conducted by the anesthesiology department of the Medical College of Virginia found that approximately three-fourths of anesthesia-related deaths and injuries are preventable. An American Society of Anesthesiology study found that pulse oximetry and end-tidal carbon dioxide monitoring alone would prevent about one-fifth of anesthesia-related complications. Another study of 155 responding anesthesia departments found that monitoring prevented at least one critical incident in 85 percent of the departments, and that, of the 16 reported cases of death and brain death, none involved use of pulse oximetry or end-tidal carbon dioxide monitoring.

The Harvard standards have been used at nine affiliated hospitals since July 1985. In February 1988, Anesthesiology News reported that there had been no major intraoperative anesthesia accident at any of these hospitals since August 1985.

Consequently, the primary social impact of the proposed rules is expected to be to reduce years of lost life. Additionally, patients in New Jersey hospitals would gain the assurance of being protected, through rigorous requirements of safety and quality.

#### Economic Impact

The primary cost of the proposed rules involves the purchase of equipment for pulse oximetry and end-tidal carbon dioxide monitoring. Pulse oximeter costs now start at approximately \$5,000. Costs of carbon dioxide monitors vary by the type of machine. For example, capnograph machines, which produce a waveform of the patient's carbon dioxide output, cost about \$7,000, while capnogram machines, which do not produce a waveform, cost amounts that start at about \$3,500.

(Note: These price estimates are liberal. Due to apparent effects of competition and technology advances, prices as of June 1988 are substantially lower for equipment that would meet the requirements of the proposed rules).

If the value of a human life lost as a result of improper anesthesia monitoring is very conservatively (and dispassionately) estimated at one million dollars, and if the combined cost of pulse oximetry and end-tidal carbon dioxide monitoring equipment is estimated at \$12,000 per unit, and if a unit is functional through 6,000 operations (which is 1,000 operations per year for six years), and if the equipment is estimated to prevent one-fifth of the anesthesia-related deaths that occur at a one per 10,000 rate during surgical operations, then the monitoring equipment is worth more than 10 times its cost, when considering mortality risks alone.

This finding results from the computation that the cost per use is two dollars, which is the unit cost (\$12,000) divided by the number of uses per unit (6,000). The benefit per use in preventing mortality is \$20.00, which is the cost per death (\$1 million) times the incidence of mortality (1/50,000). This computation does not include equipment maintenance costs.

The benefits also involve a reduction in malpractice costs. For example, malpractice premiums in Massachusetts, where the Harvard standards are in effect, are reduced by 20 percent. Insurers in Arizona and Florida have adopted similar standards, to contain malpractice costs. To illustrate further the savings that would result, one New Jersey hospital recently agreed to a settlement of approximately \$2 million in a liability case involving a malfunctioning defective machine that would not meet the requirements of the proposed rules. The Department anticipates that these rules would contribute to containing medical malpractice costs in New Jersey.

Other than the equipment costs, the proposed rules are not expected to generate substantial expenditures.

#### Regulatory Flexibility Statement

The proposed rules would not affect small businesses as defined in the Regulatory Flexibility Act. The hospitals in New Jersey which are regulated by N.J.A.C. 8:43B all employ more than 100 people. Businesses other than hospitals would not be affected.

Full text of the proposal follows:

#### SUBCHAPTER 18. ANESTHESIA

##### 8:43B-18.1 Anesthesia services policies and procedures

(a) Anesthesia services shall be controlled by written policies and procedures that are reviewed annually, revised as needed, implemented, and followed. These policies and procedures shall include at least:

1. Monitoring of patients in the postanesthesia care unit, including availability of monitoring equipment, and discharge from the postanesthesia care unit;
2. Monitoring of patients in any special procedure rooms where patients receive anesthesia; and
3. Reporting of morbidity and mortality.

##### 8:43B-18.2 Anesthesia staff qualifications

(a) There shall be a physician director of anesthesia services who is a diplomate of either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology, or who was

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made a fellow of the American College of Anesthesiology before 1972.

(b) The physician director of anesthesia services shall participate in the credentialing and delineation of privileges of all personnel who administer anesthetic agents.

(c) Anesthetic agents, including intravenous conscious sedation, shall be administered at any anesthetizing location only in accordance with medical staff policies and procedures that specify who may administer anesthetic agents and under what conditions.

(d) Anesthetic agents other than minor local blocks or intravenous conscious sedation shall be administered only by the following:

1. A physician;
2. A certified registered nurse anesthetist who holds a current certification under a program governed or approved by the American Association of Nurse Anesthetists (AANA);
3. A registered nurse anesthetist who is a qualified candidate for certification under a program governed or approved by the AANA, provided that no national examination for such certification has been administered since the nurse became a qualified candidate for certification;
4. A physician resident participating in a nationally approved graduate medical education training program in anesthesiology;
5. For dental cases only, a dentist who has successfully completed a nationally approved graduate medical education program in anesthesiology; or
6. A dental resident participating in a nationally approved graduate medical education training program in anesthesiology.

(e) An anesthesiologist, anesthesia resident, or certified registered nurse anesthetist shall be continuously present in the operating room to monitor the patient and provide anesthesia care whenever a patient is receiving any anesthesia. If radiation or another direct hazard necessitates the absence of such personnel, provision shall be made for remote monitoring of the patient.

1. If the anesthesia consists of a minor local block or intravenous conscious sedation, the administrator of anesthesia shall be continuously present in the operating room or other anesthetizing location to monitor the patient.

#### 8:43B-18.3 Anesthesiologist availability

An anesthesiologist shall be on-site or on call and available to reach the hospital within 30 minutes under normal transportation conditions at all times.

#### 8:43B-18.4 Anesthesia patient services

(a) A preanesthesia note, reflecting evaluation of the patient and review of the patient record prior to administration of anesthesia, shall be made by the anesthesiologist and entered into the medical record of each patient receiving anesthesia in the operating suite.

(b) A record of anesthesia that conforms with policies and procedures developed by the medical staff shall be made for each patient receiving sedation or anesthesia at any anesthetizing location.

(c) A postanesthesia note shall be made by the anesthesiologist early in the postoperative period and after the patient's discharge from the postanesthesia care unit and shall be entered into the medical record of each patient receiving anesthesia in the operating suite. If anesthesia was administered by a certified registered nurse anesthetist, he or she also shall make a postanesthesia note in conformance with hospital policies and procedures. For patients receiving only regional anesthesia without anesthesia services' participation and in conformance with hospital policies and procedures, the postanesthesia note may be made by the surgeon.

(d) An anesthesiologist shall discharge each patient from the postanesthesia care unit personally or through established criteria for discharge.

(e) The patient shall receive postoperative anesthesia surveillance as required by the patient's condition and by requirements of the hospital's anesthesia services. Upon conclusion of anesthesia surveillance, the anesthesiologist shall enter into the patient's medical record the postanesthesia status of the patient who has received anesthesia care from anesthesia services.

#### 8:43B-18.5 Anesthesia supplies and equipment; safety systems

(a) Diameter index safety systems shall be used on all large cylinders of medical gases and wall and ceiling outlets of medical gases.

(b) Pin index safety systems with a single washer shall be used on all small cylinders to prevent interchangeability of medical gas cylinders.

(c) All medical gas hoses and adapters shall be color-coded.

(d) An oxygen failure-protection device ("fail-safe" system) shall be used on all anesthesia machines to announce and, at lower levels of oxygen pressure, to discontinue other gases when the pressure of the supply of oxygen is reduced.

(e) A vaporizer exclusion ("interlock") system shall be used to assure that only one vaporizer, and therefore only a single agent, can be actuated on any anesthesia machine at one time.

(f) To prevent delivery of excess anesthesia during an oxygen flush, no vaporizer shall be placed in the circuit downstream of the oxygen flush valve.

(g) All anesthesia vaporizers shall be pressure-compensated in order to administer a constant non-pulsatile output.

(h) Accurate flow meters and controllers shall be used to prevent the delivery to a patient of an inadequate concentration of oxygen relative to the amount of nitrous oxide or other medical gas.

(i) Alarm systems shall be in place for high (disconnect), low (subatmospheric), and minimum ventilatory pressures in the breathing circuit for each patient under general anesthesia.

(j) There shall be a system to assure that, when technically feasible, surgery does not proceed where there are disabled alarms, depleted batteries and inactive sensors in oxygen monitors, improperly positioned breathing-circuit sensors, or other insufficiencies.

#### 8:43B-18.6 Anesthesia supplies and equipment; maintenance and inspections

(a) A record shall be maintained of all service and maintenance performed on all anesthesia machines, ventilators, and vaporizers. The record shall include machine identification; name of servicing agent; work performed; and date of work. This maintenance shall conform with maintenance requirements established by the machine manufacturer. Credentials of each servicing agent shall be approved by the machine manufacturer or by the hospital's physician director of anesthesia services.

(b) All anesthesia equipment shall be inspected fully at the beginning of each day of use. A record of each such inspection shall be maintained for each machine. The inspection shall conform with a checklist that is supplied by the manufacturer of the machine; issued by the Federal Food and Drug Administration; or developed by the hospital's anesthesia services and approved by the hospital's physician director of anesthesia services.

(c) All anesthesia equipment shall be inspected before each use. A record of each inspection shall be maintained for each machine and contained in the patient's anesthesia record.

#### 8:43B-18.7 Anesthesia supplies and equipment; patient monitoring

(a) An in-circuit oxygen analyzer shall monitor the oxygen concentration within the breathing circuit, displaying the percent oxygen of the total mixture, for all patients receiving general anesthesia.

(b) A respirometer (volumeter) measuring exhaled tidal volume shall be used whenever the breathing circuit of a patient under general anesthesia allows.

(c) The body temperature of each patient under anesthesia shall be continuously monitored.

(d) Pulse oximetry shall be performed continuously during administration of all anesthesia, including intravenous conscious sedation, at all anesthetizing locations, when technically feasible. Any alternative method of measuring oxygen saturation may be substituted for pulse oximetry if the method has been demonstrated to have at least equivalent clinical effectiveness.

(e) End-tidal carbon dioxide monitoring shall be performed continuously during administration of all general anesthesia, when technically feasible.

(f) An electrocardiogram monitor shall be used continuously on all patients receiving general anesthesia at any anesthetizing location.

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(g) Blood pressure, pulse rate, and respirations shall be determined and charted at least every five minutes for all patients receiving anesthesia at any anesthetizing location.

(h) The capacity for invasive monitoring of arterial pressure shall exist within the operating suite.

(i) A precordial stethoscope or esophageal stethoscope shall be used when indicated on each patient receiving anesthesia. If necessary, the stethoscope may be positioned on the posterior chest wall or tracheal area.

(j) A peripheral nerve stimulator shall be available within the operating suite to monitor the patient's extent of muscle paralysis from muscle relaxants. Another peripheral nerve stimulator shall be available within the postanesthesia care unit.

### 8:43B-18.8 Anesthesia staff education and training

Staff education programs and training sessions shall include patient safety and the inspection and use of equipment.

### 8:43B-18.9 Anesthesia quality assurance methods

(a) There shall be a program of quality assurance for anesthesia services that is integrated into the hospital quality assurance program and includes routinely collecting and analyzing data to help identify health-service problems and their extent, and recommending, implementing, and monitoring corrective actions on the basis of these data.

(b) Quality assurance shall include morbidity and mortality conferences.

(c) The hospital shall notify the New Jersey State Department of Health by telephone (609) 588-7725 within 24 hours, and in writing within 10 days, of all anesthesia deaths and unexpected severe intraoperative or postoperative untoward events or outcomes related to anesthesia, including the patient's American Society of Anesthesiology (ASA) Physical Status classification. Records of such reports shall be made available only to Department of Health personnel for official purposes and, for each report, to the specific facility that the report covers.

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### (a)

### DIVISION OF MENTAL HEALTH AND HOSPITALS

#### Residential Operational Standards Policies and Procedures for Group Homes

#### Proposed New Rules: N.J.A.C. 10:39

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:11B-1 et seq.

Proposal Number: PRN 1988-474.

Submit comments by November 17, 1988 to:

Lynn Kiernan, Special Assistant to the Director  
Division of Mental Health and Hospitals  
CN 700  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

P.L. 1987, c.112, (N.J.S.A. 30:11B-1 et seq.) ("the Act") vests the responsibilities for development, licensure and regulation of community residences for the mentally ill with the State Department of Human Services' Division of Mental Health and Hospitals. The Act authorizes the Commissioner of the Department of Human Services, and the Director of the Division of Mental Health and Hospitals, to set appropriate standards for community residences, which include the provisions of the "Uniform Fire Code", P.L. 1983, c.383, (N.J.S.A. 52:27D-192 et seq.), and program standards, which include criteria for educational and professional experience of employees of community residences for the mentally ill and staffing ratios appropriate to the needs of residents.

The State Legislature acknowledges that many people who are or have been hospitalized for mental illness, and persons attending community mental health programs, could benefit from specialized independent living

which a community residence can provide. The intention of the Act is to encourage the development of community residences for persons who are suffering from mental illness, and to further support the right of persons to live a fuller, more normal life, in a community setting.

The proposed rules will provide all Division of Mental Health and Hospitals' providers with minimum standards to safeguard the health and welfare of their residents.

These are the first published standards for group homes for the mentally ill. Other standards will be developed by the Division to address the other types of community residences operated by agencies and organizations under contract with the Division.

The physical standards contained herein are the same rules currently in use by the Department of Community Affairs which the Department uses to review its group homes. The program standards for group homes are rules currently contained in N.J.A.C. 10:37.

The goal of a group home is to foster personal growth and responsibility of the residents through training and support services.

The standards set forth herein are proposed as minimum operating standards for Group Homes under contract or affiliation agreement with the Division of Mental Health and Hospitals and serving 15 or fewer mentally ill persons in the State of New Jersey.

Group homes serving more than 15 persons will operate under the standards of the Rooming and Boarding Home Act (N.J.S.A. 55:13B-1 et seq.), N.J.A.C. 5:27-1 et seq. Group homes serving more than 15 persons are licensed by the Department of Community Affairs.

#### Social Impact

The proposed rules will provide all Division of Mental Health and Hospitals' provider agencies of group homes with minimum standards to safeguard the health and welfare of their residents.

At present, there are approximately 59 contracted group homes serving 374 clients. The supportive services offered in these group homes enable clients to remain in the community, by providing them with mental health services in the least restrictive setting appropriate to their level of care. Without group homes as a resource, many clients would be institutionalized, a costly and more restrictive alternative; others would reside in community settings without the necessary supportive services with a negative impact on their quality of life; some would be at risk of homelessness.

The Department supports the need for a normalized environment which fosters the growth of the client.

The Department expects a positive response from the consumers and consumers' family members due to the fact the group homes will be evaluated by staff with an expertise in mental health services.

A positive reaction is also expected from the general public because the Department will ensure that appropriate services occur in the group homes. There will be less likelihood of a burden on the community, due to appropriate supervision and services being offered to the client.

These rules will end the duplication of effort by two state agencies with two different orientations for monitoring facilities. There will be reduced operational difficulties, due to the fact that the provider agencies will be dealing with one department instead of two.

#### Economic Impact

The Department expects that the rules will not have any economic impact on the Provider Agencies (PAs), since the agencies already comply with the physical standards as part of the Department of Community Affairs' licensing rules N.J.A.C. 5:27-1 and the program standards contained in N.J.A.C. 10:37.

Group homes are funded by the Department through a purchase of services contract with the provider agency.

These rules will have no economic impact on the residents of group homes and there will be no additional costs to the provider agencies.

The Department is requiring no licensing fees from the provider agencies.

The Division of Mental Health and Hospitals has received an appropriation of \$75,000 to hire new staff to effectuate the purpose of the Act.

#### Regulatory Flexibility Statement

There is no anticipated impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., due to the proposed new rules. The proposed new rules only apply to provider agencies, which are non-profit, contracted to provide group home services to the mentally ill. The Department believes that the Regulatory Flexibility Analysis is not required because these non-profit agencies are not small businesses.

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Full text of the proposal follows.

**SUBCHAPTER 1. GENERAL PROVISIONS****10:39-1.1 Scope**

(a) The Division of Mental Health and Hospitals group home provider agencies shall comply with the physical and program standards contained within this chapter. The standards shall apply to group homes with a minimum of six and a maximum of 15 residents formerly licensed under N.J.A.C. 5:27-1 as Class D community residences for persons suffering from mental illness by the Department of Community Affairs and to group homes with five or fewer residents formerly operating under a waiver granted by the Department of Community Affairs whereby licensing as a Class D residence was not required.

(b) The standards set forth in this chapter are minimum operating standards for group homes serving persons who are suffering from mental illness in the State of New Jersey.

**10:39-1.2 Definitions**

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

"Assessment and evaluation" means a formal analysis to determine appropriate services based on individual requests and assessed needs. Included are social, personal and physical conditions affecting an individual's ability to function, as well as an analysis of the individual's current level of functioning in the face of these conditions.

"Bureau of Licensing and Inspections" (BLI) means the Bureau of Licensing and Inspections within the Division of Mental Health and Hospitals, Department of Human Services.

"Community organization" means intervention at the community level oriented toward influencing community groups, providers and institutions toward solving problems that threaten individual functioning. The focus is on organizing and developing available and potential community resources untapped or underutilized by mental health providers.

"Community residence for the mentally ill" means any community residential facility which provides food, shelter and personal guidance, under such supervision as required, to not more than 15 mentally ill persons who require assistance temporarily or permanently, in order to live independently in the community. These residences shall be approved for a purchase of services contract or an affiliation agreement pursuant to procedures established by the Division of Mental Health and Hospitals in the Department of Human Services. These residences shall not house persons who have been assigned to a State psychiatric hospital after having been found not guilty of a criminal offense by reason of insanity or unfit to be tried on a criminal charge. These residences shall not be considered health care facilities within the meaning of the "Health Care Facilities Planning Act," P.L.1971, c.136 (C.26:2H-1 et seq.) and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements, family care homes and hostels.

"Counseling" means a form of treatment for cognitive difficulties, behavior maladaptions and/or other emotional problems in which a trained person establishes a professional relationship with a client for the purpose of removing, modifying or retarding existing symptoms, altering or reversing disturbed patterns of behavior, and promoting positive personality growth and development.

"Daily living skills" means the activities or competencies to enable a resident to perform functions for everyday living, that is, basic housekeeping, grooming/dressing, nutrition management, money managements, daily routine, social/recreational activities and medication management.

"Department" means the Department of Human Services.

"Division" means the Division of Mental Health and Hospitals, Department of Human Services.

"Group home" means any leased or owned single family residence or any structure containing three or more dwelling units, all of which are utilized for the provision of residential care services; wherein staff reside or are stationed either on-site or in immediate close proximity; and for which a contract or formal affiliation agreement exists with the Division of Mental Health and Hospitals. Group homes shall not

include family care home nor apartment facilities where individuals may receive regular or periodic staff supervision and/or training visits, except where such apartment facilities include those contained in a structure of three or more units and all units are operated under contract or affiliation agreement with the Division.

"Housing" means services to help individuals locate, improve and/or maintain housing suitable and adequate for their needs at prices they can afford, whether for purchase or for rent or just as a temporary place to stay while they are being helped to make other living arrangements.

"Independent living arrangement" means living settings where individuals assume total responsibility for all aspects of personal and home maintenance, and where supportive mental health and/or social services are not usually provided on site, unless crisis outreach is needed.

"Information and referral" means staff and resources available to community residents inquiring about the range of mental health and related services available in their community.

"Normalization" means the process of promoting personal relationships and positive expectations among staff and residents in an environment that is as close to a normal life style as possible.

"Placement" means a range of activities designed to identify, refer into, and/or provide community based residential/housing services to individuals requiring supervised, semi-independent, or no programmatic assistance in medical and/or mental health areas. Placement may be of an emergency short-term nature, transitional residential services, or for long-term utilization with or without supervision.

"Provider agency" (PA) means a public or private organization which has a mental health contract with the Division.

"Recreation" means a program of organized individual or group activities of a relaxing or entertaining nature designed to promote a person's ability to socialize and manage his or her leisure time. For example, activities may include trips to art shows, musical events, movies, sports activities, field trips to historical points of interest.

"Resident(s)" means a person suffering from mental illness who resides in a community residence.

"Service management" means a series of constructive actions undertaken on behalf of an individual consumer to direct and coordinate appropriate service provision. Individuals are taught to cope with precipitating events that may lead to crisis situation and service providers are made accountable to the consumer. Actions are directed toward the consumer, the service team, providers, significant others and the community in general. Service management includes all of the following activities:

1. Information gathering, which includes identifying persons in need of services management, gaining access to and acquiring (with informed consent) pertinent information regarding a person's personal, social and health status; and assuring an assessment is completed by a service team.

2. Discharge/service planning through meetings among service providers and clients or inpatients returning to the community. The purpose is to assure the development of a time-oriented service plan with the consumer by the service team that relates directly to assessed needs.

3. Linkage, which means a process of determining eligibility for services, initiating contact with service providers, arranging and referring the individual to service and follow-up to assure services are rendered; if problems occur in obtaining and accessing service, planning to assure other appropriate services are substituted; and acting as a contact person to family and significant others and mobilizing their support.

4. Follow-up, which means a process of retaining responsibility for individual cases and, on an ongoing basis, monitoring service delivery to ensure that progress meets needs; helping consumers resolve problems and providing support; and recording and reporting progress to service teams.

5. Personal advocacy, which means acting as an agent for an individual consumer, using an assertive approach to address problems in service delivery, low motivation on the part of the consumer, and/or difficulty negotiating the system. The purpose is to ensure rights and effect positive changes in attitudes toward consumers.

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“Target population” means:

1. Adults and children currently in a State/county/local psychiatric hospital who could live in the community with appropriate services;

2. Adults and children in the community, with a history of State/county/local psychiatric hospitalization, who are at serious risk of rehospitalization; and

3. Adults and children in the community who are mentally and functionally impaired and at serious risk of psychiatric hospitalization.

“Transportation” means arranging for or providing transportation to and from other services and/or community resources when necessary.

**SUBCHAPTER 2. LICENSING PROCESS**

**10:39-2.1 Initial licensing process**

(a) All inquiries related to licensure of group homes shall be made to: New Jersey Division of Mental Health and Hospitals, CN 700, Trenton, NJ 08625

(b) All applicants shall be providers of mental health services with a service contract or an affiliation agreement with the Division.

(c) The provider agency shall request an initial inspection be completed by the Division. All requests shall be made to the Division at the address in (a) above.

(d) The Division shall inspect the site based on physical and fire safety standards (N.J.A.C. 5:18 et seq.) and review program operations for compliance with residential care standards.

(e) The Division shall notify the provider agency (PA) in writing of all violations.

(f) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit a Certificate of Occupancy or other documents indicating habitability.

(g) A license shall be issued once all requirements are met and inspections are satisfactory and there is reasonable assurance that the residence shall be operated in the manner required by this chapter.

(h) The license shall be issued by the Department of Human Services through the Division of Mental Health and Hospitals.

(i) The license shall be issued for a period of one year and shall specify the maximum number of persons permitted to occupy the group home.

(j) The license shall be available on the premises for review by the Division.

**10:39-2.2 Waiver**

All current group homes contracted with the Division of Mental Health and Hospitals at the date the standards are adopted shall be considered approved for licensing and shall not be subject to the initial licensing process. From the adoption date on, licensure shall depend on the annual inspection. Those group homes which have not contracted with the Division at the time of the adoption shall follow the initial licensing process and shall be subject to annual inspections.

**10:39-2.3 Waiver of standards**

(a) Waivers of specific standards shall be considered at the discretion of the Division providing that such a waiver would not present a danger to the health, safety, welfare or rights of the residents.

(b) Requests for waivers shall be made in writing to the Division, with substantial detail justifying the request.

(c) Specific standards may be waived only under the following conditions:

1. Where strict enforcement of the standard would result in unreasonable hardship on the residents; or

2. The waiver is in accordance with the particular need of a client(s) but does not adversely affect the health, safety, welfare or rights of the client.

**SUBCHAPTER 3. DIVISION RESPONSIBILITIES**

**10:39-3.1 Annual evaluation**

(a) The Division’s Bureau of Licensing and Inspections (BLI) shall annually conduct an on-site inspection of each group home to de-

termine whether the program and facility meet the requirements for licensure under N.J.S.A. 30:11-1 et seq.

(b) The written report of the annual on-site inspection of each program and/or facility shall specify the violations and, if necessary, the manner and time frames in which the violations shall be abated.

(c) For any violations cited by the Division as life threatening, the PA shall abate such deficiencies within 48 hours of notification and provide written notice within 48 hours to the BLI that all violations have been corrected.

(d) If the Division report identified violations other than life threatening deficiencies, representatives from the Division, as part of their ongoing monitoring responsibilities, shall visit the specified facility and/or program and provide a report to the Division on progress toward remediation of deficiencies every 60 days until the deficiencies are fully remediated.

(e) No later than 40 days after receipt of the report, the PA shall provide written notice to the Division that violations have been corrected, and/or that actions have been taken to abate violations noted and that full correction is anticipated within the time frames noted in the report.

**10:39-3.2 Appeal of the Division’s findings**

(a) The agency may appeal findings of the Division, with the exception of life threatening violations.

(b) The appeal of findings shall be directed to the Division Director or designee within 20 days of receipt of the written report of findings.

(c) A response to the appeal shall be provided within 20 days of its receipt.

**10:39-3.3 Administrative sanctions**

(a) In the event that the PA does not submit written notice specified in N.J.A.C. 10:39-3.1(e) by the required date, or if violations have not been abated within the time frames specified in the report, the Division shall have the option of suspension payments to which the PA may be entitled under any agreements with the Division, imposition of a moratorium on admissions to the facility, or revocation of the license to operate the facility.

(b) In the event that the Division requires the removal of the license and the relocation of the residents of the facility, a written order shall be directed to the PA’s executive director or designee and to the President of the Board of Directors of the agency.

(c) Under the supervision of the Division, the PA shall be responsible for placement of residents when an order to vacate the premises and the removal of a license has been issued by the Division.

**10:39-3.4 Review of administrative sanctions**

Where an administrative sanction exists and the PA denies the basis of the sanction, the PA may apply to the Division Director or designee for a review, which shall be afforded a decision rendered by the Division Director or designee within two working days of the receipt of the written request for a review.

**10:39-3.5 Administrative hearing of appeal**

If the PA chooses to appeal a decision made pursuant to the provisions of N.J.A.C. 10:39-3.4, the PA may request an administrative hearing which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**10:39-3.6 Emergency situation**

The Division, when it determines that the health, safety and welfare of the residents warrants it, may immediately suspend the license, provided that the PA shall have the right to an expeditious hearing.

**SUBCHAPTER 4. RESIDENTIAL CARE PROGRAM**

**10:39-4.1 Scope and purpose**

(a) Residential programs shall predominately include housing, placement, daily living education, and service management.

(b) A major goal of residential programs shall be to help clients to be as independent from the mental health system and as self-sufficient as possible. Residents shall live in the least restrictive environment necessary to assure safety and to promote growth.

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(c) Residential programs shall provide a context in which rehabilitative and restorative efforts focus on client's acquisition of daily living skills and movement towards more independent living arrangements.

1. Skills training in daily living may take place within a residential living arrangement.

2. Whenever possible, mental health and social services and recreational activities should occur outside of the living arrangement, in community settings (YMCA, libraries, social clubs, churches, etc.). These activities should only be offered in the residential living arrangement when they are unavailable in the community or when the current level of functioning of residents temporarily precludes their participation in normalized activities.

3. Residential services shall be organized around the principles of resident responsibility and participation.

**10:39-4.2 General responsibilities of all residential programs**

(a) All residential programs shall develop appropriate linkages with mental health, social services and natural support systems and execute formal affiliation agreements with key service providers, including any existing service area transitional housing program on the grounds of State and county psychiatric hospitals.

(b) Plans for interfacing with other housing providers in the County should also be formalized.

**10:39-4.3 Reserved****10:39-4.4 Population priorities**

(a) First priority for residential group homes shall be given to individuals who fall within State Target Group "I" and "II" cited in N.J.A.C. 10:37-5.2. Within this sub-group of clients, housing spaces should first be filled by persons who are currently residing in hospital settings (I), then by persons residing in the community-at-large who meet Target Group II criteria.

(b) Only after referrals have been sought from State Target Group I, shall a residential program accept referrals of other individuals, prioritized as indicated in N.J.A.C. 10:37-5.2.

(c) In filling vacancies, residential staff shall also consider compatibility needs of clients and potential roommates.

**10:39-4.5 Services to be provided**

(a) Residential programs shall include, but not be limited to, the following services, as defined in this chapter:

1. Housing;
2. Placement;
3. Assessment and evaluation;
4. Counseling;
5. Service management, which includes:
  - i. Information gathering;
  - ii. Discharge/services planning;
  - iii. Linkages;
  - iv. Follow-ups; and
  - v. Personal/advocacy;
6. Information and referral;
7. Daily living education;
8. Community organization;
9. Recreation; and
10. Transportation.

**10:39-4.6 Service approaches**

(a) To the greatest extent possible, residents shall share direct responsibility in the residential living arrangement, for the following:

1. Organization and planning of program and personal activities;
2. Decision-making concerning rules and expectations; and
3. Planning and execution of routine daily living tasks, such as shopping, meal preparation, laundry, cleaning, decorating, minor repairs, etc.

(b) Residential programs shall be responsible for advocating for residents so that they receive the full range of needed services. This includes advocacy with mental health and social services (welfare, social security, teaching homemaker, etc.) and housing agencies (Rental assistance/HUD Section 8 programs, local housing authority, etc.) to assure accessibility of their services to residents on an ongoing basis.

**10:39-4.7 Recordkeeping**

(a) In addition to standard reporting requirements of the Division, cited in N.J.A.C. 10:37-6.73-6.79, residential providers who charge fees to clients shall keep appropriate financial records.

(b) Financial records shall include, for each resident, specific charges for all housing-related items, including rent, food, utilities, telephone, etc., and payments for those expenses, including balances due.

(c) Fees received from residents should be recorded separately for each housing facility for which the residential provider collects such fees.

**10:39-4.8 Setting**

(a) Residential services shall be provided on-site and off-site, in residences and in the community, as needed.

(b) Residential living arrangements shall be in close proximity to shopping, generic community resources, recreational facilities, and public transportation.

**10:39-4.9 Staff**

(a) Staffing for residential programs may vary in relation to the physical arrangement of the setting, the number of housing locations offered, the capacity to share staff, and the level of functioning and number of residents.

(b) An additional determinant of staff size shall be the range of services which are offered on-site or at other locations, in collaboration with staff from other agencies.

**SUBCHAPTER 5. PHYSICAL PLANT****10:39-5.1 Water supply**

(a) Every residence shall be provided with a safe supply of potable water meeting the standards as set forth in the Safe Drinking Water Act rules, N.J.A.C. 7:10.

(b) The source of such water supply shall be approved by the New Jersey Department of Environmental Protection and/or the local health agency.

(c) The minimum rate of flow of hot or cold water issuing from a faucet or fixture shall not be less than one gallon per minute.

**10:39-5.2 Facilities**

(a) Every residence shall contain a kitchen sink of nonabsorbent impervious material.

(b) Every residence shall be provided with a minimum of one flush type water toilet, bathroom sink and a bathtub or shower.

(c) There shall be at least one toilet, sink and one bath or shower for each eight residents.

(d) The bathroom sink shall be located in or adjoining the toilet area.

(e) Every toilet, bathroom sink and bathtub or shower shall be:
 

1. Accessible from within the building without passing through any part of any other rooming unit; and
2. Contained in a room or rooms which are separated from all other rooms by walls, doors or partitions that afford privacy.

(f) No one shall be required to go farther than one floor above or below his or her rooming unit to the bathroom.

(g) No resident shall be without ready access to a bathroom, bathtub or shower by reason of physical disability.

(h) Every plumbing fixture shall be connected to water and sewer/septic systems approved by the New Jersey Department of Environmental Protection and/or the local health agency, and shall be maintained in good working condition. Plumbing systems shall be well maintained.

(i) Every kitchen sink, bathroom sink and bathtub or shower required by this section shall be connected to both hot and cold water lines.

(j) Every residence shall have water heating facilities which are installed and connected with the hot water lines.

(k) The water heating system must be capable of delivering water at a minimum temperature of not less than 120 degrees Fahrenheit and at a maximum temperature of not more than 140 degrees Fahrenheit at all times in accordance with anticipated needs.

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**Interested Persons see Inside Front Cover**

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**10:39-5.3 Garbage and rubbish storage**

Garbage, rubbish or other organic waste shall be stored in water-tight receptacles of metal or other approved material. Such receptacles shall be provided with tight-fitting covers. A sufficient number of garbage or rubbish receptacles shall be available, and shall conform to State rules and local ordinances.

**10:39-5.4 Lighting**

(a) The residence lighting system must be in working order and sufficient for the appliances and/or equipment used.

(b) Every habitable room shall have at least one window or skylight facing directly to the outdoors.

(c) The minimum glazed area of the total windows or skylights shall be eight percent of the floor area of each room.

**10:39-5.5 Electrical services**

(a) Every residence shall be provided with electric service which shall be adequately maintained.

(b) Every habitable room shall contain sufficient wall type electric outlets and lamps or light fixtures to enable occupants to use the room for its intended function. Lighting in habitable rooms shall be sufficient to read.

(c) Every outlet and lamp shall be maintained in a good and safe condition and shall be connected to the source of electric power.

(d) No temporary wiring shall be used except extension cords which meet the following requirements:

1. Run directly from portable electrical fixtures to convenient outlets;

2. Do not lie under rugs or other floor coverings; and

3. Do not extend through doorways, transoms, or other openings through structural elements.

(e) Every portion of each staircase, hall, cellar, basement, landing, furnace room, utility room, and all similar non-habitable space shall have either natural or artificial light available at all times, with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portions, and sufficient for safe use of the area for its intended purpose.

(f) Every portion of any interior or exterior passageway or staircase shall be illuminated naturally or artificially at all times with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portion of the normally traveled stairs and passageways. Lighting must be sufficient to prevent accidents.

(g) Every bathroom and water closet compartment shall have either natural or artificial light available at all times, with an illumination of at least three lumens per square foot (three foot-candles). The light shall be measured 36 inches from the floor at the center of the room. Artificial lighting shall be controlled by a wall switch so located as to avoid danger of electrical hazard. There must be sufficient light to use the room and/or area for its intended purpose.

**10:39-5.6 Ventilation**

(a) Means of ventilation shall be provided for every habitable room. The ventilation may be provided either by an easily operable window or skylight having an openable area of at least 50 percent of the minimum window area, or by other means acceptable to the Division which will provide at least two air changes per hour.

(b) Means of ventilation shall be provided for every bathroom or water closet compartment. The ventilation may be provided either by an easily operable window or skylight having an openable area of at least 50 percent of the minimum window area or by other means acceptable to the Division which will provide at least six air changes per hour.

(c) Ventilation shall be sufficient to remove odors.

**10:39-5.7 Heating**

(a) Every residence shall have heating facilities which are:

1. Properly installed;

2. Maintained in good and safe working condition; and

3. Capable of safely and adequately heating all habitable rooms and bathrooms located therein to a temperature of at least 68 degrees Fahrenheit when the outside temperature is zero degrees Fahrenheit.

(b) The temperature shall be read at a height of three feet above floor level at the center of the room.

(c) There shall be heat adequate to maintain a minimum inside temperature in all habitable rooms and bathrooms of 68 degrees Fahrenheit from October 1 of each year to the next succeeding May 1 and when the outside temperature is 57 degrees or less.

(d) Every space heater, except electrical, shall be properly vented to a chimney or duct leading to the outdoors.

(e) Unvented portable space heaters, burning solid, liquid or gaseous fuels, shall be prohibited.

**10:39-5.8 Structural safety and maintenance**

(a) Every foundation, floor, wall, ceiling, door, window, roof or other part of a residence shall be kept in good repair and capable of the use intended by its design, and any exterior part or parts thereof subject to corrosion or deterioration shall be kept well painted.

(b) Every inside and outside stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition and good repair.

(c) Every stairway having three or more steps shall be properly banistered and safely balustraded.

(d) Every porch, balcony, roof, and/or similar place higher than 30 inches above the ground, used for egress or for use by occupants, shall be provided with adequate railings or parapets which are properly balustraded and be not less than three feet in height.

(e) Every roof, wall, window, exterior door and hatchway shall be free from holes or leaks that would permit the entrance of water within or be a cause of dampness.

(f) Every foundation, floor and wall of each residence shall be free from chronic dampness.

(g) Every residence shall be free from rodents, vermin and insects. A provider agency of a residence located in an area found by the Division to be infested by rats, insects or other vermin shall carry out such rat stoppage, vermin proofing or other means of preventing infestations of said dwellings as may be required by the Division.

(h) Every openable window, exterior door, skylight and other opening to the outdoors shall be supplied with properly fitting screens in good repair from May 1st until October 1st of each year. Screens shall have a mesh of not less than No. 16.

(i) Every residence, including all exterior areas of the premises, shall be clean and free from garbage or rubbish and hazards to safety.

(j) Lawns, hedges and bushes shall be kept trimmed and shall not be permitted to become overgrown and unsightly.

(k) Fences shall be kept in good repair.

(l) The grounds maintenance shall be consistent with that of the neighborhood, unless the condition of the neighborhood does not generally meet the standards for maintenance set forth in this subchapter.

(m) The Division may require that the provider agency clean, repair, paint, whitewash or paper such walls or ceiling, when a wall or ceiling within a dwelling has deteriorated so as to provide a harborage for rodents or vermin, or when such a wall or ceiling has become stained or soiled, or the plaster, wallboard, or other covering has become loose or badly cracked or missing.

(n) Every water closet compartment floor and bathroom floor shall be so constructed and maintained as to be reasonably impervious to water and shall be kept in a clean condition.

(o) No provider agency shall cause or permit any services facilities, equipment or utilities which are required under this subchapter to be removed from, shut off or discontinued in any residence or part thereof, except for such temporary interruption as may be necessary while actual repairs or alterations are in progress, or during temporary emergencies when discontinuance of service is authorized by the Division.

(p) In the event that any service or utility is discontinued, the provider agency shall take the immediate steps to cause the restoration of such service or utility.

(q) All residences shall be clean and sanitary prior to occupation by any resident, and shall be maintained in a clean and sanitary condition.

(r) The provider agency shall ensure the orderly maintenance of the premises. The storage of objects or materials shall be done in

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an orderly manner so as to not constitute a health, safety or fire hazard.

10:39-5.9 Kitchen facilities

- (a) Kitchen storage space shall be clean and well ventilated.
- (b) Containers of food shall be covered and appropriately stored at least 12 inches above the floor on shelves or other clean surfaces.
- (c) Refrigeration and storage of food shall be provided at not more than 45 degrees Fahrenheit. Freezer compartments shall operate at no more than zero degrees Fahrenheit and must be maintained in good condition and without excessive ice build-up.
- (d) All food and drink shall be:
  - 1. Safe for human consumption, clean, wholesome and free of spoilage; and
  - 2. Prepared and served in a sanitary manner.
- (e) All equipment and utensils used for eating, drinking, preparation and keep shall be:
  - 1. Kept clean and in good condition; and
  - 2. Thoroughly washed after each use.
- (f) Floors, walls and work surfaces of food preparation and food serving areas shall be kept clean and in good condition at all times.

10:39-5.10 Occupancy and use of space

- (a) Every rooming unit occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space. Every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet of floor space for each occupant. Doors for privacy shall be provided and maintained.
- (b) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet. The floor area of that part of any room where the ceiling is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.
- (c) Sufficient closet space for storage shall be provided. The storage space shall be uncluttered and sufficient for clothing and supplies.
- (d) Rooms shall be of adequate size for the number of people, types of activities and storage.
- (e) A room located in whole or in part below the level of the ground may be used for sleeping, provided that the following requirements are met:
  - 1. The walls and floor which are in contact with the earth have been damp-proofed in accordance with a method approved by the Division; and
  - 2. All requirements generally applicable to habitable rooms are satisfied.
- (f) Any matter or requirement essential for the structural safety of a residence or essential for the safety or health of the residents thereof or of the public, and which is not covered by the provisions of this subchapter, shall be the subject of determination by the Division Director in specific cases.

**SUBCHAPTER 6. FIRE SAFETY**

10:39-6.1 Uniform Fire Code

The provisions of N.J.A.C. 5:18, the Uniform Fire Code, are hereby incorporated by reference.

10:39-6.2 Group homes with five or fewer residents

The provisions of N.J.A.C. 5:18 which apply to the R-3 use group shall apply to group homes with five or fewer residents.

10:39-6.3 Group homes with six or more residents

The provisions of N.J.A.C. 5:18 which apply to the I-1 use group shall apply to group homes with six or more residents.

10:39-6.4 Group homes in multiple unit dwellings

The provisions of N.J.A.C. 5:18 which apply to the R-2 use group shall apply to group homes in multiple unit dwellings.

10:39-6.5 Smoke detectors

- (a) Single station smoke detectors (battery-operated for those homes with five or fewer residents and electric for those homes with

six or more residents and group homes in multiple dwellings) shall be installed at the following locations:

- 1. Living room and each bedroom;
- 2. Designated smoking areas;
- 3. The highest ceiling area in each stairwell; and
- 4. Basements and cellars located in the highest ceiling area of the first floor stair landing or other approved location where the earliest detection of fire would activate the alarm.

10:39-6.6 Fire drills

- (a) Fire drills shall occur at a minimum of once per month.
- (b) Fire drills should be conducted in the evening at least 50 percent of the time.
- (c) Evacuation should be completed in less than two minutes.
- (d) For each fire drill, the time, date, participants, problem areas, resolution of problems and timeliness of egress shall be documented.
- (e) The Division's Bureau of Licensing & Inspections shall review provider agency compliance with the fire drill procedure annually during the on-site inspection.

10:39-6.7 Kerosene heaters

The use of kerosene heaters is prohibited.

10:39-6.8 Variances

- (a) Variances from N.J.A.C. 5:18 shall be permitted in accordance with N.J.S.A. 52:27D-200.
- (b) The PA shall provide the Division with a copy of all applications for variances and the action taken on them.

10:39-6.9 Administrative hearing

Administrative hearings regarding the provisions of this subchapter will be conducted in accordance with N.J.S.A. 52:27D-206.

**SUBCHAPTER 7. RESIDENT COMPLAINT PROCEDURES**

10:39-7.1 Development of resident complaint procedures

All PAs shall establish internal complaint procedures which will be subject to the Divisions's review and approval at the time of the PA's annual request for State funding or license renewal.

10:39-7.2 Appeal process; ombudsman

The provisions of N.J.A.C. 10:37-4.6, regarding client complaint/agency ombuds procedures are hereby incorporated by reference.

**(a)**

**DIVISION OF DEVELOPMENTAL DISABILITIES**

**Human Rights Committees**

**Proposed New Rules: N.J.A.C. 10:41-4**

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12; 30:6D et seq.

Proposal Number: PRN 1988-503.

Submit comments by November 16, 1988 to:

James M. Evanochko, Administrative Practice Officer  
Division of Developmental Disabilities  
CN 700  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The Department is proposing new rules to govern human rights committees that operate within components of the Division of Developmental Disabilities (Division) as well as within provider agencies under contract with or regulated by the Division. The human rights committee is a group of professionals, clients, advocates and/or interested individuals from the community at large who function as an advisory body to the administrative head of a component of the Division or the executive director of a provider agency. The committee consists of between five and 15 members. At least one-third of the membership are not to be employees of the component or agency.

There are human rights committees operating in all developmental centers and regional offices of community services as well as a number of provider agencies.

The human rights committee acts as a review body for issues which directly or indirectly affect client rights as defined in N.J.S.A. 30:6D-1 to 12. Such issues include, but are not limited to, the review of highly aversive behavior modification techniques, research involving human subjects and questions concerning possible violations of client rights.

Private agencies may elect to have their own human rights committee or to utilize Division committees on an as needed basis. In any case, the proposed new rules are to govern the activities of all such committees.

#### Social Impact

It is anticipated that the proposed new rules will establish uniform practices in human rights committees as well as reinforce their responsibility in the protection of the rights of persons who are developmentally disabled. The rules will benefit the members of human rights committees in that the rules will set forth the guidelines for their performance.

Persons with developmental disabilities are expected to benefit from the oversight by an independent body of the protection of their rights. Families of persons receiving services will be aware of a review body to consider questions that may arise concerning the rights of their family members.

The proposed rules will ensure that Division and provider agency staff receive the benefit of uniform committee deliberations.

#### Economic Impact

The proposed new rules will not have any impact on committee members. Non-employees may receive a limited reimbursement for out-of-pocket travel and other related expenditures.

There is no economic effect on Division components or provider agencies save the limited reimbursement mentioned above, nor will there be any economic impact on individuals who receive Division services or their families.

#### Regulatory Flexibility Statement

These proposed new rules affect private agencies who provide day or residential services to persons who are developmentally disabled and are under contract with or regulated by the Division. There are approximately 80 agencies in New Jersey at this time, some of which may be for-profit agencies employing fewer than 100 employees. Because of the Department's overriding concern for the welfare of the clients, no small businesses will be exempted from the rules.

The rules require that agencies who have their own human rights committee keep minutes of meetings and make them available for review by Division staff upon request. Agencies are to reimburse members who are not employed by the agency if the member requests such reimbursement. These are the only areas of compliance and are not expected to necessitate professional services or require initial capital costs. Annual costs are expected to be minimal.

Full text of the proposed new rules follows:

### SUBCHAPTER 4. HUMAN RIGHTS COMMITTEES

#### 10:41-4.1 Scope

The rules in this subchapter establish the composition and operation of the human rights committees in developmental centers, regions of the Office of Community Services, and in the agencies and facilities under contract with or regulated by the Division of Developmental Disabilities, within the State of New Jersey.

#### 10:41-4.2 Purpose

The purpose of this subchapter is to establish standards for the composition and operation of the Division's human rights committees within the State of New Jersey.

#### 10:41-4.3 Definitions

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

"Aversive stimuli" means the presentation of stimuli or conditions for the purpose of decreasing the frequency, intensity or duration of maladaptive behaviors.

"Chief executive officer" (CEO) means the person having administrative authority over, and responsibility for, a private residential facility licensed under N.J.A.C. 10:47.

"Division" means the Division of Developmental Disabilities.

"Executive director" means the person having administrative authority over a private agency which operates community-based programs regulated by, or under contract with, the Division.

"Human rights committee" means a group comprised of professionals, clients, advocates and/or interested individuals from the community at large who function as an advisory body to the CEO, executive director, regional administrator, or superintendent on issues directly affecting the rights of Division clients.

"Level of aversiveness" means one of the four categories of techniques used to modify behavior, as follows:

1. Level I means techniques that do not have any aversive components;

2. Level II means techniques that are presumed to be mildly aversive and/or restrictive in nature;

3. Level III means techniques that are presumed to be more aversive and/or restrictive than Level II techniques and which place the client at increased risk.

4. Level IV means severely aversive and/or restrictive techniques, such as contingent electric shock (Faradic stimulation).

"Non-affiliated member" means a member of a committee who is not employed by the service component, facility or agency.

"Regional administrator" means the person having administrative authority and responsibility for a regional office within the jurisdiction of the Office of Community Services.

"Superintendent" means the person having administrative authority and responsibility over a developmental center.

#### 10:41-4.4 Rights of developmentally disabled persons

(a) Developmentally disabled individuals are entitled to exercise the same human and civil rights enjoyed by other citizens. These rights shall not be limited or modified unless the individual's disability limits the exercise of these rights. Staff shall make efforts to assure that the human and civil rights of developmentally disabled clients are protected and exercised.

(b) Limitations of a client's rights shall be documented in the client's record.

(c) All staff contract service providers shall advocate for and protect the rights of developmentally disabled clients in programs for which they are responsible. Staff and contract services providers shall utilize the structured forum of the human rights committee as an assist in protecting the rights of the developmentally disabled.

#### 10:41-4.5 Role of the human rights committee

(a) The human rights committee shall exercise an advisory role only, in relation to the superintendent, regional administrator, CEO, or executive director.

(b) The superintendent, regional administrator, CEO, or executive director shall make the final decision on any issue regarding the rights of a client, and, when proceeding against the advice and recommendations of the human rights committee, shall document the substantive reasons for proceeding against the advice and recommendations of the human rights committee in the client's record.

(c) The orientation of the human rights committee shall be proactive and preventive. The committee shall recommend procedures and programs which safeguard and advance the rights of clients.

(d) Each committee shall be afforded a private meeting area and an atmosphere respectful of its independence and objectivity as a review group.

#### 10:41-4.6 Appointment of members

(a) The members of the human rights committee shall be appointed by the superintendent, regional administrator, CEO or executive director for a two year term. The term may be renewable.

(b) There shall be no more than one-third common membership of the behavior management committee and the human rights committee of any service component, facility or agency.

(c) A human rights committee shall consist of a minimum of five and a maximum of 15 members, at least one-third of whom shall not be employed by the component, facility or agency.

(d) At least one of the non-affiliated members of a developmental center or regional human rights committee shall be a representative of the Division's Bureau of Guardianship Services, and shall be

assigned by the Bureau of Guardianship Services supervisor of the region responsible for the office or facility.

(e) The Division shall have the option of assigning an observer who is not a voting member to the human rights committee of any agency or facility with its own human rights committee.

#### 10:41-4.7 Appointment and duties of chairperson and vice-chairperson

(a) A chairperson and vice-chairperson shall be elected by a majority vote of the membership of each human rights committee.

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

(c) The chairperson and vice-chairperson shall serve a two-year term, to which they may be reelected a maximum of three consecutive times.

(d) The vice-chairperson shall assume the responsibilities of the chairperson in his or her absence.

#### 10:41-4.8 Conflict of interest

(a) If any matter which arises in the committee's deliberation should constitute a conflict of interest for a member of the committee, that member shall abstain from voting on that issue.

(b) Representatives of legal services, such as the Office of the Public Advocate, or other agency, who may represent future client interests, shall not be appointed members of a human rights committee as defined in this subchapter. Their role and authority exist independent of this advisory body.

#### 10:41-4.9 Filling vacancies created by unexpired terms

(a) Any human rights committee member who cannot complete his or her term shall communicate this in writing to the superintendent, regional administrator, CEO or executive director at least two weeks before the date of resignation.

(b) If any human rights committee member, for good reason, cannot complete his or her term, the superintendent, regional administrator, CEO or executive director shall appoint a replacement within 30 days of the creation of the vacancy.

#### 10:41-4.10 Removal of human rights committee members

(a) A committee member may be removed by the superintendent, regional administrator, CEO or executive director, for good cause, based upon a two-thirds majority vote of the full committee. The member who may be removed shall not vote on the action.

(b) If a member of the committee cannot be present for the meeting, he or she shall send an absentee vote to the chairperson prior to the meeting.

#### 10:41-4.11 Meetings of the human rights committee

The human rights committee shall meet at least every two months, and preferably every month. Attendance of 50 percent of the membership shall constitute a quorum.

#### 10:41-4.12 Minutes of the meetings

(a) Minutes of the meeting shall be retained on file in the office of the superintendent, regional administrator, CEO or executive director, and shall be available to Division staff.

(b) Copies of the minutes shall be provided to the members of the committee.

(c) Copies of the minutes of human rights committees within the developmental centers and the regional offices shall be forwarded to the Division Director within two weeks of the date of the meeting.

#### 10:41-4.13 Reimbursement of expenses

Any member of a committee in a developmental center or regional office who is not an employee may receive reimbursements from the center or office for travel expenses, which may include mileage, parking, public transportation expenses, and meals.

#### 10:41-4.14 General committee functions

(a) The functions of a human rights committee shall include, but not be limited to, the following:

1. To advise the superintendent, regional administrator, CEO or executive director with regard to issues regarding the human and civil rights of clients, bringing to his or her attention existing or potential

infringements upon, or impediments to, the free exercise of clients' rights, including recommendations for action.

2. To contribute to the development or revision of policies and procedures directly relating to clients' rights.

3. To review alleged or suspected violation of the rights of individual clients or groups of clients brought to the attention of the committee, and to recommend investigation of violations, as deemed appropriate by the committee.

4. To review and to permit or allow, on a case by case basis, the use of procedures not prohibited by law or rule which may present an element of risk and/or restriction to an individual client's rights.

5. To review the proposed involvement of clients in approved research projects.

6. To review investigation reports of unusual incidents involving allegations of abuse, neglect or exploitation of clients.

(b) The human rights committee shall have available to it all information that is necessary to perform its functions. The committee shall have the right to observe programs and/or activities and conduct interviews in order to clarify a problem. Confidentiality of all information obtained shall be observed by the committee members, pursuant to N.J.S.A. 30:4-24.3.

(c) The human rights committee shall have the right to request expert advice from outside the committee, as the committee deems appropriate.

#### 10:41-4.15 Responsibilities of the chairperson

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

1. Scheduling regular and special meetings and setting the agenda for each meeting;

2. Arranging for recording and transcription of minutes;

3. Forwarding copies of minutes and other communications to the members of the committee and to the superintendent, regional administrator, CEO or executive director; and

4. Requesting consultation from outside the committee, based upon a decision of the committee.

#### 10:41-4.16 Decision making process; behavior modification plans

In the review of aversive techniques, the committee should reach consensus on the use of a specific techniques. If this does not occur, recommendation for approval may be given if only one member disagrees with the techniques. If two or more members disagree, a recommendation for approval shall not be granted by the committee. The dissenting members shall suggest alternate technique(s).

#### 10:41-4.17 Orientation to the human rights committee

Individuals who are appointed to the human rights committee shall receive, from the developmental center, regional office, facility or agency, at a minimum, informational and instructional materials relevant to the services provided by the human rights committee.

#### 10:41-4.18 Provider agency committees

(a) The administrator of each regional office shall review cases heard before facility or agency committees within the region.

(b) The CEO or executive director shall establish a line of communication with the regional administrator of the appropriate office to facilitate case reviews.

(c) Any concern about the general functioning of the committee shall be resolved between the CEO or executive director and the chairperson of the committee. If these concerns cannot be resolved, the matters shall be referred to the regional administrator for resolution.

(d) Provider agencies may elect to have their own committee or utilize a committee within an appropriate Division component, upon consultation with and recommendation of the regional administrator.

#### 10:41-4.19 Procedures for provider agency committees

Provider agencies using their own human rights committees shall have procedures regarding the composition and operation of the committee, which shall be included in the agency or facility manual and which shall be consistent with the provisions of this subchapter.

10:41-4.20 Membership of provider agency human rights committees

(a) The CEO or executive director shall appoint members of the committee, one of whom may be a Division employee.

(b) The Division may assign an observer who is not a voting member of the committee, under the following conditions:

1. The observer shall be familiar with the agency or facility, its manual, and the general function of the committee;

2. Should the observer have concerns about the agency or facility, he or she shall bring these concerns to the CEO or executive director; and

3. If the observer's concerns are not resolved, he or she shall report these concerns to his or her immediate supervisor.

(c) Any change in the membership of the committee shall be reported to the regional administrator within 30 days.

10:41-4.21 Notification of meetings

The provider agency shall notify the Division at least five working days in advance of routine meetings, and shall notify the Division immediately by telephone of any emergency meetings.

10:41-4.22 Minutes of meeting

(a) The minutes of provider agency meetings shall be available for review by person authorized by the Division Director.

(b) Committee members and observers shall be provided with copies of the minutes.

(a)

**DIVISION OF DEVELOPMENTAL DISABILITIES**

**Lead Toxicity Control Program**

**Proposed New Rules: N.J.A.C. 10:48-3.**

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12, 30:6D-5b.

Proposal Number: PRN 1988-485.

Submit comments by November , 1988 to:

James M. Evanochko, Administrative Practice Officer  
Division of Developmental Disabilities  
CN 700  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

Lead poisoning is a chronic disorder which is sometimes punctuated by recurrent acute symptomatic episodes that may result in chronic irreversible effects such as brain damage or renal disease. High dose lead sources may include lead pigment paint or lead objects, improperly lead-glazed ceramic ware, or inhalation of lead fumes such as in leaded gasoline.

Some individuals who are developmentally disabled exhibit pica behavior, which is the maladaptive behavior of mouthing or ingesting inedible objects or substances such as soil, toys or paint chips. It is therefore necessary to ensure that the environments in which these individuals live, work and play are certified lead safe.

The proposed new rules require a Lead Control Supervisor to coordinate the lead control programs within the Division. A Lead Control Coordinator shall be appointed for each component of the Division. The Lead Control Supervisor will arrange to have all sites evaluated which are not already certified as lead safe, if that site will be used by clients who exhibit pica behavior.

There shall be testing for blood levels for any new admission to the Division's services. Any clients who exhibit elevated blood lead levels shall be periodically retested. Clients with elevated blood lead levels or who exhibit pica behavior shall not be admitted to a site which has not been certified lead safe. Any client exhibiting the highest class of blood lead level shall be hospitalized, unless the hospitalization is certified by a licensed physician as medically contraindicated.

**Social Impact**

The Division currently serves approximately 14,000 clients, in residential facilities, day programs, and at program sites operated by provider agencies. Of these, there are 280 clients presently considered to have

elevated blood lead levels. Additionally, 1,400 clients exhibit pica behavior. The risks of brain or kidney damage will be significantly lessened by the use of the standards stipulated in these rules.

In addition to the Division components affected by these rules, there are approximately 800 private service providers who will need to ensure lead safe environments.

**Economic Impact**

By avoiding elevated blood lead levels, the risks of the need for hospitalization is minimized. Similarly, if renal problems can be avoided, dialysis may not be required. The long term effect of the proposed rules will be to allow clients to live more productive, less dependent lives, thereby potentially decreasing costs for dialysis and for care of clients.

**Regulatory Flexibility Statement**

There are approximately 800 provider agencies, some of which would be considered to be small businesses. They are required, pursuant to the provisions of these rules, to report incidents of pica behavior. Small businesses may be impacted, since clients could not be placed with them if their location were not certified lead safe. However, the effect of the rules has been minimized since the Division retains the ultimate responsibility to manage the placements of clients with elevated blood lead levels or pica behavior. Because of an overriding concern for the health and welfare of the Division's clients, the Department will not exempt small businesses from the requirements of these rules.

Full text of the proposed new rules follows.

**SUBCHAPTER 3. LEAD CONTROL PROGRAM**

10:48-3.1 Purpose

The purpose of this subchapter is to establish standards for a lead control program and a pica/lead registry.

10:48-3.2 Scope

The provisions of this subchapter shall apply to all clients of the Division of Developmental Disabilities who are residing in State-operated facilities, as well as those clients residing in facilities run by provider agencies who contract with or who are regulated by the Division. Additionally, this subchapter applies to day programs operated by the Division or by provider agencies under contract with or regulated by the Division.

10:48-3.3 Definitions

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

"Certified Lead Safe" means any structure which has been deemed lead safe by the Division's Lead Control Supervisor or the Office of Institutional Environmental Services of the Department of Human Services.

"Class I Risk" means individuals at low risk of lead poisoning.

"Class Ia Risk" means individuals with blood lead of less than 25 micrograms per deciliter (mcg/dl) with equal to or more than Erythrocyte Protoporphyrin (EP) 35 mcg/dl. It is not uncommon to see iron deficiency anemia in this class.

"Class Ib Risk" means individuals with blood lead of 25-49 mcg/dl and EP of less than 35 mcg/dl.

"Class II Risk" means individuals with blood lead of 25-49 mcg/dl and EP of 35-109 mcg/dl.

"Class III Risk" means individuals with blood lead of 25-49 mcg/dl with EP of 110 mcg/dl or over, or blood lead of 50-69 mcg/dl with 35-249 mcg/dl.

"Class IV Risk" means individuals with blood lead over 70 mcg/dl and EP of 110 mcg/dl or over. It also includes individuals with blood lead of 50 mcg/dl and over with EP greater than 250 mcg/dl.

"Component" or "service component" means a developmental center, Special Residential Services, or Community Services.

"Individual habilitation plan" (IHP) means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the goals and objectives being pursued on behalf of the individual and the steps being taken to achieve them by each agency. It identifies a continuum of skill development that outlines progressive steps and the anticipated outcomes of services. The individual habilitation plan is a single, consistent and comprehensive plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a service plan, a treatment

plan, and a health care plan. Various aspects of the plan, such as education, rehabilitation, health care, and others, are assigned to those persons or agencies who can provide, or are legally required to provide, the training or services.

"Interdisciplinary team" ("IDT") means an individually constituted group of individuals responsible to develop a single integrated IHP. The team consists of the client, the client's parent (if the client is a minor or an adult who desires that the parent be included), guardian or advocate, those persons who work most directly with the client and professionals and representatives of service areas who are relevant to the identification of the client's needs and the design and evaluation of programs to meet them.

"Lead poisoning" means a toxic condition which results from absorption of lead into the body by means of ingestion or inhalation.

"Pica" means the maladaptive behavior of mouthing or ingesting inedible substances or objects, including, but not limited to, soil, toys, or paint chips.

"Pica/lead registry" means a current record of clients who exhibit pica behavior or who have been diagnosed by a physician as having lead poisoning, and a current record of all program sites or residences used by clients who exhibit pica behavior.

10:48-3.4 Classification of clients

(a) Clients who exhibit pica or who have a history of lead toxicity shall be tested for Erythrocyte Protoporphyrin (EP) and blood lead level.

(b) Based upon results of the tests in (a) above, clients shall be divided into four classes, as follows:

**ERYTHROCYTE PROTOPORPHYRIN (EP) BY EXTRACTION**  
Risk Classification of Asymptomatic Children  
for Priority Medical Evaluation

Blood Level #	Erythrocyte Protoporphyrin (EP) #			
	<35	35-109	110-249	≥250
Not done	I	†	†	†
≤24	I	Ia	Ia	EPP+
25-49	Ib	II	III	III
50-69	††	III	III	IV
≥70	††	††	IV	IV

- # Units are in mcg/dl of whole blood.
- † Blood lead test needed to estimate risk.
- EPP+ Erythropoietic protoporphyria. Iron deficiency may cause elevated EP levels up to 300 mcg/dl, but this is rare.
- †† In practice, this combination of results is not generally observed; if it is observed, immediately retest with venous blood.
- ≤ Equal to or less than
- ≥ Equal to or greater than

NOTE: Diagnostic evaluation is more urgent than the classification indicates for:

1. Children with any symptoms compatible with lead toxicity.
2. Children under 36 months of age.
3. Children whose blood lead and EP levels place them in the upper part of a particular class.
4. Children whose siblings are in a higher class.

(c) The guidelines in (b) above refer to the interpretation of screening results, but the final diagnosis and disposition rest on a more complete medical and laboratory examination of the child.

10:48-3.5 Behavior modification plan

The interdisciplinary team shall consider whether to prepare a behavior modification plan, as part of the IHP of every client who exhibits pica behavior. If a behavior modification plan is not recommended, the IDT shall document in the client's record the reason(s) for not providing a behavior modification plan.

10:48-3.6 Duties of the Lead Control Supervisor

(a) The primary duty of the Lead Control Supervisor shall be to coordinate the efforts of the lead control programs in the operational units of the Division. The Lead Control Supervisor in the Division's Central Office shall:

1. Develop and maintain a centralized Pica/Lead Registry for the Division, in accordance with the provisions of this subchapter;
2. Act as liaison to the New Jersey department of Health on lead control matters and, as necessary, make referrals to the lead abatement specialists recommended by the Department of Health;
3. Supervise all lead abatement projects to assure compliance with applicable safety standards (see N.J.S.A. 24:14A-1 et seq.)
4. Evaluate, within 20 working days of receipt of a request to evaluate, all proposed public, private and community residential and program sites proposed for use by a client who exhibits pica behavior;
5. Forward a written report of findings within 10 days of completion of the evaluation to the person requesting the evaluation;
6. Monitor Division lead control programs for compliance with this subchapter;
7. Certify as "lead safe" sites which have been evaluated and/or lead abated in compliance with (a)3 above; and
8. Determine, if a client exhibits a change in blood lead levels;
  - i. Whether an evaluation of the environment for a potential lead source is necessary; and
  - ii. Whether more frequent testing is appropriate.

10:48-3.7 Duties of the Lead Control Coordinator

(a) A Lead Control Coordinator shall be appointed at each Regional Office of the Office of Community Services; at the Bureau of Special Residential Services and at each developmental center to oversee and direct the lead control program. The Lead Control Coordinator, as part of his or her duties, shall:

1. Develop and maintain a pica/lead registry which conforms to the provisions of this chapter;
2. Advise the Lead Control Supervisor by telephone immediately when a client's test results indicate that he or she is in Class II, III, or IV;
3. Advise the Medical Director for clients in developmental centers;
4. Advise the Coordinator of Nursing for clients in community programs; and
5. Develop operational procedures for the program within the developmental center, Bureau of Special Residential Services, or the regional office.

(b) The Lead Control Coordinator shall assure that orientation or refresher courses are offered to all staff who work with clients, as needed.

(c) The Lead Control Coordinator shall prepare, and forward to the Lead Control Supervisor, a quarterly report of lead control activities, including, but not limited to, test results, abatement projects and transfers. The Lead Control Coordinator shall forward copies of the quarterly report to the developmental center Superintendent and Medical Director, or to the Regional Administrator, Deputy Director and Coordinator of Nursing in the Office of Community Services, or to the Chief of the Bureau of Special Residential Services, as appropriate, and to the Chief Medical Consultant in the Commissioner's Office.

(d) The Lead Control Coordinator shall inform the Lead Control Supervisor of all planned lead abatement projects.

10:48-3.8 Duties of the Medical Director

The Medical Director in a developmental center shall direct and supervise the medical care and treatment of clients who have lead toxicity.

10:48-3.9 Site evaluation

(a) The Lead Control Supervisor shall order a lead analysis of each unevaluated building which is currently used, or is proposed to be used, by clients who exhibit pica behavior.

(b) As soon as a site is selected, any unevaluated site shall be referred to the Lead Control Supervisor as follows:

1. By the Regional Adult Training Office, for adult training and crew labor programs;
2. By the Office of Licensing and Inspection, for Skill Development Homes, Family Care Homes and Family-based Respite;
3. By the Program Development Unit, for Group Homes, Supervised Apartments, Unsupervised Apartments and Supportive Living Arrangements;

4. By the Regional Placement Coordinator, for established community residences not previously evaluated.

(c) Before the placement of a client who exhibits pica behavior into an unanalyzed, established community program, the site shall be referred to the Lead Control Supervisor, as follows:

1. By the Regional Placement Coordinator, for residential placement;

2. By the Regional Adult Training Office, for a day program.

(d) Any Developmental Center building which is used by clients who exhibit pica behavior shall be referred to the Lead Control Supervisor by the Center's Lead Control Coordinator.

(e) The Office of Licensing and Inspection shall refer proposed private residential facilities to the Lead Control Supervisor for evaluation.

#### 10:48-3.10 Content of referrals for lead analysis

(a) A referral to determine the lead content of buildings used for community programs and private residential facilities shall be in writing and shall include:

1. The address of the site;
2. The name and telephone number of the service provider; and
3. The name and telephone number of the person making the referral.

(b) A referral to determine the lead content of buildings in developmental centers shall be in writing and shall include:

1. The location of the building; and
2. The name and telephone number of the person to be contacted in order to be admitted to conduct the analysis.

#### 10:48-3.11 Monitoring and evaluation of lead abatement procedures

(a) The Lead Control Supervisor or designee shall monitor the lead abatement procedures in any structure undergoing renovation.

(b) The Lead Control Supervisor or designee shall evaluate any area previously abated which has not been certified lead safe.

#### 10:48-3.12 Site certification process

(a) When the Lead Control Supervisor has certified a site as lead safe, the Supervisor shall notify the person who requested the evaluation.

(b) The Lead Control Supervisor shall maintain a record of all sites evaluated, the results of each analysis and certifications granted.

#### 10:48-3.13 Ceramics

(a) By January 1, 1989, only non-toxic ceramic materials and supplies may be utilized in programs of the Division and all kilns shall be vented to the exterior of the building in which the kiln is located and shall have a minimum captured velocity of 100 feet per minute.

#### 10:48-3.14 Testing of clients

(a) For any client newly admitted to any service component, testing shall be as follows:

1. The client shall be tested for blood lead, EP, and hematocrit within 72 hours of admission, unless testing has been done within the three months before admission;
2. A client who exhibits pica behavior shall be retested for blood lead, EP and hematocrit three months after admission; and
3. All test results shall be documented in the client's record and reported to the Lead Control Coordinator.

(b) When clients who exhibit pica behavior and/or elevated lead levels are permanently transferred from one service component to another, testing shall be as follows:

1. The service component from which the client is transferred shall:
  - i. Test each client for blood lead, EP, and hematocrit prior to transfer, unless these tests were performed within the last three months before the scheduled transfer;
  - ii. Permanently mark the outside cover of the record to reflect the client's pica behavior or elevated lead level;
  - iii. Inform the Lead Control Coordinator at the service component to which the client is transferred, in writing, of the client's transfer;
2. The service component to which the client is transferred shall:

i. Immediately review the transfer documents of each transferred client to ascertain the presence of a pica and/or lead problem; and

ii. If pica behavior or test results shown in the record indicate, enter the client's name in the pica/lead registry.

(c) Follow-up testing, which shall include blood lead, EP and hematocrit, shall be completed three months after the client has been admitted.

(d) A client who is on the pica/lead registry shall be tested for blood lead, EP and hematocrit upon return from a home visit of more than 30 days duration.

#### 10:48-3.15 Transfer of clients listed in the pica/lead registry.

A client listed in the pica/lead registry shall be transferred only to a lead safe residence.

#### 10:48-3.16 Transfer of clients who exhibit pica behavior

(a) No client who exhibits pica behavior shall be transferred to a site which has not been certified lead safe.

(b) A referral for evaluation shall be made to the Lead Control Supervisor of any facility which has not been certified lead safe and is scheduled to receive a client who exhibits pica behavior.

#### 10:48-3.17 Mandatory hospitalization

Hospitalization is mandatory for clients with a Class IV blood lead level, unless physician certification that hospitalization is otherwise medically contraindicated is placed in the client's record.

#### 10:48-3.18 Monitoring and evaluation of clients

(a) Clients listed on the pica/lead registry shall be tested for blood lead, EP and hematocrit, at least yearly, as follows:

1. For Class I, Ia and Ib blood levels, testing shall be conducted annually;

2. For Class II blood lead levels, blood lead level shall be tested every three months;

3. For Class III blood lead levels, blood lead level shall be tested monthly;

4. For Class IV serum lead levels, blood lead level, E.P. and hematocrit shall be tested at least monthly, with additional testing done at the discretion of the attending physician.

(b) When a client's test results change, the client shall be tested according to the requirements for the class of greater risk. After the client's test results have consistently remained in a class of lesser risk for a period of one year, the client shall be tested according to the requirements for the class of lesser risk.

(c) Any client with a history or current classification of Class II, III, or IV shall reside in a lead safe environment.

(d) Any client with a history or current classification of Class I, Ia, or Ib currently residing, or receiving a day program in, a lead environment shall be tested quarterly.

(e) The name of any client who has a classification of Class I for a period of two years, without change, may be removed from the pica/lead registry and placed in a history file, upon certification from the Medical Director at a developmental center, or the Lead Control Coordinator of Special Residential Services or the Lead Control Coordinator at the regional office, as appropriate. The certification shall be placed and permanently retained in the client's record. If pica behavior occurs after certification, the client shall be tested and the client's name placed on the pica/lead registry.

(f) Any client who exhibits, or is reported to exhibit, pica behavior and has no known history of pica behavior shall be examined by a physician and reported to the Lead Control Coordinator, who shall add the client's name to the pica/lead registry.

(g) Individuals categorized as Class IV Risk should be medically evaluated within 24 hours and in any case shall be evaluated within 48 hours.

#### 10:48-3.19 Pica/lead registry

(a) The pica/lead registry shall be a loose-leaf binder divided into three sections, with the following information:

1. For each client listed as an active pica/lead client of Classes I, II, III or IV, the registry shall include a separate page designed as a flow chart to contain the client's:

- i. Name, date of birth, residence, and any change in residence, with the date of change noted;

- ii. Test values for blood lead, EP and hematocrit, with the date of each test and the classification of lead level; and
- iii. Specific treatment program for lead poisoning, where the client was treated, and the date of treatment; and

2. For each client listed as an inactive pica/lead client, the section shall be divided as follows:

i. A list of clients with a history of pica, to include physician certification of the cessation of pica behavior; and

ii. A list of clients with a history of lead poisoning; and

3. An environmental inventory of all residential and program buildings, to include:

- i. Structures which contain lead;
- ii. Structures which are lead-abated, and the dates of abatement;
- iii. Structures which have been reconstructed and lead-abated, with the dates of abatement; and
- iv. Copies of all lead analysis findings with the dates of inspection of the sites.

10:48-3.20 Prevention and treatment of lead poisoning for clients who engage in pica behavior

(a) All client records shall be permanently marked on the outside cover to designate the client's current status on the pica/lead registry.

(b) All areas to which the clients are exposed shall be evaluated and objects or materials which could cause lead poisoning shall be removed or secured away from client areas.

(c) All staff who work with clients shall be informed of the clients' pica behavior. Staff shall supervise clients to prevent mouthing or ingestion of leaded or other dangerous material.

(d) Any other persons who may have temporary care of a client shall be advised by staff responsible for the client that the client exhibits pica behavior and shall be advised of precautions to take to prevent pica behavior.

(e) Staff shall ask the person returning a client whether a client exhibited pica behavior, and about the details of the pica behavior, whenever a client is returned to a developmental center or other residential facility from a visit.

(f) The client's attending physician shall be informed of the client's pica behavior and of the client's latest blood lead level test results by appropriate Division or agency staff.

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Physician's Services Manual; Manual for Dental Services; Independent Laboratory Services Manual; Independent Clinic Services Manual HCPCS Procedure Codes**

**Proposed Amendment: N.J.A.C. 10:54-4.5; 10:56-3.7, 3.10; 10:61-3.2; 10:66-3.2**

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(3), (5), b(3), (4); 30:4D-7,7a,b,c; 30:4D-12.

Proposal Number: PRN 1988-496.

Submit comments by November 16, 1988 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance  
and Health Services  
CN-712  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

These proposed amendments pertain to the HCPCS (Health Care Financing Administration Common Procedure Coding System) Procedure Codes for certain Medicaid providers, such as physicians, independent laboratories and independent clinics, and dentists.

These amendments are related to the public notice that appeared in the August 15, 1988 issue of the New Jersey Register. Said notice authorized the Commissioner, Department of Human Services, to grant provider fee increases pursuant to the New Jersey Appropriations Act (P.L. 1988, c.47). One of the provisions of this public notice was that the increases apply to existing procedure codes. Any additions to the procedure codes had to be accomplished by a separate proposal. Therefore, these amendments add procedure code 88151 as one of the three HCPCS Codes for procedure described as cytopathology, smears, cervical or vaginal (for example, Papanicolaou), commonly referred to as "pap" smears. Code 88151 is being added to N.J.A.C. 10:54, the Manual for Physician's Services, N.J.A.C. 10:61, Independent Laboratory Services, and N.J.A.C. 10:66, Independent Clinic Services Manual. The Medicaid reimbursement for this code will be \$4.50 effective August 1, 1988 and \$6.00 effective May 1, 1989.

The other two procedure codes, for "pap" smears, 88150 and 88155, and the corresponding maximum fee allowance, were part of the public notice cited above.

The Manual for Dental Services, N.J.A.C. 10:56, is being amended by deleting the requirement for prior authorization for surgical removal of an erupted tooth (procedure code 07210). Providers who perform this service may bill the Medicaid program directly without contacting the Division for approval. Prior authorization is no longer required prior to payment.

Another amendment adds a modifier "52" to Procedure Code 07130 for extractions of exposed roots. The modifier identifies removal of those roots that are completely located in soft tissue.

With respect to prosthodontics (dentures), as described in N.J.A.C. 10:56-3.7, procedure code Y2510 can no longer be used for initial fabrication of partial dentures. If a partial denture requires two or more clasps, providers may enter the appropriate procedure code (05211, 05212, 05213, 05214) on the claim form. The clasps are included as part of the maximum fee allowance for the partial dentures. Providers are still allowed to use procedure code Y2510 when submitting a claim for repair procedures.

**Social Impact**

These proposed amendments have a minimal impact on Medicaid patients. The services and procedures are already available to Medicaid patients.

The amendments impact on Medicaid providers, including physicians, independent laboratories and clinics, and dentists, and are designed to assist in claim submittal for the providers.

**Economic Impact**

The increase in maximum fee allowances pertaining to the procedure codes were part of the New Jersey Appropriations Act previously cited.

The economic impact on providers will vary, depending on the number of Medicaid patients being treated.

There is no cost to the Medicaid patients for these services.

**Regulatory Flexibility Analysis**

The proposed amendments impact on small businesses, such as physicians, dentists, clinics and laboratories. However, a regulatory flexibility analysis is not required. The amendments do not impose any recordkeeping, reporting, or other compliance requirements.

Providers are already required to keep sufficient records to document the name of the patient, date of service, nature of service, etc., and the amendments do not impose any capital costs.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated by brackets [thus]).

CHAPTER 54  
MANUAL FOR PHYSICIAN'S SERVICES

10:54-4 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

10:54-4.5 HCPCS CODE NUMBERS AND MAXIMUM FEE SCHEDULE  
PATHOLOGY/LABORATORY

HCPCS CODE	MAXIMUM FEE ALLOWANCE	
	EFFECTIVE DATE 8/1/88	5/1/89
...		
Cytopathology, smears, cervical or vaginal (e.g., Papanicolaou):		
88150	\$4.50	\$6.00
<b>88151</b>	<b>\$4.50</b>	<b>\$6.00</b>
88155	\$4.50	\$6.00



(a)

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Long Term Care Services Manual  
CARE Guidelines; Buildings and Return on Equity  
Proposed Amendments: N.J.A.C. 10:63-3.9, 3.10,  
3.11 and 3.12**

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14); 30:4D-7a, b, c; 30:4D-12; 42 CFR 447.250.

Proposal Number: PRN 1988-495.

Submit comments by November 16, 1988 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and Health Services  
CN-712  
Trenton, NJ 08625

A copy of the proposed changes may be obtained by contacting the Administrative Practice Officer at the above address. A copy of the proposed changes is also available for public review at any of the 16 Medicaid District Offices or at the 21 county welfare agencies.

The agency proposal follows:

**Summary**

These proposed amendments concern reimbursement of long term care facilities (LTCFs) under the CARE (Cost Accounting and Rate Evaluation) Guidelines. The specific portion of the CARE guidelines that is affected by these amendments concerns the fixed property and movable equipment component. These components (fixed property and movable equipment) are based entirely upon a return on appraised value (for building and land) and standardized value (for movable equipment) of a facility. The interest/amortization rate (CFA Rate) applied to the property value in calculating this return is derived from either the Medicare Return on Equity Rate or, in the case of low rate governmentally authorized financing, 150 percent of the facility's actual loan interest rate. When the Federal government adjusted the Medicare Return on Equity Rate from 150 percent to 100 percent of certain Federal Hospital Insurance Trust Fund Obligations, the New Jersey reimbursement system was indirectly and inappropriately changed, since the reimbursement system incorporates the Medicare Return on Equity Rate as a basis of the "interest rate" in the calculation of the CFA Rate. These amendments will correct this change by basing the CFA Rate of Return on 150 percent of the Medicare Return on Equity Rate for applicable facilities, or additions to facilities, beginning operation after October 1, 1985. These amendments are a technical change designed to keep the reimbursement rates for new facilities in general parity with the reimbursement rates for facilities built before October 1, 1985.

In addition, current rules permit reimbursement of an LTCF's costs related to obtaining governmentally authorized financing through a process of special amortization. These amendments would require a different allowance for these costs for those LTCFs beginning operation after October 1, 1985. LTCFs which began operation before October 1, 1985 will only receive reimbursement if the allowance was approved for inclusion in the rates by the effective date of these amendments.

The allowance for LTCFs beginning operation after October 1, 1985 would be calculated by multiplying the Building CFA Rate of Return times the amount of such "acquisition" costs. Any such acquisition costs would be limited to the amount by which the building appraisal limit exceeds reasonable appraised value of long term care square feet in the CFA-building calculation.

The amendments also define an addition to a facility as any project requiring a Certificate of Need approval.

The amendments establish procedures regarding appraisal or reappraisal of land and building value related to additions to or replacement of, LTCFs.

The Division believes this regulatory change is necessary in order to modify the rules in response to recent Superior Court Appellate Division decisions in *Medford Convalescent Center v. The Division of Medical Assistance and Health Services*, 218 N.J. Super. (App. Div. 1985), certif. den. 102 N.J. 385 c.1985 and *In the matter of Leisure Chateau*, Docket No. A-5252-85T6 (App. Div. 1987). The proposed amendments would

require that all facilities receiving financing or refinancing through a governmental authority will have a CFA "interest rate" which is based upon the lower of the applicable Medicare Return on Net Equity Rate or 150 percent of the facilities' actual financing rate. This will eliminate the inequity created by the courts' interpretation of the rules, which resulted in distinctions drawn between facilities financed in this manner for reasons other than the actual rate of interest paid by a provider.

**Social Impact**

These proposed amendments will have virtually no social impact, because they apply to reimbursement of LTCFs. If the amendments impact on an LTCF the impact will be economic, not social.

The amendments do not impact on patients in LTCFs.

**Economic Impact**

The proposed amendments will have no economic impact on Medicaid patients, because the rate calculation for LTCFs has no bearing on the amount of available income the patient is required to contribute towards the cost of long term care.

The amendments will impact on LTCFs. However, the impact will vary, depending on when the facility was built, added on to, or the type of financing obtained.

The Division does not anticipate an increase or decrease in the aggregate annual expenditures for those facilities in operation before the adjustment of the Medicare Return on Equity Rate. The correction to the CFA Rate allows new facilities to be reimbursed in general parity with facilities operating prior to October 1, 1985 and the Division does not anticipate an increase in aggregate annual expenditures relative to the rates received by facilities which began operation before October 1, 1985. With regard to the acquisition cost provision, the estimated annual aggregate expenditures will be approximately \$750,000 per year (Federal-State share combined). Since this change only affects new facilities and the availability of governmentally authorized financing with significantly reduced interest has been minimized, it is unlikely that this yearly amount will change considerably.

**Regulatory Flexibility Statement**

Many LTCFs would not be considered small businesses, because they employ more than 100 people. There are some LTCFs which would be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq.; however, these small businesses should not be exempted from the rules, as an exemption would result in unequal treatment of the members of the regulated public. The proposal does not impose any additional recordkeeping, reporting or other requirements. LTCFs are already required to maintain sufficient documentation to complete and submit cost reports annually.

The proposed amendments do not create any capital costs. The amendments recognize capital costs for those LTCFs who have either built new facilities, or added on to an existing facility, within the time periods specified in the rules.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated by brackets [thus]).

10:63-3.9 Property—capital costs (including Return on Investment (ROI))

(a) (No change.)

(b) The guidelines promulgated herein have been developed with the following objectives and considerations:

1. The departments should not concern themselves with the method and attendant costs with which individual LTCF's are financed and constructed or the arrangements under which they are acquired or leased, **except for a facility which has received financing through or from a governmental authority (see N.J.A.C. 10:63-3.10 through 3.12 regarding this exception).**

2. While not concerning themselves about the costs, financing and so forth, of individual LTCF's the departments' mandate with respect to the reasonableness of cost requires [it] **them** to develop this rate component upon the presumption of reasonable facility costs and prudent financing [or leasing arrangements].

3. (No change.)

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

10:63-3.10 Buildings and fixed equipment

(a) The CFA for buildings and fixed equipment will be based upon appraised **value as follows**:

**PROPOSALS**

Interested Persons see Inside Front Cover

**HUMAN SERVICES**

1. For LTCF's beginning operation before January 1, 1978, the CFA will be determined based upon 1977 replacement costs derived from nationally recognized construction cost manuals, less wear and tear and subject to reasonableness limits as described in (c), (d) and (e) below;

2. For LTCF's, or additions to existing LTCF's requiring a certificate of need (that is, significant additions), beginning operation on or after January 1, 1978, the appraised value will be determined at the time construction is completed based upon price levels derived from nationally recognized construction cost manuals, subject to reasonableness limits as described in (c) and (d) below.

(b)-(c) (No change.)

(d) A reasonableness limit on appraised value per square foot will be established as follows:

1. For LTCF's beginning operation before January 1, 1978, at 110 percent of the median appraised value, at 1977 price levels, of proprietary and voluntary LTCF's which had over 20 percent Medicaid days in the base period [.] ;

2. For LTCF's beginning operation between January 1, 1978 and December 31, 1984, at the original reasonableness limit as determined from (d)1 above, increased for inflation by 15 percent for the first year and 10 percent for each succeeding year. For facilities beginning operation on or after January 1, 1985, at the reasonableness limit determined for 1984, incremented annually by a factor for inflation which is the average of percentages representing cost increases derived from:

- i. The Marshall Swift Valuation Index for the Eastern District; and
- ii. Inflation factors published by the U.S. Department of Labor, Bureau of Labor Statistics, for New York and Northeastern New Jersey.

3. For significant additions to existing LTCF's beginning operation from January 1, 1978, at the original reasonableness limit as determined from (d)1 above increased by a factor for inflation (see (d)2 above). A single weighted reasonableness limit for the entire LTCF will be calculated based upon the square footage and the corresponding appraised values of the building as originally appraised and the appraised addition(s).

4. A separate reasonableness limit will be developed for governmental LTCF's by the same method.

(e) (No change.)

(f) [Two rates will be developed for calculating the CFA for LTCF's.] The CFA for buildings and fixed equipment will be determined by applying the appropriate interest of amortization rate, described in (f)1 and 2 below, to the reasonable appraised value of the building and fixed equipment.

1. Interest rate shall be developed as follows:

i. For LTCF's beginning operation before January 1, 1978, the interest rate is [E]qual to the Medicare return on equity rate for the 12 month period ending with December of 1976 (10.719 percent).

ii. For LTCF's, or significant additions to existing LTCF's, beginning operation between January 1, 1978 and September 30, 1985, the interest rate is equal to the latest Medicare return on equity rate published at the inception of operations, or, if financing was or is obtained through or from a governmental authority, the lower of:

(1) The latest Medicare return on equity rate published at the inception of operations; or

(2) One hundred fifty (150) percent of the governmental financing rate as set by the financing authority at the date of issue or settlement.

iii. For LTCF's, or significant additions to existing LTCF's, beginning operations on or after October 1, 1985, the interest rate is equal to 150 percent of the Medicare return on equity rate published at the inception of operations, or, if financing was or is obtained through or from a governmental authority, the lower of:

(1) One hundred fifty (150) percent of the latest Medicare return on equity rate published at the close of issue or settlement; or

(2) One hundred fifty (150) percent of the governmental financing rate as set by the financing authority at the date of issue or settlement.

iv. For LTCF's which have been refinanced or shall obtain refinancing through or from a governmental authority, the lower of:

(1) The previously established "interest rate"; or

(2) One hundred fifty (150) percent of the governmental financing rate at the date of issue or settlement.

2. [Amortization rate: Equal] **The amortization rate is equal** to the ratio of annual debt service (principal and interest) to original principal required to amortize a loan in 25 equal installments, with an interest rate equal to the appropriate above-defined "interest rate" [(11.631) percent].

(g) For the first 25 years of the life of a LTCF beginning with the year of construction, the amortization rate will be applied to the [1977] reasonable appraised value of the building and fixed equipment.

(h) Beyond the 25th year after construction, the interest rate will be applied to the [1977] reasonable appraised value of buildings and fixed equipment.

(i)-(k) (No change.)

(l) For existing LTCF's, the State will not increase the CFA rate in future years should the Medicare return on equity rate increase. [Should this rate decrease by more than the reasonable cost of refinancing, both the interest rate and the amortization rate will be reduced. Should financing through a governmental authority be obtained by a facility, the CFA rate will be adjusted as necessary based upon the lower of the previously established Medicare return on equity rate or the available financing rate incremented in accordance with Medicare return on equity factor.]

[(m) For new LTCF's, or for additions to existing LTCF's, the amortization rate will be established based upon the lower of the latest Medicare return on equity rate published at the inception of operations, or the governmental financing rate incremented in accordance with the Medicare return on equity factor. The provisions of (l) above will apply in subsequent years.]

[(n)] (m) (No change in text.)

[(o) With respect to new LTCF's and significant additions to existing LTCF's the appraised value will be determined based upon price levels at the time the constructions is completed.]

[(p)] (n) **Any LTCF receiving reimbursement for expenses incurred in obtaining financing through a governmental authority under the special amortization provisions of this chapter will continue to receive such allowance under the terms originally approved. For LTCF's beginning operation on or after October 1, 1985, [E]xpenses incurred in obtaining financing through or from a governmental authority may be [allowable] the basis for a separate allowance, based on the special amortization provisions of this chapter. [These expenses should be presented for treatment under the special amortization provision of the rates, and they will be evaluated on an individual basis in accordance with N.J.A.C. 10:63-3.7 (a) and (b).] This allowance will terminate when the ownership of an LTCF is transferred or the premises are leased. The facilities determined to be eligible for the allowance will receive an adjustment in their CFA for building and fixed equipment calculated by applying the appropriate interest or amortization rate to the lesser of:**

1. **Financing acquisition expenses attributable to long term care in accordance with (j) above, which are limited to:**

- i. FHA Fees;
- ii. EDA Fees;
- iii. Bond premiums;
- iv. Bond printing;
- v. Underwriting fees;
- vi. Mortgagor cost certification audit; or

2. **The amount by which the facility's reasonable appraised value of the LTCF square feet is less than the building appraised limit.**

(o) For (n) above, the sum of the CFA-Building per diem and the per diem for costs related to obtaining financing through a governmental authority shall not exceed the amount of the CFA-Building per diem calculated using 150 percent of the applicable Medicare Return on Equity Rate including no allowance for costs of obtaining financing.

10:63-3.11 Land

[(a) The 1977 value of land and land improvements as appraised by the State Department of Transportation will be the basis for determining the CFA with respect to land, subject to reasonableness limits as defined for property taxes on land in N.J.A.C. 10:63-3.6, with respect to:]

**HUMAN SERVICES**

**PROPOSALS**

(a) The CFA for land will be based upon appraised value of land and land improvements determined by the State Department of Transportation (D.O.T.) as follows:

1. For LTCF's beginning operation before January 1, 1978, the 1977 value of land and land improvements;

2. For LTCF's beginning operation on or after January 1, 1978, the value of land and land improvements as of the completion of construction;

3. For additions to existing LTCF's beginning operation on or after January 1, 1978, the value of additional land acquired or additional land improvements made as of the completion of construction of the addition. Land or land improvements previously included in a facility's D.O.T. appraisal will not be reappraised in determining value of an addition to a facility;

4. For replacement facilities beginning operation on or after January 1, 1978, the value of additional land acquired or additional land improvements made as of the completion of construction. Land or land improvement included in the original facilities appraisal will not be reappraised in determining value of a replacement facility;

5. Land and land improvement value will be subject to reasonable limits with respect to:

[1.] i. Reasonable land area; and

[2.] ii. The total reasonable appraised value of reasonable land area;

6. Reasonable limits for land and land improvements will be the same as defined for property taxes on land in N.J.A.C. 10:63-3.6. For LTCF's beginning operation on or after January 1, 1978, the original reasonableness limit for reasonable appraised value will be increased by a factor for inflation. As of January 1, 1985, this factor will be the same as described in N.J.A.C. 10:63-3.10(d)2.

(b) The applicable interest rate developed for a facility per N.J.A.C. 10:63-3.10(f) will be applied to the reasonable [1977] appraised land value.

(c) The provisions of N.J.A.C. 10:63-3.10(1) through [(p)] (o) will also apply to the CFA for land [in years subsequent to 1977].

(d) (No change.)

10:63-3.12 Moveable Equipment

(a) (No change.)

(b) The allowance per licensed bed will be determined by applying to this median cost the applicable interest rate developed per N.J.A.C. 10:63-3.10(f), [(1), (m)].

(c) (No change.)

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Independent Clinic Services Manual**

**Proposed Readoption: N.J.A.C. 10:66.**

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(3); 30:4D-7, 7a, b, c; 30:4D-12; 42 CFR 440.90.

Proposal Number: PRN 1988-497.

Submit comments by November 16, 1988 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and Health Services  
CN-712  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), the Independent Clinic Services Manual (N.J.A.C. 10:66) expires on December 15, 1988. The Division of Medical Assistance and Health Services has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. The readoption of all three subchapters is necess-

ary because they describe the conditions of provider participation, scope of services, basis of reimbursement, billing procedures, and the appropriate HCPCS procedure codes for clinic billing.

An "independent clinic" means a free-standing organization which is approved by the New Jersey Medicaid Program to provide specific health care services (see N.J.A.C. 10:66-1.2, Definitions). Some of the services provided by independent clinics include dental, vision care, podiatry, mental health, family planning, medical day care, and physical, occupational, and speech-language therapy. Clinics are designed to treat non-acute conditions on an outpatient basis. This group of providers enables Medicaid patients to receive Medicaid services in the community.

Subchapter 1, entitled "General Provisions", contains basic definitions, identifies who may qualify as providers, the scope of services the clinics are authorized to render, and the basis of reimbursement.

Subchapter 2, entitled "Billing Procedures", contains instructions for completion of the claim form, mailing instructions, and a reference to the timely filing requirements in N.J.A.C. 10:49-1.12. This subchapter also reminds independent clinic providers of the necessity of obtaining prior authorization for those New Jersey Medicaid services that are governed by prior approval requirements.

The text of Subchapter 3, entitled "HCFA Common Procedure Coding system (HCPCS), is referenced but not reproduced in New Jersey Administrative Code. Independent clinic providers must use the appropriate HCPCS Code(s) when submitting a claim to the New Jersey Medicaid Program for reimbursement.

The recent history of the Independent Clinic Manual indicates it was previously readopted as R.1983, d. 615, effective December 15, 1983. (The notice of re adoption was published in the January 17, 1984 issue of the New Jersey Register at 16 N.J.R. 145(a).) There have been several amendments since the previous re adoption. The more significant amendments are discussed below.

The rules were amended to permit Ambulatory Surgical Centers to participate as clinic providers in the New Jersey Medicaid Program. (The rule was adopted as R.1985, d. 532, and printed in the December 2, 1985 issue of the New Jersey Register at 17 N.J.R. 2894(b).) Personal care assistant services became a type of covered clinic services. (The rule was adopted as R.1984, d. 21. The notice of adoption was printed in the February 6, 1984 issue of the New Jersey Register at 16 N.J.R. 239(c).) Subchapter 2, or "Billing Procedures" was amended to centralize and standardize the procedure for timely claim submittal and follow-up inquiry. (The rule was adopted as R.1987, d. 408. The notice of adoption was printed in the October 5, 1987 issue of the New Jersey Register at 19 N.J.R. 1800(a).) Subchapter 3, which references the HCPCS codes, was adopted as R.1986, d. 52. (The notice of adoption appeared in the March 3, 1986 issue of the New Jersey Register at 18 N.J.R. 478(a).)

There are no amendments to the rules associated with this proposed re adoption.

**Social Impact**

Medicaid patients still require care and treatment for conditions that can be managed on an outpatient ambulatory basis. Therefore, the rules are necessary to enable Medicaid patients to receive outpatient ambulatory services. Consequently, the rules have potential impact on all Medicaid patients.

The rules impact independent clinics who are participating providers in the Medicaid program. The New Jersey Department of Health is involved in licensing clinics when licensure is required. The Division of Mental Health and Hospitals surveys the mental health clinics. If the rules were not re adopted, Medicaid patients might find it difficult to obtain certain services, such as mental health services, in the community.

**Economic Impact**

Independent clinics are reimbursed on a fee-for-service basis. The total cost for independent clinic services during State Fiscal Year 1988 was approximately 22 million dollars (Federal-State share combined).

There is no change in reimbursement to providers associated with this re adoption. The fee increases that were mentioned in the summary above are included in the proposed text.

There is no cost to the Medicaid patient.

The economic conditions that necessitated the rules still prevail. The Division can provide necessary medical services on a cost effective basis if and when the patient can be treated satisfactorily on an outpatient basis. The rules should be re adopted to insure continued Federal funding for the variety of services rendered by independent clinics.

**Regulatory Flexibility Analysis**

This proposed readoption impacts small businesses. There are no additional reporting, recordkeeping or other compliance requirements associated with this readoption. Independent clinic providers are already required by law to maintain sufficient records to fully disclose the name of the recipient to whom the service was rendered, the date of the service, the nature and extent of the service, etc. (See N.J.S.A. 30:4D-12); therefore, no small businesses should be exempt from the provisions of this chapter.

There are no capital costs associated with this readoption.

Full text of the rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:66, as amended in the New Jersey Register.

**(a)**

**DIVISION OF PUBLIC WELFARE**

**Special Payments Handbook: Emergency Assistance; Funeral and Burial Expenses Appendix A: Supplemental Security Income Payment Levels**

**Proposed Readoption with Recodification and Amendment: N.J.A.C. 10:100-3 and Appendix A to N.J.A.C. 10:83-1.**

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-12, 44:7-13, 44:7-38, and 44:7-43.

Proposal Number: PRN 1988-502.

Submit comments by November 16, 1988.

Marion E. Reitz, Director  
Division of Public Welfare  
CN 716

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

N.J.A.C. 10:100, pursuant to Executive Order No. 66 (1978), will expire February 6, 1989. Subchapter 1 is reserved; Subchapter 2 contains planned service provisions of the Department of Human Services; and Subchapter 3 contains the Special Payments Handbook of the Division of Public Welfare, which includes provisions for burial and funeral expenses. The text in subchapter 2 is not regulatory and can be deleted from the New Jersey Administrative Code when N.J.A.C. 10:100 expires.

N.J.A.C. 10:100-3 and Appendix A are being recodified and published at N.J.A.C. 10:83. The Special Payments Handbook sets forth the rules and procedures concerning the provision of emergency assistance and the payment of burial and funeral expenses in cases of eligible aged, blind, and disabled individuals who are recipients of Supplemental Security Income (SSI).

N.J.A.C. 10:83-1.1 presents the purpose of the rules and the reminder that all of the customary principles and concepts surrounding the provision of public assistance remain applicable. Those include the rights and procedures concerning fair hearings, safeguarding of information, non-discrimination, and matters relating to fraudulent receipt of assistance.

N.J.A.C. 10:83-1.2 contains the eligibility rules for payments of emergency assistance for persons who are receiving SSI benefits. Medicaid Only recipients are not eligible for emergency assistance.

N.J.A.C. 10:83-1.3 through 1.10 contain detailed rules which govern burial and funeral payments for deceased SSI or Medicaid Only recipients. Those sections include the identification of individuals who may be eligible for payment of burial and funeral expenses; limit the contracting authority of county agencies; discuss conditions under which burial or funeral payments will be authorized; and provide procedures as to disputed claims.

Appendix A shows the New Jersey SSI payment levels in accordance with Section 1618(a) of the Social Security Act and is subject to periodic updating in accordance with that Act. Appendix A is being recodified as N.J.A.C. 10:83-1.11.

The Department's Division of Public Welfare recently conducted an internal review and evaluation of the rules prior to proposing these rules

for readoption. After review of the rules, the Department determined the rules to be adequate, reasonable and responsive to the purposes for which they were promulgated.

Since the last readoption, extensive revisions were made at N.J.A.C. 10:83-1.6 and 1.7 in accordance with A-2846, now L. 1985, c. 282. The revisions substantially increased the allowances payable for funeral or burial services. A new section was also added to provide a time-limited procedure for payment of funeral and burial charges on the basis of new allowance standards, retroactive to September 8, 1985.

**Social Impact**

The authority set forth in these rules allows SSI recipients to have the personal security of knowing that should an emergency occur, they will not be left destitute, if the costs which result from such occurrence are beyond their own financial means. Similarly, they are assured that funds will be available through which they can be provided a decent and dignified funeral and burial. The social damage that would be done to our elderly and disabled, as well as their next of kin, by allowing this authority to lapse is self-evident.

Appendix A has been periodically adjusted to provide an increase in SSI payment levels. This results in a significant social impact since such annual increases in allowances provide SSI recipients with a greater amount of self-sufficiency in the face of increasing costs of living.

**Economic Impact**

The annual fiscal impact data is as follows:

1. Funerals and burials for SSI and Medicaid Only cases:

Fiscal Year	Expenditures
1987 (actual)	\$2,434,918
1988 (projected)	\$4,856,000
1989 (estimated)	\$4,800,000

2. New Jersey SSI cases:

Fiscal Year	Expenditures
1987 (actual)	\$33,755,421
1988 (projected)	\$32,698,000
1989 (estimated)	\$32,453,000

3. SSI Emergency Assistance:

Fiscal Year	Expenditures
1987 (actual)	\$ 287,757
1988 (projected)	\$ 800,000
1989 (estimated)	\$1,400,000

**Regulatory Flexibility Statement**

These rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This rulemaking imposes no compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:100.

**Proposed Recodification**

Old Citation	New Citation
SUBCHAPTER 3.	SUBCHAPTER 1.
10:100-3.1	10:83-1.1
10:100-3.2	10:83-1.2
10:100-3.3	10:83-1.3
10:100-3.4	10:83-1.4
10:100-3.5	10:83-1.5
10:100-3.6	10:83-1.6
10:100-3.7	10:83-1.7
10:100-3.8	10:83-1.8
10:100-3.9	10:83-1.9
10:100-3.10	10:83-1.10
Appendix A	10:83-1.11

Full text of the amendment follows (deletions shown in brackets [thus]; additions shown in boldface thus).

**10:83-1.11 New Jersey Supplemental Security Income payment levels [APPENDIX A]**

[The New Jersey Supplemental Security Income Payment Levels] **New Jersey Supplemental Security Income payment levels are as follows:**

**HUMAN SERVICES**

**PROPOSALS**

Living Arrangement Categories	Payment Level	Residential Health Care Facilities and certain residential facilities for children and adults	\$504.05
	1/1/88	Living Alone or with Others	\$385.25
Eligible Couple		Living with Ineligible Spouse (No other individuals in household)	\$557.36
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	\$50/532.00†	Living in Household of Another, Receiving Support and Maintenance	\$280.31
Residential Health Care Facilities and certain residential facilities for children and adults	\$989.36		
Living Alone or with Others	\$557.36		
Living in Household of Another, Receiving Support and Maintenance	\$447.76		
Eligible Individual			
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	\$25/354.00†		

\_\_\_\_\_ †The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month. \_\_\_\_\_

# RULE ADOPTIONS

## AGRICULTURE

### (a)

#### DIVISION OF RURAL RESOURCES

#### State Agriculture Development Committee

#### Acquisition of Development Easements

#### Adopted New Rule: N.J.A.C. 2:76-6.16

#### Adopted Amendments: N.J.A.C. 2:76-6.2, 6.5, 6.6, 6.8, 6.9, 6.10 and 6.11

Proposed: July 5, 1988 at 20 N.J.R. 1503(a).

Adopted: September 22, 1988 by Arthur R. Brown, Jr.,  
Chairman, State Agriculture Development Committee.  
Filed: September 23, 1988 as R.1988 d.493, **without change**.

Authority: N.J.S.A. 4:1C-5f.

Effective Date: October 17, 1988.

Expiration Date: August 29, 1989.

#### Summary of Public Comments and Agency Responses:

**COMMENT:** The Middlesex County Agriculture Development Board commented that the proposed weighting criteria discriminated against those counties with considerable pressure for development of agricultural land for nonagricultural purposes. The Board suggested that the weight of the criteria for "the degree of imminence of change" be increased with a proportionate decrease in the weight of "boundaries and buffers criterion". Furthermore, the weight of "the relative best buy criterion" should be reduced or if possible eliminated.

Secondly, the Board expressed concern that the "special considerations" criterion should be given greater weight than the "best buy" criterion or at least equal the weight for the "best buy" criterion.

**RESPONSE:** The proposed criteria are intended to provide a uniform approach to evaluate applications for the sale of development easements Statewide. The "degree of imminence of change" criterion, a statutory requirement, is to be viewed from the perspective of the negative impacts of farmland conversion not only on the individual farm but on the project area as well. Generally, where there is increased nonagricultural development in an area, factors such as "boundaries and buffers" and "size and density" become extremely important to ensure the ability to vary the agricultural enterprise in the future. Buffering from residential areas will also help minimize right to farm conflicts. The Committee strongly feels that the weights assigned to the respective criteria are representative of their importance, and that the overlapping considerations inherent in the nature of these criteria address the Board's concerns for ensuring thorough and accurate consideration of every application's merits. The Committee further recognizes that weighting factors may be fine-tuned as needed in the future to reflect experience gained in the use of these criteria.

The Committee has refrained from assigning a specific weight to the factors identified under "special considerations" for the expressed purpose of using its discretion as warranted by the conditions affecting the respective application.

**COMMENT:** The Warren County Agricultural Development Board expressed concern that once the Committee performed its preliminary ranking or rating according to the proposed prioritization criteria, provided no other conditions changed between the time of preliminary approval and final review, the Committee should be held to its decision to purchase the easement provided funding was available.

**RESPONSE:** In theory, the Committee agrees that once it has granted preliminary approval for the purchase of a development easement, provided no other conditions change and funds are available, the Committee will purchase the development easement.

However, the submission of applications from 16 counties constantly changes the initial ranking of an application because funding is the limiting factor. Applications which appear to be a high priority today may not maintain the same ranking in six months because the number and quality of applications may have changed not only in the respective county but in other counties as well.

In conjunction with this, the Committee does support the board's position that it is imperative to reject applications that do not receive a priority ranking at the preliminary review stage.

**COMMENT:** The Morris County Agriculture Development Board expressed its support of the proposed prioritization criteria but is strongly opposed to the project area concept. The Board's concern is that smaller yet viable agricultural operations in Morris County would not receive funding or will be placed at a low priority for development easement purchase.

**RESPONSE:** The project area concept is to assist the counties and the State in targeting farmland preservation efforts locally and Statewide. The approach provides a uniform yet flexible framework to address local goals and the uniqueness of each county's agriculture.

Full text of the adoption follows.

#### 2:76-6.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings.

"Agricultural Development Area", hereinafter referred to as ADA, means an area identified by a board pursuant to the provisions of N.J.S.A. 4:1C-18 and certified by the State Agriculture Development Committee.

...

"Project area" means an area identified by a board or the Committee which is located within an ADA and is comprised of one or more development easement purchase applications, lands where development easements have already been purchased, other permanently deeded restricted farmlands, farmland preservation programs and municipally approved programs.

...

#### 2:76-6.5 Preliminary board review

(a) The board shall review, evaluate and decide on the easement purchase application and respective project area to determine the suitability of the land for development easement purchase and establish a priority ranking on the basis of the following factors:

1. Criteria for evaluating easement purchase applications as identified in N.J.A.C. 2:76-6.16; and

2. Criteria duly adopted by the board.

(b)(c) (No change.)

(d) The board shall forward an approved application(s) with a priority ranking, supporting documents and a detailed justification for its decision to the committee for preliminary review.

#### 2:76-6.6 Preliminary committee review

(a) Upon receipt of an application from the board, the committee shall review and evaluate the easement purchase application and respective project area in compliance with N.J.A.C. 2:76-6.16.

(b) The committee shall forward its position and priority ranking of applications to the board.

#### 2:76-6.8 Appraisals

(a) (No change.)

(b) The procedure for conduction and reviewing appraisals shall be as follows:

1.-3. (No change.)

4. Upon completion of the appraisals, the appraisers shall forward appraisal reports to the appropriate person designated by the board to review the reports for completeness of contractual requirements.

5. The completed reports shall be forwarded directly to the committee;

6. The committee shall appoint a review appraiser to evaluate the two appraisals and to recommend a fair market value of the development easement;

7. The committee shall have final authority for certifying the fair market value of the development easement.

8. The committee shall inform the board of the certified fair market value of the development easement.

**AGRICULTURE**

**ADOPTIONS**

2:76-6.9 Final board review

- (a) (No change.)
- (b) The board shall review the easement purchase application, respective project area and the negotiated offer to determine the suitability of the land for development easement purchase on the basis of the following factors:
  - 1. Criteria for evaluating easement purchase applications as identified in N.J.A.C. 2:76-6.16; and
  - 2. Criteria duly adopted by the board.
- (c) The board shall rank and approve or disapprove an application(s) and state the reasons for arriving at the decision.
- (d) Based on available funds, applications receiving priority ranking shall be forwarded to the committee for final review.

2:76-6.10 Board application to the committee

- (a) The board shall submit the following information to the committee:
  - 1. Priority ranking of applications;
  - 2. Negotiated development easement value; and
  - 3. Justification for arriving at its decision.

2:76-6.11 Final committee review

- (a) The committee shall review the easement purchase application, respective project area and the negotiated development easement, value to determine the suitability of the land for development easement purchase in accordance with N.J.A.C. 2:76-6.16.
- (b) The committee shall rank and approve or disapprove an application(s) and state the reasons for arriving at the decision.
- (c) (No change.)

2:76-6.16 Criteria for evaluating development easement applications

- (a) The evaluation shall be based on the merits of the individual application, the application's contribution to the respective project area, the project area's ranking relative to other project areas and available funds.
- (b) The weight factor assigned to each criterion identifies the relative importance of the specific criterion in relation to the other criteria.
- (c) The soil quality criterion (weight 30) is as follows:
  - 1. Priority will be given to soils which exhibit superior quality, require minimal maintenance and have a greater potential for long term viability for a variety of agricultural purposes.
  - 2. Factors to be considered are as follows:
    - i. Prime soils identified by the U.S.D.A., Soil Conservation Service;
    - ii. Soils of Statewide importance as identified by the New Jersey Department of Agriculture, State Soil Conservation Committee; and
    - iii. Other soils which are specifically suited for the production of specialty crops and are being used or intended to be used for that purpose.
- (d) The boundaries and buffers criterion (weight 20) is as follows:
  - 1. Priority will be given to the greatest proportion of boundaries with buffers which help protect the integrity of the individual application and/or project area from conflicting nonagricultural uses.
  - 2. Factors to be considered are as follows:
    - i. The type and quality of buffers, including:
      - (1) Compatible uses as follows:
        - (A) Deed restricted farmland (permanent);
        - (B) Deed restricted wildlife areas;
        - (C) Eight year programs;
        - (D) Farmland (unrestricted);
        - (E) Streams and wetlands;
        - (F) Parks (limited public access);
        - (G) Parks (high use);
        - (H) Military installations;
        - (I) Highways (limited access); and
        - (J) Other compatible buffers
      - (2) Conflicting uses as follows:
        - (A) Residential; and
        - (B) Other;

- ii. Percentage of boundaries buffering the individual application; and
- iii. The application's added buffer to the project area.
- (e) The local commitment criterion (weight 20) is as follows:
  - 1. Priority will be given where municipal and county land use regulations and policies support the long term viability of the agricultural industry.
  - 2. Factors to be considered are as follows:
    - i. Zoning ordinances and densities which discourage conflicting nonagricultural development;
    - ii. Absence of sewer or other growth leading infrastructure;
    - iii. Consistency with municipal, county, state and regional plans;
    - iv. Municipal commitment to actively participate in the Agriculture Retention and Development Program;
    - v. Right to farm and other ordinances supporting agriculture; and
    - vi. Community support for the project area.
  - (f) The size and density criterion (weight 20) is as follows:
    - 1. Priority will be given to larger masses with a higher density of the lands dedicated to farmland preservation.
    - 2. Factors to be considered are as follows:
      - i. The size of the individual application;
      - ii. The size of the individual application in relation to the average farm size in the respective county;
      - iii. The overall size of the project area; and
      - iv. The density and contiguity of the subject project area. Density shall be recognized as the proportion of lands encompassed by development easement purchase applications, development easements purchased, other permanently deed restricted farmlands, farmland preservation programs and municipally approved programs in relation to the remaining lands contained in the interstices of the outer boundaries of the project area.
    - (g) The degree of imminence of change criterion (weight 5) is as follows:
      - 1. Priority will be given to minimizing the negative impacts caused by the imminent conversion of agricultural land to a nonagricultural use.
      - 2. Factors to be considered are as follows:
        - i. The degree of imminence of change; and
        - ii. The impact of the conversion.
    - (h) The relative best buy criterion (weight 5) is as follows:
      - 1. Priority will be given to offers with higher numerical values obtained by application of the following formula:
 

nonagricultural	-	agricultural	-	landowner
<u>development value</u>		<u>value</u>		<u>asking price</u>
nonagricultural	-	agricultural		
development value		value		
      - 2. Factors to be considered are as follows:
        - i. The certified and/or negotiated value of the development easement determined for an individual application at the final review stage.
        - (i) Special considerations are as follows:
          - 1. The board and committee shall review the following factors and recognize special considerations which cannot be adequately addressed in the previous criteria.
            - i. A contribution to reduce the committee's percent cost share of the negotiated development easement value;
            - ii. The first application(s) in the county to receive the committee's preliminary approval which ultimately results in the purchase of the development easement(s);
            - iii. Historic contributions;
            - iv. Environmental contributions; and
            - v. Uniqueness of the agricultural operation.

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**STATE BOARD OF EDUCATION**

**Teacher Preparation and Certification**

**Adopted New Rules: N.J.A.C. 6:3-1.23, 1.24;  
6:11-3.25**

**Adopted Amendments: N.J.A.C. 6:11-4.2, 5.7;  
6:11-10**

Proposed: June 20, 1988 at 20 N.J.R. 1320(c).

Adopted: September 7, 1988 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: September 22, 1988 as R.1988 d.491, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:6-10, 18A:6-50, 18A:6-7A-1, 18A:7A-1.1, 18A:10-6, 18A:13-14, 18A:16-1, 18A:17-14.1 to 17-14.3, 18A:17-15, 18A:17-17, 18A:17-20, 18A:17-32, 18A:17-42 to 17-45, 18A:18A-4, 18A:18A-6, 18A:22-1, 18A:22-2, 18A:22-13, 18A:22-14, 18A:22-19, 18A:22-22, 18A:24-11, 18A:28-9 to 28-13, 18A:29-6 to 29-16, 18A:40-12.1, 18A:40-12.2 and 18A:49-1 to 49-8.

Effective Date: October 17, 1988.

Expiration Date: N.J.A.C. 6:3, July 8, 1993; N.J.A.C. 6:11, December 12, 1990.

**Summary of Public Comments and Agency Responses:**

The State Board of Education received many written comments and oral testimony at its monthly testimony opportunities, regarding the proposed new rules and amendments. These comments related to three areas of the proposed rule text, and are summarized, along with the Board's response, below:

**Residency Teaching Requirements**

COMMENT: Proposed N.J.A.C. 6:11-10.8(b)3iii would require those candidates who lack prior teaching experience and/or teaching competency to teach in the proposed principal residency. The subparagraph states, in pertinent part:

All candidates whose assessment reports and/or backgrounds indicate a need shall be involved in teaching and teaching-related experiences on a regular basis for no less than one year and up to the two years maximum duration of the residency. . . .

Comments were received concerning the need to clarify the various provisions of this requirement: What aspects of candidates' backgrounds would indicate a need to teach in the residency? What is the relationship between candidates' assessment reports and teaching backgrounds as criteria for prescribing residency teaching experiences? What does it mean, specifically, that candidates will have to teach "on a regular basis" in the residency? What are "teaching-related" experiences? Which candidates would be required to teach "up to the two years maximum duration of the residency?"

RESPONSE: The State Board has adopted the following language in response to the commenters' concerns, to replace the text set forth in the preceding comment summary:

Unless candidates' assessment reports indicate an extraordinary circumstance with respect to teaching competencies, those with less than a year of teaching in their backgrounds shall be involved in teaching and teaching-related experiences on a regular basis for no less than one year and up to the two years maximum duration of the residency. The maximum two-year residency teaching requirement applies to those candidates who have no teaching experience in their backgrounds. Teaching on a regular basis in the residency means teaching one class period per day on a continuous basis. Teaching-related experiences means those activities that normally are associated with teaching a class on a continuous basis, such as planning lessons, grading papers, filling out report cards and meeting with parents.

**Pre-Residency Instruction**

COMMENT: Proposed N.J.A.C. 6:11-10.8(b)3iv requires that each principal candidate "shall complete 45 clock hours of formal study in the supervision of instruction and curriculum during the pre-residency."

Comments were received concerning the need to indicate how this instruction will be divided between the two topics, and to assure that this instruction will help prepare the candidate to carry out the requirements of the residency.

RESPONSE: The State Board has adopted the addition of the following clarifying language to the referenced subparagraph:

This formal study shall be divided equally between orienting the candidate to the employing district and its curriculum and providing the candidate with that knowledge of the instructional process that will enable him or her to carry out the requirements of the residency.

**Priorities for Mentor Supervision**

COMMENT: Proposed N.J.A.C. 6:11-10.8(b)5i states that, "The primary responsibility of the mentor is to assure that the resident receives appropriate training, support and supervision as the resident carries out his or her critical job responsibilities." Comments were received concerning the need to identify more precisely the "critical job responsibilities" that would constitute priorities for mentor supervision.

RESPONSE: The State Board, in response to the comments, has adopted clarifying language, changing the subparagraph by deletion of the language, "support and supervision as the resident carries out his or her critical job responsibilities", and its replacement with, "supervision and support in the areas of supervision of instruction and personnel management."

In addition, the State Board has made several corrective typographic and citation changes.

**Full text** of the adoption follows (additions to proposal in boldface with asterisks **\*thus\***; deletions from proposal in brackets with asterisks **\*[thus]\***).

6:3-1.23 Support residencies for regularly-certified, inexperienced first-year principals

(a) Regularly-certified, inexperienced first-year principals are individuals who:

1. Acquired regular New Jersey school principal endorsements pursuant to N.J.A.C. 6:11-10.8 prior to September 1, 1989;
2. Have not previously held full-time employment as principals, vice-principals, or in other positions for which the principal endorsement is required in New Jersey or elsewhere; and
3. Have been offered employment as principals or vice-principals in a New Jersey public school district.

(b) Each district employing a regularly-certified, inexperienced first-year principal shall enter into an agreement to provide a principal residency program pursuant to N.J.A.C. 6:11-10.8(b), including a pre-residency experience, except that:

1. Entry requirements in N.J.A.C. 6:11-10.8(b)1 shall not apply to regularly-certified, inexperienced first-year principals;
2. Special certification evaluations as described in N.J.A.C. 6:11-10.8(b)5 shall not be conducted for regularly-certified, inexperienced first-year principals, and no evaluations or recommendations concerning their certification shall be presented to the State Department of Education; and
3. As part of the support residency, the district shall require the new principal to undergo an assessment of performance at a State-approved center during the pre-residency phase. The sole purpose of this assessment shall be to provide a diagnosis of strengths and weaknesses as a basis for designing continuing education and support exercises.

(c) The State Department of Education shall monitor local districts to determine compliance with this section.

6:3-1.24 Local district responsibility for employment of staff

(a) State certification requirements are those structured training and competency evaluation requirements that are prescribed by the State Board of Education in order to protect the public. In addition, the teaching and other background experiences of candidates for professional positions may often be important considerations in the local selection of specific staff for specific positions. Each district board of education shall determine the types of background experiences and personal qualities, if any, that the district requires or prefers successful candidates for specific positions to possess in addition to appropriate state certification. Such local requirements shall be based upon a careful review of the position in question, and the requirements shall emphasize the nature of experience and the quality

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of individual achievement desired, rather than only the amount of experience, and shall be applied flexibility without having the force of legal requirements.

(b) No teaching staff member shall be employed in the public schools by any board of education unless he or she is the holder of a valid certificate (see N.J.S.A. 18A:26-2). In addition, district boards of education should exercise their right and responsibility to require job candidates to present other, more detailed documentation of their competency. Such documentation includes resumes, references, records of past experiences, college transcripts, certification test scores, assessment reports, internship evaluations, and other documentation of competency relevant to the specific position.

#### 6:11-3.25 Procedure for provisional staff contesting of certification recommendations of mentors

(a) When the Secretary of the State Board of Examiners receives any adverse recommendation concerning the standard certification of a provisional staff member, the Secretary shall notify the provisional staff member of the date upon which the State Board of Examiners will consider such recommendation. If the adverse recommendation has not already been contested by the provisional staff member pursuant to N.J.A.C. 6:11-10.8(b)6\*[iv]\*\*v\* or N.J.A.C. 6:11-5.7(e), the Secretary shall allow the provisional staff member an additional opportunity to provide the State Board of Examiners with written materials documenting the reasons why the provisional staff member believes standard certification should be awarded.

(b) When a provisional staff member contests an adverse recommendation concerning his or her standard certification, the secretary shall formally notify the provisional staff member of the opportunity to request a hearing before an administrative law judge.

(c) Upon receipt of notification pursuant to (b) above, the provisional staff member shall be allowed 20 days to request a hearing. The hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) The State Board of Examiners shall take final action on the opinions rendered by administrative law judges concerning the certification of provisional staff members.

#### 6:11-4.2 Provisional certificate

(a) A provisional certificate is a standard one-year certificate issued to an applicant who is not eligible for a standard certificate. A provisional certificate may be issued under certain circumstances to an applicant whose preparation does not meet completely the New Jersey requirements for standard certification.

(b) To be eligible for the provisional certificate in instructional fields the applicant shall:

1. Hold a bachelor's degree from an accredited college or university (except in certain technical fields as noted in N.J.A.C. 6:11-6.3(c));

2. Pass a subject matter test for teaching field(s) or a test of general knowledge for the elementary and nursery endorsements. In order to be eligible to take a subject field test, the applicant must have completed at least 30 semester hours in a coherent major or five years of experience in the subject fields; and

3. Have been offered employment in a New Jersey public school district approved by the commissioner at the recommendation of the Board of Examiners to offer a certification training program;

(c) Persons who pass the appropriate test as set forth in (b)2 above shall be granted a formal document which will enable them to seek employment as provisional teachers in the public schools.

(d) To be eligible for the provisional certificate for admission to a Principal Residency Program pursuant to N.J.A.C. 6:11-10.8(b), the applicant shall:

1. Hold a master's degree in one of the recognized fields of leadership or management, such as educational administration, public administration, business administration, leadership or management science. In order to be accepted for certification, the degree program must provide study in the following topics, which represent those areas of management that are directly related to education and the principalship: leadership and human resource management; communications; quantitative decision-making; finance; and law. Degree

programs may provide study in other areas at the discretion of the sponsoring institution and its faculties. This requirement shall be effective (upon adoption of this amendment).

2. Pass a State-administered examination of knowledge in the areas of leadership and human resource management, communications, quantitative decision-making, finance and law. Within these five topical areas, the examination shall assess leadership and management proficiencies that are validated as being most directly relevant to education and the essential duties of school principals. This requirement shall be effective September 1, 1989;

3. Undergo an assessment of performance, conducted by State-approved assessors, through structured exercises which simulate the duties of school principals, and authorize the state to release the written results of this assessment to potential sponsoring districts and schools. In particular, there shall be a formal assessment of each candidate's teaching competencies that are essential to principals' ability to lead and supervise instruction and curriculum. The State Department of Education shall, with appropriate professional input, develop and validate the criteria, instruments, and procedures for conducting such assessments. This requirement shall be effective September 1, 1989; and

4. Obtain an offer of employment in a position requiring the principal endorsement in a school or district which has reviewed the candidate's assessment report and has agreed formally to sponsor the residency.

5. Applicants who meet the requirements of (d)1 through 3 above shall receive eligibility papers which will permit the applicant to seek employment in positions that require the principal endorsement.

(e) To be eligible for the provisional certificate in the field of speech-language pathology, the applicant shall:

1. Hold a master's degree in the field of speech-language pathology; and

2. Pass a State-administered examination of knowledge in the area of speech-language pathology.

#### 6:11-5.7 Recommendation for certification of provisional teachers

(a) At the conclusion of the alternative training program, the chairperson of the Support Team shall prepare a comprehensive evaluation report on the provisional teacher's performance. This report shall be submitted by the Chairperson directly to the Bureau of Teacher Preparation and Certification and shall contain a recommendation as to whether or not a standard certificate should be issued to the provisional teacher.

(b) The final comprehensive evaluation report on each provisional teacher shall be made on standard forms developed by the State Department of Education.

(c) The final report on each provisional teacher shall include one of the following recommendations:

1. Approved: Recommends issuance of a standard certificate;

2. Insufficient: Recommends that a standard certificate not be issued but that the candidate be allowed to seek entry on one more occasion in the future into a State-approved training program; or

3. Disapproved: Recommends that a standard certificate not be issued and that the candidate not be allowed to enter into a State-approved training program.

(d) The Support Team chairperson shall provide the provisional teacher with a copy of the provisional teacher's written evaluation report and certification recommendation before submitting it to the Bureau of Teacher Preparation and Certification.

(e) If the provisional teacher disagrees with the chairperson's recommendation, the provisional teacher may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the chairperson written materials documenting the reasons why the provisional teacher believes standard certification should be awarded. The chairperson shall forward all such documentation to the Bureau of Teacher Preparation and Certification along with the evaluation report and recommendation concerning certification.

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SUBCHAPTER 10. NEW JERSEY STANDARDS FOR  
CERTIFICATION OF ADMINISTRATIVE  
AND SUPERVISORY PERSONNEL

## 6:11-10.1 Use of standards

(a) These standards will be used by the Bureau of Teacher Preparation and Certification in the following ways:

1. As a basis for approving college preparation programs for administrative and supervisory personnel.
2. As the basis for evaluating the eligibility of candidates for administrative or supervisory certification.
3. As the basis for defining the nature and extent of experience background required for administrative and supervisory certificates.

## 6:11-10.2 College degrees

(a) Except when specifically indicated below, the following requirements apply to all programs leading to a New Jersey administrative or supervisory certificate.

1. Master's degree:
  - i. Approved programs, except where noted otherwise, will lead to a master's degree.
  - ii. Where authorized below, non-degree certificate programs may be designed for students who already hold master's degrees. Such certificate programs must be approved by the New Jersey State Department of Education.
2. College accreditation:
  - i. Except as indicated below, degrees will be recognized for purposes of administrative and supervisory certification in New Jersey from colleges and/or programs accredited or approved by the state in which the college exists.
  - ii. Transfer of credit from one college to another shall be determined by the policies of the colleges involved.

## 6:11-10.3 (Reserved)

## 6:11-10.4 Authorization

(a) School administrator: This endorsement is required for the position of superintendent of schools. The holder of this endorsement may also serve as assistant superintendent of schools or supervisor.

(b) Principal: This endorsement is required for the positions of principal, vice-principal, and certain other administrative positions. Holders of this endorsement may supervise instruction.

(c) Supervisor: This endorsement is required for supervisors of instruction who do not hold a school administrator's or principal's endorsement. The supervisor shall be defined as any school officer who is charged with authority and responsibility for the continuing direction and guidance of the work of instructional personnel. This endorsement also authorizes appointment as an assistant superintendent in charge of curriculum and/or instruction.

(d) Assistant superintendent in charge of business: This endorsement is required for the position of assistant superintendent of schools in charge of business affairs.

(e) School business administrator: This endorsement is required for the position of school business administrator when the local board of education is granted permission by the State Board of Education to create such a position. The holder of this endorsement is authorized to perform such duties as the rules of the State Board of Education shall define.

## 6:11-10.5 (Reserved)

## 6:11-10.6 (Reserved)

## 6:11-10.7 School administrator

(a) Successful completion of one of the following is required for school administrators:

1. A curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or
2. A program of college studies in the areas indicated below, including 30 semester-hour graduate credits, in addition to those required for a standard teacher's certificate, and including study in each of the **\*[starred]\* areas \*in i through iii below\***. This study may be in either separate or integrated courses.
  - i. **\*[\*]\*School administration:** Included may be studies in such areas as general school administration, elementary, secondary and

vocational administration, school law, school finance, school plant planning and design. These studies may be in either separate or integrated courses;

- ii. **\*[\*]\*Educational supervision;**
- iii. **\*[\*]\*Curriculum development:** A course in general principles of curriculum development, or a combination of specialized courses covering both elementary and secondary, vocational, or adult programs;
- iv. The learner and the learning process;
- v. Academic disciplines related to school administration, such as anthropology, business or public administration, economics, government, intercultural relations, group dynamics, psychology, sociology, labor relations, law, and community organization.

3. When candidates have completed their preparation for this endorsement in an out-of-State college or university, a doctor's degree in educational administration, or completion of an approved two-year graduate program for the preparation of school administrators leading to the **\*specialist in\*** education certificate or similar diploma or degree, from a program accredited by the National Council for Accreditation of Teacher Education (NCATE), will be accepted as meeting the college study requirements indicated above.

4. Successful completion of three years of educational administrative or supervisory experience, under a New Jersey administrative or supervisory endorsement or its equivalent, when spending at least half time in administrative or supervisory duties.

- i. One year of this experience requirement will be waived to holders of the doctor's degree in educational administration, received from an accredited institution in a program approved by the Department of Education.
- ii. One year of internship in a program approved by the Commissioner of Education may be submitted toward the fulfillment of this experience requirement.

5. A standard New Jersey teacher's certificate or its equivalent, and three years of successful teaching experience. Experience in New Jersey public schools must have been completed under an appropriate New Jersey teacher's certificate or its equivalent. This experience requirement shall not apply to candidates who hold New Jersey school principal endorsements.

## 6:11-10.8 Principal

(a) Each candidate for the principal endorsement shall:

1. Possess a provisional certificate pursuant to N.J.A.C. 6:11-4.2(d);
2. Complete a State-approved residency program pursuant to (b) below while employed provisionally in a position requiring the principal endorsement. This requirement shall be effective September 1, 1989; and
3. Possess an instructional certificate and three years of professional experience in education. This requirement shall cease to be in effect on September 1, 1989.

(b) The principal residency is a training program conducted under the direction of a State-approved mentor and the sponsorship of the public school district or nonpublic school that employs the certificate candidate.

1. In order to enter a residency program, the certification candidate shall:

- i. Possess a provisional certificate pursuant to N.J.A.C. 6:11-4.2(d); and
- ii. Obtain an offer of employment in a position requiring the principal endorsement in a district or school which has reviewed the candidate's assessment report and has agreed formally to sponsor the residency.

2. The requirements for State-approval of residency programs are as follows:

- i. The State Department of Education shall issue a standard agreement detailing the experiences and requirements of the residency. This agreement shall be entered into by the Department, the sponsoring district, the residency mentor, and the candidate before the residency may be initiated.
- ii. Sponsoring districts and mentors may propose modifications to the standard residency agreement in order to accommodate the backgrounds and special training needs of individual candidates.

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iii. No residency program may be undertaken without a valid agreement.

3. Each State-approved residency shall provide training in two phases:

i. Pre-residency experiences of no fewer than 30 days nor more than 60 days duration. This phase shall emphasize professional experiences and training in the areas of instruction/supervision and curriculum/evaluation. The pre-residency phase must be completed before the candidate assumes full responsibility on a provisional basis for a principalship, vice-principalship or other position requiring the principal endorsement. The Department shall, at the recommendation of the mentor and the district superintendent, prescribe the content of each new principal's pre-residency. Such prescription shall be based upon a review of each candidate's assessment reports, background experiences and other information gathered by the mentor and superintendent. The content of each pre-residency shall be specified in the standardized written agreement to be signed by the mentor, the district superintendent, the principal candidate, and approved by the Department.

(1) For candidates who possess practical teaching competencies but lack practical management competencies, the pre-residency shall consist of management and management-related experiences in the amount of 300 clock hours.

(2) For candidates who possess practical management competencies but lack practical teaching competencies, the pre-residency shall consist of teaching and teaching-related experiences in the amount of 300 clock hours. As a means of obtaining these experiences, the candidate shall be assigned to classroom to teach under a supervising teacher. This assignment shall be similar in format to student teaching and its purpose shall be to provide the candidate with those practical teaching competencies which are essential to lead and manage a school.

(3) For candidates who lack practical competency in both teaching and management, the pre-residency shall be extended until the candidate completes all required experiences in both teaching and management.

(4) For candidates who possess practical competency in both teaching and management, the mentor and district superintendent may request and the Department may prescribe a waiver of the pre-residency.

(5) For candidates who possess partial competence in practical aspects of teaching and/or management, the mentor and district superintendent may request and the Department may prescribe other variations to the pre-residencies described in (b)3.i.(1) through (4) above.

(6) No candidate shall be certified provisionally or permitted to assume a position that requires the principal endorsement until he or she has successfully completed the pre-residency.

ii. Residency experiences which shall be completed while the candidate is serving as a principal or vice principal. The residency phase shall provide professional experiences and training in the areas of instruction/supervision, curriculum/evaluation, pupil personnel, personnel management, community relations, student relations, facilities management, finance, school law, and technical administrative skills. The Department\*,\* with appropriate professional input, shall design standard training exercises which all candidates shall complete in each of these topical areas. The mentor and the district superintendent shall, at the start of the residency, submit to the Department a written supplementary recommendation concerning any standard exercises that should be waived and any \*[concerning]\* **\*additional\*** teaching or other special experiences, if any, that the individual candidate should complete before achieving standard certification. Such recommendations shall be submitted on State-developed forms and shall take into account strengths and weaknesses identified in the candidate's assessment reports and backgrounds. The Department shall direct the candidate to complete any such special experiences as appropriate.

iii. \*[All candidates whose assessment reports and/or backgrounds indicate a need shall be involved in teaching and teaching-related experiences on a regular basis for no less than one year and up to the two years maximum duration of the residency.]\* **\*Unless candidates' assessment reports indicate an extraordinary circumstance**

**with respect to teaching competencies, those with less than a year of teaching in their backgrounds shall be involved in teaching and teaching-related experiences on a regular basis for no less than one year and up to the two years maximum duration of the residency. The maximum two-year residency teaching requirement applies to those candidates who have no teaching experience in their backgrounds. Teaching on a regular basis in the residency means teaching one class period per day on a continuous basis. Teaching-related experiences means those activities that normally are associated with teaching a class on a continuous basis, such as planning lessons, grading papers, filling out report cards and meeting with parents.\*** Each residency program shall assure that the resident acquires sufficient familiarity with the teaching process to lead and manage in the school setting. Each residency agreement entered pursuant to (b)\*[(2)]\*\*2\* above shall include in its prescription appropriate amounts and types of classroom teaching and teaching-related experiences in both the pre-residency and residency phases. The nature and amount of such experiences shall be determined in consideration of the resident's prior experiences and shall be accorded an appropriate place among other important training needs and priorities identified for the individual resident. The residency shall provide at least one experience in an elementary school and at least one experience in a secondary school. The residency phase shall be completed in no less than one year nor more than two years.

iv. Each candidate shall complete 45 clock hours of formal study in the supervision of instruction and curriculum during the pre-residency. **\*This formal study shall be divided equally between orienting the candidate to the employing district and its curriculum and providing the candidate with that knowledge of the instructional process that will enable him or her to carry out the requirements of the residency.\*** Each candidate shall complete 90 additional hours of formal study during the residency in the following topics: supervision of instruction and curriculum, pupil personnel services, school personnel management, community relations, student relations, school facilities management, school finance, school law and technical administrative skills.

4. Each residency shall be under the direction of a mentor who is a certified, experienced principal appointed by the Department and who has completed a State-approved orientation and training program.

5. The mentor shall supervise and verify the completion of all required experiences and training by the resident.

i. The primary responsibility of the mentor is to assure that the resident receives appropriate training, \*[support and supervision as the resident carries out his or her critical job responsibilities]\* **\*supervision and support in the areas of supervision of instruction and personnel management\*.**

ii. The mentor shall evaluate each resident's ability to exhibit leadership and management capabilities in accord with State-established criteria, on State-developed instruments.

iii. Each mentor shall, with State approval, form an advisory panel of practicing educators and shall convene this panel on at least three occasions for purposes of reviewing the resident's progress and soliciting advice concerning the certification of the resident.

iv. Each resident shall be evaluated formally by the mentor on at least three occasions: after approximately three months, six months and nine months from the start of the residency. The first two of these evaluations shall be conducted mainly for diagnostic purposes while the final evaluation shall be the basis for recommending the residents' certification. Such \*[evaluation]\* **\*evaluation\*** shall be conducted in accord with \*[state]\* **\*State\*** criteria and reported on State-developed forms. The mentor shall discuss each evaluation report with the resident, and the mentor and resident shall sign each report as evidence of such discussion. Upon completion of each evaluation, the report shall be sent to the Secretary of the State Board of Examiners; the final evaluation shall be accompanied by the recommendation for certification pursuant to (b)6 below.

v. Each mentor shall be responsible for supervising no more than three residents concurrently.

6. Standard certification of residents shall be approved or disapproved pursuant to the following procedures:

i. Before the end of the residency year, the mentor shall submit to the Bureau of Teacher Preparation and Certification a com-

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prehensive evaluation report on the resident's performance using State-approved forms and criteria.

ii. This final report shall include one of the following certification recommendations:

(1) Approved: Recommends issuance of a standard certificate;  
 (2) Insufficient: Recommends that a standard certificate not be issued but that the candidate be allowed to continue the residency or seek admission to another residency for a maximum of one additional year; or

(3) Disapproved: Recommends that a standard certificate not be issued and that the candidate be prohibited from continuing or re-entering a residency.

iii. Candidates who receive a recommendation of "approved" shall be issued a standard certificate.

iv. The mentor shall provide the resident principal with a copy of the resident principal's written evaluation report and certification recommendation before submitting it to the Bureau of Teacher Preparation and Certification.

v. If the resident principal disagrees with the mentor's recommendation, the resident principal may within 15 days of receipt of the evaluation report and certification recommendation submit to the mentor written materials documenting the reasons why the resident principal believes standard certification should be awarded. The mentor shall forward all such documentation to the Bureau of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification.

(c) The requirements listed in (a) and (b) above shall not apply to persons who obtain New Jersey principal endorsements prior to October 1, 1988.

(d) Persons who can document that they enrolled, before October 1, 1988, in a New Jersey college program approved by the Department for the preparation of principals, shall have until October 1, 1992 to complete that program in lieu of the required \*[masters]\* \*master's\* degree in leadership/management (see N.J.A.C. 6:11-4.2\*(d)1.\* \*(c)1\*). Those who have not qualified for the principal endorsement by October 1, 1992, shall be required to obtain the required \*[masters]\* \*master's\* degree.

(e) All candidates shall be required to meet all other requirements of N.J.A.C. 6:11-4.2\*(d)1.\* \*(c)2 through 5 and this section that become effective prior to date upon which they qualify for principal endorsements.

## 6:11-10.9 Supervisor

(a) Successful completion of one of the following are required for supervisors:

1. A college curriculum approved by the New Jersey Department of Education as the basis for issuing this endorsement; or

2. A program of college studies including 12 semester hours of graduate study in supervision and curriculum development. Included in this study must be a least one course in the general principles of staff supervision, and one course in the general principles of curriculum development and evaluation. The additional work may be oriented directly toward supervision and curriculum development in particular grade levels, or in specific subject fields.

3. When candidates have completed their preparation for this endorsement in an out-of-State college or university, a master's degree in educational administration or supervision from a program accredited by the National Council for Accreditation of Teacher Education (NCATE) will be accepted as meeting the college study requirements indicated above.

4. A standard New Jersey teacher's certificate or its equivalent, and three years of successful teaching experience. Experience in New Jersey public schools must have been completed under an appropriate New Jersey teacher's certificate or its equivalent.

## 6:11-10.10 School business administrator

(a) The requirements for school business administrators are:

1. A bachelor's degree based upon a four-year curriculum in an accredited college. The requirement of a master's degree does not apply to this endorsement.

2. Successful completion of one of the following:

i. A standard New Jersey teacher's certificate or its equivalent, and three years of appropriate teaching experience; or

ii. Business training and experience as approved by the Secretary of the State Board of Examiners.

3. Successful completion of one of the following:

i. A college curriculum approved by the New Jersey State Department of Education as the basis for issuing this certificate; or

ii. Thirty semester-hour credits including work in each of the starred fields:

(1) \*School business administration;

(2) \*School buildings—including planning, construction and maintenance;

(3) \*School finance;

(4) \*School law;

(5) \*Accounting;

(6) \*Organization and administration of public education;

(7) \*Curriculum of public schools;

(8) Foundations of education, including such courses as history or philosophy of education, principles of elementary education, and principles of secondary education;

(9) Electives related to administration, curriculum, or the foundations of education.

(b) The policies governing issuance of a school business administrator's certificate are:

1. A person who was employed full time in the district as a school business official on January 2, 1963, does not need a certificate to continue in his present position, but may be issued a certificate authorizing service in his present district if he requests it.

2. A person who was employed full time as a school business official on January 2, 1963, may be issued a school business administrator's certificate upon presentation of 12 semester hours of study, including work in areas in (c)2i.v. above. The additional 18 semester-hour credits required for the certificate will, in these cases, be waived.

3. In cases where applicants submit business training and experience for approval in meeting requirements in this subsection for the certificate, the records submitted will be reviewed by a committee for the purpose of determining eligibility.

4. Persons serving full time as school business officials on January 2, 1963, will be considered to have satisfactory "business training and experience" in meeting requirements in this subsection for the school business administrator's certificate.

5. In administering the policies above, a "school business official" shall be interpreted as a person who served on a full-time basis on January 2, 1963, as the secretary of any board of education or a business manager in a chapter 6 district. Applications must be accompanied by a statement from the county superintendent of schools, certifying to such service.

6. Persons serving full time as the secretary of the board of education or the business administrator in a chapter 6 district prior to September 1, 1967, may qualify for the school business administrator's certificate by meeting the requirements previously in effect. In such cases, the requirement of a bachelor's degree will not apply.

## 6:11-10.11 Assistant superintendent for business

(a) The requirements for an assistant superintendent for business are:

1. A master's degree in business, public, or school administration from an accredited or approved institution.

2. Experience in one of the following:

i. Three years of successful teaching experience; or

ii. Three years of experience as secretary of a board of education or school business administrator under a school business administrator's certificate.

3. Successful completion of one of the following:

i. A college curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or

ii. Thirty-two semester-hour graduate or undergraduate credits in the following fields. These credits must be in addition to those required for the regular instructional certificate and must include work in each of the starred (\*) areas. This work may be in a separate or integrated courses:

(1) \*Administration of public education;

## EDUCATION

- (2) \*Supervision of instruction in the public schools;
  - (3) \*The curriculum of the public schools;
  - (4) \*School business administration;
  - (5) \*School business—including planning, construction and maintenance;
  - (6) \*School finance;
  - (7) \*School law;
  - (8) \*Accounting;
  - (9) \*Electives related to the field.
4. These changes shall be effective July 1, 1978.

## 6:11-10.12 Executive superintendent

(a) This certificate is required for the position of executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Shall possess and be able to demonstrate a knowledge of the complex problems of an urban community, involving the educational, societal, fiscal and political aspects;
2. Shall possess a master's degree;
3. Shall have five years of administrative experience in which three years must be in an organization of comparable complexity and magnitude;
4. Shall have a knowledge of school board interrelationships, including negotiations;
5. Shall be able to demonstrate knowledge of accounting, school finance, school business administration and Federal programs;
6. Shall have a knowledge of long-range education planning, and a knowledge of planning for capital construction of educational facilities;
7. Shall possess knowledge of organization, curriculum and administration of public education;
8. Shall have a working knowledge of modern management techniques.

## 6:11-10.13 Assistant executive superintendent with specialization in supervision and curriculum

(a) This certificate is required for the position of assistant executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Certification to serve as principal issued by New Jersey State Board of Examiners; or in the alternative;
2. A standard New Jersey teacher's certificate or equivalent;
3. Teaching experience;
4. A master's degree;
5. A program of graduate studies including coursework in:
  - i. Administration of public education;
  - ii. School law, including collective negotiations;
  - iii. Public school curriculum;
  - iv. Supervision of instruction in public schools;
  - v. Administration and supervision of school personnel.

## 6:11-10.14 Assistant executive superintendent with specialization in business administration

(a) This certificate is required for the position of assistant executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Bachelor's degree;
2. Approved teaching or business experience;
3. A program of studies \*[including]\* \*including\* coursework in:
  - i. Administration of public education;
  - ii. School business administration;
  - iii. School buildings, including planning, construction and maintenance;
  - iv. School finance;
  - v. School law, including collective negotiations;
  - vi. Public school curriculum.

## ADOPTIONS

## HEALTH

## (a)

## HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations  
Financial Elements and Reporting

Adopted Amendments: N.J.A.C. 8:31B-3.7, 3.17,  
3.27, 3.51, 3.55, 3.73 and 4.42

## Public Notice

Take notice that adopted amendments to N.J.A.C. 8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73 and 4.42 published in the January 4, 1988 issue of the New Jersey Register at 20 N.J.R. 77(a) concerning procedural and methodological regulations were inadvertently omitted from the January 19, 1988 update of the New Jersey Administrative Code.

Full text of the adoption as it should have appeared in the Code follows.

8:31B-3.7 Incentive standard, Preliminary Cost Base: Proposed  
Schedule of Rates

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

(c) The Preliminary Cost Base shall include a Capital Facilities Allowance as defined in N.J.A.C. 8:31B-3.27.

(d)-(e) (No change.)

## 8:31B-3.17 Financial elements reporting audit adjustments

(a) The aggregate Current Cost Base is developed from financial elements reported to New Jersey State Department of Health and includes:

1.-2. (No change.)

3. Capital Facilities Allowance: Capital cash requirements (as defined in N.J.A.C. 8:31B-3.27 and 8:31B-4.42).

4. (No change.)

(b) (No change.)

## 8:31B-3.27 Capital Facilities

(a) Capital Facilities as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base in the following manner:

1. Building and fixed equipment:

i. Capital Cash Requirements are all current payments, excluding cash purchases, made for Capital Facilities utilized for Services Related to Patient Care during a reporting period, including lease, principal, reasonable interest (as defined in (a)1i(1) below on long term debt, and certain other debt service payments, but excluding the expenditure of specific purpose grants for capital projects. Capital Cash Requirements for any year the Schedule of Rates is to be prospectively set shall not include the whole amount of any balloon payments. Rather, balloon payments shall be reported to the Commission in a timely manner in order to examine the possibility of refinancing such payments. Capital Cash Requirements are to be reported per Uniform Cost Reporting Regulation.

(1) Reasonable Interest Expense for Capital Facilities for any year is defined as the lower of the hospital's actual interest expense for that year or the interest expense the hospital would have incurred had it refinanced or advance refunded its long-term debt at the average interest rate available during that year on bonds of comparable credit quality and Federal income tax status issued by the New Jersey Health Care Facilities Financing Authority, provided that such a refinancing or advance refunding would result in significant present value savings to consumers and is feasible considering issuance costs and tax laws. If either of these provisions is not met, Reasonable Interest Expense shall equal the hospital's actual interest expense.

ii. Reimbursement for capital facilities indebtedness incurred on or before August 31, 1986 shall be reimbursed in accordance with the following requirements except that where hospitals elect to undertake capital indebtedness on or after September 1, 1986 such hospitals will be reimbursed in accordance with (a)1vii below.

iii. (No change in text.)

iv. (No change in text.)

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## HEALTH

v. The yearly Capital Facilities Allowance is computed using information provided by the Uniform Cost Reporting Regulation as: the prospective year's depreciation and reasonable interest expense (OPTION 2); or the hospital's current yearly amount of capital indebtedness, excluding any portion associated with major moveable equipment, plus the deficiency of the Plant Fund (any funds designated by the hospital's board for the Capital Facilities Formula Allowance against the Fund Target) divided by the adjusted remaining useful life of the hospital (OPTION 1).

(1) Hospitals must elect the method for reimbursement of Capital Facilities Allowance by December 31, 1987. Should no election be made, the Department will place hospitals on Principal plus Reasonable Interest plus CFFA reimbursement (OPTION 1).

(2) After hospitals elect or are included in either OPTION 1 or OPTION 2, they will remain on the pertinent reimbursement option for the life of the outstanding debt. This method will continue to apply if refinancing or advance refunding of this debt occurs.

vi. For either option, a hospital must annually fund an amount equal to at least the product of the depreciation excess and the deposit ratio at the defined compounding rate established by the Department used to calculate present values. These yearly contributions plus earned interest shall accumulate to be used exclusively to offset the shortfall between CFA reimbursement and Capital Cash Requirements (CCR) in later years of debt service. The deposits will be accumulated as a separate balance subject to audit in the Plant Fund (as defined in N.J.A.C. 8:31B-4.16(a)2). A penalty of 10 percent of the amount not funded (the difference between required accumulated funding with fund earnings and actual funding) will be assessed against the hospital. Each year a hospital may spend up to the difference between the CFA and Capital Cash Requirements less the required deposit ratio for permitted purposes (as defined in N.J.A.C. 8:31B-4.42(a)2) or may borrow against the Plant Fund up to this level for any lawful purpose, provided that: such loans made against the Plant Fund are repaid with interest within one year of borrowing; and such borrowings do not reduce the accumulated balance of deposits plus earnings in the Plant Fund. Expenditures above the required deposit level are permitted only for major plant replacement with an approved Certificate of Need or for needs related to: mergers; consolidations; conversions; or closures as defined in N.J.A.C. 8:31B-4.42(a)3.

(1) Pursuant to N.J.A.C. 8:31B-4.16 and 8:31B-4.21, at the close of each annual accounting period hospitals must submit to the Department of Health certified financial statements including an auditor's (or actuary's) statement attesting that accumulated Plant Fund contributions meet or exceed the required deposit ratio amounts for the difference between the CFA and Capital Cash Requirements plus accumulated contributions and Plant Fund earnings.

vii. Reimbursement for capital facilities indebtedness requiring Certificate of Need approval, batching and incurred on or after September 1, 1986 shall be in accordance with the following requirements.

(1) A Statewide Capital Facilities Allowance will be calculated as follows:

(A) Total Capital Facilities Allowance including all indebtedness whether or not requiring Certificate of Need approval (as defined in (a)lv above) and an estimate of the annual Capital Facilities Allowance which will result from capital projects approved but not yet bonded or built, for all Chapter 83 hospitals, will be summed and this sum divided by Total Adjusted Admissions (as defined in N.J.A.C. 8:31B-3.24 Footnote 2) to determine the Capital Facilities Allowance per Adjusted Admission. To initiate these regulations, Capital Facilities Allowance (plus approved projects) for 1986 and Adjusted Admissions for 1985 will be used in the calculations defined in this paragraph. Revised calculations will be performed as needed and in accordance with the Hospital Policy Manual once promulgated and adopted.

(B) Hospitals will be reimbursed their actual Capital Facilities Allowance per Adjusted Admission up to the maximum statewide amount calculated as shown in (a)lvii(1)(A) above. All amounts included in a hospital's Capital Facilities Allowance, whether or not requiring Certificate of Need approval, will be included in calculating the Capital Facilities Allowance per Adjusted Admission.

(C) Hospitals will be reimbursed the Capital Facilities Allowance per Adjusted Admission for each event of inpatient care billed for on the Uniform Bill—Patient Summary (UB-PS) except that hospitals will be reimbursed total CFA amounts which are not less than their approved actual Principal and Interest amounts incurred through December 31, 1987 and adjusted by actual annual revisions to the 1987 amount thereafter.

viii. Reimbursement for capital facilities which does not require Certificate of Need approval, or which requires Certificate of Need approval but does not require Batching, incurred on or after January 1, 1988 shall be in accordance with the following requirements.

(1) The hospital's Capital Facilities Allowance per Adjusted Admission, including the new capital costs, shall be compared to the statewide Capital Facilities Allowance per Adjusted Admission in accordance with (a)lvii above.

(2) Hospitals with costs per Adjusted Admission below the calculated limit will be reimbursed their actual costs for additional Capital Facilities Allowance in accordance with (a)lviii through v above.

(3) Hospitals with costs per Adjusted Admission above the calculated limit may appeal an increase to the Hospital Rate Setting Commission to add the additional capital costs to their Capital Facilities Allowance.

(A) Where the Commission approves such amounts, in whole or in part, they will be reimbursed in accordance with (a)lviii through v above;

(B) Absent Commission approval, no additional Capital Facilities Allowance reimbursement will be permitted.

2. (No change.)

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:

1. (No change.)

2. Conditionally accept the Certified Revenue Base: Conditional acceptance is contingent upon approval by the Commission of the Schedule of Rates. Subject to approval, conditional acceptance waives the right of the hospital to appeals set forth under N.J.A.C. 8:31B-3.53 and 3.54. Following Commission approval, rates conditionally accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. A hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to conditionally accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. Rates conditionally accepted shall not include the additional one percent of all direct patient care costs. Hospitals may appeal the following items:

i.-ii. (No change.)

iii. Approved certificates of need which are defined as capital and patient care costs arising from projects for which a certificate of need has been granted; except for certificate of need projects approved on or after September 1, 1986 which will only be appealable in accordance with N.J.A.C. 8:31B-3.27(a)lvii. Adjustments in Patient Care Costs in excess of that which would otherwise be deemed reasonable under N.J.A.C. 8:31B-3.20 through 3.36 shall be permitted by the Commissioner acting under this Section only when:

(1) The hospital's historical level of depreciation on major moveable equipment fails to adequately reflect purchases of equipment subject to the State's Standards and General Criteria for Certificate of Need for regionalized tertiary services; or

(2) The hospital has no overall disincentive, and no disincentive in the Patient Care Cost Centers most directly affected by the project.

Note: In evaluating appeals, for (b)2iii above the Commission shall give emphasis to any cost savings projected by the hospital in its application for such a Certificate of Need to any existing debt obligations on existing equipment.

iv. (No change in text.)

3. (No change.)

**HEALTH**

**8:31B-3.55 Capital facilities**

(a) Any changes in debt financing subsequent to the Current Cost Base shall be reported to the Commissioner and reviewed for reasonableness in accordance with N.J.A.C. 8:31B-3.27(a)1.

(b)-(d) (No change.)

**8:31B-3.73 Reconciliation: Hospitals**

(a) Following receipt of actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill—Patient Summaries (inpatient) or N.J.A.C. 8:31A-10.7, whichever is appropriate; determination of actual case-mix as determined the GROUPEE used to establish rates, and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commission's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation:

1. Variable financial elements:

i-iii. (No change.)

iv. For capital indebtedness incurred on or after September 1, 1986, (as defined in N.J.A.C. 8:31B-3.27(a)1vii) adjustments at reconciliation will reflect only adjusted admission figures.

2. Fixed financial elements:

i. (No change.)

ii. Capital Costs: Only capital indebtedness incurred before September 1, 1986 (as defined in N.J.A.C. 3:27(a)1) is considered a fixed financial element. With the exception of the Capital Facilities Formula Allowance and Major Moveable Equipment, these costs shall be reconciled to actual certified amounts, provided that any increase from the prospective amount approved by the Commissioner to the actual amount are related to Capital Facilities as defined in N.J.A.C. 8:31B-3.42.

3.-4. (No change.)

**8:31B-4.42 Capital facilities'**

(a) Buildings and Fixed Equipment:

1. The costs of Capital Facilities used for Services Related to Patient Care as defined in N.J.A.C. 8:31B-4.21, except for Major Moveable Equipment as defined in 8:31B-4.21 and 4.44, are included as financial elements for all hospitals through a Capital Facilities Allowance calculated in accordance with N.J.A.C. 8:31B-3.27(a)1i through vii.

2.-3. (No change.)

'(Footnote) (No change.)

**(a)**

**HOSPITAL REIMBURSEMENT**

**Procedural and Methodological Regulations  
Uniform Bill-Patient Summaries**

**Adopted Amendment: N.J.A.C. 8:31B-3.45**

Proposed: June 6, 1988 at 20 N.J.R. 1143(a).

Adopted: September 20, 1988 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: September 23, 1988 as R.1988 d.497, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: October 17, 1988.

Expiration Date: October 15, 1990.

**Summary of Public Comments and Agency Responses:**

COMMENT: Since outpatient services have been deregulated for Medicare reimbursement purposes, and inasmuch as the proposal is to delay implementation of submittal of Uniform Bill-Patient Summaries for all outpatient claims from the first quarter in 1988 until the first quarter in 1990, the New Jersey Hospital Association requests that the entire sentence regarding the requirement for submitting outpatient Uniform Bill-Patient Summaries be deleted until such time as it is determined that reporting would be in the best interest of the system.

RESPONSE: Maintaining the ability to collect data in a future year allows the Department of Health greater flexibility in the future. The

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option to collect additional data may be a useful tool in examining any future revision of outpatient reimbursement.

**Full text** of the adoption follows:

**8:31B-3.45 Uniform bill-case mix determination-financial reports**

(a) Hospitals shall submit to the Department through the UB-PS Intermediary(ies) and within 90 days of the end of the calendar quarter, information on all inpatients discharged for the quarter containing final diagnoses and such other patient specific information as set forth in the Rule on Hospital Reporting of Uniform Bill-Patient Summaries. The net cost to the hospital of any information provided to the Department by a UB-PS Intermediary for a hospital under a memorandum of understanding developed under N.J.A.C. 8:31B-2.1 of the Rule on Hospital reporting of Uniform Bill-Patient Summaries shall be considered by the Commission in the Preliminary Cost Base established for the hospital. Beginning on or before the first quarter of 1990 hospitals shall also submit Uniform Bill-Patient Summaries on all outpatients containing final diagnosis or reason for visit (as defined by the Department), for each outpatient. Included with such reporting shall be a statement of gross revenue by revenue center for patients discharged in the quarter (including in-house accounts of the previous period but excluding in-house accounts of the current quarter) for inpatient, emergency service, clinic, home health, outpatient dialysis, ambulatory surgery, same day psychiatry, and private referred patients. UB-PS records not received by the Department within the time frames specified may not be included in the hospital's Final Reconciliation unless the hospital pays to the Commission a fine as specified in the Uniform Bill-Patient Summary (inpatient) Regulation, section IV-E. This decision will be at the discretion of the Commission.

(b)-(c) (No change.)

**(b)**

**NARCOTIC AND DRUG ABUSE CONTROL**

**Controlled Dangerous Substances  
Use of Sodium Pentobarbital in Animal Humane Societies**

**Adopted Amendments: N.J.A.C. 8:65-1.3, 6.6**

**Adopted New Rule: N.J.A.C. 8:65-8.13**

Proposed: February 16, 1988 at 20 N.J.R. 366(a).

Adopted: September 22, 1988 by Molly J. Coye, M.D., M.P.H., Commissioner, Department of Health.

Filed: September 23, 1988 as R.1988 d.498, **without change.**

Authority: N.J.S.A. 24:21-9.

Effective Date: October 17, 1988.

Expiration Date: December 2, 1990.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

**8:65-1.3 Activities requiring registration**

(a)-(h) (No change.)

(i) A person or duly authorized agent registered as a dispenser for the purchasing and dispensing of Sodium Pentobarbital for the purpose of animal euthanasia shall be limited to registration in Schedule II N (Sodium Pentobarbital) and may possess or have under his control such amounts as are reasonably necessary to administer euthanasia on the premises of the registered location.

**8:65-6.6 Procedure for executing order forms**

(a)-(e) (No change.)

(f) The registered agent of a Humane Society or licensed animal shelter may apply for Federal purchase order forms as described in N.J.A.C. 8:65-6.4 and 8:65-6.5. Execution of the order forms shall be as specified in (a) through (e) above.

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8:65-8.13 Humane societies and animal care facilities

(a) Incorporated humane societies or licensed animal care facilities authorized to purchase, possess and to dispense Sodium Pentobarbital for animal euthanasia pursuant to N.J.S.A. 24:21-11(f) shall:

1. Be authorized to dispense any commercially prepared Sodium Pentobarbital drug product for animal euthanasia approved for interstate sale by the United States Food and Drug Administration, provided the registrant complies with the approved recommended dosage regime in the labeling;

2. Be authorized to dispense a standard compounded formula of Sodium Pentobarbital for animal euthanasia established by the Department as follows:

i. Sodium Pentobarbital injection (for animal euthanasia), formula non-sterile solution:

U.S.P. Pentobarbital Sodium (Powder)	460 grams
Isopropyl Alcohol	250 mls.
Methyl Violet	1 drop
U.S.P. Water for injection	
Quantity sufficient to make	1000 mls.

ii. Using the formula in (a)2; above, the strength of this mixture will provide 460 mgs of Pentobarbital Sodium per milliliter.

iii. Lethal dose: one milliliter per 10 pounds of body weight for small animals; horses and other large animals—one milliliter per 10 pounds of body weight subject to a maximum dose of 100 milliliters.

iv. Package and storage: Package in tight containers with rubber stoppers and store under refrigeration. Solutions decompose on standing. Heat accelerates the decomposition.

v. Expiration date: five days from date of manufacture.

(b) Labeling: sample labeling is as follows:

- |    |    |    |
|----|----|----|
|    | 1. |    |
|    | 2. |    |
|    | 3. |    |
|    | 4. |    |
| 5. |    | 7. |
| 6. |    | 8. |
| 9. |    |    |

1. Name and address, city and State of registrant;
2. Name of preparation: "Pentobarbital Sodium Injection";
3. Strength of the preparation: "460 milligrams per one milliliter";
4. "Lethal dose: one milliliter per 10 pounds of body weight for small animals; horses and large animals—one milliliter per 10 pounds of body weight subject to a maximum dose of 100 milliliters.";
5. "Batch number . . .";
6. "Net contents . . .";
7. "Expiration date . . .";
8. "Keep under refrigeration.";
9. "Warning: Do not use the injection if it contains a precipitate."

(c) A master formula and production record shall be made and retained on file at the formulating (compounding) site. This record shall contain:

1. Name, address, city and State of registrant;
2. Name and strength of the product and a description of the dosage form;
3. The name and weight or measure of each active ingredient including the control number of each such ingredient;
4. A statement of the theoretical yield of finished product;
5. A statement describing the equipment and utensils used in the formulating (compounding);
6. A description of the finished drug product containers and closures including a specimen or copy of each label and all other labeling signed and dated by the person or persons responsible for approval of such labeling; and
7. Complete manufacturing and control instructions, procedures, special notations and precautions to be followed.

(d) Batch production records shall be prepared for each batch of drug product produced and shall include complete information relating to the production of each batch. The records shall contain:

1. An accurate reproduction of the appropriate master formula production record, checked for accuracy, dated and signed;

2. Documentation that each significant step in the manufacture, processing, packaging or holding of the batch was accomplished, including:

- i. Dates;
- ii. Identity of the individual equipment used;
- iii. Specific identification of each batch of component or materials used;
- iv. Weights and/or measures of components used in processing;
- v. Copy of all labeling used;
- vi. Identification of the person performing each step in the process and identification of the person checking the weights, measures and operations;
- vii. A statement of the theoretical yield; and
- viii. A statement of the actual yield.

**(a)**

**Controlled Dangerous Substances Schedule V**

**Adopted Amendment: N.J.A.C. 8:65-10.5**

Proposed: July 5, 1988 at 20 N.J.R. 1506(a).

Adopted: September 22, 1988 by Molly J. Coye, M.D., M.P.H., Commissioner, Department of Health.

Filed: September 23, 1988 as R.1988 d.496, **without change**.

Authority: N.J.S.A. 24:21-9.

Effective Date: October 17, 1988.

Expiration Date: Exempt.

Summary of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

8:65-10.5 Controlled dangerous substances; Schedule V

(a) (No change.)

(b) The following is the Schedule V listing of controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code numbers for Narcotic Drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, or mixture or preparation containing any of the following narcotic drugs and their salts is included in this schedule:

Buphenorphine 9064

(c) The following is the Schedule V listing of controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code numbers for Narcotic Drugs Containing Non-Narcotic Active Medicinal Ingredients. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone, is included in this schedule:

Renumber i. through vi. as 1. through 6. (No change in text.)

(d) The following is the Schedule V listing of controlled dangerous substances by generic, established or chemical name and the controlled dangerous substances code numbers for Stimulants. Unless specifically exempted or excluded, or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including salts, isomers and salts of isomers is included in this schedule:

**HUMAN SERVICES**

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Independent Clinic Services Manual  
Partial Care**

**Adopted Amendment: N.J.A.C. 10:66-1.6 and 10:66-3**

Proposed: May 16, 1988 at 20 N.J.R. 1054(a).  
Authorized By: Drew Altman, Commissioner, Department of Human Services.

Filed: September 20, 1988 as R.1988 d.481, **with technical change.**

Authority: N.J.S.A. 30:4D-2, 6b(3)(12); 7a, b, c; 30:4D-12, 42  
CFR 440.90, 440.130.

Effective Date: October 17, 1988.

Expiration Date: December 15, 1988.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Summary of Changes Between Proposal and Adoption:**

There is one codification change upon adoption. The subsection that describes mental health services rules in a clinic setting is being relettered from (h) to (i) to conform to the existing codification in the New Jersey Administrative Code. There is no change in the text between the proposal and adoption. Therefore, this change is non-substantive in nature.

**Full text** of the adoption follows (additions indicated in boldface and asterisks **\*thus\***; deletions indicated by brackets and asterisks **\*[thus]\***).

10:66-1.6 Scope of services

(a)-(h) (No change.)

**\*[(h)]\*\*\*(i)\*** Mental health services rules are as follows:

1. Mental health clinics shall provide the following mental health services by, or under the direction of, a psychiatrist.
  - i. Individual therapy;
  - ii. Group therapy;
  - iii. Partial care: A Partial Care program shall provide a full system of services including:
    - (1) Assessment and evaluation;
    - (2) Service procurement;
    - (3) Therapy and counseling;
    - (4) Information and referral;
    - (5) Daily living education;
    - (6) Community organization;
    - (7) Pre-vocational therapy
    - (8) Recreational therapy;
    - (9) Health related services.
  - iv. (No change in text.)
- 2.-5. (No change.)
- (j)-(p) (No change.)

10:66-3 HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

Appendix A5

Partial Care: A mental health service whose primary purpose is to maximize the client's independence and community living skills in order to reduce unnecessary hospitalization. It is directed toward the acute and chronically disabled individual. PC programs shall provide, as listed below, a full system of services necessary to meet the comprehensive needs of the individual client. Services shall be provided or arranged for, to meet the individual needs of participating clients. These services shall include:

- Assessment and evaluation;
- Service Procurement;
- Therapy;
- Information and referral;
- Counseling;

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IND	HCPCS CODE	MOD	DESCRIPTION	FOLLOW UP DAYS	MEDICAID DOLLAR VALUE		
					S	\$	NS
			Daily living education; Community organization; Pre-vocational Therapy Recreational Therapy Health-related. Partial Care Programs shall be available daily for five days a week, with additional planned activities each week, during evening and/or weekend hours as needed. Individual clients need not attend every day but as needed. Partial care programs specifically developed for children may be available four days a week, with one evening and/or weekend activity(ies). The staff of the Partial Care Program should include a Director who shall be a qualified professional from the specialties of psychiatry, psychology, social work, psychiatric nursing, vocational rehabilitation, or a related field with training and/or experience in direct service provision and administration. A qualified psychiatrist shall be available to the PC program on a regularly scheduled basis, for consultation. Other staff deemed necessary to implement a Partial Care Program which meets the requirement of this section should include qualified mental health professionals, para-professionals and volunteers.				

Appendix A7

IND	HCPCS CODE	MOD	DESCRIPTION	FOLLOW UP DAYS	MEDICAID DOLLAR VALUE		
					\$	\$	NS
			In order to qualify as an approved Partial Care Program the program must be certified by the Department.				
	Z0170		Partial Care, half day		23.00		23.00
	Z0180		Partial Care, fully day		38.50		38.50

These services may be provided directly or arranged by PC staff through other Program Elements or agencies, to avoid duplication.  
 Note: Except for transportation these rates reflect full payments with a prohibition against multiple billing for more than one service to a Medicaid patient in a given day.

(a)

**DIVISION OF PUBLIC WELFARE**

**Home Energy Assistance Handbook  
 Program Eligibility; Income Eligibility Guidelines;  
 Emergency Energy Assistance and Application  
 Process**

**Adopted Amendments: N.J.A.C. 10:89-2.1, 2.3, 3.4  
 and 4.1**

Proposed: July 18, 1988 at 20 N.J.R. 1643(a).  
 Adopted: September 20, 1988 by Drew Altman, Commissioner,  
 Department of Human Services.  
 Filed: September 20, 1988 as R.1988 d.482, **without change**.  
 Authority: N.J.S.A. 30:4B-2.

Effective Date: October 17, 1988.  
 Operative Date: November 1, 1988.  
 Expiration Date: September 11, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

10:89-2.1 General

In order to receive Home Energy Assistance benefits, the household must meet the eligibility requirements found in this chapter and must make application in accordance with N.J.A.C. 10:89-4 (Application Process) or be entitled to automatic payments in accordance with N.J.A.C. 10:89-3.1. All Home Energy Assistance benefits must be used to offset current costs of home energy.

10:89-2.3 Income Eligibility

(a)-(e) (No change.)

(f) Income computation: Countable gross monthly earned and unearned income, as defined in (c) and (d) above, and verified in accordance with N.J.A.C. 10:89-4.1(d), shall be added to determine the household's total gross monthly income. Cents shall be rounded to the nearest dollar. If the household's total gross monthly income is equal to or less than the gross income limit for the household size, the household is income eligible for Home Energy Assistance.

1.-3. (No change.)

4. Roomer-boarders residing with an applicant household are not to be included in the household size and the income of such individuals is not to be considered in the eligibility determination. However, in accordance with N.J.A.C. 10:82-4.3(c) in the Assistance Standards Handbook (ASH), any income to the HEA Program applicant household in roomer-boarder situations in excess of \$125.00 per month shall be considered in determining the household's gross monthly income.

i. The only exception to (f)4 above will occur if the roomer-boarder is a spouse, parent, grandparent, child, brother or sister of a household member. In such instances, the roomer-boarder shall be included in the household size and his or her gross monthly income considered as part of the household's income in determination of eligibility.

5. (No change.)

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limit
1	\$ 721
2	966
3	1211
4	1456
5	1701
6	1946
7	2191
8	2436
9	2681
10	2926
Each additional member	+245

10:89-3.4 Emergency energy assistance

(a) Emergency energy assistance is available to HEA eligible households and is subject to the following conditions:

1.-4. (No change.)

5. The CWA shall, no later than 48 hours after a household or its representative signs the declaration of energy emergency, provide some form of assistance that will resolve the energy crisis if such household is eligible to receive such benefits.

6. The CWA shall also, not later than 18 hours after a household or its representative signs the declaration of energy emergency, provide some form of assistance that will resolve the crisis if such household is eligible to receive such benefits and is in a life-threatening situation.

Renumber existing 5.-6. as 7.-8. (No change in text.)

(b)-(c) (No change.)

(d) Emergency energy assistance for specific services:

1. Emergency energy assistance is authorized through the CWA when a household is without heat or is in danger of being without heat. Payments for the following services shall only be authorized for a household if the household owns and resides in the residence requiring the service:

i. Furnace repairs up to \$1,000 are authorized when an HEA eligible household that pays a fuel supplier directly for their primary source of heat is in need of furnace repair to prevent homelessness or where assistance for furnace replacement is not available through the New Jersey Department of Community Affairs (DCA) Weatherization and Furnace Retrofit Programs.

(1) HEA funds are not intended to supplant or supplement existing services available through DCA and are to be considered assistance to the homeowner to prevent homelessness only.

(2) CWAs shall obtain written estimates of necessary repairs prior to authorizing payment.

(3) Once payment is authorized, an itemized receipt for furnace repair services shall be included in the HEA case record.

(e) (No change.)

(f) Emergency assistance benefits to prevent eviction:

1. Payment may be authorized to eligible households facing eviction due to non-payment of rent or mortgage arrears whose heating costs are included in a single monthly rental charge or mortgage

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payment, or who pay only for a secondary source of heat, or who pay a separate charge to their landlord for heat.

2. Emergency assistance to prevent eviction may not exceed the difference between the amount of the HEA entitlement for the program year and \$900.00, and shall be the lowest amount necessary to prevent eviction from the residence.

3. The applicant household must have received official documentation of pending eviction due to non-payment of rent, such as a tenancy complaint filed by the landlord or an order for eviction from the courts. The assistance available must be sufficient to prevent eviction. Households which have already been evicted are not eligible for this assistance.

(g) (No change in text.)

10:89-4.1 Opportunity and decision to apply

(a)-(c) (No change.)

(d) At the time of application, the CWA shall advise the household of all program eligibility requirements and the method by which assistance will be provided. Additionally, the CWA shall assist the household in completing the application and explain what elements of eligibility must be verified. The CWA must advise the household what verification is required and explain that the case will be denied if verification is not provided.

1. Verification requirements: The CWA shall assist the household in obtaining the required verification.

i. Required documentation: The following must be verified, documented and retained in the case record by the CWA prior to transmitting the application to DPW:

(1) (No change.)

(2) Social Security number of the applicant. If an applicant has not previously obtained a Social Security number, the CWA shall ensure that the applicant applies for a Social Security number by submitting Form SS-5. (Social Security numbers for all other adult household members shall be recorded);

(A) SS-5 forms may not be utilized to enumerate HEA only applicants (those who do not have an AFDC or Food Stamp Program case number). Any applicant for HEA-only who has not been assigned a Social Security number must be referred to the local Social Security Administration district office to apply for same, and must submit verification of such application to the CWA.

(3)-(10) (No change.)

ii. Documentation of questionable information: The following must be verified and documented if the information provided by the applicant is questionable or inconsistent:

(1) (No change.)

(2) Gross monthly income and total monthly household expenditures.

Renumber existing (2)-(3) as (3)-(4) (No change in text.)

(e)-(j) (No change.)

**INSURANCE**

**(a)**

**DIVISION OF ADMINISTRATION**

**Unfair Claims Settlement Practices  
Use of After Market Parts**

**Adopted Amendments: N.J.A.C. 11:2-17.3 and 17.10**

Proposed: June 6, 1988 at 20 N.J.R. 1159(a).

Adopted: September 15, 1988, by Kenneth D. Merin,  
Commissioner of Insurance.

Filed: September 19, 1988 as R.1988 d.480, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:29B-1 et seq.

Effective Date: October 17, 1988.

Expiration Date: December 2, 1990.

**ADOPTIONS**

**Summary of Public Comments and Agency Responses:**

**COMMENT:** The Alliance of American Insurers (AAI) commented that a certification program (see proposed N.J.A.C. 11:2-17.10(a)11) is in the development stage and that it is presently not available. As a result, AAI suggests that the relevant language concerning certification be deleted.

**RESPONSE:** The Department believes that if the requested change is made there would be no incentive for the after market parts industry to proceed with an independent testing program, which is desirable. Also, it is noted that certification is not required. Accordingly, no change in the proposed rule amendment is being made.

**COMMENT:** AAI commented that the requirement that insurers "shall provide coverage" for any necessary modifications should be deleted because insurance companies presently do so now without a regulatory requirement and because, in its opinion, specifying this requirement will encourage inflated claims by certain body shops.

**RESPONSE:** This requirement will remain in the adopted amendments as it was first proposed. The Department believes that it is necessary to require insurers to cover the cost of modifications made necessary by the use of after market parts by a formal administrative rule rather than to rely on general industry practice or standard policy language. By codifying this requirement, the public is more fully protected and the industry is not burdened. The Department believes that any allegations of projected wrongdoing by body shops are, at this stage, without foundation, and that existing statutes and rules of other administrative agencies will adequately respond to any actual transgressions committed by body shops.

**COMMENT:** AAI commented that proposed N.J.A.C. 11:2-17.10(a) 13 mandates a standard disclosure notice to the claimant with respect to after market parts. AAI acknowledges that the responsibility for providing disclosure rests with "the insurer." AAI agrees with the disclosure requirement, but states that claims settlement practices vary considerably among insurers, and often the estimate provided to the claimant is not prepared by the insurer. In many cases, the estimate is provided to the claimant by the auto body shop or by an independent adjuster or appraiser. AAI suggests that the reference to "the insurer" be changed to include as an alternative "the person preparing the estimate."

**RESPONSE:** The Department notes that AAI's recommendation is inconsistent with N.J.A.C. 11:3-10.3(c), which requires that insurers furnish to the owner of a damaged vehicle (or to that individual's representative) a detailed estimate in writing in cases of partial loss. Accordingly, claims settlement practices should not vary and only the insurer should furnish the estimate in cases of partial loss. However, the Department will take this matter under advisement as to the issue of amending both the instant rule and N.J.A.C. 11:3-10.3(c).

**COMMENT:** AAI comments that it is concerned about the specific wording of the disclosure statement in proposed N.J.A.C. 11:2-17.10(a)13. AAI believes that the development of the after market parts industry should be encouraged for the long term benefit of the consumer. AAI notes that the disclosure statement refers to after market parts as "automobile parts not made by the original manufacturer." Although the next sentence should make it clear to the consumer that the parts are not inferior, AAI fears that the proposed phraseology tends to imply inferiority. Accordingly, AAI proposes what it considers to be more neutral terminology, such as "automobile parts made by a manufacturer other than the original manufacturer."

**RESPONSE:** The Department believes that the suggested rephrasing would be confusing for the consumer and would not clearly indicate to the consumer what parts are being used. The proposed language more clearly advises the consumer that an after market part is being used, without, in the Department's opinion, implying inferiority. The Department rejects this comment.

**COMMENT:** The American Insurance Association (AIA) questions the reference in N.J.A.C. 11:2-17.10(a)10 to an after market part's identification being accessible to the extent possible and suggests deletion of any indication of accessibility. AAI believes that the rule may be construed to mean "physically possible" as opposed to what is common practice or "reasonably practical."

**RESPONSE:** The rule is to be interpreted to include both "physical possibility" and "practical possibility" in identifying an after market part. That is, all factors are to be considered in a determination as to whether this requirement has been fulfilled.

**COMMENT:** AIA suggests that the warranty provision for after market parts be deleted. AIA notes that the original manufacturer's war-

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warranties change from year to year and from part to part in a manner making it difficult to satisfy this requirement.

**RESPONSE:** Upon further consideration of this issue, the Department agrees with this comment and will delete the reference to warranty as proposed in N.J.A.C. 11:2-17.10(a)11. This deletion is consistent with the NAIC Model. The Department believes that this requirement is generally unenforceable because it is difficult to compare warranties. If implemented, this requirement would have been relatively meaningless as a method of protecting the consumer. However, the Department believes that warranty protection is an essential component of consumer protection and will still require that reasonable warranties be provided, without requiring that they precisely duplicate the terms of warranties offered by the original equipment manufacturer. It is believed that the competition of the marketplace will ensure adequate warranty protection. This change upon adoption, to require warranty protection without requiring conformity to those offered by original equipment manufacturers, is consistent with N.J.A.C. 1:30-4.3 since, as a practical matter, the rule as proposed was unenforceable and would have inevitably been enforced in a manner which is consistent with the change now being made upon adoption. Moreover, warranty protection will still be required so that the consumer is protected.

**COMMENT:** AIA comments that the language contained in proposed N.J.A.C. 11:2-17.10(a)12, requiring insurers to "provide coverage for any modifications," may be unclear. AIA notes that the words "provide coverage" may be construed to require a change in policy language. Current policy language provides that the repair should be made and that insurers will pay for any additional labor cost made necessary by the use of an after market part. The use of the word "coverage," therefore, seems unnecessary. AIA would prefer substituting a word such as "pay".

**RESPONSE:** The Department agrees with this comment and will make the appropriate change upon adoption. The substitution of the word "pay" for "provide coverage" is indeed a proper clarification of the Department's original intent. This change is clarificatory only, and thus does not violate the provisions of N.J.A.C. 1:30-4.3.

**COMMENT:** The National Association of Independent Insurers (NAII) suggests that the rules require the use of only parts with permanent identification, whether they be original equipment or after market parts.

**RESPONSE:** The proposed amendments concern only the use of after market parts. Thus, imposing a "permanent identification" requirement on original equipment manufacturers is, in the present context, procedurally and substantively inappropriate. Additionally, such a change could not be made without repropounding the proposed amendments, even if the suggested changes were appropriate. The Department further believes that there may be little to gain from imposing a similar requirement on original equipment manufacturers. However, the Department will take this matter under advisement.

**COMMENT:** NAII states that the requirements should extend only to parts manufactured after the effective date of the amendments.

**RESPONSE:** The Department accepts this comment. This requirement is in the NAIC Model Regulation and is clearly implied in the proposed amendments. This change upon adoption will not violate N.J.A.C. 1:30-4.3 since it eases what would otherwise be an unfair burden on after market parts manufacturers, whose existing inventory would be rendered useless. Such a circumstance would be unreasonable and arguably legally impermissible.

**COMMENT:** NAII suggests amendments to proposed N.J.A.C. 11:2-17.10(a)11. Unlike the NAIC Model, it notes, the amendment requires at least equality in terms of fit, performance and warranty. NAII argues that it is difficult to compare warranties.

**RESPONSE:** This comment is the same as that for which a response was given above.

**COMMENT:** NAII comments that the certification language in proposed N.J.A.C. 11:2-17.10(a)11 is unclear. NAII proposes that the Department delete the language completely and that the issue of certification for quality purposes be left to the competitive forces of the marketplace.

**RESPONSE:** Certification is not mandatory and is only one obvious method of insuring equality. Accordingly, this matter is essentially left to the "competitive forces of the marketplace." Since the after market parts industry is presently actively developing certification procedures, this approach to ensuring quality will likely be the standard imposed by the industry itself.

**COMMENT:** NAII comments that the use of the word "warranties" in the disclosure statement in proposed N.J.A.C. 11:2-17.10(a)13 should

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be deleted consistent with its comment that the warranty requirement in proposed N.J.A.C. 11:2-17.10(a)11 itself be deleted.

**RESPONSE:** For the reasons stated in an earlier response, this comment is accepted.

**COMMENT:** Royal Insurance comments that the proposed amendments do not control the auto body repair facilities nor do they provide an opportunity for the insurer to reinspect the vehicle subsequent to the repairs being made.

**RESPONSE:** The Department of Insurance cannot regulate the activities of auto body repair facilities. These businesses are primarily regulated by the Division of Motor Vehicles and the Division of Consumer Affairs.

**COMMENT:** New Jersey Manufacturers Insurance Company comments that the proposed amendments should include a provision that the insurer has no obligation under the proposed amendments in the case of after market parts being used or authorized by a party other than the insurer or its representative.

**RESPONSE:** This comment is accepted and the Department will make the appropriate change upon adoption. This change will merely clarify, consistent with the proposed amendments as a whole, that the disclosure provision applies only when insurers (rather than the vehicle owner or body shop) require the use of an after market part. The proposed amendments regulate the operations of insurance companies only, and the Department will be without the authority to require auto body shops to make such a disclosure. Accordingly, this change is consistent with N.J.A.C. 1:30-4.3.

**COMMENT:** The Professional Insurance Agents (PIA) comment that the proposed amendments are necessary because the use of after market parts has become more and more prevalent. The use of these parts presents a clear and identifiable hazard to the New Jersey consumer in that such parts are not currently subject to the regulation and therefore do not necessarily have to meet any quality control standards. Further, PIA states, there is currently no requirement that the use of such parts be disclosed to the consumer. These amendments would require that the estimate for repair contain a notice stating the use of after market parts and would require that insurers who require the use of any such part shall provide coverage for any subsequent necessary modification.

**RESPONSE:** The Department agrees with this comment.

**COMMENT:** The Division of Consumer Affairs of the State of New Jersey comments that they see no conflict with its rules codified at N.J.A.C. 13:45A-7 et seq. They note that the disclosure requirement in the proposed amendments will "work in conjunction with" their rules, and that such disclosure is an important factor in consumer protection.

**RESPONSE:** The Department agrees with this comment.

**COMMENT:** The Motor Vehicle Manufacturer's Association (MVMA) suggests that the reference to "like kind and quality" is misleading to the consumer and that testing parts via "reverse engineering" is improper.

**RESPONSE:** The term "like kind and quality" is a part of the standard automobile policy and there is no reference in any indemnity contract, to the Department's knowledge, that only parts manufactured by the original manufacturer are to be used. Including this phrase in the rule will not confuse consumers, but should have the opposite effect. It will provide them with both the feeling and the fact of security concerning repairs to their automobile. Further, since the after market parts industry is developing a certification procedure, the phrase will be objectified and manifested in a mechanical procedure. "Reverse engineering" would appear to be necessary since the original equipment manufacturers have apparently refused to make part specification available.

**COMMENT:** MVMA questions whether the inclusion of a warranty as a measure of equality will act to restrict competition with regard to warranties.

**RESPONSE:** This is conjecture. In any event, for the reasons noted in a prior response, the warranty requirement as proposed is being deleted. The warranty requirement that is being adopted will clearly foster competition.

**COMMENT:** MVMA comments that the Department should require disclosure of warranty terms for both original equipment manufacturers and after market replacement parts.

**RESPONSE:** The Department will take this comment under advisement. As noted in a previous response, the instant amendments concern after market parts only.

**COMMENT:** The Central Jersey Auto Body Association (CJABA) is "uniformly opposed to the amendment." CJABA believes that the quality of after market parts is "questionable at best."

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RESPONSE: CJABA provides no documentation to support its opposition and it appears that its opposition is directed to the use of after market parts generally, rather than to the identification, disclosure and quality provisions of the instant amendments. For the reasons identified in the notice of proposal, the Department firmly believes that consumers and insurers should be given the option to use after market parts. The proposed amendments are only an attempt to ensure that when these parts are used, their quality will satisfy the consumer and such use will be disclosed to the consumer.

COMMENT: State Farm Insurance Company (State Farm) comments that the inclusion of a warranty as a criterion for a quality comparison should be deleted.

RESPONSE: For the reasons stated in a previous response, the Department agrees with this comment and will make the appropriate change upon adoption.

COMMENT: State Farm finds "generally acceptable" the requirement that after market parts carry permanent identification. However, State Farm states that this requirement should also apply to original equipment manufacturers.

RESPONSE: As noted in a previous response, the Department believes that a change such as that which is suggested cannot be made without further consideration or within the current context. This matter will be taken under advisement.

COMMENT: State Farm comments that the phrase "independent testing laboratory" in proposed N.J.A.C. 11:2-17.10(a)11 may be misleading since currently there is only one certification entity, CAPA, which is funded by automobile manufacturers. It is suggested that CAPA may not be an "independent facility."

RESPONSE: The use of an independent testing facility is optional. It is hoped that the inclusion of this language in the proposed amendments will inspire the after market parts industry to develop procedures to ensure equality of quality. Presently, insurers, body shops and after market parts manufacturers are working to develop independent testing procedures.

COMMENT: State Farm comments that to the extent that certification is required for any replacement parts, it should be required for all replacement parts, and thus it should also be applied to original equipment manufacturers.

RESPONSE: The Department will take this issue under advisement, and notes that a rule concerning the use of after market parts is not the appropriate location for the rules as are suggested by State Farm.

COMMENT: State Farm would like to delete proposed N.J.A.C. 11:2-17.10(a)12, requiring insurers to pay for modifications made necessary by the use of after market parts. It fears that body shops will demand additional compensation based on unwarranted claims that additional time was needed to make after market parts fit properly. State Farm indicates that insurers are contractually bound to restore a damaged vehicle to its pre-accident condition.

RESPONSE: State Farm's fear is conjectural only. Abuses by body repair shops can be controlled under the existing provision of the rules of the Division of Motor Vehicles and the Division of Consumer Affairs. Since contracts may vary at this or some future time, the Department believes that this requirement is necessary and appropriate to protect the consumer.

COMMENT: State Farm, consistent with its comment on warranties, suggests that the reference to warranties in the disclosure statement in proposed N.J.A.C. 11:2-17.10(a)13 be deleted.

RESPONSE: As previously noted, the Department agrees that if the warranty requirement no longer exists, its reference in the disclosure statement is inappropriate. This change will be made upon adoption.

COMMENT: State Farm comments that the proposed amendments apply to both first and third party claims while the NAIC Model applies to first party claims only.

REPOSE: As the insurer's obligation to indemnify is essentially the same in both first and third party claims, there is no acceptable reason, nor is one offered by State Farm, why the proposed amendments should not apply to both types of claims. The standards for the adjustment of claims should be the same regardless of liability. One could argue that the protection afforded by these amendments is more necessary in the context of third party claims where there is no clear contractual protection. The insurer is always free to use original equipment manufacturer parts exclusively on third party or first party claims if it is so desired.

COMMENT: General Motors Corporation (GMC) requests that a statement be included in the disclosure notice stating: "The use of automobile parts not made by the OEM (original equipment manufacturer) may affect any remaining warranties of the OEM of that automobile."

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RESPONSE: The Department believes that including such a statement would add nothing and, instead, would be an attempt to add bias to an otherwise "neutral" rule. The suggested statement tells the consumer nothing and could as easily read that the use of after market parts may not affect warranties.

COMMENT: GMC asserts that the proposed amendments cannot require that after market parts be of like kind and quality unless there is a mechanism for administering and enforcing that requirement.

RESPONSE: Insurance policies generally require that repairs be of like kind and quality and restore a vehicle to its pre-loss condition. The forums for resolving disputes concerning the quality of repairs are already in place. Additionally, as previously noted, the after market parts industry, insurers and auto body shops are currently developing an independent testing procedure.

**Agency Initiated Changes**

1. In the proposed definition of "after market part" in N.J.A.C. 11:2-17.3, the word "necessarily" is deleted. The word adds nothing to the definition. Accordingly, this change is consistent with N.J.A.C. 1:30-4.3.

2. In proposed N.J.A.C. 11:2-17.10(a)13, the word "must" is being changed to "shall" to conform to standard drafting practices.

3. "Quality" has been added to N.J.A.C. 11:2-17.10(a)11 and the disclosure statement in (a)13 to conform both to the NAIC Model Regulation.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

**11:2-17.3 Definitions**

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

"After market part" means sheet metal or plastic parts which constitute the exterior of an automobile, including inner and outer panels, manufactured by any manufacturer other than the original manufacturer of the part. Examples of after market parts include, but are not \*[necessarily]\* limited to, the following: doors, hoods, fenders, trunk lids, grills and bumper components.

**11:2-17.10 Rules for fair and equitable settlements applicable to property and liability insurance**

(a) This section, unless otherwise noted in this subchapter, is applicable to claims arising under all property/liability coverages. This section is organized so that the requirements for all lines of property/liability insurance are found in (a)1 through 6 below; for automobile insurance only, in (a)7 through 13 below; and for other than automobile insurance only, in (a)14 and 15 below. The requirements of this section with respect to motor vehicle claims are in addition to the requirements of N.J.A.C. 11:3-10. In addition to the provisions of this section, the requirements for auto physical damage first party claims found in N.J.A.C. 11:3-10.1 through 10.4 shall also be construed to apply to automobile property damage third party claims from the time that liability becomes reasonably clear. The requirements are as follows:

1.-9. (No change.)

10. All after market parts **\*manufactured after October 17, 1988\*** used in the repair of an automobile where insurance proceeds provide the basis of payment therefor shall carry sufficient permanent identification so as to identify the manufacturer thereof. Such identification shall be accessible after installation to the extent possible.

11. No insurer shall require the use of after market parts in the repair of an automobile unless the after market part is **\*warranted by the manufacturer in a reasonable manner as to duration and coverage and\*** at least equal in like kind and quality to replacement parts available from the original manufacturer of the part in terms of fit, **\*quality and\*** performance **\*[and warranty]\***. Use of after market parts which have been certified by an independent testing laboratory as being of like kind and quality to the original manufactured part will be deemed to be in compliance with the requirements of this paragraph.

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12. Insurers specifying the use of after market parts shall \*[provide coverage]\* \*pay\* for any modifications which may become necessary in making the repair.

13. \*[The]\* \*Where the insurer specifies the use of after market parts, the\* insurer \*[must]\* \*shall\* disclose to the claimant, in writing, either on the estimate or on a separate document attached to the estimate, the following information, which shall appear in print no smaller than 10 point type:

THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL IN LIKE KIND AND QUALITY IN TERMS OF FIT, PERFORMANCE AND WARRANTIES TO REPLACEMENT PARTS AVAILABLE FROM THE ORIGINAL MANUFACTURER.

The insurer shall clearly identify on the estimate of such repair all after market parts installed on the vehicle.

14. If the insurer intends to exercise its right to inspect, or cause to be inspected by an independent appraiser, damages prior to repair, it shall have 10 working days following receipt of notification of claim to inspect the claimant's damaged property at a place and time reasonably convenient to the claimant, provided that the claimant has not refused to make the property available for inspection. For third-party property damage claims, this paragraph shall apply once the insured's liability is reasonably clear. This paragraph does not apply to losses caused by a catastrophe.

Recodify existing 11. as 15. (No change in text.)

**(a)**

**DIVISION OF ACTUARIAL SERVICES**  
**Group Coordination of Health Benefits**  
**Adopted New Rules: N.J.A.C. 11:4-28**

Proposed: August 1, 1988 at 20 N.J.R. 1773(b).

Adopted: September 23, 1988, by Kenneth D. Merin,  
 Commissioner, Department of Insurance.

Filed: September 23, 1988 as R.1988 d.499, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:48-1.7, 17:48A-9,  
 17:48C-13, 17:48D-23, 17:48E-44 and 17B:27-49.

Effective Date: October 17, 1988.

Expiration Date: December 2, 1990.

**Summary of Public Comments and Agency Responses:**

COMMENT: The New Jersey Dental Association (NJDA) "generally agrees" that New Jersey should follow the NAIC Model as amended in the re-proposal. However, NJDA comments that compliance with the rules should be changed from January 1, 1989 to September 1, 1988. NJDA argues that due to the calendar year budget which many companies follow, many contracts are signed between September 1 and December 30. If a group enters into a benefit contract during this time frame, whether it be for one, two or three years, the coordination of benefits (COB) rules will not be unified until after the three year contract has expired.

RESPONSE: Pursuant to N.J.A.C. 11:4-28.11, insurers are free to use the rules or the "birthday" order of payment portion of the rules as soon as they are able to bring their forms into compliance therewith. The proposed rules merely provide that compliance must be no later than the next renewal or anniversary date. Further, since these rules were first published on August 15, 1988, groups entering into benefit contracts between September 1 and December 30, 1988, have already been apprised of its provisions and could have taken the proposed rules into account in negotiating benefit contracts.

In cases where an insurer does not voluntarily wish to adopt the provisions of the rules, note the following. Pursuant to the rules of the Office of Administrative Law (OAL), in implementation of the New Jersey Administrative Procedure Act, a rule is effective upon publication of the notice of adoption in the New Jersey Register. A rule may be made operative (it may be implemented) upon the effective date or at some time-certain thereafter. With this legal framework in mind, this rule will

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not become effective and cannot be implemented until October 17, 1988—the date of publication of these new rules. This date is several weeks after the date desired by NJDA. The Department believes that a reasonable amount of lead time is necessary for companies to achieve compliance with the new rules. Accordingly, the January 1, 1989 compliance date is appropriate. Moreover, the retroactive application of a rule is highly disfavored in law and, in the opinion of the Department, impermissible in this case. Therefore, a mandatory retroactive application of the COB rules to contracts or bargaining agreements in effect prior to its promulgation is inappropriate.

Additionally, it is believed that although NJDA's plight is not singular, it is also not the rule, and many contracts will not be entered into between September 1 and December 30 of this year. Accordingly, unification will not be a general problem beyond the scope which has been determined by the Department to be acceptable.

The OAL's rules do allow for a rule to be adopted on an emergency basis. However, the Department does not believe that there exists an "imminent peril" necessitating emergency proceedings (see N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-4.5).

Further, the chosen date is more clearly defined than one which is later in the calendar year, and the Department believes that the administration of the new rules is best facilitated by its implementation at the beginning of a calendar year.

COMMENT: Metropolitan Life Insurance Company comments that the Department "should adopt the entire NAIC Model which contains a right of subrogation for secondary plans that coordinate against non-complying plans." Metropolitan states that when a noncomplying carrier takes an always secondary position and the complying plan must make payment as if it is primary, the secondary plan should be permitted certain legal recourses, including the right of subrogation and the right to claim against the noncomplying plan which should have paid as primary. Metropolitan cites New York and Oklahoma as examples of states that have resolved this issue in a manner more acceptable to Metropolitan. New York does not require a secondary complying plan to pay any more than it would as a secondary carrier. Oklahoma has a rule adopting as public policy the position that a plan may not declare itself to be "excess" to all others or "always secondary", or reduce its benefits because of the existence of duplicate coverage in a manner other than as permitted by the rule. Metropolitan also cites Tennessee and Utah as states having adopted acceptable approaches to this issue.

RESPONSE: The New Jersey rules are essentially the codification of the Department's existing guidelines. Under the subrogation provisions of the NAIC Model, the burden is on the insured to coordinate between the plans and to go through a level of refusal before benefits can be obtained. This happens when the "always secondary" plan remains adamant in its refusal to pay, resulting in the insured not promptly receiving proper reimbursement. Under the New Jersey rules, communication and coordination is between the plans, and the burden is on the plans, particularly the complying plan, to provide full benefits. This should provide for quicker settlement and payment of claims. The subrogation provisions of the Model require a two-step, more formalized and time-consuming procedure. First, the complying plan assumes a primary position but reduces its benefits to secondary. Second, with subrogation, the complying plan advances an amount equal to its primary benefits less what it paid previously. Under subrogation as permitted by the NAIC Model, the claimant receives partial payment during negotiations and additional payment only in exchange for subrogation of all rights under the plan. The NAIC rule will result in delays in benefit payments for many insureds. Under the New Jersey rules, if a noncomplying plan is not willing to act as a primary or to supply information concerning coordination of benefits, then the complying plan simply assumes, without the right of subrogation, the primary position if it is secondary. Here, the claimant receives prompt payment while the insurers determine the proper order.

It was never the Department's intention, nor could it be, to remove any independently existing rights of a complying plan to make a claim in law against a noncomplying plan. Accordingly, under the New Jersey rules, if a complying secondary plan assumes the primary position as to the order and amount of payment, that plan is not, by these rules, denied the right to make any claim it may have against the noncomplying plan in the absence of subrogation.

Finally, even if the Department was inclined to accept the principle of subrogation, it is believed that subrogation in this context is not permitted by New Jersey law. Since the states cited by Metropolitan all employ subrogation, their approaches, although varied, are unacceptable to the Department for this reason and for the reasons previously stated.

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COMMENT: Blue Cross and Blue Shield of New Jersey (BCBS) states that it is their interpretation that the proposed new rules would permit BCBS to implement the rules on a uniform basis on a specific date; for example, January 1, 1989. BCBS seeks clarification as to whether it will be possible to bring all contracts into compliance at one time, or whether a group contract may be brought into compliance only on the renewal date of the contract or the expiration of the collective bargaining agreement.

RESPONSE: As long as an existing group contract's language so allows, and as long as contracts effective after January 1, 1989 are consistent with the rules, it will be possible to bring all contracts into compliance at one time.

COMMENT: BCBS notes that N.J.A.C. 11:4-28.2, Definitions, exempts from coordination of benefits, group or group type coverage where the cost of the coverage is paid solely by the employee. BCBS believes that the value of COB is greatly diminished when it is possible for an individual to collect duplicate benefits from more than one insurance policy. BCBS is specifically concerned when there are instances where either retirees or COBRA continuation enrollees who pay for their coverage are excluded from the coordination of benefits provisions of the group contract. In those instances, a situation develops where individuals have double coverage and are able to collect full benefits from two policies; this inevitably will raise costs for the entire group, including those who only have one source of coverage. In a related instance, there are times where employers require employees to pay the entire cost of some coverages, but not others. For example, an employee receives basic hospital coverage at no cost, but is required by his employer to pay for major medical coverage. BCBS asks whether it is the proposed rules' intent to allow insurers to utilize COB procedures on all coverages available, or only on those coverages that are partially paid by the employer.

RESPONSE: It is the intent of the rules to allow insurers to utilize COB procedures on all coverages except those where all employees, members or subscribers pay the total cost of all coverages. It is not intended to prevent coordination of benefits when the policyholder subsidizes the benefit program but utilizes separate policies. Since the proposed rules codify the principle that an individual is entitled to total benefits if he pays the entire cost of coverage, COB is not allowed in situations where all individuals pay the entire cost of coverages.

COMMENT: BCBS questions how an automobile carrier under existing no-fault laws would utilize COB in relation to traditional health insurance contracts. What would be the responsibility of a health insurance carrier toward automobile insurers?

RESPONSE: In New Jersey, pursuant to N.J.S.A. 39:6A-6, the automobile carrier is primary to collateral sources of coverage except workers' compensation, employees' temporary disability insurance and Medicare. For policies issued or renewed prior to January 1, 1989, the law provides that automobile carriers pay medical-related expenses as the primary carrier, from dollar one, in the absence of the optional deductibles. Where a deductible has been chosen, the insured can secure coverage from his health carrier according to the terms of his contract. Depending upon the existence of any deductibles in its policy, the health carrier would pay the deductible amount for the automobile insured and the automobile carrier would thereafter provide coverage. With the enactment of P.L. 1988, c. 119, for automobile policies issued or renewed after January 1, 1989, the same principle would apply as to deductibles, but health carriers, depending upon the terms of their contract, may also be required to pay the 20 percent insured co-payment (for medical expenses between \$251.00 and \$5,000) required in these policies.

For out-of-State contracts, the provisions of subparagraph 3v of the "plan" definition in N.J.A.C. 11:4-28.2 apply, and COB is permitted.

COMMENT: BCBS seeks clarification as to whether HMO's which issue group type contracts must abide by the COB rules while HMO's that also market contracts directly to individuals are exempted therefrom on that part of their business.

RESPONSE: Since HMO's are regulated by the Department of Health, the Department of Insurance cannot require them to abide by the proposed COB rules. If HMO's voluntarily choose to incorporate COB provisions that comply with the proposed rules, then BCBS' assumption is correct. That is, contracts for individuals are not "plans" (coverage with which coordination is allowed) within the meaning of the rules and contracts for groups are "plans".

COMMENT: BCBS asks whether Appendix A, sections VI and VII are flexible in allowing insurers to decide whether they can seek reimbursement from another insurer or make reimbursements to that insurer for overpayment. It is BCBS' opinion that such flexibility is appropriate.

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RESPONSE: Although sections VI and VII must be included in the provisions of the contract, the utilization of the procedures identified therein is not mandatory.

Full text of the adoption follows.

## SUBCHAPTER 28. GROUP COORDINATION OF BENEFITS

## 11:4-28.1 Purpose; applicability

(a) The purpose of this subchapter is to:

1. Discourage overinsurance and avoid duplication of benefits by permitting a reduction of benefits when a person is covered by more than one plan providing benefits or services for medical, dental, or other care or treatment;

2. Avoid claims payment delays and misunderstandings that result from the use of inconsistent or incompatible nonduplication provisions; and

3. Establish uniformity in the order in which plans pay their claims, and provide the authority for the orderly transfer of information needed to pay claims promptly.

(b) This subchapter applies to group contracts providing health care benefits which are issued, amended, or renewed by health insurers, health service corporations, hospital service corporations, medical service corporations, dental service corporations, dental plan corporations and all similar organizations.

## 11:4-28.2 Definitions

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

"Allowable expense" means the necessary, reasonable, and customary item of expense for health care when the item of expense is covered at least in part under any of the plans involved, except where a statute requires a different definition.

1. Notwithstanding the above definition, items of expense under coverages such as dental care, vision care, prescription drug or hearing aid programs may be excluded from the definition of allowable expense. A plan which provides benefits only for any such items of expense may limit its definition of allowable expenses to like items of expense.

2. When a plan provides benefits in the form of services, the reasonable monetary value of each service shall be considered as both an allowable expense and a benefit paid.

3. The difference between the cost of a private hospital room and the cost of a semi-private hospital room shall not be considered an allowable expense under the above definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

4. When COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of allowable expense shall include only the corresponding expenses or services to which COB applies.

"Claim" means a request that benefits of a plan be provided or paid. The benefits claimed may be in the form of:

1. Services (including supplies);
2. Payment for all or a portion of the expenses incurred;
3. A combination of 1 and 2 above; or
4. An indemnification.

"Claim determination period" means the period of time, which shall not be less than 12 consecutive months, over which allowable expenses are compared with total benefits payable in the absence of COB, to determine whether benefit duplication exists and how much each plan will pay or provide.

1. The claim determination period shall generally be a calendar year, but a plan may use some other period of time that fits the coverage of the plan. A person may be covered by a plan during a portion of a claim determination period if that person's coverage starts or ends during the claim determination period.

2. As each claim is submitted, each plan shall determine its liability and pay or provide benefits based upon allowable expenses incurred to that point in the claim determination period. This determination shall be subject to adjustment as later allowable expenses are incurred in the same claim determination period.

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"COB" means coordination of benefits.

"Group type coverage" means coverage which is not available to the general public and which can be obtained and maintained only because of membership in, or connection with, a particular organization or group.

"Plan" means coverage with which coordination is allowed. The definition of "plan" in the group contract must state the coverages which will be considered in applying the COB provision of that contract. The right to include a coverage shall be limited by 1 through 3 below.

1. Any definition that satisfies the substance of this definition at N.J.A.C. 11:4-28.2 may be used. The definition of "plan" shown in the Model COB Provision in Appendix A of this subchapter is an example of what may be used.

2. This subchapter uses the term "plan". However, a group contract may, instead, use "program" or a comparable term.

3. A "plan" may include:

- i. Group insurance and group subscriber contracts;
- ii. Uninsured arrangements of group or group-type coverage;
- iii. Group or group-type coverage through HMOs and other prepayment, group practice and individual practice plans;
- iv. Group hospital indemnity benefit amounts exceeding \$150.00 per day;

v. The medical benefits coverage in automobile "no-fault" and traditional automobile "fault" type contracts; and

vi. Medicare or other governmental benefits, except those benefits as provided in 4vii below. This part of the definition of "plan" may be limited to the hospital, medical and surgical benefits of the governmental program.

4. "Plan" shall not include:

- i. Individual or family insurance contracts;
- ii. Individual or family subscriber contracts;
- iii. Individual or family coverage through Health Maintenance Organizations (HMOs);
- iv. Individual or family coverage under other prepayment, group practice and individual practice plans;
- v. Group or group-type coverage where the cost of coverage is paid solely by the employee, member or subscriber;
- vi. Group hospital indemnity benefits of \$150.00 per day or less;
- vii. School accident-type coverages. This coverage provides benefits for students, headstart and day care enrollees, campers, and similar participants for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis;
- viii. A State plan under Medicaid; and
- ix. A plan when, by law, its benefits are in excess of those of any private insurance plan or other nongovernmental plan.

"Hospital indemnity benefits" means those benefits not related to expenses incurred. The term does not include expense-incurred benefits, even if they are designed or administered to give the insured the right to elect indemnity-type benefits at the time of claim.

"Primary plan" means a plan whose benefits for a person's health care coverage must be determined without taking into consideration the existence of any other plan. There may be more than one primary plan. A plan shall be a "primary plan" if either 1 or 2 below exists:

1. The plan has no order of benefit determination rules, or it has rules which differ from those permitted by this subchapter;

2. All plans which cover the person use the order of benefit determination rules required by this subchapter, and under those rules the plan determines its benefits first.

"Secondary plan" means a plan which is not a primary plan. If a person is covered by more than one secondary plan, the order of benefit determination rules of this subchapter shall decide the order in which their benefits are determined in relation to each other. The benefits of each secondary plan may take into consideration the benefits of the primary plan or plans and the benefits of any other plan which, under this subchapter, has its benefits determined before those of that secondary plan.

"This Plan" in a COB provision means the part of the group contract providing the health care benefits to which the COB provision applies and which may be reduced because of the benefits of other plans. Any other part of the group contract providing health

care benefits shall be separate from "This Plan". A group contract may apply one COB provision to certain of its benefits (such as dental benefits), coordinating only with like benefits, and may apply other separate COB provisions to coordinate other benefits.

## 11:4-28.3 Coordination permissive

(a) The use of COB provisions in group contracts providing health care benefits shall be permissive; any plan may elect to be always "primary". Where COB is used, it shall be included in group contracts providing health care benefits subject to the following conditions:

1. If a group contract includes a COB provision, it shall be consistent with the requirements of this subchapter.

2. A plan that does not include a COB provision shall not take the benefits of another plan into account in determining its benefits

(b) Group coverage that is designed to supplement a part of a basic package of benefits may provide that the supplementary coverage shall be excess to any other parts of a plan provided by the same contract holder.

## 11:4-28.4 Model COB contract provision

(a) Appendix A of this subchapter contains Model COB Provisions for use in group contracts, and is incorporated herein by reference as part of this subchapter. The use of the Model COB Provisions shall be subject to the provisions of (b) below, N.J.A.C. 11:4-28.5 and N.J.A.C. 11:4-28.6.

(b) A group contract's COB provision shall not be required to use the words and format shown in Appendix A of this subchapter. Changes may be made to fit the language and style of the rest of the group contract or to reflect the differences among plans which provide services, pay benefits for expenses incurred, and which indemnify. No other changes to the Model COB Provisions in Appendix A shall be permitted.

## 11:4-28.5 Prohibited coordination; benefit design

(a) A group contract shall not reduce benefits on the basis that:

1. Another plan exists;
2. A person is or could have been covered under another plan, except with respect to Part B of Medicare; or
3. A person has elected an option under another plan providing a lower level of benefits than another option which could have been elected.

(b) A contract shall not contain a provision that its benefits are "excess" or "always secondary" to any plan as defined in this subchapter, except as may be permitted by this subchapter. This prohibition shall not apply to group student excess accident or health contracts where no part of the premium is paid by the student or his family.

## 11:4-28.6 Rules for coordination of benefits

(a) The general order of benefit determination shall be as follows:

1. The primary plan shall pay or provide its benefits as if the secondary plan or plans did not exist.

2. A secondary plan shall take the benefits of another plan into account only when, under this subchapter, it is secondary to that other plan.

3. The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) shall be determined before those of the plan which covers the person as a dependent.

(b) The rules for the order of benefits for a dependent child when the parents are not separated or divorced are as follows:

1. The benefits of the plan of the parent whose birthday falls earlier in a year shall be determined before those of the plan of the parent whose birthday falls later in that year.

2. If both parents have the same birthday, the benefits of the plan which covered the parent longer shall be determined before those of the plan which covered the other parent for a shorter period of time.

3. The word "birthday" refers only to month and day in a calendar year and not the year in which the person was born.

4. If the other plan does not follow the rules described in (b) 1, 2 and 3 above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of

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benefits, the rule based upon the gender of the parent shall determine the order of benefits.

(c) If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child shall be determined according to the provisions of this subsection:

1. The plan of the parent with custody of the child shall have its benefits determined first;

2. The plan of the spouse of the parent with the custody of the child shall have its benefits determined next;

3. The plan of the parent not having custody of the child shall have its benefits determined last.

4. If the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and if the plan of that parent is a secondary plan, and further, if the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, then the benefits of that plan shall be determined first. The plan of the other parent shall be considered the secondary plan. This paragraph shall not apply to any claim determination period or plan year during which any benefits are actually paid or provided before the entity that has actual knowledge.

(d) The benefits of a plan which covers a person as an employee who is neither laid-off nor retired (or as that employee's dependent) shall be determined before those of a plan which covers that person as a laid-off or retired employee (or as that employee's dependent). If the other plan does not have this particular provision, and if, as a result, the plans do not agree on the order of benefits, this subsection shall be ignored.

(e) If none of the provisions of (c) and (d) above determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer shall be determined before those of the plan which covered that person for the shorter term.

1. To determine the time a person has been covered under a plan, successive plans of a given group shall be treated as one if the claimant was eligible under the second plan within 24 hours after the first plan ended.

2. The start of a new plan shall not include:

- i. A change in the amount or scope of a plan's benefits;
- ii. A change in the entity which pays, provides or administers the plan's benefits; and
- iii. A change from one plan to another (such as, from a single employer plan to that of a multiple employer plan).

3. The claimant's time covered under a plan shall be measured from the claimant's initial date of coverage under that plan. If that date is not readily available, the date the claimant first became a member of the group shall be used as the date from which to determine the time of the claimant's coverage under the present plan.

### 11:4-28.7 Procedure to be followed by secondary plan to reduce benefits

(a) A plan determined to be a secondary plan pursuant to N.J.A.C. 11:4-28.6 may reduce its benefits so that the total benefits paid or provided by all plans during a claim determination period are not more than the total allowable expenses. The amount by which the secondary plan's benefits have been reduced shall be used by the secondary plan to pay allowable expenses, not otherwise paid, which were incurred during the claim determination period by the person for whom the claim is made. As each claim is submitted, the secondary plan shall determine its obligation to pay for allowable expenses based on all claims which were submitted up to that time during the claim determination period.

(b) The benefits of the secondary plan shall be reduced when the sum of the benefits that would be payable for the allowable expenses under the secondary plan in the absence of this COB provision, and the benefits that would be payable for the allowable expenses under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not a claim is made, exceeds those allowable expenses in a claim determination period. In this case, the benefits of the secondary plan shall be reduced so that they and the benefits payable under the other plans do not total more than those allowable expenses.

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(c) When the benefits of This Plan are reduced as described in (a) or (b) above, each benefit shall be reduced in proportion, and the amount paid shall then be charged against any applicable benefit limit of This Plan.

(d) The requirements of (c) above may be omitted if the plan provides only one benefit, or may be altered to suit the coverage provided.

### 11:4-28.8 Reasonable monetary value of services

A secondary plan which provides benefits in the form of services may recover from the primary plan the reasonable monetary value of providing the services to the extent that benefits for the services are covered by the primary plan. Nothing in this section shall be interpreted to require a plan to pay a covered person money for the value of services provided by a plan which provides benefits in the form of services.

### 11:4-28.9 Excess and other nonconforming provisions

(a) Where a plan has order of benefits determination rules which are inconsistent with this subchapter and declares that the plan's coverage is "excess" or "always secondary" the following shall apply. Such inconsistencies and declarations can occur because certain plans may not be subject to this subchapter or because some group contracts have not yet conformed to the requirements of this subchapter pursuant to N.J.A.C. 11:4-28.11.

1. A plan with order of benefit determination rules which comply with this subchapter (complying plan) shall coordinate its benefits with a plan which is "excess" or "always secondary" or which uses order of benefit determination rules which are inconsistent with those contained in this subchapter (noncomplying plan) on the following basis:

i. If the complying plan is the primary plan, it shall pay or provide its benefits on a primary basis;

ii. If the complying plan is the secondary plan, it shall attempt to coordinate in the secondary position with benefits available through the noncomplying plan. The complying plan shall attempt to secure the necessary information from the noncomplying plan. If the noncomplying plan is unwilling to act as primary plan or to supply the necessary information, the complying plan shall assume the primary position and pay its benefits as the primary plan.

### 11:4-28.10 Substitute terminology in contracts

A term such as "usual and customary", "usual and prevailing", or "reasonable and customary", may be substituted for the term "necessary, reasonable and customary" in a contract. Terms such as "medical care" or "dental care" may be substituted for "health care" in a contract to describe the coverages to which the COB provisions apply.

### 11:4-28.11 Compliance

(a) Every group contract which provides health care benefits and which is issued on or after January 1, 1989, shall comply with this subchapter.

(b) A group contract which provides health care benefits and which has been issued before January 1, 1989, shall be brought into compliance with this subchapter by the later of:

1. The next anniversary date or renewal date of the group contract following January 1, 1989; or

2. The expiration, following January 1, 1989, of any applicable collectively-bargained contract under which it was written.

### 11:4-28.12 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

## APPENDIX A

### MODEL COB PROVISIONS

#### COORDINATION OF THE GROUP CONTRACT'S BENEFITS WITH OTHER BENEFITS

##### (I) APPLICABILITY

(A) This Coordination of Benefits ("COB") provision applies to This Plan when an employee or the employee's covered dependent

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has health care coverage under more than one Plan. "Plan" and "This Plan" are defined below.

(B) If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of This Plan are determined before or after those of another plan. The benefits of This Plan:

- i. Shall not be reduced when, under the order of benefit determination rules, This Plan determines its benefits before another plan; but
- ii. May be reduced when, under the order of benefits determination rules, another plan determines its benefits first. The above reduction is described in Section (IV) Effect on the Benefits of This Plan.

(C) If this COB provision applies, but the other plan assumes an always secondary position or refuses to follow the order of benefit determination rules, the benefits of This Plan shall not be reduced.

**(II) DEFINITIONS**

(A) "Plan" is any of these which provides benefits or services for, or because of, medical or dental care or treatment;

i. Group insurance or group or group-type coverage. This includes prepayment, group practice or individual practice coverage. It also includes coverage other than school accident-type coverage.

ii. Coverage under a governmental plan, or coverage required or provided by law. This does not include a State plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other nongovernmental program.

Each contract or other arrangement for coverage under ii. is a separate plan. Also, if an arrangement has two parts and COB rules apply only to one of the two, each of the parts is a separate plan.

(B) "This Plan" is the part of the group contract that provides benefits for health care expenses.

(C) "Primary Plan/Secondary Plan". The order of benefit determination rules state whether This Plan is a Primary Plan or Secondary Plan as to another plan covering the person.

When This Plan is a Primary Plan, its benefits are determined before those of the other plan and without considering the other plan's benefits.

When This Plan is a Secondary Plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits.

When there are more than two plans covering the person, This Plan may be a Primary Plan as to one or more other plans, and may be a Secondary Plan as to a different plan or plans.

(D) "Allowable Expense" means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made.

The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an Allowable Expense under the above definition unless the patient's stay in a private hospital room is medically necessary either in terms of generally accepted medical practice, or as specifically defined in the plan.

When a plan provides benefits in the form of services, the reasonable monetary value of each service rendered will be considered both an Allowable Expense and a benefit paid.

(E) "Claim Determination Period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under This Plan, or any part of a year before the date this COB provision or a similar provision takes effect.

**(III) ORDER OF BENEFIT DETERMINATION RULES.**

(A) General. When there is a basis for a claim under This Plan and another plan, This Plan is a Secondary Plan which has its benefits determined after those of the other plan, unless:

- i. The other plan has rules coordinating its benefits with those of This Plan; and
- ii. Both those rules and This Plan's rules, in subparagraph (B) below, require that This Plan's benefits be determined before those of the other plan.

(B) Rules. This Plan determines its order of benefits using the first of the following rules which applies:

i. Nondependent/Dependent. The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent.

ii. Dependent Child/Parents not Separated or Divorced. Except as stated in subparagraph (B)iii below, when This Plan and another plan cover the same child as a dependent of different persons called "parents":

a. The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

b. If both parents have the same birthday, the benefits of the plan which covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time.

However, if the other plan does not have the rule described in a. immediately above, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.

iii. Dependent Child/Separated or Divorced Parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

- a. First, the plan of the parent with custody of the child;
- b. Then, the plan of the spouse of the parent with the custody of the child; and
- c. Finally, the plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health care expenses of the child, and if the plan of that parent is a secondary plan, and further, if the entity obligated to pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. The plan of the other parent shall be the Secondary Plan. This paragraph does not apply with respect to any Claim Determination Period or Plan year during which any benefits are actually paid or provided before the entity has that actual knowledge.

iv. Active/Inactive Employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of benefits, this rule (iv) is ignored.

v. Longer/Shorter Length of Coverage. If none of the above rules determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the Plan which covered that person for the shorter term.

**(IV) EFFECT ON THE BENEFITS OF THIS PLAN.**

(A) When This Section Applies. This Section (IV) applies when, in accordance with Section (III) Order of Benefit Determination Rules, This Plan is a Secondary Plan as to one or more other plans. In that event the benefits of This Plan may be reduced under this section. Such other plan or plans are referred to as "the other plans" in (B) immediately below.

(B) Reduction in This Plan's Benefits. The benefits of This Plan will be reduced when the sum of:

- i. The benefits that would be payable for the Allowable Expenses under This Plan in the absence of this COB provision; and
- ii. The benefits that would be payable for the Allowable Expenses under the other plans, in the absence of provisions with a purpose like that of this COB provision, whether or not claim is made; exceeds those Allowable Expenses in a Claim Determination Period. In that case, the benefits of This Plan will be reduced so that they and the benefits payable under the other plans do not total more than those Allowable Expenses.

When the benefits of This Plan are reduced as described above, each benefit is reduced in proportion. The amount paid is then charged against any applicable benefit limit of This Plan.

## INSURANCE

### (V) RIGHT TO RECEIVE AND RELEASE NEEDED INFORMATION.

Certain facts are needed to apply these COB rules. (Insurer) has the right to decide which facts it needs. It may get needed facts from or give them to any other organization or person. (Insurer) need not tell, or get the consent of, any person to do this. Each person claiming benefits under This Plan must give (Insurer) any facts it needs to pay the claim.

### (VI) FACILITY OF PAYMENT.

A payment made under another plan may include an amount which should have been paid under This Plan. If it does, (Insurer) may pay that amount to the organization which made that payment. That amount will then be treated as though it were a benefit paid under This Plan. (Insurer) will not have to pay that amount again. The term "payment made" includes providing benefits in the form of services, in which case "payment made" means reasonable monetary value of the benefits provided in the form of services.

### (VII) RIGHT OF RECOVERY

If the amount of the payments made by (Insurer) is more than it should have paid under this COB provision, it may recover the excess from one or more of:

- (A) The persons it has paid or for whom it has paid;
- (B) Insurance companies; or
- (C) Other organizations.

The "amount of the payments made" includes the reasonable monetary value of any benefits provided in the form of services.

## LABOR

### (a)

#### DIVISION OF ADMINISTRATION

##### Rulemaking

##### Petitions for Rules

##### Adopted New Rules: N.J.A.C. 12:6-1

Proposed: August 15, 1988 at 20 N.J.R. 2012(a).

Adopted: September 23, 1988 by Charles Serrano,

Commissioner, Department of Labor.

Filed: September 23, 1988 as R.1988 d.494, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Effective Date: October 17, 1988.

Expiration Date: October 17, 1993.

**Summary** of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

#### CHAPTER 6 RULEMAKING

#### SUBCHAPTER 1. PETITIONS FOR RULES

##### 12:6-1.1 Scope

This subchapter shall apply to all petitions made by interested persons for the promulgation, amendment or repeal of any rule by the Department of Labor, pursuant to N.J.S.A. 52:14B-4(f).

##### 12:6-1.2 Procedure for petitioner

(a) Any person who wishes to petition the Department to promulgate, amend or repeal a rule must submit to the Commissioner, in writing, the following information:

1. Name of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the authority of the Department to take the requested action.

(b) Petitions shall be sent to the following address:

Commissioner of Labor  
New Jersey Department of Labor  
CN 110  
Trenton, New Jersey 08625-0110

(c) Any document submitted to the Department of Labor which is not in substantial compliance with (a) above shall not be deemed to be a petition for a rule requiring further Department action pursuant to N.J.S.A. 52:14B-4(f).

##### 12:6-1.3 Procedure of the Department

(a) Upon receipt of a petition in compliance with N.J.A.C. 12:6-1.2, the Department will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register (Register). The notice will include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received.

(b) Within 30 days of receiving the petition, the Department will mail to the petitioner, and file with the Office of Administrative Law for publication in the Register, a notice of action on the petition which will include:

1. The name of the petitioner;
2. The Register citation for the notice of petition, if that notice appeared in a previous Register;
3. Certification by the Commissioner that the petition was duly considered pursuant to law;
4. The nature or substance of the Department's action upon the petition; and
5. A brief statement of reasons for the Department's action.

(c) Department action on a petition may include:

1. Denying the petition;
2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
3. Referring the matter for further deliberations, the nature of which will be specified and which will conclude upon a specified date. The results of these further deliberations will be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the Register.

## TRANSPORTATION

### TRANSPORTATION OPERATIONS

### (b)

#### Speed Limits

#### Routes N.J. 35 in Monmouth County; N.J. 87 and 187 in Atlantic County

#### Adopted Amendments: N.J.A.C. 16:28-1.49 and 1.111

#### Adopted New Rule: N.J.A.C. 16:28-1.35

Proposed: August 15, 1988 at 20 N.J.R. 2039(a).

Adopted: September 14, 1988 by John F. Dunn, Jr., Director,  
Division of Traffic Engineering & Local Aid.

Filed: September 22, 1988 as R.1988 d.484, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Effective Date: October 17, 1988.

Expiration Date: June 1, 1993.

**Summary** of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

##### 16:28-1.35 Route 187

(a) The rate of speed designated for the certain parts of the State highway Route 187 described in this subsection shall be established and adopted as the maximum legal rate of speed:

**ADOPTIONS**

**TRANSPORTATION**

1. For both directions of traffic in the City of Atlantic City, Atlantic County:

i. 40 miles per hour between Route U.S. 30—South Carolina Avenue and Route N.J. 87 (Huron Avenue) (mileposts 0.0 to 0.47).

16:28-1.49 Route 35 including Higgins Avenue, Route U.S. 9 and 35; and Route 35 and 71

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

(c) The rate of speed designated for the certain parts of State highway Route 35—Route 35 and 71—Route 35 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. In Monmouth County:

Renumber existing 1. as i. (No change in text.)

(1) 40 mph in Wall Township and the Borough of Belmar, Monmouth County, between Route N.J. 35-70 and 34 traffic circle and Belmar Avenue—16th Avenue (mileposts 16.03 to 20.55); thence.

Renumber 2.-10. as ii.-x. (No change in text.)

(d) (No change.)

16:28-1.111 Route 87

(a) The rate of speed designated for the certain parts of State highway Route 87 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in the Cities of Atlantic City and Brigantine, Atlantic County:

i. Zone one: 45 mph between Route U.S. 30—Illinois Avenue and 2,100 feet north of Huron Avenue—Brigantine Boulevard (Route N.J. 187) mileposts 0.0 to 1.02); thence

ii. Zone two: 50 mph between 2,100 feet north of Huron Avenue—Brigantine Boulevard (Route N.J. 187) and the end of the New Jersey Department of Transportation jurisdiction (mileposts 1.02 to 1.72).

**(a)**

**Speed Limits**

**Route N.J. 27 in Middlesex and Somerset Counties**

**Adopted Amendment: N.J.A.C. 16:28-1.44**

Proposed: August 15, 1988 at 20 N.J.R. 2040(a).

Adopted: September 15, 1988 by John F. Dunn, Jr., Director,

Division of Traffic Engineering & Local Aid.

Filed: September 22, 1988 as R.1988 d.488, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98.

Effective Date: October 17, 1988.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

16:28-1.44 Route 27

(a) The rate of speed designated for certain parts of State highway Route 27 described in this subsection shall be designated and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-vii. (No change.)

viii. 50 miles per hour between the Bunker Hill Road—New Road and Beekman Road, South Brunswick Township, Middlesex County, and Franklin Township, Somerset County (mileposts 7.79 to 9.24); thence

ix. 40 miles per hour between Beekman Road and 200 feet north of Evelyn Avenue, South Brunswick Township—North Brunswick Township, Middlesex County, and Franklin Township, Somerset County (mileposts 9.24 to 10.61); thence

x. 45 miles per hour between 200 feet north of Evelyn Avenue and 100 feet north of Skillman Lane, North Brunswick Township, Middlesex County and Franklin Township, Somerset County (mileposts 10.61 to 12.29); thence

xi. 40 miles per hour between 100 feet north of Skillman Lane and 100 feet south of Sandford Street, North Brunswick Township—City of New Brunswick, Middlesex County and Franklin Township, Somerset County (mileposts 12.29 to 15.41); thence

xii.-xxi. (No change.)

**(b)**

**Restricted Parking and Stopping**

**Route U.S. 9 in Atlantic County**

**Adopted Amendment: N.J.A.C. 16:28A-1.7**

Proposed: August 15, 1988 at 20 N.J.R. 2040(b).

Adopted: September 15, 1988 by John F. Dunn, Jr., Director,

Division of Traffic Engineering & Local Aid.

Filed: September 22, 1988 as R.1988 d.489, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1.

Effective Date: October 17, 1988.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

16:28A-1.7 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-19. (No change.)

20. No stopping or standing in the City of Somers Point, Atlantic County:

i. Along both sides:

(1) For the entire length within the corporate limits of the City of Somers Point, including all ramps, and connections under the jurisdiction of the Commissioner of Transportation except at approved bus stops or time limit parking areas.

(b) (No change.)

**(c)**

**Restricted Parking and Stopping**

**Routes N.J. 27 in Union County and U.S. 46 in**

**Bergen County**

**Adopted Amendments: N.J.A.C. 16:28A-1.18 and**

**1.32**

Proposed: August 15, 1988 at 20 N.J.R. 2040(c).

Adopted: September 15, 1988 by John F. Dunn, Jr., Director,

Division of Traffic Engineering & Local Aid.

Filed: September 22, 1988 as R.1988 d.485, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138(g), 39:4-138.1, and 39:4-199.

Effective Date: October 17, 1988.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

16:28A-1.18 Route 27

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

(e) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "time limit parking" zones where parking is prohibited at all times except as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established time limit parking zones:

1. (No change.)

**TRANSPORTATION**

**ADOPTIONS**

- 2. In the City of Linden, Union County:
  - i. St. George Avenue:
    - (1) Along the east side:
      - (A) Two hour time limit parking from 8:00 A.M. to 6:00 P.M. Monday through Friday from Roselle Street to Lincoln Street.
    - (2) Along the south side:
      - (A) Two hour time limit parking from 8:00 A.M. to 5:00 P.M. Monday through Friday from Summit Street to Laurita Street.
    - (3) Along the north side:
      - (A) Two hour time limit parking from 8:00 A.M. to 5:00 P.M. Monday through Friday from Wood Avenue to Summit Terrace.
- 16:28A-1.32 Route U.S. 46
  - (a) (No change.)
  - (b) The certain parts of State highway Route U.S. 46 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
    - 1.-3. (No change.)
    - 4. Within the Borough of Teterboro, County of Bergen:
      - i. (No change.)
      - ii. Along the northerly (westbound) side:
        - (1) Far side bus stops:
          - (A) (No change.)
        - (B) From the westerly curb line of Hollister Road and extending 125 feet westerly therefrom.
          - (2) (No change.)
      - 5.-14. (No change.)

**(a)**

**Restricted Parking and Stopping  
Routes N.J. 27 in Union County and U.S. 30 in  
Camden County**

**Adopted Amendments: N.J.A.C. 16:28A-1.18 and  
1.21**

Proposed: August 15, 1988 at 20 N.J.R. 2041(a).  
 Adopted: September 14, 1988 by John F. Dunn, Jr., Director,  
 Division of Traffic Engineering & Local Aid.  
 Filed: September 22, 1988 as R.1988 d.486, **without change**.  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.  
 Effective Date: October 17, 1988.  
 Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

- 16:28A-1.18 Route 27
  - (a) (No change.)
  - (b) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
    - 1.-21. (No change.)
    - 22. Along the northbound (easterly) side in the City of Linden, Union County:
      - i. Far side bus stops:
        - (1) (No change.)
        - (2) Stuart Place—Beginning at the prolongation of the northerly curb line of Stuart Place and extending 100 feet northerly therefrom;
        - (3) Laurita Street—Beginning at the northerly curb line of Laurita Street and extending 100 feet southerly therefrom;
        - (4) Washington Avenue—Beginning at the northerly curb line of Washington Avenue and extending 125 feet northerly therefrom;
        - (5) Roselle Street—Beginning at the northerly curb line of Roselle Street and extending 100 feet northerly therefrom;

- (6) Lincoln Street—Beginning at the northerly curb line of Lincoln Street and extending 100 feet northerly therefrom;
- (7) Chandler Avenue—Beginning at the northerly curb line of Chandler Avenue and extending 100 feet northerly therefrom;
- (8) Alexander Avenue—Beginning 35 feet north of the northerly curb line of Alexander Avenue and extending 100 feet northerly therefrom;
- (9) Hagel Avenue—Beginning at the northerly curb line of Hagel Avenue and extending 110 feet northerly therefrom.
  - ii. Near side bus stops:
    - (1) North Stiles Street—Beginning 95 feet south of southerly curb line of North Stiles Street and extending 105 feet southerly therefrom;
    - (2) Keep Street—Beginning at the southerly curb line of Keep Street and extending 105 feet southerly therefrom;
    - (3) Erudo Street—Beginning at the northerly curb line of Erudo Street and extending 105 feet southerly therefrom;
    - (4) DeWitt Street—Beginning at the southerly curb line of DeWitt Street and extending 105 feet southerly therefrom;
    - (5) McCandless Street—Beginning at the southerly curb line of McCandless Street and extending 100 feet southerly therefrom;
    - (6) Cranford Avenue—Beginning 55 feet south of the southerly curb line of Cranford Avenue and extending 105 feet southerly therefrom;
    - (7) Nora Drive—Beginning at the southerly curb line of Nora Drive and extending 105 feet southerly therefrom.
  - iii. Mid-block bus stops:
    - (1) Between Summit Street and Ainsworth Street—Beginning at a point 85 feet north of the northerly curb line of Summit Street and extending 135 feet northerly therefrom;
    - (2) Between Grant Street and Nora Drive—Beginning at a point 265 feet south of the southerly curb line of Grant Street and extending 100 feet southerly therefrom;
    - (3) Between Park Avenue and Adams Street—Beginning at a point 150 feet south of the southerly curb line of Park Avenue and extending 135 feet southerly therefrom.
- 23. Along the southbound (westerly) side in the City of Linden, Union County:
  - i. Far side bus stops:
    - (1) North Wood Avenue—Beginning at the southerly curb line of North Wood Avenue and extending 100 feet southerly therefrom;
    - (2) DeWitt Terrace—Beginning at the southerly curb line of DeWitt Terrace and extending 115 feet northerly therefrom;
    - (3) Hollywood Road—Beginning at the southerly curb line of Hollywood Road and extending 120 feet southerly therefrom;
    - (4) North Stiles Street—Beginning at the southerly curb line of North Stiles Street and extending 100 feet southerly therefrom.
  - ii. Near side bus stop:
    - (1) Summit Terrace—Beginning at the northerly curb line of Summit Terrace and extending 115 feet northerly therefrom.
      - Renumber existing 23. as 24. (No change in text.)
    - (c)-(e) (No change.)

- 16:28A-1.21 Route U.S. 30
  - (a) (No change.)
  - (b) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
    - 1.-21. (No change.)
    - 22. Along the (White Horse Pike) southbound (westerly) side in the Borough of Oaklyn, Camden County:
      - i. Near side bus stops:
        - (1) West Lakeview Avenue—Beginning at the northerly curb line of West Lakeview Avenue and extending 115 feet northerly therefrom;
        - (2) West Oakland Avenue—Beginning at the southerly curb line of West Oakland Avenue and extending 105 feet southerly therefrom;
        - (3) Capitol Avenue—Beginning at the southerly curb line of Capitol Avenue and extending 105 feet southerly therefrom.

**ADOPTIONS**

**TRANSPORTATION**

- ii. Far side bus stops:
  - (1) West Beechwood Avenue—Beginning at the southerly curb line of West Beechwood Avenue and extending 100 feet southerly therefrom;
  - (2) West Collingswood Avenue—Beginning at the southerly curb line of West Collingswood Avenue and extending 100 feet southerly therefrom.

**(a)**

**Restricted Parking and Stopping  
Routes N.J. 28 in Union County and U.S. 42 in  
Gloucester  
Adopted Amendments: N.J.A.C. 16:28A-1.19 and  
1.29**

Proposed: August 15, 1988 at 20 N.J.R. 2042(a).  
 Adopted: September 15, 1988 by John F. Dunn, Jr., Director,  
 Division of Traffic Engineering & Local Aid.  
 Filed: September 22, 1988 as R.1988 d.487, **without change**.  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.  
 Effective Date: October 17, 1988.  
 Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

- 1.-3. (No change.)
- 4. No stopping or standing in the Borough of Garwood, Union County:
  - i.-ii. (No change.)
  - iii. Along the south side (eastbound) from the westerly curb line of Cedar Street to the easterly curb line of Anchor Place.
- 5.-13. (No change.)

(b)-(e) (No change.)

16:28A-1.29 Route 42

(a) The certain parts of State highway Route 42 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

- 1. (No change.)
- (b) The certain parts of State highway Route 42 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:
  - 1. Along the northbound (easterly) side in Washington Township, Gloucester County:
    - i. (Milepost 6.2) south of the Turnersville garage of the Transport of New Jersey—Beginning 2,280 feet north of the northerly curb line of Whitman Drive to 135 feet northerly thereof.
    - ii. Mid-block bus stop:
      - (1) Greentree Road—Beginning 1,700 feet north of the northerly curb line of Greentree Road (County Road 651), and extending 170 feet northerly therefrom.

**(b)**

**Restricted Parking and Stopping  
Routes U.S. 130 and U.S. 206 in Burlington County  
Adopted Amendments: N.J.A.C. 16:28A-1.46 and  
1.57**

Proposed: August 15, 1988 at 20 N.J.R. 2043(a).  
 Adopted: September 15, 1988 by John F. Dunn, Jr., Director,  
 Division of Traffic Engineering & Local Aid.  
 Filed: September 22, 1988 as R.1988 d.492, **without change**.  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.  
 Effective Date: October 17, 1988.  
 Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

**Full text of the adoption follows.**

16:28A-1.46 Route U.S. 130

(a) (No change.)  
 (b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1.-9. (No change.)
- 10. Along the northbound (easterly) side in Bordentown Township, Burlington County:
  - i. Near side bus stops:
    - (1) Dunns Mill Road—Beginning at the southerly curb line of Dunns Mill Road and extending 105 feet southerly therefrom.
    - (2) Farnsworth Avenue—Beginning at the southerly curb line of Farnsworth Avenue and extending 105 feet southerly therefrom.
    - (3) Highbridge Road—Beginning at the southerly curb line of Highbridge Road and extending 105 feet southerly therefrom.

11. Along the southbound (westerly) side in Bordentown Township, Burlington County:

- i. Far side bus stop:
  - (1) Highbridge Road—Beginning at the prolongation of the southerly curb line of Highbridge Road and extending 100 feet southerly therefrom.
- ii. Near side bus stops:
  - (1) Farnsworth Avenue—Beginning at the northerly curb line of Farnsworth Avenue and extending 105 feet northerly therefrom.
  - (2) Dunns Mill Road—Beginning at the northerly curb line of Dunns Mill Road and extending 105 feet northerly therefrom.

(c) (No change.)

16:28A-1.57 Route U.S. 206

(a) (No change.)  
 (b) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1.-10. (No change.)
- 11. Along the northbound (easterly) side in Bordentown Township, Burlington County:
  - i. Far side bus stops:
    - (1) Dunns Mill Road—Beginning at the northerly curb line of Dunns Mill Road and extending 105 feet northerly therefrom.
    - (2) Cemetery Lane—Beginning at the northerly curb line of Cemetery Lane and extending 100 feet northerly therefrom.
  - ii. Mid-block bus stops:
    - (1) Georgetown Road—Beginning 870 feet north of the northerly curb line of Georgetown Road and extending 135 feet northerly therefrom.
    - (2) Stanton Avenue—Beginning 255 feet north of the northerly curb line of Stanton Avenue and extending 135 feet northerly therefrom.

**TRANSPORTATION**

**ADOPTIONS**

- iii. Near side bus stops:
  - (1) Cedar Avenue—Beginning at the southerly curb line of Cedar Avenue and extending 105 feet southerly therefrom.
  - (2) Oak Avenue—Beginning at the southerly curb line of Oak Avenue and extending 105 feet southerly therefrom.
  - (3) Martin Avenue—Beginning at the southerly curb line of Martin Avenue and extending 105 feet southerly therefrom.
  - (4) Heiser Avenue—Beginning at the southerly curb line of Heiser Avenue and extending 105 feet therefrom.
- 12. Along the southbound (westerly) side in Bordentown Township, Burlington County:
  - i. Far side bus stops:
    - (1) Reichert Avenue—Beginning at the northerly curb line of Reichert Avenue and extending 105 feet southerly therefrom.
    - (2) Sylvan Glen Road—Beginning at the southerly curb line of Sylvan Glen Road and extending 100 feet southerly therefrom.
    - (3) Dunns Mill Road—Beginning at the southerly curb line of Dunns Mill Road and extending 100 feet southerly therefrom.
    - (4) Maple Avenue—Beginning at the northerly curb line of Maple Avenue and extending 100 feet southerly therefrom.
  - ii. Mid-block bus stops:
    - (1) Nissim Avenue—Beginning 800 feet south of the southerly curb line of Nissim Avenue and extending 135 feet southerly therefrom.
    - (2) Dunns Mill Road—Beginning 1910 feet south of the southerly curb line of Dunns Mill Road and extending 200 feet southerly therefrom.
  - iii. Near side bus stops:
    - (1) Elizabeth Street—Beginning at the northerly curb line of Elizabeth Street and extending 105 feet northerly therefrom.
    - (2) Georgetown Road—Beginning at the northerly curb line of Georgetown Road and extending 105 feet northerly therefrom.

**(a)**

**Lane Usage**

**Route N.J. 35 in Ocean County**

**Adopted Amendment: N.J.A.C. 16:30-3.1**

Proposed: August 15, 1988 at 20 N.J.R. 2044(a).  
 Adopted: September 20, 1988 by John F. Dunn, Jr., Director,  
 Division of Traffic Engineering & Local Aid.  
 Filed: September 22, 1988 as R.1988 d.490, **without change**.  
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-6.  
 Effective Date: October 17, 1988.  
 Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text** of the adoption follows.

- 16:30-3.1 Route 35
  - (a)-(b) (No change.)
  - (c) The northbound shoulder (right-hand lane or curb lane) of Route 35 may be used by buses and is reserved therefor on Saturdays, Sundays, and holidays from 3:00 P.M. to 11:30 P.M. from Faber Lane (milepost 7.9) in the Township of Brick, north to Herbert Street (milepost 10.0) in the Borough of Mantoloking, County of Ocean.
    - 1. (No change.)
    - (d) (No change.)

**TREASURY-GENERAL**

**(b)**

**DIVISION OF PENSIONS**

**State Health Benefits Program  
 Full-Time Employee Defined**

**Adopted Amendment: N.J.A.C. 17:9-4.2**

Proposed: April 4, 1988 at 20 N.J.R. 741(a).  
 Adopted: September 27, 1988 by the State Health Benefits Commission, Gaius Mount, Acting Secretary.  
 Filed: September 27, 1988 as R.1988 d.442, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).  
 Authority: N.J.S.A. 52:14-17.27.  
 Effective Date: October 17, 1988.  
 Expiration Date: October 3, 1993.

**Summary of Public Comments and Agency Responses:**

On September 27, 1988, the State Health Benefits Commission, pursuant to authority of N.J.S.A. 52:14-17.27 and in accordance with applicable provisions of the Administrative Procedure Act, adopted amendments to N.J.A.C. 17:9-4.2 concerning health benefits coverage for certain part-time employees within a pilot program at the Attorney General's Office as proposed in the Notice published April 4, 1988, at 20 N.J.R. 741(a), with changes not in violation of N.J.A.C. 1:30-4.3.

Comments concerning the proposed amendment were received from a representative of the Department of Health and from Local 195 of the International Federation of Professional and Technical Engineers. Essentially, those comments were similar and suggested that other part-time or comparable employees in their areas be included in the proposed amendments which was limited to certain employees within the Department of Law and Public Safety. The Commission reviewed those comments and decided not to include any additional employees at this time. The employees who will be covered by this adoption are involved in a pilot program and the experiences gained from this pilot project will be utilized to determine if the same type of coverage could be extended to other, similar employees in the future. The Commission felt that it would be too expensive to include a larger number of employees in this pilot program at this time.

The changes add the Office of Attorney General to the list of divisions of the Department from which part-time deputy attorneys general may participate in the program. Deputies assigned to the Office of Attorney General may participate in the pilot program and they were inadvertently not included in the original proposal.

**Full text** of the adoption follows (additions indicated in boldface with asterisks \*thus\*).

17:9-4.2 State; full time defined

(a) For the purposes of State coverage, "full-time" shall mean: 1.-6. (No change.)

7. For the time period beginning April 1, 1988 and ending March 31, 1990, deputy attorneys general in the **\*Office of the Attorney General and the\*** Divisions of Criminal Justice, Gaming and Law in the Department of Law and Public Safety, who are participating in a pilot program of part-time employment for deputy attorneys general with child care responsibilities conducted by the Department and are paid for a minimum of 20 hours per week, notwithstanding N.J.A.C. 17:9-4.4.

ADOPTIONS

OTHER AGENCIES

**OTHER AGENCIES**

**(a)**

**NEW JERSEY TURNPIKE AUTHORITY**

**New Jersey Turnpike Authority Rules**

**Adopted New Rules: N.J.A.C. 19:9**

Proposed: June 20, 1988 at 20 N.J.R. 1338(a).

Adopted: September 21, 1988 by the New Jersey Turnpike

Authority, Frank B. Holman, Executive Director.

Filed: September 22, 1988 as R.1988 d.483, **without change.**

Authority: N.J.S.A. 27:23-1, 28:23-29.

Effective Date: October 17, 1988.

Expiration Date: October 17, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Since the proposed re-adoption of the rules of the New Jersey Turnpike Authority, N.J.A.C. 19:9, was published in the June 20, 1988 New Jersey Register, the chapter has expired, pursuant to Executive Order No. 66(1978). Therefore, the rules proposed for re-adoption are now adopted as new rules.

Full text of the adopted new rules appears in the New Jersey Administrative Code at N.J.A.C. 19:9.

**(b)**

**CASINO CONTROL COMMISSION**

**Gaming Equipment**

**Emergency Slot Machine Modifications**

**Adopted Amendment: N.J.A.C. 19:46-1.29**

Proposed: January 4, 1988 at 20 N.J.R. 52(a).

Adopted: September 23, 1988 by the Casino Control

Commission, Walter N. Read, Chairman.

Filed: September 23, 1988 as R.1988 d.495, **without change.**

Authority: N.J.S.A. 5:12-63(c) and 5:12-100(e).

Effective Date: October 17, 1988.

Expiration Date: April 28, 1993.

**Summary of Public Comments and Agency Responses:**

COMMENT: The Division of Gaming Enforcement fully supports the proposed amendment to N.J.A.C. 19:46-1.29.

RESPONSE: Accepted.

COMMENT: The Vice President-General Counsel of Caesars Atlantic City states that occasionally emergency procedures must be implemented and thus the repeal is not warranted.

RESPONSE: Rejected. The repeal of N.J.A.C. 19:46-1.29(a)2 would not prohibit slot machine modifications on an emergent basis. The emergency procedures per N.J.A.C. 19:46-1.29 have become obsolete for at least the last four years and have been replaced by procedures detailed in Sections X and XI of the Slot Machine Procedures Manual which is available to the casino industry and which has been utilized effectively. Basically, these procedures require written notification to and inspection by the Division of Gaming Enforcement. In addition, Caesars' reference to the outdated emergency procedure provides even more support to repeal this paragraph of the rule in order to reduce confusion by the casino industry as to the actual procedures to be utilized.

COMMENT: The Vice President-Compliance and Legal Affairs of Claridge objects to the proposed amendment to N.J.A.C. 19:46-1.29. Claridge states that the emergency procedures connected with the rules are necessary to effect such modifications in "instances to prevent the unscrupulous conduct of some patrons who will otherwise attempt to cheat or tamper with slot machines". In addition, Claridge states that by eliminating the present procedure, casino licensees would not be able to take immediate steps to insure that the integrity of casino gaming in New Jersey is not adversely affected.

RESPONSE: Rejected. In accordance with N.J.A.C. 19:46-1.20(c), it is precisely in these circumstances that the Division must be called to investigate the facts surrounding such activities. Accordingly, it is imperative that these obsolete emergency procedures be repealed in order to eliminate any confusion as to the actual procedures to be utilized and to safeguard any evidence to be brought forth into an investigation.

Full text of the adoption follows.

19:46-1.29 Operation of slot machine in conformance with approved model

(a) The responsibility for final assembly and initial operation of a slot machine in the manner approved by the Commission rests with the manufacturer and distributor. Changes in the manner of final assembly or initial operation of a slot machine will be deemed unsuitable unless prior to the institution of the change the manufacturer or distributor or operator shall have obtained approval from the Commission in accordance with the following procedure:

1. (No change.)

(b) (No change.)

# EMERGENCY ADOPTION

## HUMAN SERVICES

### (a)

#### DIVISION OF PUBLIC WELFARE

#### Food Stamp Program

#### Increased Income Deductions, Maximum Coupon Allotments and Maximum Income Eligibility Limits Adopted Emergency Amendments and Concurrent Proposal: N.J.A.C. 10:87-12.1, 12.2, 12.3, 12.4 and 12.7

Emergency Amendment Adopted: September 16, 1988 by Drew Altman, Commissioner, Department of Human Services.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): September 29, 1988.

Emergency Amendment Filed: September 30, 1988 as R.1988 d.512.

Authority: N.J.S.A. 30:4B-2; the Food Stamp Act of 1977 as amended; 7 CFR 273.9(a) and 273.9(d)(6), (7), and (8); and 7 CFR 273.10(e)(4).

Concurrent Proposal Number: PRN 1988-553.

Emergency Amendment Effective Date: September 30, 1988.

Emergency Amendment Operative Date: October 1, 1988.

Emergency Amendment Expiration Date: November 29, 1988.

Submit comments on the concurrent proposal by November 16, 1988 to:

Marion E. Reitz, Director  
Division of Public Welfare  
CN 716  
Trenton, New Jersey 08625

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

#### Summary

The Department of Human Services is required by the Food Stamp Act of 1977 (see 7 U.S.C. §§2011 et seq.), as amended, and Federal regulations to revise maximum allowable net and gross income eligibility standards to reflect the annual Federal adjustment of the poverty income guidelines issued by the United States Department of Health and Human Services. The "165 percent of poverty level" used when determining separate household status for elderly or disabled individuals is also revised.

Additionally, the Department is required by Federal regulations to revise maximum coupon allotments (7 CFR 273.10(e)(4)) and increase the standard deduction (7 CFR 273.9(d)(7)) and the shelter deduction (7 CFR 273.9(d)(8)) to reflect the annual Federal adjustment of those amounts which takes into account changes in the cost of living. The standard deduction is being increased to \$106.00. The maximum shelter deduction is being increased to \$170.00.

The Department is also updating the uniform telephone allowance to \$18.00 and adjusting the utility allowances (7 CFR 273.9(d)(6)) to reflect a decrease, over the past 12 months, in the average cost of services, fuel and utilities. The heating utility allowance (HUA), which can be utilized by households who are responsible for their heating costs, is \$163.00. The standard utility allowance (SUA), which is for use by households that are not responsible for their heating costs but who are responsible for a major utility expense, is \$101.00. These are annualized amounts and will be effective through September 1989.

#### Social Impact

The increase in the income eligibility standards will increase the number of households eligible to participate in the program and receive food stamp benefits. The increase in the standard deduction, shelter deduction, uniform telephone allowance, and maximum coupon allotments will result in an increase in the amount of food stamp benefits households are entitled to receive.

Both the annualized SUA and HUA are being amended to reflect a decrease in the average cost of services, fuels and utilities. It should, however, be noted that households having utility expenses in excess of the SUA or HUA may elect to have actual expenses used in the eligibility and benefit computation.

#### Economic Impact

The net effect of the increase in the standard deduction, shelter deduction, uniform telephone allowance, and maximum coupon allotments will be an increase in benefits for food stamp recipients. The decrease in the SUA and HUA amounts will likely be offset by other increased deductions and/or use of actual utility expenses for eligibility and benefit determinations and by the increase in coupon allotments.

The revised, increased income eligibility limits will expand the number of households eligible to receive food stamp benefits. These changes will not have a significant adverse impact on the Department and local agencies administering the program but will bring additional Federal funds into the State for those households participating in this Federally funded program.

#### Regulatory Flexibility Statement

This emergency rule and concurrent proposal has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This rulemaking imposes no compliance requirements on small businesses; therefore, a regulatory flexibility statement is not required.

Full text of the emergency adoption and concurrent proposal follows (additions indicated by boldface **thus**; deletions indicated in brackets [thus]).

#### 10:87-12.1 Income deduction table

TABLE I  
Income Deductions

Standard Deduction	[\$102.00] <b>\$106.00</b>
[Shelter Deduction	\$152.00]
[(for households certified prior to October 1, 1987)]	
Shelter Deduction	[\$164.00] <b>\$170.00</b>
[(for households certified or recertified effective	
October 1, 1987 or later)]	
Dependent Care Deduction	\$160.00
Uniform Telephone Allowance	[ 13.80] <b>\$ 18.00</b>
Standard Utility Allowance	[\$103.00] <b>\$101.00</b>
Heating Utility Allowance	[\$169.00] <b>\$163.00</b>

#### 10:87-12.2 Maximum coupon allotment table

TABLE II  
Maximum Coupon Allotment (MCA)

Household Size	MCA
1	[\$ 87] <b>90</b>
2	[159] <b>165</b>
3	[228] <b>236</b>
4	[290] <b>300</b>
5	[344] <b>356</b>
6	[413] <b>427</b>
7	[457] <b>472</b>
8	[522] <b>540</b>
9	[587] <b>608</b>
10	[652] <b>676</b>
Each Additional Member	[+65] <b>+68</b>

**EMERGENCY ADOPTION**

**HUMAN SERVICES**

10:87-12.3 Maximum allowable net income standards

**TABLE III**  
Maximum Allowable Net Income

Household Size	Maximum Allowable Income
1	\$ [459] <b>481</b>
2	[617] <b>645</b>
3	[775] <b>808</b>
4	[934] <b>971</b>
5	[1092] <b>1135</b>
6	[1250] <b>1298</b>
7	[1409] <b>1461</b>
8	[1567] <b>1625</b>
9	[1726] <b>1789</b>
10	[1885] <b>1953</b>
Each Additional Member	[+159] <b>+164</b>

10:87-12.4 Maximum allowable gross income standards

**TABLE IV**  
Maximum Allowable Gross Income

Household Size	Maximum Allowable Income
1	\$ [596] <b>626</b>
2	[802] <b>838</b>
3	[1008] <b>1050</b>
4	[1214] <b>1263</b>
5	[1420] <b>1475</b>
6	[1625] <b>1687</b>
7	[1831] <b>1900</b>
8	[2037] <b>2112</b>
9	[2243] <b>2325</b>
10	[2449] <b>2538</b>
Each Additional Member	[+206] <b>+213</b>

10:87-12.7 165 percent of poverty level

(a) The following table is to be used when determining separate household status for elderly and disabled individuals in accordance with N.J.A.C. 10:87-2.2(a)4.

**TABLE VII**  
165 Percent of Poverty Level

Household Size	Maximum Allowable Income
1	\$ [757] <b>794</b>
2	[1018] <b>1063</b>
3	[1279] <b>1333</b>
4	[1540] <b>1602</b>
5	[1802] <b>1872</b>
6	[2063] <b>2141</b>
7	[2324] <b>2411</b>
8	[2585] <b>2680</b>
9	[2847] <b>2950</b>
10	[3109] <b>3220</b>
Each Additional Member	[+262] <b>+270</b>

# PUBLIC NOTICES

## EDUCATION

(a)

### THE COMMISSIONER

#### State Plan for the Education of All Handicapped Children

#### Public Notice

Take notice that the New Jersey Department of Education has received approval of its Program Plan for Fiscal Years 1989-1991 for the Education of All Handicapped Children by the United States Office of Special Education and Rehabilitative Services. Approval of the Plan entitles New Jersey to receive an EHA-B grant award of \$55.4 million for fiscal year 1988-89. Applicable agencies receive notice of the grant application process through the Department of Education.

Copies of the approved Plan are available to interested parties through the Division of Special Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.

For further information contact Erin Hillary Leff, Esq. at (609) 292-5894.

## ENVIRONMENTAL PROTECTION

(b)

### DIVISION OF WATER RESOURCES

#### Amendment to the Tri-County Water Quality Management Plan

#### Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the expansion of the Logan Township Municipal Utilities Authority's (MUA) sewer service area to include the proposed Heron Drive sewer extension and its service area, parts of Blocks 43 and 44 located in Logan Township, Gloucester County.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

#### Amendment to the Tri-County Water Quality Management Plan

#### Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt the Township of Mansfield's Wastewater Management Plan (WMP). The Mansfield WMP allows for two new wastewater treat-

ment facilities with groundwater discharges, one to serve a proposed office/warehouse complex and another to serve a proposed restaurant. The WMP also proposes service areas for three future wastewater treatment facilities with on-site groundwater discharges.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(d)

#### Amendment to the Mercer County Water Quality Management Plan

#### Public Notice

Take notice that on July 6, 1988 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment is to allow the Hightstown Borough Sewage Treatment Plant to continue to operate and not connect to the East Windsor Municipal Utilities Authority.

## CORRECTIONS

(e)

### MUNICIPAL AND COUNTY FACILITIES

#### Notice of Administrative Correction Holding rooms

#### N.J.A.C. 10A:34-2.9

Take notice that the Department of Corrections, pursuant to N.J.A.C. 1:30-2.7(a)3, is administratively correcting the text of N.J.A.C. 10A:34-2.9(b), Holding rooms, to include a citation to N.J.A.C. 10A:34-2.7, Cells specifications. Without this reference, construction requirements for holding rooms in N.J.A.C. 10A:34-2.9, which are referenced in the rule, are incomplete since the current rule's citation to N.J.A.C. 10A:34-2.8 only specifies equipment.

By this notice of administrative correction, N.J.A.C. 10A:34-2.9(b) has been corrected as follows (additions indicated in boldface thus).

10A:34-2.9 Holding rooms

(a) (No change.)

(b) Construction and equipment of holding rooms shall be the same as required in N.J.A.C. 10A:34-2.7 and N.J.A.C. 10A:34-2.8. Instead of a bunk, a hardwood bench firmly affixed to the floor shall be installed in the holding room.

## HEALTH

(a)

### PUBLIC HEALTH COUNCIL

#### Notice of Public Hearing

#### "Cigarettes That Use, But Do Not Burn, Tobacco"

Take notice that a public hearing will be conducted by the Public Health Council, State Department of Health, to discuss the following issue:

In September, 1987, the R.J. Reynolds Tobacco Company (Reynolds) announced the development of a product which it described as "a new cigarette that uses, but does not burn, tobacco." In April, the American Medical Association and three voluntary health agencies acting as the Coalition on Smoking Or Health petitioned the Federal Food and Drug Administration (FDA) to assert jurisdiction over this product as a drug. During a round of discussions in August with the petitioners and other interested parties, FDA indicated that it has not decided whether to assert jurisdiction or to take a less definitive action.

Reynolds has recently revealed plans to test market this product, which will be named Premier, in three cities in Arizona and Missouri beginning in October. The company has expressed its intention to market Premier throughout the country eventually. Coincident with this announcement, Reynolds filed a response to the petitions with FDA and released a large volume of reports which provide information about Premier not previously available.

Concerns have been expressed in a number of quarters about the possible effects which Premier might have on public health if it is introduced. The Public Health Council has scheduled a hearing on this product to receive comment from the public about Premier. The Council intends to consider testimony in order to inform itself concerning a public health matter. Specifically, the Council seeks comment regarding the following questions:

1. What is the product known as Premier?
2. What, if any, characteristics does this product have which could lead to characterization of it as a drug or hazardous substance under New Jersey law?
3. What are the alleged adverse public health effects of this product?
4. If Premier were marketed in New Jersey as a freely available, over the counter product, what effects, both positive and negative, might this have on the health of New Jersey citizens?

The hearing will be held on Monday, November 21, 1988, at 1:00 P.M. to 5:00 P.M. in the Board Room, 1st floor, Health Agriculture Building, New Jersey State Department of Health, John Fitch Plaza, Trenton, New Jersey.

Any individual desiring to testify must submit advance notice of this intention either in writing or by telephone to Joseph Kale, Executive Director, Public Boards and Councils, New Jersey Department of Health, CN 360, Trenton, NJ 08625-0360, (609) 292-9382.

A copy of written testimony must be submitted at least one week prior to the hearing to Mr. Kale at the above address.

Oral testimony will be limited to a maximum of 10 minutes, if time permits.

(b)

### THE COMMISSIONER

#### Availability of Grants

#### Gerontology Program

#### Huntington's Disease Service Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Health hereby publishes notice of the availability of the following grant:

- A. Name of Grant Program: Huntington's Disease Services Program, Grant Program No. 89-64-GER.
- B. Purpose for which the Grant Program Funds will be used: To contract with a medical school to provide pre-symptomatic testing for Huntington's Disease, intensive counseling for Huntington's Disease victims and their families, and the provision of educational services to professionals and family members.
- C. Amount of Money in the Grant Program: The Department of Health has received \$100,000 to implement this initiative.

D. Group or Entities which may Apply for the Grant Program: New Jersey medical schools with documented experience in counseling clients with Huntington's Disease and their families.

E. Qualifications needed by an Applicant to be considered for the Grant: Documented experience in counseling clients with Huntington's Disease and their families, and previous working relationship with the NJ Chapter of the Huntington's Disease Society of America.

F. Procedures for Eligible Entities to Apply for Grant Funds: Submission of completed Application for Health Service Grant.

G. For information contact:

Rickey Greene  
Chief, Gerontology Program  
Division of Epidemiology  
NJ Dept. of Health  
CN 369  
Trenton, NJ 08625  
(609) 588-7496

H. Deadline by which Applications must be submitted: November 15, 1988.

I. Deadline by which Applicant shall be notified whether they will receive Funds: December 1, 1988.

(c)

### THE COMMISSIONER

#### Availability of Grants

#### Occupational Health Service

#### County Occupational Health Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Health hereby publishes notice of the availability of the following grant:

A. Name of Grant Program: County Occupational Health Program Grants.

B. Purpose for which the Grant Program Funds will be used: To promote and encourage the establishment and conduct of Occupational Health Programs in counties. These programs are staffed by industrial hygienists who will conduct industrial hygiene evaluations in private workplaces identified through the Heavy Metal Register and referred by the Department of Health.

C. Amount of Money in the Grant Program: The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified below to determine whether the funds have been awarded and to receive further information.

D. Group or Entities which may Apply for the Grant Program: A noncompetitive continuation grant to specific local governmental agencies.

E. Qualifications needed by an Applicant to be considered for the Grant:

1. Demonstrated ability to provide services and meet the NJDOH specific grant responsibilities.
2. Willingness to provide services on a countywide basis.
3. Applicant is required to provide matching funds in an amount equal to or greater than the grant award.

F. Procedures for Eligible Entities to Apply for Grant Funds: Complete and submit a New Jersey State Department of Health application for Health Service Grant.

G. For information contact:

Director  
NJDOH, Occupational Health Service  
CN 360  
Trenton, NJ 08625-0360  
(609) 984-1863

H. Deadline by which Applications must be submitted: November 30, 1988.

I. Date by which Applicant shall be notified whether they will receive Funds: January 1, 1989.

## HUMAN SERVICES

### (a)

#### CHILD LIFE PROTECTION COMMISSION

##### Availability of Grant Funds

##### Children's Trust Fund: Prevention of Child Abuse

##### Community Based Programs

Take notice that in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Child Life Protection Commission, the governing authority of the Children's Trust Fund, announces the following availability of funds:

- A. Name of the Grant Program: Children's Trust Fund.
- B. Purpose for which the Grant Program Funds shall be used: To fund child abuse and neglect prevention programs at the community level.
- C. Amount of Money in the Grant Program: Up to approximately \$500,000 dependent upon receipt of a Federal Challenge Grant award.
- D. Groups or Entities which may Apply for the Grant Program: Public or private agencies with 501(c)3 status for the purpose of child abuse and neglect prevention programs.
- E. Qualifications needed by an Applicant to be considered for the Grant Program: An applicant must have a Federal income tax number in support of the 501(c)3 status, and, if a corporation, must submit a list of trustees.
- F. Procedure for Eligible Entities to Apply for Grant Funds: Directives and an application will be mailed by the Children's Trust Fund upon receipt of a letter of inquiry sent to the address listed below. The completed application is to be returned to the Trust Fund for consideration.
- G. Address of division, office or official receiving application:
 

Sharon Ahern  
Children's Trust Fund  
CN 711  
Trenton, NJ 08625
- H. Deadline by which Applications must be submitted to that division, office or official: November 15, 1988.
- I. Date by which Applicants shall be notified whether they will receive funds under the Grant Program: January 15, 1989.

## INSURANCE

### (b)

#### OFFICE OF THE COMMISSIONER

##### Surplus Lines Exportable List

Take notice that, on June 3, 1988, the Department of Insurance held a hearing to determine the placement of classes of risk or coverage on the Exportable List, pursuant to N.J.S.A. 17:22-6.43. After due consideration of the record, Kenneth D. Merin, Commissioner of Insurance, hereby promulgates the following list as the class or classes of insurance risk or coverage determined to be eligible for export:

1. Amusement Devices, Parks and Carnivals
2. Animal Mortality
3. Armored Cars
4. Auto Racing and Race Tracks
5. Day Care Center Liability
6. Differences in Condition
7. Environmental Impairment Liability Insurance
8. Excess and Buffer Liability
9. Excess Loss and Excess Aggregate for Self-Insurers; Public Liability and Worker's Compensation
10. Fine Arts Dealers
11. Golf Driving Range
12. First Loss and Excess of First Loss Insurance
13. House Movers and Building Demolition
14. Kidnapping and Ransom Insurance
15. Manufacturers and Contractors Liability for Floor Waxers, Building Maintenance People, Window Washers and Exterminators
16. Limousine and Trucks (over 10,000 pounds) Physical Damage Coverage for Non-Fleet (one to five), including trailers and trailer interchange, and all fleet risks irrespective of gross vehicle weight

17. Mortgage Impairment
  18. Pony Rides/Riding Academies
  19. Physical Damage Coverage for Private Passenger and Commercial Vehicles with Actual Cash Value over \$39,000
  20. Products Liability and Products Recall Coverage
  21. Professional Liability and Errors and Omissions (all forms)
  22. Short Term Events
  23. Skating Rinks (Roller and Ice) and Skate Board Parks
  24. Swim Clubs/Swim Pools
  25. Vacant and Unoccupied Buildings
  26. Warehouseman's Legal Liability
- This list supersedes the current list and is valid until further notice.

## TRANSPORTATION

### (c)

#### LOCAL AID

##### Notice of Intention Not To Readopt

##### N.J.A.C. 16:16, Municipal Operations

##### N.J.A.C. 16:17, Municipal Construction

Take notice that N.J.A.C. 16:16, Municipal Operations, and N.J.A.C. 16:17, Municipal Construction, will expire on November 7, 1988, pursuant to Executive Order No. 66(1978). The Department of Transportation has reviewed these rules and decided to permit their expiration, and not to readopt them.

## TREASURY-GENERAL

### (d)

#### THE TREASURER

##### Public Notice

##### Charitable Organization; Application for Public Employee Charitable Fund-Raising Campaign and Campaign Steering Committee

Take notice that Feather O'Connor, Treasurer, State of New Jersey, pursuant to the Public Employee Charitable Fund-Raising Act, P.L. 1985, c. 140 (see N.J.A.C. 17:28-3.2(b)1), announces that the Department of the Treasury will be accepting applications via the DIVISION OF CONSUMER AFFAIRS until December 1, 1988 from charitable fund-raising organizations wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1989-1990 and Campaign Steering Committee.

For the purposes of this notice, "Charitable Fund-Raising Organization" shall mean a voluntary not-for-profit organization which receives and distributes voluntary charitable contributions. A charitable fund-raising organization shall be eligible to participate on the Steering Committee and in the 1989-1990 Campaign if it meets the following requirements:

- a. The organization is exempt from Federal income tax under Section 501(c) (3) of the Internal Revenue Code;
- b. The organization qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;
- c. The organization is not a private foundation as described in Section 509 of the Internal Revenue Code;
- d. The organization is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971", P.L. 1971, c. 469 (N.J.S.A. 45:17A-1 et seq.);
- e. The organization demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State;
- f. The organization shall have raised at least \$60,000 and distributed that sum among at least 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State campaign.

**PUBLIC NOTICES**

**TREASURY-GENERAL**

Copies of the following applications may be obtained from the Division of Consumer Affairs, Charities Registration, or the information requested therein may be submitted along with a cover letter. **Completed applications or requests for application forms should be addressed to:**

Ann Mallet  
Charities Registration  
Division of Consumer Affairs  
1100 Raymond Boulevard  
Room 507  
Newark, NJ 07102

**Applications can also be requested by calling (201) 648-4004.**

The application form follows:

**APPLICATIONS\***

1. Name of organization and name under which it intends to conduct charitable fund-raising campaigns among public employees.
  2. Address for organization and addresses of any organization offices within the state.
  3. Names and addresses of officers, directors, trustees and executive personnel of organizations.
  4. Place and date organization was formed.
  5. Has organization received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code? Yes \_\_\_ No \_\_\_ . Please attach a copy of your IRS letter of determination.
  6. Is organization a private foundation as defined in Section 509(a) of the Internal Revenue Code? Yes \_\_\_ No \_\_\_
  7. Date on which fiscal year of organization ends.
  8. Has organization registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.? Yes \_\_\_ No \_\_\_ Section qualified under \_\_\_ . Explanation:
  9. Does the organization qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code? Yes \_\_\_ No \_\_\_ Section qualified under \_\_\_ . Please attach a copy of your IRS letter of determination.
  10. Provide the names and addresses of charitable agencies affiliated with your organization for the purpose of directly sharing in funds raised by the organization from charitable fund-raising campaigns among public employees.
  11. Please attach a copy of the organization's charter and all amendments thereto.
  12. Please submit and certify the following financial data for each of the two fiscal years preceding this application:
    - a) amount of funds raised;
    - b) what percentage of those funds consisted of individual contributions from citizens of New Jersey;
    - c) names and addresses of charitable agencies to which those funds were distributed and how much to each.
- \*Please note:** Charitable fund-raising organizations which were found eligible by the State Treasurer to participate on the Campaign Steering Committee for the 1988-89 Campaign, shall be required only to submit to the State Treasurer via CONSUMER AFFAIRS, CHARITIES REGISTRATION, their most recent financial information specified in question 12 above. (N.J.A.C. 17:28-2.8e).

**(a)**

**Public Notice**

**Charitable Agency; Application for the Public Employee Charitable Fund-Raising Campaign**

Take notice that Feather O'Connor, Treasurer, State of New Jersey, pursuant to the Public Employees' Charitable Fund-Raising Act, P.L. 1985, c. 140 (see N.J.A.C. 17:28-3.2(b)1), announces that the Department of the Treasury will be accepting applications via the DIVISION OF CONSUMER AFFAIRS until December 1, 1988 from charitable fund-raising agencies wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1989-1990.

For the purposes of this notice, "Charitable Fund-Raising Agency" shall mean a voluntary not-for-profit organization that provides health, welfare, or human care services to individuals. A charitable fund-raising agency shall be eligible to participate in the 1989-1990 Campaign if it meets the following requirements:

If it is an affiliated charitable agency (For this purpose affiliated charitable agency shall mean a charitable agency which is affiliated with a charitable fund-raising organization for the purpose of directly sharing in funds raised by the organization.)

**OR**

- a. The agency is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code;
- b. The agency qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;
- c. The agency is not a private foundation as described in Section 509 of the Internal Revenue Code;
- d. The agency is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971", P.L. 1971, c. 469 (N.J.S.A. 45:17A-1 et seq.);
- e. The agency demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State;
- f. The agency shall have raised at least \$15,000 from individual citizens of New Jersey in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the following applications may be obtained from the Division of Consumer Affairs, Charities Registration, or the information requested therein may be submitted along with a cover letter. **Completed applications or requests for application forms should be addressed to:**

Ann Mallet  
Charities Registration  
Division of Consumer Affairs  
1100 Raymond Boulevard  
Room 507  
Newark, NJ 07102

**Applications can also be requested by calling (201) 648-4004**

The application form for affiliated charitable fund-raising agencies follows:

**APPLICATION—AFFILIATED AGENCIES**

1. Name of AGENCY and name under which it intends to conduct charitable fund-raising campaigns among public employees.
  2. Name and address of the charitable fund-raising organization with which agency is affiliated.
- The application form for non-affiliated charitable fund-raising agencies follows:

**APPLICATION—NON-AFFILIATED\***

1. Name of agency and name under which it intends to conduct charitable fund-raising campaigns among public employees.
  2. Address for agency and addresses of any agency offices within the state.
  3. Names and addresses of officers, directors, trustees and executive personnel of agency.
  4. Place and date agency was formed.
  5. Has agency received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code? Yes \_\_\_ No \_\_\_ .Please attach a copy of your IRS letter of determination.
  6. Is agency a private foundation as defined in Section 509(a) of the Internal Revenue Code? Yes \_\_\_ No \_\_\_
  7. Date on which fiscal year of agency ends.
  8. Has agency registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.? Yes \_\_\_ No \_\_\_ If no, is agency exempt from registration requirement? Yes \_\_\_ No \_\_\_ Explanation:
  9. Does the agency qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code? Yes \_\_\_ No \_\_\_ Section qualified under \_\_\_ . Please attach a copy of your IRS letter of determination.
  10. Please attach a copy of the agency charter and all amendments thereto.
  11. Please submit and certify the following financial data for each of the two fiscal years preceding this application:
    - a) amount of funds raised;
    - b) what percentage of those funds consisted of individual contributions from citizens of New Jersey;
- \*Please note:** Unaffiliated charitable agencies, which were found eligible by the State Treasurer to participate in the 1988-89 Campaign, shall be required only to submit to the State Treasurer via DIVISION OF CON-

TREASURY-GENERAL

PUBLIC NOTICES

SUMER AFFAIRS, CHARITIES REGISTRATION, their most recent financial information specified in question 11 above. (N.J.A.C. 17:28-3.4(e)).

## STUDY COMMISSION

### (a)

#### COMMISSION TO STUDY SERVICES AND PROGRAMS AVAILABLE TO HEARING IMPAIRED CHILDREN

##### Notice of Public Hearings

Take notice that the Commission to Study Services and Programs Available to Hearing Impaired Children, created by Joint Resolution No. 2, effective February 19, 1987, will hold public hearings on October 19 and 26, 1988. The hearings will be held at the following places:

October 19, 1988	Camden County College 5:00 P.M. to 9:00 P.M. Madison Hall, Room 109 Peter Cheeseman and Little Gloucester Roads Blackwood, New Jersey
October 26, 1988	Bergen County College 5:00 P.M. to 9:00 P.M. Adult Basic Education Building Main Street Hackensack, New Jersey

To help the Commission respond to and evaluate services and programs, the Commission is seeking public comment to the following questions.

The Commission is organizing advance registration if anyone wishes to testify. On-site registration will also be held.

Please call or write the Commission at:

6323 Browning Road  
Pennsauken, NJ 08109-1548  
(609) 488-2309 (voice)  
(call after 7:00 P.M.)

Interpreters will be present at all Commission hearings. David Fleming, Chairman.

#### QUESTIONS FOR PUBLIC HEARINGS

##### Topic #1: What is the availability and quality of evaluation services for hearing impaired children in New Jersey?

(a) What is the availability, quality, timeliness and effectiveness of the diagnostic procedures used to identify your infant's hearing loss? Was infant hearing screening available to you?

(b) What is the quality of audiological services you received for diagnosis, prescription of hearing aids and referral for additional services?

(c) What is the availability and effectiveness of service delivery by the school psychologists for hearing impaired students? Knowledge of appropriate assessment/evaluation materials, procedures and interpretations for hearing impaired students? Communication skills?

(d) Is at least one specialist in deafness available on Teams evaluating a child with hearing loss? If not, is a qualified outside evaluator made available?

(e) Is the Specialized Child Study Team for the Deaf in your region utilized by your school district?

(f) How satisfactory are the goals and objectives set for hearing impaired children?

(g) What are the criteria used for educational placement of hearing impaired children?

(h) Are parents informed of the range of placement options for hearing impaired children?

##### Topic #2: How available and effective are parent guidance and parent education for families of deaf and hearing impaired children?

(a) How accessible are early intervention programs? To deaf families?

(b) How appropriate was the information you were given at the time your child was diagnosed as hearing impaired regarding: hearing aids? education? speech/language development? community support services?

(c) To what extent do school programs encourage parents to improve communication and educational involvement with their deaf children?

(d) To what extent do educational programs incorporate parent education, training, and follow-up procedures into their service models?

##### Topic #3: What is the availability and appropriateness of educational programs for deaf and hearing impaired students in New Jersey?

(a) How accessible to you was information about the availability of specialized early intervention for your hearing impaired child from: your doctor? a local agency? (e.g., Child Find)?

(b) What is the appropriateness and quality of early intervention services? Are specially trained staff in the area of hearing impairment available?

(c) What is the availability, quality and effectiveness of early intervention services to multiply handicapped hearing impaired children?

(d) How available is the certified Teacher of the Deaf or Hard of Hearing to the hearing impaired child's educational program? To the home-bound hearing impaired child?

(e) Are appropriate educational programs available to deaf and hard of hearing children in all regions of the State? If not, what are the shortcomings?

(f) What is the quality of supervision, evaluation and monitoring of the academic progress of hearing impaired children? Are children with permanent and temporary loss of hearing identified, assisted and monitored?

(g) How available are personnel, knowledgeable in deafness, to deaf children placed in classes for other handicapping conditions?

(h) What is the extent of school transfers needed to create a continuation of school programming for hearing impaired children?

(i) What is the availability of educational technology to the hearing impaired schoolchild? Are amplification devices, computer software for speech and language development, telecommunication devices, warning systems and closed captioning available?

(j) What is the availability of extra-curricular activities to the hearing impaired child?

(k) Are current vocational educational programs readily accessible to deaf or hard of hearing students who require them?

(l) Are current vocational transition programs sufficient to meet the needs of deaf students when they graduate from secondary school?

(m) Are postsecondary vocational training and community-based training programs available to hearing impaired students?

(n) Are appropriate postsecondary, adult, and continuing educational opportunities available to deaf and hearing impaired youth?

##### Topic #4: How available and effective are educational programs for multi-handicapped and minority group hearing impaired students?

(a) How adequately are deaf-blind children served? Are personnel appropriately trained and/or certified to work with vision and hearing impaired students?

(b) How adequately are severely impaired multi-handicapped children with hearing loss served? Are personnel appropriately trained and/or certified to work with severe-profoundly impaired children and hearing loss as well?

(c) How adequately are deaf children with mild-moderate secondary impairments served? Are personnel trained and/or certified in education of the hearing impaired, and in special education as well?

(d) How adequately are minority group hearing impaired children served? Are personnel appropriately prepared to meet their unique cultural needs? Is a teacher of the deaf and/or interpreter fluent in the family's native language available to deaf children and their families?

##### Topic #5: What is the availability and quality of support services to deaf and hearing impaired children in New Jersey schools?

(a) Are adequate support services available to deaf and hearing impaired school children?

(b) What is the extent of the school district's hearing aid maintenance program?

(c) Are classroom interpreters and notetakers available to meet the needs of students who require them? Is sufficient time scheduled to meet students' needs?

(d) What is the availability and effectiveness of service delivery by the speech and language specialists for hearing impaired students? Is sufficient time scheduled to address individual students' needs?

(e) Are counselors knowledgeable in deafness available for hearing impaired children and their families? Knowledge of postsecondary resources for hearing impaired students?

## PUBLIC NOTICES

(f) What is the availability and effectiveness of service delivery by the social worker for hearing impaired students?

(g) What is the availability and effectiveness of service delivery by the learning disabilities teacher-consultants for hearing impaired students?

(h) What is the availability and accessibility of Learning Resource Centers to parents and professionals serving hearing impaired students? Are materials and equipment current, relevant, and adequate for enhancing instruction of deaf and hearing impaired students?

(i) What is the availability and effectiveness of service delivery by paraprofessionals, i.e., dorm supervisors, teachers' assistants, for hearing impaired students?

**Topic #6: What are the training and technical assistance needs of professionals and staff serving hearing impaired students at all levels of educational programs?**

(a) To what extent is the hearing impaired child's mainstreamed classroom teacher prepared to deal with the child's hearing loss, learning style, communication, and social needs? Are support and advisement available from a case manager trained in education of the hearing impaired? Is technical assistance available from a specialist in education of the hearing impaired?

(b) Are sufficient professional development opportunities being offered to administrators and other professionals providing programs and services for deaf and hearing impaired students?

(c) To what extent are all levels of education and government agencies coordinating their training and technical assistance activities for deaf and hearing impaired children and youth?

(d) To what extent are all levels of education and government agencies providing technical assistance activities for deaf and hearing impaired children and youth?

(e) Are New Jersey certification requirements for Teachers of the Deaf or Hard of Hearing sufficient to ensure quality instruction? Are the standards current and in line with national certification standards? Are there appropriate training programs where teachers can obtain certification?

(f) Are evaluation and certification standards and procedures for professionals, e.g., speech/language specialists, education audiologists, educational interpreters, sufficient to ensure quality services? Are there appropriate training programs where professionals can obtain certification?

(g) What are training and technical assistance needs for infant and early childhood education programs? Are there appropriate training programs available?

**Topic #7: What is the availability and accessibility of community services for hearing impaired children and youth in New Jersey? Background: Community services being investigated are: childcare, transportation, medical services, police, libraries, recreation programs, welfare, Medicaid, food stamps, SSI, juvenile shelters, criminal system, human service agencies, and group homes.**

(a) What has been your experience in trying to obtain community services for your hearing impaired child? Has the lack of services negatively affected your child?

(b) To what extent have you experienced difficulty in using community services? Re: communication, awareness, etc.?

## OTHER AGENCIES

**Topic #8: What is the availability and quality of mental health services for hearing impaired children and youth in New Jersey?**

(a) When a hearing impaired family member needed professional mental health services, were adequate services found? How? Where?

(b) Did the mental health services satisfy the original referral, and were they satisfactory? Was the mode of communication appropriate?

(c) Was the cost of services more because of a hearing impaired family member? And, why?

(d) Did people consulted have training or experience with the hearing impaired?

(e) Were you denied adequate services because your family member was hearing impaired?

(f) If hospitalization was recommended, was it available, was communication facilitated, and was there adequate discharge planning?

**Topic #9: What is the availability and quality of assistance to mental health professionals serving hearing impaired children and youth in New Jersey?**

(a) Are mental health professionals aware of sources of assistance and referral services when working with hearing impaired children and youth?

(b) As a professional in the mental health area, were you able to find an interpreter knowledgeable and experienced in therapeutic settings?

(c) Were you able to find an interpreter skilled in facilitating communication in a therapeutic setting?

## OTHER AGENCIES

### (a)

### CASINO CONTROL COMMISSION

#### Petition for Rulemaking Live Music Requirement

#### N.J.A.C. 19:52-1.3

Petitioner: Atlantic City Musicians' Union Local 661-708.

Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

**Take notice** that on July 25, 1988, the Atlantic City Musicians' Union Local 661-708 filed a rulemaking petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:52-1.3.

The petitioner proposes to amend N.J.A.C. 19:52-1.3 to require that any hotel casino providing musical entertainment in a showroom or lounge having a seating capacity which exceeds 350 people shall provide only live musical entertainment to the exclusion of taped or mechanically reproduced music. Further, the casino hotel would be required to post in their description of any show in which music is provided whether that music is taped or recorded.

The petitioner contends that the proposed amendment would insure a high quality of entertainment, attract additional patrons who prefer hearing live instead of taped music, and increase employment levels for musicians thereby improving Atlantic City's economy and contributing to the area's revitalization.

**After due notice**, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 52:14B-4.

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 6, 1988 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1988 d.1 means the first rule adopted in 1988.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT AUGUST 15, 1988**

**NEXT UPDATE: SUPPLEMENT SEPTEMBER 19, 1988**

**Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.**

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
19 N.J.R. 1859 and 1926	October 19, 1987	20 N.J.R. 951 and 1018	May 2, 1988
19 N.J.R. 1927 and 2086	November 2, 1987	20 N.J.R. 1019 and 1126	May 16, 1988
19 N.J.R. 2087 and 2224	November 16, 1987	20 N.J.R. 1127 and 1316	June 6, 1988
19 N.J.R. 2225 and 2324	December 7, 1987	20 N.J.R. 1317 and 1500	June 20, 1988
19 N.J.R. 2325 and 2510	December 21, 1987	20 N.J.R. 1501 and 1594	July 5, 1988
20 N.J.R. 1 and 124	January 4, 1988	20 N.J.R. 1595 and 1758	July 18, 1988
20 N.J.R. 125 and 220	January 19, 1988	20 N.J.R. 1759 and 1976	August 1, 1988
20 N.J.R. 221 and 320	February 1, 1988	20 N.J.R. 1977 and 2122	August 15, 1988
20 N.J.R. 321 and 434	February 16, 1988	20 N.J.R. 2123 and 2350	September 6, 1988
20 N.J.R. 435 and 570	March 7, 1988	20 N.J.R. 2351 and 2416	September 19, 1988
20 N.J.R. 571 and 692	March 21, 1988	20 N.J.R. 2417 and 2498	October 3, 1988
20 N.J.R. 693 and 842	April 4, 1988	20 N.J.R. 2499 and 2610	October 17, 1988
20 N.J.R. 843 and 950	April 18, 1988		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1-9.5	Transmittal of clerk's notices	20 N.J.R. 1979(a)		
1:1-14.3	Interpreters for hearing impaired: preproposal	20 N.J.R. 1979(b)		
1:1-14.8	Proceedings on the papers: inaction by requesting party	20 N.J.R. 1979(c)		
1:6-10.1	Discovery in school budget cases	20 N.J.R. 1980(a)		
1:6A-1.1	Applicability: correction to text			20 N.J.R. 2325(a)
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)		

Most recent update to Title 1: TRANSMITTAL 1988-3 (supplement August 15, 1988)

<b>AGRICULTURE—TITLE 2</b>				
2:2	Animal disease control program	20 N.J.R. 2419(a)		
2:33	Agricultural fairs	20 N.J.R. 2125(a)		
2:68-1	Association standards for commercial feeds	20 N.J.R. 1671(c)		
2:69	Commercial fertilizers and soil conditioners	20 N.J.R. 1673(a)		
2:71-2.4, 2.5	Jersey Fresh Logo program	20 N.J.R. 1129(b)	R.1988 d.421	20 N.J.R. 2254(a)
2:76-6.2, 6.5, 6.6, 6.8, 6.9, 6.10, 6.11, 6.16	Farmland preservation: acquisition of development easements	20 N.J.R. 1503(a)	R.1988 d.493	20 N.J.R. 2565(a)
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 1761(a)		
2:76-6.9, 6.11, 6.14	Farmland preservation: acquisition of development easements	20 N.J.R. 1319(a)	R.1988 d.435	20 N.J.R. 2254(b)

Most recent update to Title 2: TRANSMITTAL 1988-5 (supplement August 15, 1988)

<b>BANKING—TITLE 3</b>				
3:1-2.17	Repeal (see 3:32-1)	20 N.J.R. 697(a)	R.1988 d.472	20 N.J.R. 2450(a)
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	20 N.J.R. 1025(a)		
3:24-5.1	Licensed check cashing	20 N.J.R. 2353(a)		
3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11	Conversion of savings and loan associations from mutual to capital stock	20 N.J.R. 697(a)	R.1988 d.472	20 N.J.R. 2450(a)
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)		

Most recent update to Title 3: TRANSMITTAL 1988-5 (supplement August 15, 1988)

<b>CIVIL SERVICE—TITLE 4</b>				
4:1-6, 7, 10.1, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4:2-6.4-6.10, 7, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4:3-2	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)

Most recent update to Title 4: TRANSMITTAL 1988-2 (supplement June 20, 1988)

<b>PERSONNEL—TITLE 4A</b>				
4A:1-1.3	State and local departments defined	20 N.J.R. 845(b)	R.1988 d.415	20 N.J.R. 2255(a)
4A:3	Classification, services, and compensation	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)		
4A:6-1.3, 1.10	Sick leave, leave without pay: extension of comment period	20 N.J.R. 341(a)		

Most recent update to Title 4A: TRANSMITTAL 1988-2 (supplement June 20, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>COMMUNITY AFFAIRS—TITLE 5</b>				
5:2	Handicapped Persons' Recreational Opportunities grant program	20 N.J.R. 1765(a)	R.1988 d.459	20 N.J.R. 2451(a)
5:3-2	Nonpublic records	20 N.J.R. 1763(a)	R.1988 d.458	20 N.J.R. 2451(b)
5:10	Maintenance of hotels and multiple dwellings	20 N.J.R. 2126(a)		
5:10-1.3, 1.6, 1.10, 1.12, 25	Fire safety in hotels and multiple dwellings	20 N.J.R. 2126(a)		
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:13-1.14	Limited dividend and nonprofit housing projects: payment in lieu of taxes	20 N.J.R. 2425(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.18	Energy Subcode	20 N.J.R. 699(b)	R.1988 d.417	20 N.J.R. 2274(a)
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-7.104, 7.116	Barrier Free Subcode: recreation standards	20 N.J.R. 1764(b)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:27-1.3, 1.6, 5	Fire safety in rooming and boarding houses	20 N.J.R. 2126(a)		
5:30	Local Finance Board rules: waiver of Executive Order No. 66 (1978) expiration provision	20 N.J.R. 1320(a)		
5:38	State intergovernmental review process for Federal programs and direct development activities	20 N.J.R. 2354(a)		
5:51	Handicapped Persons' Recreational Opportunities grant program (recodified as 5:2)	20 N.J.R. 1765(a)	R.1988 d.459	20 N.J.R. 2451(a)
5:70-6.3	Congregate Housing Services Program: service subsidy formula	20 N.J.R. 2426(a)		
5:92-6.1, 11.4, 11.5, 12.9, 16.6, App. F	Affordable housing council rules	20 N.J.R. 1673(b)		
5:92-11.2	Council on Affordable Housing: excess funds in regional contribution agreements; age restricted units	20 N.J.R. 1140(a)	R.1988 d.440	20 N.J.R. 2376(a)
5:92-12.4	Council on Affordable Housing: initial pricing of rental units	20 N.J.R. 1320(b)	R.1988 d.441	20 N.J.R. 2376(b)

Most recent update to Title 5: TRANSMITTAL 1988-8 (supplement August 15, 1988)

**VETERANS' AFFAIRS AND DEFENSE—TITLE 5A**

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

**EDUCATION—TITLE 6**

6:2-1.21	Issuance of administrative order creating State-operated school district	20 N.J.R. 1505(a)	R.1988 d.475	20 N.J.R. 2452(a)
6:3-1.23, 1.24	Principal certification	20 N.J.R. 1320(c)	R.1988 d.491	20 N.J.R. 2567(a)
6:11-12.5	Substance awareness coordinator	20 N.J.R. 1980(c)		
6:11-3.25, 4.2, 5.7, 10	Principal certification	20 N.J.R. 1320(c)	R.1988 d.491	20 N.J.R. 2567(a)
6:22A-1	School facility lease purchase agreements	20 N.J.R. 2127(a)		
6:28-11.12	Special Education Pilot Project: moderate behavior handicap class types	20 N.J.R. 1141(a)	R.1988 d.430	20 N.J.R. 2275(a)
6:29-4.2	Testing for tuberculosis infection	20 N.J.R. 1981(a)		
6:31-1.10	Bilingual education and English as a second language programs: exit testing and reentry process	20 N.J.R. 1034(a)	R.1988 d.448	20 N.J.R. 2383(a)
6:78-1.1, 1.2, 1.3	Marie H. Katzenbach School for the Deaf	20 N.J.R. 1678(a)		

Most recent update to Title 6: TRANSMITTAL 1988-6 (supplement August 15, 1988)

**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1A-1.1, 1.2, 1.4, 1.6, 2.1-2.4, 2.8, 2.10, 2.12-2.15, 5.1, 5.2, 7	Replacement of contaminated wellfields	Emergency (expires 11-18-88)	R.1988 d.479	20 N.J.R. 2470(a)
7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1D	Allocation of costs for emergency water supply projects	20 N.J.R. 2197(a)		
7:2	State Park Service: extension of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.41, 3.46, 7.41, 8.11	Hudson River waterfront development: extension of comment period	20 N.J.R. 552(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)		
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:14A-3.1	NJPDES permit requirements: discharges of dredged and fill material into freshwater wetlands and open waters	20 N.J.R. 1328(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:22-10	Environmental assessment requirements for State-assisted wastewater treatment facilities	20 N.J.R. 1983(a)		
7:25-5.7	1989 Wild turkey season	20 N.J.R. 2217(a)		
7:25-6	1989-90 Fish Code	20 N.J.R. 1627(a)		
7:26-1.1, 1.4, 4, 4A, 7.3, 7.5, 12.2, 13A.6, 16.2, 16.3	Hazardous waste fee schedule	20 N.J.R. 1995(a)		
7:26-1.1, 1.4, 4, 4A	Hazardous waste fee schedule: extension of comment period	20 N.J.R. 2427(c)		
7:26-1.4, 7.4, 9.1, 12.1	Hazardous waste research and testing facilities: pre-proposal	20 N.J.R. 460(b)		
7:26-1.4, 9.8-9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-3A	Special medical waste	Emergency (expires 10-9-88)	R.1988 d.429	20 N.J.R. 2321(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)		
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)		
7:26-12.9	Hazardous waste management: research, development and demonstration permits	20 N.J.R. 462(a)		
7:26B-1.10	Environmental Cleanup Responsibility Act: fee schedule	20 N.J.R. 2000(a)		
7:27-16.1, 16.3	Marine transfer of gasoline: vapor recovery program	20 N.J.R. 866(a)		
7:27-23	Volatile organic substances in consumer products	20 N.J.R. 2002(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels	20 N.J.R. 1631(a)		
7:27-25	Control and prohibition of air pollution by vehicular fuels: extension of comment period	20 N.J.R. 2355(a)		
7:30	Pesticide Control Code	20 N.J.R. 579(a)		
7:31-2.12, 2.15, 5	Confidentiality and trade secrets: correction and extension of comment period	20 N.J.R. 554(a)		
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 552(b)		
7:36	Green Acres Program: extension of comment period	20 N.J.R. 869(a)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		
7:45	Delaware and Raritan Canal review zone: extension of comment period	20 N.J.R. 552(c)		
7:50-2.11, 3.32, 4.1, 4.40, 4.66, 5.22-5.26, 5.30, 5.43, 5.47, 6.7, 6.84, 6.107, 6.123, 6.131, 6.132, 6.133	Pinelands Comprehensive Management Plan	20 N.J.R. 716(a)	R.1988 d.405	20 N.J.R. 2384(a)

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8:31A-7.2, 7.4, 7.5, 7.11	Reimbursement for new SHARE facilities	20 N.J.R. 1633(a)		
8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement: existing capital indebtedness	19 N.J.R. 1145(a)	R.1988 d.24	20 N.J.R. 2572(a)

<b>N.J.A.C. CITATION</b>		<b>PROPOSAL NOTICE (N.J.R. CITATION)</b>	<b>DOCUMENT NUMBER</b>	<b>ADOPTION NOTICE (N.J.R. CITATION)</b>
8:31B-3.45	Hospital reimbursement: submission of uniform bill-patient summaries	20 N.J.R. 1143(a)	R.1988 d.497	20 N.J.R. 2574(a)
8:31B-4.37	Uncompensated Care Trust Fund: charity care eligibility and charges	20 N.J.R. 2219(a)		
8:31B-4.37, 4.39	Uncompensated Care Trust Fund: charity care eligibility	20 N.J.R. 595(a)	R.1988 d.420	20 N.J.R. 2276(a)
8:33J-1.3	Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) demonstration period	20 N.J.R. 2220(a)		
8:34	Licensing of nursing home administrators	20 N.J.R. 2355(b)		
8:39-20.1, 29.1, 30.5, 31.2	Long-term care licensing standards: corrections to text	_____	_____	20 N.J.R. 1944(a)
8:43-4.11	Residential health care facilities: hot water temperature	20 N.J.R. 2221(a)		
8:43B-1.10	Hospital facilities: confidentiality of patient information	20 N.J.R. 2221(b)		
8:44	Operation of clinical laboratories	20 N.J.R. 2222(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
8:65-1.3, 6.6, 8.13	Handling of sodium pentobarbital in animal humane facilities	20 N.J.R. 366(a)	R.1988 d.498	20 N.J.R. 2574(b)
8:65-10.5	Schedule V, Controlled Dangerous Substances	20 N.J.R. 1506(a)	R.1988 d.496	20 N.J.R. 2575(a)
8:70	Evaluation criteria for interchangeable drug products	20 N.J.R. 1507(a)	R.1988 d.444	20 N.J.R. 2376(c)
8:71	Interchangeable drug products (20 N.J.R. 191(b), 654(b), 899(a), 1462(b), 1711(c))	19 N.J.R. 1878(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 900(a), 1461(a), 1711(b))	20 N.J.R. 146(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b))	20 N.J.R. 871(a)	R.1988 d.445	20 N.J.R. 2376(d)
8:71	Interchangeable drug products	20 N.J.R. 1766(a)		
8:71	Interchangeable drug products: correction to list	_____	_____	20 N.J.R. 2290(a)
8:71	Interchangeable drug products	20 N.J.R. 2356(a)		

**Most recent update to Title 8: TRANSMITTAL 1988-7 (supplement July 18, 1988)**

**HIGHER EDUCATION—TITLE 9**

9:3	Facilities planning for public colleges and universities	20 N.J.R. 1768(a)		
9:4-1.5	Chargeback for disability-specific programs at county colleges	20 N.J.R. 1330(a)		
9:7-3.5	Tuition Aid Grant Program: part-time students	20 N.J.R. 2007(a)		
9:7-4.2, 4.3, 4.4	Garden State Scholarships	20 N.J.R. 1635(a)		
9:9	Student loan programs: policies and procedures	20 N.J.R. 1636(a)	R.1988 d.478	20 N.J.R. 2452(b)
9:9-11.2	Guaranteed Student Loan Program: institution compliance	20 N.J.R. 1641(a)	R.1988 d.477	20 N.J.R. 2456(a)
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)		
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)		
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)		

**Most recent update to Title 9: TRANSMITTAL 1988-5 (supplement August 15, 1988)**

**HUMAN SERVICES—TITLE 10**

10:1-2	Public comment procedure and petitions for rulemaking	20 N.J.R. 1050(a)		
10:3	Contract administration	20 N.J.R. 1771(a)		
10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:14-1.4, 4.1, 6.3	Statewide Respite Care Program	20 N.J.R. 1051(a)		
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)		
10:37-5.6, 5.16	Repeal (see 10:31)	20 N.J.R. 2427(d)		
10:41-2	Services to developmentally disabled: confidentiality of client records	20 N.J.R. 2435(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:49	New Jersey Care—Special Medicaid Programs	_____	_____	20 N.J.R. 2478(c)
10:49-1.12	Timely claim submittal—pharmaceutical services	20 N.J.R. 1642(a)		
10:49-3.19	Outpatient claim form: correction	_____	_____	20 N.J.R. 2400(f)
10:49-6.9	Medicaid providers and administrative charges and service fees	20 N.J.R. 518(a)	R.1988 d.446	20 N.J.R. 2387(a)
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:54-4	Physician's services reimbursement: correction	_____	_____	20 N.J.R. 2400(f)
10:56-3.7, 3.10	Dental services reimbursement: correction	_____	_____	20 N.J.R. 2400(f)

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10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:62-1, 2, 3	Vision Care Manual	20 N.J.R. 956(c)		
10:63-1.11, 1.19	Use of personal needs allowance in long-term care facilities	20 N.J.R. 1144(a)		
10:66-1.6, 3	Mental health services: partial care	20 N.J.R. 1054(a)	R.1988 d.481	20 N.J.R. 2576(a)
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)		
10:69B	Lifeline Credit/Tenants Lifeline Assistance programs	20 N.J.R. 2440(a)		
10:72	New Jersey Care—Special Medicaid Programs			20 N.J.R. 2478(c)
10:81-3.38–3.42, 3.46	PAM: client resources in AFDC program	20 N.J.R. 1056(a)	R.1988 d.426	20 N.J.R. 2291(a)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:81-11.18	Child support guidelines: spousal support obligation	20 N.J.R. 1058(a)	R.1988 d.423	20 N.J.R. 2292(a)
10:81-14	Realizing Economic Achievement (REACH) program	20 N.J.R. 2222(b)		
10:82-3.2, 3.6, 3.7	ASH: client resources in AFDC program	20 N.J.R. 1059(a)	R.1988 d.424	20 N.J.R. 2292(b)
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:85-3.2, 3.3	GAM: travel costs for job seeking or training	20 N.J.R. 879(a)	R.1988 d.425	20 N.J.R. 2292(c)
10:85-3.3	General Assistance: income-in-kind	20 N.J.R. 2238(a)		
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:87-12.1–12.4, 12.7	Food Stamp Program: income deductions, coupon allotment, maximum allowable income	Emergency (expires 11-29-88)	R.1988 d.512	20 N.J.R. 2592(a)
10:89-2.1, 2.3, 3.4, 4.1	Home energy assistance	20 N.J.R. 1643(a)	R.1988 d.482	20 N.J.R. 2577(a)
10:89-3.5, 3.6, 5.3	Home Energy Assistance program	20 N.J.R. 1060(a)	R.1988 d.422	20 N.J.R. 2293(a)
10:126	Registration of family day care providers	20 N.J.R. 1508(a)		
10:127	Residential child care facilities	20 N.J.R. 1149(a)	R.1988 d.456	20 N.J.R. 2387(b)

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**CORRECTIONS—TITLE 10A**

10A:3-5.2	Institutional search plan	20 N.J.R. 2441(a)		
10A:3-5.6, 5.7	Pat and strip searches	20 N.J.R. 1331(a)	R.1988 d.406	20 N.J.R. 2294(a)
10A:4-11.9, 12	Inmate discipline: appeal to Office of Administrative Law	20 N.J.R. 496(b)		
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:9-11.4	Classification process	20 N.J.R. 1645(a)	R.1988 d.467	20 N.J.R. 2456(b)
10A:16-4.1, 4.2, 4.8	Psychological services at correctional facilities	20 N.J.R. 2128(a)		
10A:16-4.4	Inmate/therapist confidentiality	20 N.J.R. 1772(a)	R.1988 d.476	20 N.J.R. 2457(a)
10A:16-11.4, 11.5, 11.14	Special Medical Unit	20 N.J.R. 1773(a)	R.1988 d.460	20 N.J.R. 2457(b)
10A:17-5.3, 5.8	Religious services	20 N.J.R. 1332(a)	R.1988 d.433	20 N.J.R. 2294(b)
10A:18-7	Bedside and funeral visits	20 N.J.R. 1332(b)	R.1988 d.432	20 N.J.R. 2294(c)
10A:32-6.5	Temporary restriction of juveniles	20 N.J.R. 2442(a)		
10A:34-2.8	Municipal cell equipment	20 N.J.R. 2442(b)		
10A:34-2.9	Holding rooms: administrative correction			20 N.J.R. 2594(e)
10A:71-2.1, 3.4, 3.28	Parole Board rules	20 N.J.R. 2129(a)		

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11:1-1.1, 1.2	Organization of department; public information	Exempt	R.1988 d.454	20 N.J.R. 2377(a)
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11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)		
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12:16-7	Use of surplus unemployment funds by contributing local governments	20 N.J.R. 1521(a)	R.1988 d.437	20 N.J.R. 2300(a)
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12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
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12:235-1.6	1989 Workers' Compensation maximum weekly benefit	20 N.J.R. 2188(a)		
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13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)	Expired	
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13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)		
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13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		
13:45A-25	Health club services	20 N.J.R. 2036(a)		
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14:11-6	Interest on fuel clause overrecoveries	19 N.J.R. 1967(c)		
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**Most recent update to Title 15: TRANSMITTAL 1988-1 (supplement May 16, 1988)**

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**Most recent update to Title 16: TRANSMITTAL 1988-8 (supplement August 15, 1988)**

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**Most recent update to Title 17: TRANSMITTAL 1988-7 (supplement August 15, 1988)**

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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**Most recent update to Title 19: TRANSMITTAL 1988-3 (supplement July 18, 1988)**

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**Most recent update to Title 19K: TRANSMITTAL 1988-6 (supplement August 15, 1988)**

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